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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, help us to see things from Your perspective and envision what can happen through Your power. We need You to help us combat the growing tide of cynicism in our society. Secular humanism is catching. It leads to horizontal thinking. We evaluate things on the basis of what we can do on our own strength. Sometimes our capacity to hope is debilitated by life's frustrations, disappointments over people, and our inability to control life. Cynicism becomes addictive. It begins with negativism, grows in a critical attitude, and becomes a settled personality trait.

Father, help us to be realistic about people and situations, but always expectant of what You can do. Give us Your joy as the only lasting antidote to cynicism. We trust You with our problems, difficult relationships, and disturbing anxieties. We commit the present crisis in our Nation to You and ask for Your wise guidance. Now, with Your help, we want to share contagious joy and not spread the virus of cynicism. In the Name of our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

Mr. LOTT. Thank you, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, this morning the Senate will immediately resume consideration of S. 1301, the Consumer Bankruptcy Protection Act, with Senator REED being recognized to

offer an amendment under a 1-hour time agreement. Following that debate, Senator KENNEDY will be recognized to offer an amendment regarding minimum wage under a 2-hour time agreement.

At 12:30 p.m. the Senate will recess until 2:15 to allow the two party conferences to meet. When the Senate reconvenes at 2:15 there will be 5 minutes for closing remarks on the Kennedy amendment prior to a vote on or in relation to the amendment. Following that vote, there will be up to four additional votes occurring in stacked sequence with minimal debate time between each vote. Those votes, in their respective order, will include the two Feingold amendments regarding attorney's fees and filing fees, the Reed amendment regarding underwriting standards, and the cloture vote on the child custody bill previously scheduled at 4:30.

I am still hopeful that we can come to some agreement on amendments and time so that we can go to the child custody bill without further cloture votes. But failing that, we will go forward with that vote at 4:30.

Further votes could occur into the evening as the Senate attempts to complete action on the bankruptcy bill. If we do not get to final passage tonight, then we expect that to be probably the first vote on Wednesday.

As a reminder to Senators, second-degree amendments to the child custody bill must be filed by 3:30 p.m.

I thank my colleagues for their attention.

MEASURE PLACED ON CALENDAR—S.J. RES. 56

Mr. LOTT. Mr. President, I understand there is a joint resolution at the desk due for its second reading.

The PRESIDING OFFICER (Mr. HUTCHINSON). The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 56) expressing the sense of Congress in support of the existing Federal legal process for determining the safety and efficacy of drugs, including marijuana and other Schedule I drugs, for medicinal use.

Mr. LOTT. Mr. President, I object to further consideration of the resolution at this time.

The PRESIDING OFFICER. The resolution will be placed on the calendar.

Mr. LOTT. Thank you, Mr. President. I yield the floor.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1301, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Lott (for Grassley/Hatch) amendment No. 3559, in the nature of a substitute.

Feingold/Specter amendment No. 3602 (to amendment No. 3559), to ensure payment of trustees' costs under chapter 7 of title 11, United States Code, of abuse motions, without encouraging conflicts of interest between attorneys and clients.

Feingold/Specter amendment No. 3565 (to amendment No. 3559), to provide for a waiver of filing fees in certain bankruptcy cases.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized to offer an amendment regarding underwriting standards, on which there will be 1 hour of debate equally divided.

The Senator from Rhode Island.

Mr. REED. Thank you, Mr. President.

Mr. WARNER. Mr. President, will the Senator yield?

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Mr. REED. Yes.

Mr. WARNER. Might I inquire as to how long the Senator might wish to speak?

Mr. REED. I assume I will speak anywhere from 10 to 15 minutes.

Mr. WARNER. I wonder if the managers of the bill would simply grant me the opportunity to introduce a bill, which will take less than 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. REED. Mr. President, I assume that if the Senator introduces a bill we would still have the full time to debate my amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. REED. Thank you. I have no objection.

THE PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair. I thank my distinguished colleagues.

(The remarks of Mr. WARNER pertaining to the introduction of S. 2506 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 3610 TO AMENDMENT NO. 3559

(Purpose: To make amendments with respect to court considerations with respect to dismissal or conversion)

Mr. REED. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. REED) numbered 3610 to amendment No. 3559.

Mr. REED. 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:

On page 5, line 10, insert "(i)" after "(A)".
On page 5, line 15, strike "or" and insert "and".

On page 5, between lines 15 and 16, insert the following:

"(ii) when any party in interest moves for dismissal or conversion, whether the party in interest dealt in good faith with the debtor; or".

Mr. REED. Mr. President, my amendment to S. 1301 is designed to encourage responsible lending by the credit card industry just as the underlying motivation of the bill is to require responsible borrowing by the general population of the United States.

Under the present legislation before us, a credit card company, or a creditor, may go into a bankruptcy court and request that the judge move a petition from chapter 7 to chapter 13 if the individual has the ability to pay at least 20 percent and is not acting in bad faith. My amendment will certainly look at the other side of the transaction and require that the creditor also act in good faith.

As I have indicated before, section 707 of this legislation will, for the first

time, give the power to creditors to request that a court convert a chapter 7 petition into a chapter 13 case. This is discretionary with the judge. It is not mandatory. But implicit in that, I believe, is already the standard of good faith that the judge will require through his or her analysis of the request of the change from chapter 7 to chapter 13. But I believe it is appropriate—indeed, necessary—to have an explicit standard of good faith on behalf of the creditor, as well as on behalf of the debtor.

The bankruptcy judge, in considering this request, will first have to determine that the individual debtor has the ability to pay at least 20 percent of the claims against the debt, and, in addition, the judge will have to consider whether the debtor filed for chapter 7 in bad faith.

Once again, my amendment would propose a complementary analysis of the creditor, whether that creditor has been offering credit in good faith.

This is not only fair but is something that is necessary to maintain the balance and the appropriateness of this change to a longstanding rule in bankruptcy court which allowed the debtor to go in and file in chapter 7.

Now, we understand the differences between these two provisions of the bankruptcy code. Chapter 7 allows the debtor to discharge all of their debts. Chapter 13 requires them to repay a portion of the debts based upon their ability to repay.

The proponents of this legislation have suggested that by using this means test, by saying that if a debtor can pay at least 20 percent and requiring them, or at least giving the judge the option to put them into a provision of chapter 13 where they must repay a portion, this procedure will reduce the abuse of the bankruptcy system, the abuse that is cited in terms of people coming in with that but still declaring under chapter 7 they cannot pay and having all of their debts discharged.

We know that part of the impetus behind this legislation is the increase in bankruptcy filings throughout the United States. The proponents of this legislation have pointed out that in 1997 alone there were a record 1.3 million bankruptcy filings, and over the past 10 years the bankruptcy filings have increased year after year after year. Unfortunately, these assertions are correct.

In my State of Rhode Island, there has been a 500-percent increase in bankruptcy filings between 1984 and 1996. And so I think everyone is concerned and, indeed, everyone is interested in working out an arrangement which will prevent the abuse of the bankruptcy system, and that is a part of the underlying legislation.

Just focusing alone, however, on the increase in bankruptcy filings misses the full story because it is just one side of the story. On the other side, there has been an explosion in the extension of credit by the credit industry of the

United States. Many times their standards for underwriting have diminished substantially. Many times they are issuing credit—in fact, fostering credit upon people at exorbitant interest rates. This, too, must be factored into our analysis of the bankruptcy problem in the United States today. Between 1986 and 1996, total bankruptcy filings did increase by 122 percent, but outstanding revolving consumer credit increased by almost twice as much—238 percent.

So when you look at both sides of the story, the analysis would lead me to believe, very strongly, that this is not solely the problem of individual debtors gaming the system and taking advantage of this system. This is also the problem of the credit card industry, and the credit industry in general, that is fostering and pushing credit on some people who they know are incapable of keeping up with their debts. And so when we look at these changes, we have to look at both sides of the question.

Now, this whole trend in the explosion of credit is reflected graphically in the analysis of household debt and income data. Back in 1974, total household debt was 24 percent of aggregate household income. Today, that same ratio is 104 percent. That is graphic evidence of not only the increased access to credit but the unusually robust and forceful presentation of credit and availability of credit throughout the United States.

We all know this in daily life. You just have to go to your mailbox every day and get a credit card solicitation. You just have to sit in your home from early morning to late at night 7 days a week and answer the telephone and hear a solicitation from a credit card company saying they want to give you credit. It is annoying, it is constant, and it reflects this incredible urge on the part of the industry to push credit as much as they can.

Last year, for example, the credit card companies sent out over 2 billion credit card solicitations. By my calculation, that is roughly 10 for every American man, woman and child. A recent Wall Street Journal article about a California family demonstrated just the ubiquitous and constant effort to get people to sign up for these credit cards. In 1997 alone, this one family was offered almost \$5 million in credit through mail solicitations. The wife, who was not working and without independent income, was offered more than \$2.5 million in credit. Her husband, who was president of a nonprofit organization, earning a good salary, on the other hand, was offered only \$592,000 in credit, suggesting that the industry is not so much interested in how much you make but really how much you potentially might spend. In that regard, the daughter in the household was offered another \$1.4 million in credit—in 1 year.

What does this say? This says that the industry is not looking carefully at

where it is sending its solicitations. It is not looking at those people who can pay, and, in fact, in many cases it is burdening people already in debt with further debt, and now what they would like to do, when these individuals come before the bankruptcy court, is they would like to say, well, listen, you people who can't discharge your debts fully, you have to pay up. I think, again, that the appropriate balance, if we are to pursue this ability to move from chapter 13 to chapter 7, is to at least look at the good faith of the credit card industry.

In view of these facts, Mr. President, it becomes clear that the increase in bankruptcy filings is not simply a result of more borrowers borrowing more money. It is also a factor of these credit card companies soliciting poorer and poorer credit risks, and doing it quite deliberately, quite knowingly.

Data from the National Bankruptcy Review Commission supports this assertion. Indeed, this data suggests that the proportional incidence of bankruptcy filings has actually decreased slightly in the last 20 years. We have seen the numbers go up, up, up. But if you look at the ratio, if you look at the proportional incidence, given the outstanding credit, there has been a slight decrease. In 1977, there were 0.74 bankruptcies for every million dollars of consumer credit. In 1997, there are 0.73 bankruptcies for every million dollars in consumer credit.

So when you, again, look at the situation, it is not simply a group of Americans who have suddenly decided that they no longer want to honor their obligations, that they want to abandon the tradition of responsible credit behavior that their fathers and mothers had; these statistics suggest that not much has changed except in the absolute numbers, and that has been driven by this constant extension of credit by the companies, in many cases to people who they know are very unlikely to be able to keep up with the debts at the time.

The approach in the underlying bill overlooks, I think, this other side of the equation. They focus solely on the borrower. They take the "blame the debtor" approach. I do not think that is entirely correct. My amendment seeks to address that approach by striking a balance, by allowing—in fact requiring—the judge to look at the good faith of the individual company that is extending this credit. Most, indeed, the vast majority, of reputable creditors day in and day out take pains to ensure that they are doing the proper underwriting, that they are targeting people who have the ability to pay and they are not abusing their ability to market their products. But there are those operators who are not so scrupulous. These unscrupulous operators should not easily have the ability to force an individual from one chapter in the bankruptcy code to another.

At the heart of what my amendment is suggesting is that we explicitly do

what I believe is implicit within the existing legislation—that the judge makes a finding that the creditor, in fact, operated in good faith. Under the present language, he or she is required to make a judgment that the debtor has not acted in bad faith in their application for chapter 7. I think that the same approach, complimentary approach should be applied to creditors.

My amendment adds this good-faith standard, and it is not the only place you will find a good-faith standard or its related bad-faith standard within this legislation and within the bankruptcy code. For example, section 202 of the bill protects the debtor's ability to discharge certain debts if in the language of the bill "the debtor makes a good-faith effort to negotiate a reasonable alternative repayment schedule."

The point is clear that throughout this legislation we have imposed good-faith standards at various junctures to give the bankruptcy judge guidance in assessing various petitions for various claims, so that this amendment is consistent with that good-faith theme throughout the legislation.

My legislation does not prescribe specific factors to be considered on the good-faith standard. Instead, it gives the bankruptcy judge the discretion to make that judgment. Again, that is consistent with this legislation and also with the general practice in the bankruptcy code. Judges, bankruptcy judges particularly, are quite familiar with making these analyses of good-faith judgment, either on the part of the creditor or the part of the debtor. In fact, if you look through the bankruptcy code, there are about 79 annotations related to the court's interpretation of "good faith." So it is a constant of the bankruptcy law and it is something that is not a novel injection into this particular legislation. I think, in fact I am convinced, that the judges can handle this analysis of "good faith" very clearly and very well.

But one might ask, what are we talking about in terms of good faith? For example, if a judge had found that there was intimidation in the extension of credit, that is certainly not good faith, and I do not think any creditor should be able to claim this privilege under the bankruptcy code if it can be shown they intimidated the creditor. If they are taking advantage of creditors, if their marketing pattern is to market to vulnerable people in our population—seniors or low-income Americans who may not have the ability to get good counseling on their debts—all these things together which suggest bad faith, or the lack of good faith, if they are consistent, demonstrable, then that judge should not allow the ability for that claimant to demand that debtor be moved from one section of the bankruptcy code to another.

All of these things together, I think, suggest very strongly that we have to look out for the exception, in terms of the creditor population, those unscrupulous

creditors. There are examples already in the legislation where we have taken steps to guard against unscrupulous operations in the extension of credit. For example, the committee report comments that in section 202 they use "substantially justified" language to describe or to allow the award of attorney's fees in terms of allegations that a debt was obtained fraudulently. That is an attempt, as the committee report says, because they are "concerned that some unscrupulous creditors have alleged false misrepresentations with no proof of doing so." Indeed, there are protections already in the bill. I think, in this particular section, 707(b), there should be further protection for the good faith standard that would protect that.

I have mentioned also that there is a concern to have some sense of what might be operating out there presently that would fall under this ambit of bad faith, or lack of good faith. There is a practice that is evolving in the industry of offering, particularly to low-income populations, these loan checks, where essentially they will send a check unsolicited to the home and all you have to do is sign it to get the money. But once you do that, you now have a debt with a substantial interest rate in many cases. That is the type of behavior I think a judge reasonably can look at and say, "Is this good faith?"

For all these reasons and many, many more, the standard of good faith should be obvious to the bankruptcy judge. And I believe the way we have designed this overall legislation and this particular amendment is that we give that individual not only the incentive but also the mission to look closely at the company applying for this transfer of the debtor from one chapter to another.

I am pleased to say that this particular amendment has been endorsed by the Consumer Federation of America and that it represents an attempt to balance the standard within this particular legislation. I hope all my colleagues will support this amendment. It seems to me to do several things that are essential.

First of all, it recognizes that the problem we face is not solely, exclusively as a result of the behavior of debtors; that, in fact, it is the result of the behavior of lenders who are lending more and who are doing it without the kind of tight underwriting standards that are necessary. In that context, to give them the opportunity to move a debtor from a chapter 7 to a chapter 13 without looking at their behavior, I think, is inappropriate. It is particularly inappropriate when the judge must consider the behavior of the debtor in filing a chapter 7 petition.

This amendment, I believe, is a very important one. It will restore the balance in this particular section, section 707 of the underlying legislation, and it will, I think, provide not only a way to safeguard against abuse of the bankruptcy system by debtors, but also

strike a balance so creditors understand they have the responsibility to act responsibly also.

I urge support of this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, this amendment by the Senator from Rhode Island is very much a modification of an amendment he proposed which would require bankruptcy judges to consider whether a creditor had used sound underwriting practices and standards when considering whether to dismiss or convert a chapter 7 to chapter 13. The modified amendment now requires judges to consider whether a creditor acted in good faith when considering whether to convert or to dismiss that case.

It is my understanding from discussions that have gone on between Senator REED's staff and my staff, and from what Senator REED has said, now, as he has introduced his amendment, that the good faith standard in the modified amendment also includes many of the underwriting considerations in the original amendment. So, accordingly, many of the objections to the original amendment still apply to this modified amendment presented by the Senator from Rhode Island.

At the outset, as with other amendments which relate to lending practices, I urge my colleagues to vote "aye" on a motion I will make to table this amendment because the Banking Committee should have a chance to consider this issue. But, since this amendment affects the means-testing provisions of S. 1301, I would like to describe how this amendment will be difficult to apply in practice, should it be adopted.

Under the bill as written now, judges are directed to consider repayment ability, and given the power to dismiss or convert chapter 7 cases if a debtor could repay some portion of his or her debt. This is the very foundation of this legislation. This is what makes this bill, this year, different than any bankruptcy legislation we have had in the 100-year history—and this is the 100th year that the first national bankruptcy code was passed, on an ongoing basis.

This amendment also requires judges to consider whether a creditor acted in good faith, including a creditor's lending practices. I don't think anyone knows how this amendment will work

in the real world. There are questions raised by this amendment but not answered by the amendment:

How would a judge even find out what the creditor's underwriting practices are?

What is "good faith" in the context of section 707(b)?

Procedurally, who would have the burden of producing evidence about underwriting practices in good faith?

And if a creditor had properly extended credit to the debtor whose chapter 7 case is pending, but had recklessly offered credit to other people, is a judge supposed to factor that in as well?

What if there are two pending motions asking for dismissal or conversion—one motion by a creditor who has sloppy underwriting practices or who acted in bad faith, and another motion by a creditor with tight underwriting standards who acted in good faith? In this case, should a judge deny both motions?

Mr. President, what these questions show is that the amendment offered by the Senator from Rhode Island should be rejected because it is not good bankruptcy policy. There are too many unanswered questions and, of course, the underlying question regarding which underwriting practices are sloppy and which underwriting practices are not sloppy needs to be addressed not by the Judiciary Committee, not on the floor of the Senate, but in the laboratory of jurisdiction of that subject where legislation is perfected, and that happens to be the Senate Banking Committee.

There are already penalties for creditors who refuse to act in good faith. We made sure they were in this bill. They are a very important part of making this a well-balanced piece of legislation.

We talk so much about personal responsibility and making it tougher to get into bankruptcy that maybe people viewing this debate have sensed over the last week that all we are going after is the debtor, but that sometimes creditors don't act in good faith. This bill is balanced because it has penalties against creditors. For instance, if a creditor refuses to negotiate in good faith, then that creditor can't object to the discharge of his or her debt. This is already in the bill.

Again, I urge my colleagues to vote "no" on the Reed amendment and eventually get this bill to final passage, because this is a very needed bill. We have 2 weeks to work out some differences between the House and Senate. The other body's bankruptcy bill is considerably different from ours. And I don't say that in a denigrating way; it just is different. The process of negotiating for provisions somewhere between the House and Senate provisions—also we have to consider the White House, because we want a bill that the President can sign—takes 2 weeks to get done, and we need to get this bill passed.

I hope the Senator from Rhode Island is aware that the 20-percent figure was

raised to 30 percent in the managers' amendment. I need to clarify that point because that 30-percent figure is also something that the White House was involved in working out as well, because the White House had raised some concerns about our 20-percent figure.

There also was some willingness on the part of the White House to consider some points of view we had about the 30-percent figure, and they even modified their original position, to some extent, to satisfy me.

I think it is odd that the Senator from Rhode Island is critical of lenders extending too much credit. When the credit union bill was on the floor, there was an amendment to strike the Community Reinvestment Act. The Community Reinvestment Act, of course, requires banks to extend credit to low-income people.

I don't think that any of us can argue with the social responsibility of a bank to be fair to all people and all sectors, with the understanding that they have a responsibility to the stockholders of that bank and other people who are saving, but, within the concept of good financial prudence, to lend accordingly to all sectors of a city, all types of people who have the ability to repay.

We had this community reinvestment amendment offered, and we had many Members talk about the need to make sure that credit is widely available to low-income people. What in the heck do you think credit cards are about? They are about giving people who maybe would not have that opportunity elsewhere an opportunity to borrow—again, within the concept of personal responsibility for debt.

Now, through this amendment, we hear that we should, in effect, deny a creditor the ability to collect on a debt if the creditor extended credit to low-income people. On the one hand, a month ago we had a bill before us that we were trying to modify to make it reasonable, and the other side, which was opposed to that, said we are hurting low-income people with that amendment. And now with this amendment they are saying that low-income people are people taken advantage of.

It seems to me that you can't have it both ways. I believe that borrowing and I believe that lending decisions are best made by individual Americans and not second-guessed by bankruptcy judges or political leaders in Washington, DC.

I yield the floor.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Thank you, Mr. President. I yield myself such time as I may consume.

Let me respond to the Senator from Iowa. First of all, he raised interesting arguments about the amendment I did not propose, which would be a more detailed review of the underwriting practices of credit card companies and those that extend credit. For the reasons he illustrated, I did not suggest

that amendment, because requiring a bankruptcy judge to look at the myriad of different underwriting standards of companies throughout the United States would not be appropriate.

What is appropriate, I believe, is to require that they look at the good faith of the person who extends the credit and is now requesting that the debtor be transferred from chapter 7 to chapter 13. It seems to me to be perfectly consistent with the notion that the judge would also look at the good faith of the debtor—whether that debtor, in fact, was trying to use chapter 7 as a dodge. That is already in the legislation.

He also raised some very interesting questions about how this will apply in practice, but I think the answer—a compelling answer, in my view—is that this is exactly what a bankruptcy judge is authorized and empowered to do on a daily basis—make judgments about the good faith of the debtor and, I suggest, also the good faith of the creditor. He or she can make these judgments. That is why they are there. They have the facts. This is a standard that is persistent throughout the bankruptcy code.

There are numerous places in which the judge is called upon to make good-faith determinations. It does not require the kind of searching, detailed analysis of all the credit policies of a particular credit card company or a bank that extends credit, but what it requires is a commonsense view of whether or not the individual who has extended the credit has abused their market power or has, in fact, somehow distorted the relationship which we think is appropriate between a borrower and a lender.

The Senator from Iowa also makes reference to the CRA Act in terms of suggesting that my demonstration of the explosion of credit is in some way inconsistent with suggesting that the Community Reinvestment Act play as positive a role.

I do not think we witnessed a 238-percent increase in consumer community lending over the last several years as we have witnessed an explosion of the extension of credit by credit card companies. I do not think that we have seen the kind of robust lending into distressed communities that many in this Chamber would think would be appropriate.

So to make that analogy by pointing out that credit card companies are increasingly lax about their extension of credit is somehow inconsistent with supporting very thorough and very limited lending under the CRA, I do not think carries weight.

What we have is a situation in which the credit card companies—and we know this. Again, you do not have to go ahead and commission a survey to find out and discover this fact; you just have to sit home some Saturday when at 9:30 in the morning the phone rings, and you think it is your cousin or your brother calling up, and it is a credit

card company. You politely hang up the phone. At 10:30 you get another call, thinking again it is a family member, and it is another credit card company. You go out to your mailbox at 11 a.m. Guess what? There are two solicitations, a platinum card and a gold card; and at 2 o'clock, thinking it is a member of the staff, it is another credit card company. You know this because you go back to your States, as I do, and you learn this from your constituents.

This industry is really promoting credit. Is it beneficial? Sure it is. Access to credit is something that moves this economy forward. But when this credit extension is not done in a wise way, when in fact there is tangible evidence that there has been, in fact, bad faith—and that is a fairly strong standard to meet—then I think that the judge should be able to say or should be required to say you cannot move a debtor from chapter 7 to chapter 13.

I am also pleased to note that the increase in the standard is to 30 percent of the ability to pay. I think that is an improvement in the legislation, just like I think this would be an improvement in the legislation.

Let me conclude by saying I, frankly, believe that the way this legislation is already structured, with the judge in a position, not required to but having discretion—and the language is “may” move a debtor from chapter 7 to chapter 13—there is implicitly already a good-faith standard that I think any bankruptcy judge worth his or her salt in seeing a company that was abusive, that is filing constant petitions to move someone from chapter 7 to chapter 13, that have a known record for shoddy behavior in the community, I would think that individual would take that into consideration and should take that into consideration.

That is why I do not believe my amendment is a unique or extreme departure from what already should be the standard. I would hope that we could adopt this amendment. I think it will go a long way to ensure that there is a balanced test, that you look at the debtor, you determine whether that individual can pay a certain amount—30 percent—and you look to see if that debtor has been deploying bad faith to apply to chapter 7, but at the same time look over, not at any rigorous searching review of underwriting standards, but look at that very, very obvious standard of good faith, look at that creditor. That is what this amendment is supposed to do.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I have had a chance now for a second time to hear the explanation of the amendment from the Senator from Rhode Island. I think he is a person who always acts in good faith on his amendments and other legislative activity. He is a very active member of

the Aging Committee, which I chair, and I have had a chance to observe him there as being a very serious Senator. So I do not raise any questions with the motives of the Senator because I think he even sees a need for bankruptcy legislation.

But I still have to point out that I think the amendment, even if the intent is good, is just unworkable. I do not know whether we could have an amendment written to accomplish his goals that could be perfected enough to be workable—I should not draw that conclusion; that is a possibility—but I do believe that the language we have before us would fall into that category, because the modified amendment still requires bankruptcy judges to review underwriting standards. That is what the Senator from Rhode Island said earlier on the floor.

So I do not think that we know how this amendment will work. I do not know how you can make even a commonsense determination of whether lending practices are in good faith unless the judge begins to second-guess many credit-granting decisions.

As I have said, if the Senator from Rhode Island believes that there are too many credit card solicitations, then I think I should refer him to a letter that I read into the RECORD last week, which I am going to insert in the RECORD at this point as well, a letter from the junior Senator from North Carolina, Mr. FAIRCLOTH, who chairs the subcommittee of banking where I made an argument, from a procedural standpoint, that this amendment should be considered there, and that he has offered to hold hearings on this subject matter, and maybe even the goal that the Senator from Rhode Island seeks can be accomplished, but, more importantly, accomplished in a studied approach.

So I ask unanimous consent that this letter be printed in the RECORD as justification on a procedure not to add this amendment to this bill but to have the Banking Committee consider this.

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

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS,
Washington, DC, September 16, 1998.

Hon. CHARLES GRASSLEY,
Chairman, Subcommittee on Administrative
Oversight and the Courts, Senate Committee
on the Judiciary, Washington, DC.

DEAR CHUCK: It is my understanding that a number of amendments relating to credit cards will be offered to S. 1301. Most, if not all, of these amendments will relate to matters in the jurisdiction of the Banking Committee. I Chair the Financial Institutions Subcommittee of the Banking Committee.

I share the concerns that many have regarding multiple credit card solicitations and solicitations to minors. In fact earlier this year, my Subcommittee held a hearing on bankruptcy issues, with representatives of the credit card industry testifying. I have requested and received GAO reports on such practices as high loan to value loans and the sending of “live” loan checks.

As for many of the proposed amendments relating, however, none have been passed by

the Committee. In fact, none have been considered by the Committee. Further, none of the proponents of the amendments have requested hearings on any of their legislative proposals.

During consideration of the bankruptcy bill, please know that I would be more than willing to hold a hearing or hearings on any these proposals in my Subcommittee where they rightfully should be considered under regular order.

Sincerely,

LAUCH FAIRCLOTH,
Chairman, Subcommittee on
Financial Institutions.

Mr. GRASSLEY. I yield the floor.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I do not know if this is the final word, but the Senator is doing a remarkably good job moving this legislation forward. I agree with him, it is quite important because of this increase in the number of bankruptcy filings. There has been a huge growth in my home State of Rhode Island, a 500-percent increase in just a few years. If we are going to do it, let's do it in a fair and balanced way.

I also go back to the underlying legislation that we are trying to amend. It says essentially that a creditor may file a request to move the debtor from chapter 7 to chapter 13, and the judge will make a determination. It is not mandatory. As I read it, even if that judge determines that the debtor has 30 percent, the sufficient amount of money to repay, and that the debtor may have, in fact, been questionable in filing a chapter 7 petition, the judge is still not required to grant the request and move the petitioner from chapter 7 to chapter 13.

So as I said before, I think, implicitly, we already have this good-faith standard, because that is what the judge is going to apply. He or she is going to look at the behavior of both parties and determine if this is appropriate—if the individual should have all his debts discharged or whether there should be some partial repayment.

What I would like to do is make it clear that this good-faith standard does exist, and it does not require this searching analysis of the underwriting practices of any company. It just requires a judge looking at the facts before him or her and making a judgment, as they do every day, as to what is fair, who has acted with clean hands coming to the bar of justice.

I also say, in conclusion, that this amendment has the strong support of the Consumers Union and the Consumers Federation of America. This legislation is designed to ensure there is responsible borrowing, that the American public is responsible, and that they recognize their debts and their obligations.

I believe and I think there is underlying support of the Consumers Union and the Consumer Federation of America, that the credit industry should also be responsible and understand

their obligations. This is just a small way of making explicit what I think is already within the law—to recognize that responsibility.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield 5 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The distinguished Senator from Minnesota is recognized.

Mr. GRAMS. I thank my colleague from Iowa for yielding the floor to me. First, I ask unanimous consent that I be made an original cosponsor of the consumer bankruptcy reform bill.

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

Mr. GRAMS. Mr. President, as a cosponsor, I rise today in strong support of the Consumer Bankruptcy Reform Bill. The bill contains sorely needed provisions to help curb the dramatic rise of personal bankruptcies in this country.

It is incredible that while most sectors of the economy are experiencing an economic boom—with the notable exception of some of the hardest-working farmers in the country—personal bankruptcy filings have reached record highs. My constituents tell me that declaring bankruptcy has become so routine as to be considered just another personal finance option. No longer is it an avenue of last resort. It has become a matter of convenience, sometimes to avoid the personal responsibilities of living within one's means and repaying one's debts. I believe this shift in attitude is due in large part to a system which readily lends itself to abuse and exploitation.

The passage of the Consumer Bankruptcy Reform bill is critical because it directly confronts the abuses within our bankruptcy system. One of the main features of the bill would allow bankruptcy judges to dismiss or reassign cases if the system is being "abused." Under the bill, one of the factors which shows abuse in a chapter 7 filing is if the debtor has current income sufficient to pay at least 20% of unsecured claims against him. A motion alleging abuse of the system could be filed by the judge, the trustee, or any party in interest.

We must return to the real purpose of bankruptcy laws—to establish uniform rules in facilitating debt collection. Unfortunately today, the laws are increasingly recognized as a tool for escaping debt responsibility. They are becoming a substitute for personal responsibility.

In addition, I am disappointed that some of my colleagues seek to offer a nongermane amendment to the underlying bankruptcy legislation that would increase the minimum wage.

As my colleagues may recall, it was only two years ago that Congress enacted legislation that increased the federal minimum wage in two phases, from \$4.25 to \$4.75 on October 1, 1996, and from \$4.75 to \$5.15 on September 1, 1997. Now, as part of the Small Busi-

ness Regulatory Fairness Act of 1996, this provision represented a 20 percent increase in the federal minimum wage.

Now, I voted for this legislation because it included a number of long overdue tax measures designed to help small businesses grow and create more jobs in our economy. These changes, in my judgement, would be far more helpful to wage earners than would the minimum wage increases.

Two years after enactment of this legislation, I am not convinced that the economic effect of that federal minimum wage increase is fully understood. For this reason, I am particularly concerned that an additional increase in the federal minimum wage at this time could actually have an adverse impact upon our economy.

Mr. President, the proponents of an additional increase in the minimum wage argue that Congress should do more to help Americans increase their take-home pay. I agree. However, I believe this can be done far better through tax cuts and reduced government regulation. By doing so, we will save the private sector billions of dollars which could be used for investment that brings better jobs and higher wages.

Mr. President, basic economics tells us that raising real wages above what the market will bear will cause unemployment. The higher real wages rise above the market rate the greater the level of unemployment and overall downward pressure on all wages. The solution, therefore, is to allow wage rates to adjust to market conditions. Otherwise we will have persistent, widespread unemployment that hurts the low-income workers the hardest.

Raising the cost of doing business by raising the minimum wage is probably going to mean even fewer of those jobs. Some statistics say as many as 600,000 of those jobs will be lost, killing work opportunities for young people and those families who depend on a needed second income.

Besides artificially inflating salaries, hiking the minimum wage ignores the real concerns of many working Americans. Yes, they want better jobs that pay better salaries, but they have told me repeatedly that what matters most is not how much you earn but how much of your own paycheck you are allowed to keep after the greedy Federal Government has deducted its taxes.

Families today are taxed at the highest levels since World War II, with 38 percent of a typical family's budget going to pay taxes on the federal, state, and local level. In nominal dollars, a two-income family is paying more just in taxes today than their paychecks totaled in 1977. That's nearly 50 percent more than they are spending for food, shelter, and clothing combined.

Compared to the proposed minimum wage increase, tax relief and economic growth is a better solution for helping low-income families. It will increase incentives to work, save and invest. It

will allow families to maximize their income and improve their standard of living. Tax relief will allow families who today are forced to scrimp just to cover their monthly bills and their tax bills to have more money to spend on their children's education, health care expenses, food and clothing, or insurance.

In 1981, President Reagan initiated massive tax reduction which resulted in an economic miracle we are still benefiting from today. Over eight years, real economic growth averaged 3.2 percent and real median family income grew by \$4,000, 20 million new jobs were created, unemployment sank to record lows, all classes of people did better.

According to the National Taxpayers Union, if Congress could roll federal domestic spending back to 1969 levels, a family of four would keep \$9,000 a year more of its own money than it does today.

Recent estimates by the CBO show that the government will enjoy a nearly \$1.6 trillion budget surplus over the next ten years. This potential surplus is generated by working Americans and should be returned to the taxpayers. Tax relief particularly, lower payroll income tax rates will immediately increase Americans' take-home pay and allow them to keep a little more of their own money.

In sum, Mr. President, the real answer to increasing the take-home pay of American families is not promoting political grandstanding efforts like this which would only destroy jobs, but to support more meaningful tax relief and sustainable economic growth. I urge my colleagues to support the bankruptcy legislation and resist any effort to distort the intent of this most important bill.

Mr. GRASSLEY. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

Mr. SPECTER. I thank the distinguished Senator from Iowa.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

NONPARTISAN IMPEACHMENT INQUIRY

Mr. SPECTER. Mr. President, I have sought recognition to express the view that Congress should make our inquiry into possible impeachment of President Clinton as bipartisan as possible, nonpartisan, fair, and judicious. There is an abundance of evidence that the American people deplore excessive partisanship in general and oppose any kind of partisanship where we are dealing with a matter which is judicial or quasi-judicial.

I recall an admonition from my father years ago. When in a partnership situation he said, "Arlen, don't make it 50/50; give 60 percent. It will look like 50 percent to your partner. If you give 50 percent, it will look like 40 percent." That bit of advice which my father gave me as to a partnership ar-

angement, I think, is applicable to relationships or arrangements of many kinds.

I think it is very important that there be a real effort on the part of Republicans, because we Republicans are in control, to not press for every bit of advantage. I believe that the proceedings in the House were off to a good start when there was a vote of 363-33 to release the Starr report, with about two-thirds of the Democrats voting in favor of a release of the report. It seems to me where we have a proceeding like impeachment, which is really judicial, that it ought to be bipartisan or nonpartisan.

With respect to the playing of the tapes of President Clinton, it has been my preference that the approach be somewhat different from that which was undertaken by the House of Representatives. The playing of those tapes, I think, would have been subject to no criticism at all had the House moved ahead with an impeachment inquiry, either in a preliminary stage or after the signing in a more formalistic sense to have impeachment hearings. Then it would have been in the regular course of business in regular order to see the tape of the President so that the Members of the House could make an evaluation of the evidence as to what to do next.

Then where those hearings would be public, with the availability of the President's tape, his deposition before the grand jury would have come into the public domain in a matter of due course, and then as a regular proceeding with the hearings of the House of Representatives so that the House would have obviated the controversy and the concern of whether there was an inappropriate release of the President's tapes. Once the hearings start, even in a preliminary sense, the House Members have an obligation to see what the evidence is.

Similarly, with the release of other evidence, such as the testimony of Ms. Monica Lewinsky yesterday, that testimony is appropriate in regular course, but there is bound to be some concern raised when it is released en masse and not as a part of a regular proceeding by the House of Representatives.

From my days as district attorney of Philadelphia, which was a quasi-judicial position, a district attorney—a public prosecutor—is part advocate and part judge. The expression is made as to the district attorney being a quasi-judicial official. I found it very important in the cases which I tried personally and in the administration of the office to exercise great care to be fair with the defense, both in terms of proceedings generally and in the presentation of evidence at trial.

The juries in a criminal case, like public opinion generally, have a sense as to fairness, and it builds up, I found, the credibility of the prosecutor not to be looking for every slight advantage in the course of either investigation or trial. The impeachment proceedings, it

seems to me, are really totally judicial in nature. The articles of impeachment have been analogized to a bill of indictment, but I think they are not really a bill of indictment in a criminal proceeding; or it may be argued that a bill of indictment before a grand jury is judicial in nature.

However, I hope that when we in the Congress vote in this body, when responsibilities come to the Senate, or in the other body, the House of Representatives, that there will be an approach which is bipartisan and nonpartisan. We are proceeding in a matter of the utmost, utmost gravity, the potential for impeachment of the President of the United States, and I think the American people will demand and are entitled to that kind of bipartisanship.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield the remainder of the time that I have on my side.

Mr. REED. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is recognized to offer a second-degree amendment relative to the minimum wage, on which there shall be 2 hours of debate equally divided.

AMENDMENT NO. 3540

(Purpose: To amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage)

Mr. KENNEDY. Mr. President, I call up amendment No. 3540.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an amendment numbered 3540.

Mr. KENNEDY. 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:

At the appropriate place, insert the following:

SEC. . FAIR MINIMUM WAGE.

(a) SHORT TITLE.—This section may be cited as the "Fair Minimum Wage Act of 1998".

(b) MINIMUM WAGE INCREASE.—

(1) WAGE.—Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than—

"(A) \$5.65 an hour during the year beginning on January 1, 1999; and

"(B) \$6.15 an hour during the year beginning on January 1, 2000."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on January 1, 1999.

Mr. KENNEDY. Mr. President, I understand that there is a time allocation, 1 hour for those who support this amendment, and 1 hour in opposition. Am I correct?

The PRESIDING OFFICER. The Senator is correct.