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H.R. 2415: Bankruptcy Reform in the Closing Days of the 106th Congress

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Summary

A final effort to enact bankruptcy reform legislation took place as the 106th Congress came to a close. On Oct. 12, 2000, the House passed a conference report which embodied the legislation negotiated between House and Senate Republican leadership. It was passed by the Senate as well on December 7, 2000 by a vote of 70 to 28.

The legislation retained the essential elements of consumer reform that previously passed both chambers, *i.e.*, a complicated means test to exclude some debtors from chapter 7 and stricter performance requirements for chapter 13 debtors. Among the more controversial provisions, the Senate-passed provision making liability for violence against abortion facilities nondischargeable was omitted. With respect to the homestead provision, a modified version of the House approach was adopted. This means that homestead exemptions would continue to vary from state to state, but debtors would be discouraged from making pre-bankruptcy domiciliary homestead adjustments.

Because the bill retained features that the White House objected to, President Clinton pocket-vetoed it. The legislation is likely to be taken up again in the 107th Congress.

Background. As the 106th Congress headed towards adjournment *sine die*, a final push toward enactment of bankruptcy reform took place. Bankruptcy reform legislation, which passed both chambers in different versions of H.R. 833 earlier in the 106th Congress, was informally negotiated by House and Senate Republican leadership. The product of the negotiations was substituted as H.R. 2415, 106th Cong., 1st Sess. (1999), previously entitled “the American Embassy Security Act of 1999.” H.R. 2415 was described as a legislative “shell.” Its original substantive provisions dealing with State Department appropriations and embassy security were passed by both chambers, but ultimately enacted under an Omnibus Appropriations Act.

On Wednesday, October 11, the House filed the Conference Report on H.R. 2415, entitled the Bankruptcy Reform Act of 2000.¹ The Report passed the House by voice vote on October 12, 2000.² The Senate passed the bill by a vote of 70 to 28 on December 7, 2000.³

Highlights of the negotiated substitute. A document entitled “Summary of Conference Report’s Resolution of Significant Differences Between the House and Senate Bankruptcy Bills” is posted at the American Bankruptcy Institute’s website.⁴

H.R. 2415 omits the major nongermane amendments that were added to the Senate version of H.R. 833, namely those which increased the federal minimum wage, amended provisions in the Internal Revenue Code dealing with small business taxes, long term health care insurance, and pensions and one entitled the “Methamphetamine Anti-Proliferation Act,” which involves criminal enforcement of drug laws.⁵

Also omitted is the controversial “Schumer Amendment” added by the Senate which renders nondischargeable any debt that results from any judgment entered in a state or federal court for damages to a clinic or violation of the civil rights of individuals providing or obtaining reproductive health care services.

Other provisions, reported to have been added during negotiations, such as a provision that would favor rent-to-own businesses, and an amendment to the Fair Debt Collection Act that would exempt some debt collection activities from the Act, appear to be omitted.

The Homestead Exemption. The provisions of H.R. 2415 track the House version more closely. The bill imposes lengthened residency requirements to take advantage of state exemptions. It extends to seven years the period for which assets converted to an otherwise exempt homestead may be proven to be a fraudulent transfer. It caps homestead exemptions under state law at \$100,000 for a homestead acquired within two years of filing (except for farmers.) Hence, the state opt out program for bankruptcy exemptions remains intact, but debtors will be discouraged from provable fraudulent conversions and conversions within two years of filing. §§ 307, 308, 322.

Among the consumer reform provisions included are:

- ! ***The Means Test.*** The heart of the consumer reform provision, the complicated “means test”— which would create a legal presumption of abuse of chapter 7 and require some debtors to reorganize under a stricter chapter 13 or refrain from filing – remains intact. There are, however,

¹ H.Rept. 106-970, 106th Cong., 2d Sess. (2000).

² 146 CONG. REC. H9840 (daily ed., Oct. 12, 2000)

³ Id. at S11730.

⁴ [<http://www.abiworld.org/research/compromise1.html>].

⁵ For more background, see CRS Report RL30454, “Comparison of the Bankruptcy Reform Act, H.R. 833, Passed by the House and Senate,” by Robin Jeweler, March 6, 2000.

adjustments to the means test criteria details.⁶ A debtor may rebut the presumption of abuse by demonstrating “special” rather than “extraordinary” circumstances, although the term remains undefined. The calculation of permissible monthly living expenses remains pegged to IRS National Standards and Local Standards, and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides. A debtor may also subtract an allowance of up to 5% of the IRS food and clothing categories. Individualized expenses may include private school tuition of up to \$1,500 per year; charitable and religious contributions of up to 15% of the debtor’s gross annual income, administrative expenses, and reasonable attorneys fees. § 102.

- ! ***Reaffirmation Agreements.*** More closely tracks the Senate version which imposes enhanced requirements for approval of a reaffirmation agreement when the debtor is not represented by counsel; requires U.S. Attorney and FBI to investigate abusive reaffirmation practices. Creates a presumption of “undue hardship” if the debtor’s monthly income less expenses does not leave enough to pay the reaffirmed debt, but exempts credit union creditors from the presumption. The provision is silent on the question of authorizing or prohibiting class actions. § 203

- ! ***Pensions exempt from creditors.*** The bill retains the provisions from the House and Senate bills that would clarify and expand the law to provide that retirement accounts that are tax exempt under the Internal Revenue Code are exempted from the debtor’s estate, subject to a \$1,000,000 cap. § 224. The provision adopted by the Senate that appeared to allow debtors to waive the retirement exemption is omitted. § 303.

- ! ***Definition of “Household Goods.”*** Adopts the Senate’s more restrictive definition to include only 1 radio; 1 television; 1 VCR; and 1 personal computer but only if used for the education or entertainment of a minor child. § 313.

- ! ***Chapter 13 Plans.*** Tracks the House bill by requiring chapter 13 debtors to calculate living expenses based on IRS living expense calculations; extends plans to 5 years in some cases.

- ! ***Attorney Sanctions.*** If a panel trustee brings a successful motion for dismissal or conversion, counsel for the debtor will be liable to reimburse the trustee for costs, attorneys’ fees, and payment of a civil penalty if the

⁶ For example, “presumed abuse” would exist if the debtor’s current monthly income “is not less than the lesser of – (I)25 percent of the debtor’s nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or (II)\$10,000.” § 102(a)(2). In other words, a debtor who can pay the lesser of \$100/ month or 25% of unsecured debt or \$166.66 per month over 60 months would be ineligible. This revision appears to compromise between the monetary limits of the earlier House amount, \$100/month, and the Senate amount, \$250/month.

court finds a violation of Bankruptcy Rule 9011. This essentially adopts the House-passed version.

- ! ***Domestic support obligations.*** Retains provision making domestic support the first priority of unsecured claims under 11 U.S.C. § 507. §212.
- ! ***Trustee notification of child support claim holders.*** Retains the provision from both bills to direct the trustee to notify a priority child support recipient of the existence of a state child support enforcement agency, and, upon discharge, the existence of nondischargeable and reaffirmed debt. § 219

Chapter 12, Family Farmer Reorganization. The bill would make chapter 12 governing family farmer reorganization (which expired on July 1, 2000) permanent. It omits the Senate provisions which create special provisions for “family fishermen.”

White House Remained Opposed. The White House remained opposed to the bankruptcy reform bill.⁷ President Clinton withheld his approval, Congress adjourned *sine die*, and the bill was “pocket” vetoed. The *Memorandum of Disapproval* explaining President Clinton’s decision to veto H.R. 2415, the Bankruptcy Reform Act of 2000, cites two primary criticisms of the Act: first, retention of the unlimited homestead exemption and second, omission of the provision from the Senate-passed version of H.R.833 making nondischargeable liability incurred as a result of violence at reproductive health care clinics.

⁷ See Letter from John Podesta, White House Chief of Staff, to Speaker of the House, Representative Hastert, at 146 CONG. REC. H9839 (daily ed., Oct. 12, 2000).