



Legislative Bulletin.....April 14, 2005

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S. 256—Bankruptcy Abuse Prevention and Consumer Protection Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$111.5 million over five years

Effect on Revenue: \$180.0 million decrease over five years

Total Change in Mandatory Spending: \$21.5 million increase over five years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Various

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

**S. 256—Bankruptcy Abuse Prevention and Consumer Protection Act
(Senator Grassley)**

Order of Business: The bill is scheduled to be considered on Thursday, April 14th, subject to a closed rule. No amendments are allowed under the rule.

Background: S. 256 is essentially the same as H.R. 975 of the 108th Congress, which itself was essentially the same as H.R. 333 of the 107th Congress. H.R. 333 passed the House on March 1, 2001, by a vote of 306-108 (<http://clerk.house.gov/evs/2001/roll025.xml>). On July 17, 2001, the Senate amended and passed H.R. 333 by a vote of 82-16 (http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00236). Then the bill went to a conference committee for over a year. On

November 14, 2002, the rule (H.Res. 606) to bring up the conference report **failed** by a vote of 172-243 (<http://clerk.house.gov/evs/2002/roll478.xml>) because the conference report included language making nondischargeable the debts incurred from peaceful pro-life protesting (commonly known as the “Schumer language,” after its author Senator Chuck Schumer from New York).

The next morning, on November 15, 2002, the House passed H.R. 333 without the peaceful protesting provision by a vote of 244-116 (<http://clerk.house.gov/evs/2002/roll484.xml>).

Last Congress, on March 19, 2003, the House passed H.R. 975, which was nearly identical to H.R. 333 in the 107th Congress, by a vote of 315-113, with one Member answering “present” (<http://clerk.house.gov/evs/2003/roll1074.xml>). The Senate did not consider the bill.

The bill under consideration today, S. 256, is essentially identical to H.R. 975 as it passed the House in 2003 and does NOT include the provision related to pro-life protestors.

Highlights of S. 256:

S. 256 is aimed at reducing frivolous bankruptcy claims (by requiring that higher-income filers who can repay some of their debts actually do so) while protecting debtors *vis a vis* creditors. The legislation establishes a needs-based system (or “means test”) that accounts for a debtor’s income, expenses, obligations, and any “special circumstances” when determining whether the debtor can repay at least a portion of the debt (rather than file under Chapter 7 to erase virtually all debts).

Further, the bill would ensure that creditors receive timely notice of important events in a bankruptcy case, while improving the accuracy of the information contained in debtors’ schedules, statements of financial affairs, and other such documents. Abusive serial filings would be prohibited, the period between successive discharges would be lengthened (from six to eight years in most cases), and the use of exemptions would be limited. At least one of every 250 bankruptcy cases under chapter 13 or chapter 7 would have to be audited by an independent certified public accountant.

The bill moves child support and alimony debts from the number seven priority (on the list of what debts must be paid and in what order) to the number *one* priority, thereby preventing some debtors from using bankruptcy to evade child support or alimony payments. The bill creates a uniform and expanded definition of domestic support obligations to include debts that accrue both before or after a bankruptcy case is filed.

The bill also includes provisions for law firms and other counseling agencies to educate consumers about debt, including required credit counseling for pre-bankruptcy filers and required explanations of non-bankruptcy options and the consequences of bankruptcy to debtors. Retirement accounts that are tax-exempt and worth \$1 million or less would not count toward a debtor’s estate, nor would Social Security benefits, withheld wages for contributions to employee benefit plans, or funds (up to \$5000 per beneficiary) placed in an education IRA or used to purchase a tuition credit within a year of filing bankruptcy.

To prevent “loading up” on debt prior to filing for bankruptcy, this bill lengthens the time-period before bankruptcy (from 60 days to 90 days) and lowers the dollar-amount of items purchased (from \$1000 to \$250) that would not be dischargeable through bankruptcy. No cash advance of \$750 or higher made within 70 days before filing bankruptcy would be dischargeable, nor would any debt incurred for the purpose of paying a state or local tax.

In giving creditors new responsibilities, the legislation requires creditors to educate debtors about the results of paying only the minimum payment each month, prohibits creditors from closing the accounts of consumers who incur no finance charges, gives incentives for alternative dispute resolution, and encourages honest pre-bankruptcy settlements with debtors.

The bill also has provisions to protect dispositions of family farms (by making permanent the existing bankruptcy relief laws for family farmers) and to apply certain laws of individual bankruptcy to small business bankruptcy. S. 256 would establish a new form of bankruptcy relief for transnational insolvencies.

The Director of the Administrative Office of the United States Courts would have to collect statistics on individual bankruptcy, standardize and make such statistics available to the public, and submit a report on this data once a year. The Board of Governors of the Federal Reserve would be directed to study consumer protections for unauthorized use of dual-purpose debit cards and other consumer credit issues.

Additionally, S. 256 would authorize 28 new temporary judgeships and extend four existing judgeships.

Some Key Issues:

Discharging Debts Incurred from Pro-Life Activities: S. 256 does NOT contain the language in the conference report for H.R. 333 (107th Congress) to which pro-life Members objected. That is, there is **no** language that would prevent the dischargeability of debts incurred as a result of peaceful, non-violent protesting (such as sidewalk counseling).

The Homestead Exemption: S. 256 would reduce the value of a homestead exemption in a state to reflect the portions disposed of within ten years of bankruptcy with the intent to “hinder, delay, or defraud a creditor.” A homestead exemption may not exempt interest in a house above a total of \$125,000 acquired within 1215 days of declaring bankruptcy (unless the value is a result of a transfer of residence within a single state). Therefore, the bill discourages debtors from moving to a state with more favorable homestead laws in order to keep an expensive home after declaring bankruptcy.

S. 256 also would cap a debtor’s homestead exemption at \$125,000 if the debtor was convicted in the preceding five years of a felony or owes a debt arising from any securities law violation, from any criminal act, or from willful or reckless misconduct that caused serious physical injury or death.

Some provisions of S. 256 that were *not* in the original version of H.R. 333 in the 107th Congress (passed on March 1, 2001) but that *were* included in the final version of H.R. 333 (passed November 15, 2002):

- Limits the release of personally identifiable information from consumer transactions in certain instances (Sec. 231);
- Authorizes the appointment of consumer privacy ombudsmen (Sec. 232);
- Clarifies what counts as “wages and benefits” once a bankruptcy case has been filed (Sec. 329);
- Allows for a delay of debt discharges while the outcome of certain proceedings are pending (Sec. 330);
- Requires that administrators of employee benefit plans fulfill their duties as administrators even when they are debtors in bankruptcy cases; (Sec. 446);
- Expands the qualifications to be a “family farmer” for the purposes of family farmer bankruptcy protection (Sec. 1004);
- Expands the requirement that family farmers receive 50% of their income from farming operations in the taxable year immediately prior to bankruptcy filing to each of the second and third taxable years preceding the bankruptcy year (Sec. 1005);
- Prohibits the retroactive assessment of disposable income for family farmers (Sec. 1006);
- Extends to family fishermen the bankruptcy protections for family farmers (Sec. 1007); and
- Makes nondischargeable any debts incurred to pay fines or penalties imposed under federal election law (Sec. 1235).

Additional Background: To read brief summaries explaining the differences among the chapters in the bankruptcy code (Ch. 7, 13, 11, 12, and 9), visit this website:

<http://www.thebankruptcysite.com/chapters.htm>

Committee Action: No House committee took official action on S. 256, though H.R. 975 last Congress did move by regular order through the Judiciary Committee.

Administration Position: The Administration expressed support for S. 256 in the following Statement of Administration Policy:

<http://www.whitehouse.gov/omb/legislative/sap/109-1/s256sap-s.pdf>

Cost to Taxpayers: CBO estimates that S. 256 would increase authorizations by less than \$500,000 in FY2005 and by \$111.5 million over the FY2005-FY2009 period. Additionally, the bill would increase mandatory spending by less than \$500,000 in FY2005 and by \$21.5 million over the FY2005-FY2009 period. Furthermore, the bill would have no revenue effect in FY2005 but reduce revenues (mainly because of a budgetary reclassification) by \$180.0 million over the FY2005-FY2009 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Not in any significant way, since the Constitution grants Congress the power to establish nationwide rules for bankruptcies. The additional judgeships created by the bill are temporary.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. Below are some examples:

- For debtors:
 - Debtors would have to undergo credit counseling within 180 days of filing for bankruptcy and may not obtain any discharge of debts until completing a personal financial management instructional course.
 - Bankruptcy filers would have to file the three most recent years of tax returns or face dismissal of their cases.
- For creditors:
 - Creditors would be required to send information to consumers about the ramifications of paying only the minimum balance each month, introductory rates, payment deadlines, late-payment penalties, and other information.
 - Creditors would be prohibited from terminating a credit account prior to its pre-determined expiration date just because the consumer always pays off the full balance each month (and thus never incurs a finance charge).
- For other entities:
 - Debt-relief counseling agencies (sometimes referred to as “bankruptcy mills”) would be required to counsel consumers on the significance of bankruptcy and what alternatives to bankruptcy consumers may have.

Constitutional Authority: Though no committee report citing constitutional authority is available, Article I, Section 8, Clause 4 gives Congress the power “to establish ... uniform Laws on the subject of Bankruptcies throughout the United States.”

Outside Organizations: The U.S. Chamber of Commerce has indicated that it is urging support for this legislation and may consider including the vote on this bill (and any related amendments or motions) in its annual “How They Voted” guide.

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