

Consumer Bankruptcy Reform

Past and Present

Since its inception, the Bankruptcy Code has attempted to balance the interests of debtors, creditors, and society as a whole.

by Bret Fulkerson



I. Introduction

The Code provides for the debtors' interests by giving them the ability to embark on a fresh start after financial failure by means of liquidation or a restructured payment plan. Conversely, creditors are given an opportunity to collect on some portion of the debtors' contractual obligations through the bankruptcy laws. On a more fundamental level, bankruptcy laws attempt to reconcile countervailing social interests in seeing that obligations to repay debt are fulfilled while allowing individuals to maintain dignity and self-respect after financial ruin. The balance is effected by subjective assessments of debtors, creditors, society, and the administrators of the bankruptcy system.

The environment in which consumer debtors make the decision to declare bankruptcy is influenced by social, economic, and interpersonal factors. In recent times, bankruptcy filings have reached unprecedented levels. Creditors assert that debtors use bankruptcy as a convenient method of avoiding their obligations because the stigma associated with going bankrupt has diminished. Consumer groups and other commentators cite irresponsible lending practices in the credit industry as the major reason for increased filings. Whatever the cause (or causes), the rise in bankruptcy filings has spurred Congress into action and the credit industry and consumer groups are vying to shape the reform movement. This article will examine consumer bankruptcy reform efforts starting with the Bankruptcy Act of 1978 and focusing on the latest bankruptcy reform bill.

II. Bankruptcy Reform Act of 1978

In 1970, Congress established the Commission on Bankruptcy Laws of the United States, to "study, analyze, evaluate, and recommend changes to the [1898] Act ... in *Journal of Texas Consumer Law*

order for such Act to reflect and adequately meet the demands of present technical, financial, and commercial activities."¹ Bankruptcy reform was motivated, to a large extent, by the explosion of consumer credit and resulting rise in consumer bankruptcies since World War II.² After extensive hearings, the Commission published a report in 1973³ prompting the 1978 Bankruptcy Reform Act, which was later signed by President Carter in November, 1978. The 1978 Act, along with subsequent amendments, governs bankruptcy matters to this day. Unlike other major amendments to United States bankruptcy law, the 1978 Act was not passed in response to an economic downturn. Instead, changes were made to the 1898 Act because it was perceived as outmoded and unresponsive to the needs of both debtors and creditors. Originally, the 1978 Act had a decidedly pro-debtor orientation, but that has been substantially eroded by subsequent amendments. Critics of our current bankruptcy laws argue that the 1978 Act was overly debtor-friendly because it made filing easier and more attractive. The 1978 Act established a federal exemption that was more generous than many state exemptions.⁴ The bill would have allowed debtors the choice of using federal or state exemptions, but in the end, states were given the right to "opt out" of the federal exemptions for resident debtors.⁵ Three-fourths of the states have since enacted legislation limiting debtors to exemptions provided by state law.⁶ The federal exemption was deemed to be necessary in providing debtors with a realistic chance at starting over. The House Report explained:

The premises of the bill with respect to consumer bankruptcy are that use of the bankruptcy law should be a last resort; that if it is used, debtors should attempt

repayment under Chapter 13 ... and ... bankruptcy relief should be effective, and should provide the debtor with a fresh start.⁷

The 1978 Act also attempted to encourage greater use of Chapter 13 by offering features such as the “super discharge” which would erase debts that would not be dischargeable in a straight Chapter 7 liquidation case.⁸ The intent was to benefit both creditors and debtors by letting creditors recoup more money than they would in a Chapter 7 case, and at the same time allow debtors to emerge with better credit. Congress wanted consumers to file under Chapter 13 and repay their debts to the best of their ability even if it took a significant amount of time. Some reformers urged Congress to require compulsory Chapter 13 filings, but Congress rejected these proposals just as it had rejected calls for allowing bankruptcy judges the discretion to force debtors into Chapter 13 under the Chandler Act in 1938.⁹ Overall, the 1978 Act was viewed by most disinterested parties as fair to both creditors and debtors because discharge was available for all but a few excepted debts and it was still subject to complete denial under 11 U.S.C. § 727(a).

Along with substantive changes, the 1978 Act greatly improved the administration of bankruptcy cases by implementing a nationwide trustee system and eliminating the requirement that judges appear at creditors’ meetings. Another administrative reform was the elimination of the cap imposed on fees chargeable to a debtor by lawyers and other professionals. The drafters of the 1978 Act believed that the better policy was to involve the best professionals in bankruptcy cases and competitive fees were seen as necessary to that end.¹⁰ The Act also expanded the jurisdiction of bankruptcy judges by allowing them to hear all matters arising in, under, or related to bankruptcy cases as adjuncts of the district court.

A. Bankruptcy Amendments and the Federal Judgeship Act of 1984

Soon after the bankruptcy reforms were enacted some critics argued that the law unfairly favored debtors. However, subsequent amendments have tilted the scales back in favor of creditors. Since 1978, the credit industry has been at the forefront of the reform effort.¹¹ In 1984, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA) which contained the Consumer Credit Amendments.¹² The amendments were passed in response to a concerted effort from the consumer credit industry and represented a significant retreat from the fresh start policy of the 1978 Act.¹³ Interestingly, during the years between 1978 and 1984 several significant economic developments occurred that suggested anti-debtor reform would be counter-productive. First, the credit industry intensified its marketing efforts to increase consumer borrowing. Also, high inflation and unemployment rates resulted in increased consumer borrowing, while rising interest rates prompted creditors to lend more. The increased borrowing at high interest rates ultimately forced many debtors to default on financial obligations and file for bankruptcy.

In the past, when the economy forced people into difficult financial situations, Congress responded by enacting debtor relief measures that made it easier for

debtors to file for bankruptcy. However, in 1984, with the increasingly powerful influence of the credit industry, consumer debtors found little sympathy in Congress. BAFJA contained several Consumer Credit Amendments that shifted the 1978 balance of rights back in favor of creditors. Some commentators argued that the Consumer Credit Amendments went so far as to severely undermine the policies of providing a fresh start, preserving debtors’ self-respect, and creating incentives for debtors to rejoin the work force.¹⁴

The three most significant amendments in BAFJA are found in sections 707(b), 1325(b), and 1329(a) of the Bankruptcy Code. Section 707(b) allows a bankruptcy court or a trustee to dismiss a debtor’s Chapter 7 case if it is found that filing would be a “substantial abuse.”¹⁵ The Code does not define what constitutes substantial abuse, but the broad language allows courts to give the statute an expansive meaning. For example, in *United States Trustee v. Harris*, the Eighth Circuit took the position that the debtor’s ability to pay his debts when due, as determined by his ability to fund a Chapter 13 payment plan, can be a sufficient reason to dismiss a Chapter 7 case on the grounds of substantial abuse.¹⁶ Other courts have adopted a multi-factor “totality of the circumstances” approach to determine substantial abuse.¹⁷

Section 1325(b) prohibits a bankruptcy court from confirming a Chapter 13 plan over the objections of a trustee or unsecured creditors unless either the unsecured creditors will be paid in full or the debtor will apply to plan payments all of his projected disposable income for the three year period commencing on the date the first payment is due.¹⁸ Disposable income is defined as income that is not reasonably necessary for the maintenance and support of the debtor and his dependents.¹⁹ With the highly subjective definition supplied by the Code, courts have naturally made inconsistent decisions regarding debtors’ disposable income. The bankruptcy judge is allowed to decide whether or not a certain debtor is living beyond his means and various factors (which may be proper or improper) go into this decision. One proponent of the legislation stated,

[T]he debtor should forego luxuries during the term of the plan. For most debtors some sacrifice and adjustment to the debtor’s standard of living will be required. There should be no such expenses as the purchase of new cars or for that matter continuing to make payments on a nearly new car at the expense of unsecured creditors under the plan. The court should . . . in some cases, require the debtor to pursue a more modest lifestyle.²⁰

Although preventing a debtor from maintaining a lavish lifestyle to the detriment of his creditors is a legitimate goal, the enforcement mechanism provided by section 1325(b) is itself subject to abuse. The provision is activated by the objection of unsecured creditors who are rarely satisfied with the repayment they receive from Chapter 13 plans. After the objection, the debtor has two unattractive options. First, he may repay the creditor in full—a course of action which he is most likely unable to do. Alternatively, the debtor must contribute all income

except that which is needed for maintenance and support of the debtor and the debtor's dependents. In essence, if the debtor decides to work for the next three years, he will be working for his creditors. Consequently, in many cases, the debtor is left with a disincentive to work and earn more than a minimal amount, and the primary goals of bankruptcy are undermined.

The discretion of debtors filing for bankruptcy was further reduced by section 1329(a) which allows a trustee or an unsecured creditor to request that Chapter 13 payments be increased or accelerated.²¹ As with section 1325(b), the unsecured creditor is given the opportunity to exercise its natural instinct and modify the plan thereby increasing the debtor's obligations. Once again, the debtor is given a disincentive to work because doing so would probably be against his interests.

B. Bankruptcy Reform Act of 2001

Between 1984 and 1994, there were few major amendments to the Bankruptcy Code that affected consumers. However, in 1994 Congress passed an important bankruptcy bill that established the National Bankruptcy Review Commission and simultaneously made numerous amendments to the Code.²² Among the amendments relating to consumer bankruptcies was a provision extending the time a Chapter 13 debtor could cure a default on a loan secured by a lien on the debtor's principal residence to the date of the foreclosure sale.²³ Also, in response to a number of confusing court decisions regarding the impairment of exemptions in various situations, Congress amended section 522(f). Under the new version, debtors are allowed to avoid judicial liens on their exempt property to the extent the lien (as well as all senior liens and the exemption) exceeds the value of the debtor's interest in the property.²⁴

Ultimately, the most significant effect of the Bankruptcy Reform Act of 1994 resulted from its creation of the National Bankruptcy Review Commission (the Commission). The Commission was required to study bankruptcy laws and submit a comprehensive report two years later.²⁵ In setting forth the Commission's duties, Congress made it clear that it was "generally satisfied with the basic framework" of the current Code, and that the focus should be on "reviewing, improving, and updating the Code in ways which do not disturb the fundamental tenets and balance of current law."²⁶ Such an endorsement of the Code begs the question: what was the impetus behind the Commission's formation? As with the 1978 Bankruptcy Reform Act, Congress was not responding to an economic crisis requiring extensive debtor relief. However, unlike the 1978 Act, bankruptcy laws did not need to be radically reformed "to reflect and adequately meet the demands of present technical, financial, and commercial activities."²⁷ The 1978 Act had modernized the Code and the congressional demand not to disturb its fundamental tenets suggests it was generally workable.

The critical difference between 1978 and 1994 was that consumer bankruptcies had increased by more than 700 percent.²⁸ Perhaps Congress's intent in establishing the Bankruptcy Review Commission was to discover the cause of the unprecedented increase in bankruptcy filings. In conducting its study, the Commission heard testimony of representatives from the credit industry, advocates of consumer debtors, as well as

academics, bankruptcy trustees and judges.²⁹ When the Commission released its report in 1997, it was clear that the credit industry was far more successful in lobbying for pro-creditor reform.³⁰

On June 10, 1998, the House of Representatives passed House Bill 3150 which incorporated many of the proposals from the Bankruptcy Review Commission.³¹ On September 23, 1998, the Senate passed its own consumer bankruptcy bill, also designated under House Bill 3150. Towards the end of the 105th Congress, a conference committee released its report and recommended that a revised version of House Bill 3150 be substituted for the Senate version.³² The Clinton administration and congressional Democrats objected to the revised bill because it omitted several measures providing debtor and consumer protection.³³ This opposition precluded a Senate vote and left bankruptcy reform to the 106th Congress.

Recently, the 106th Congress came even closer to realizing comprehensive bankruptcy reform. H.R. 2415 enacted the Bankruptcy Reform Act of 2000 and passed the Senate by a vote of 70 to 28.³⁴ The Bankruptcy Reform Act of 2000 was a long and highly technical piece of legislation that

includes several piecemeal provisions attracting a wide range of support. For example, the United Child Support Enforcement Association lent its approval to the bill because it gives child-support debt priority among all other debts.³⁵

However, on Dec. 19, 2000, President Clinton exercised a pocket veto of the bill which precluded any congressional attempt to override his veto. President Clinton withheld his approval of the bill because in his view it did not represent a balanced approach to bankruptcy reform that would encourage responsibility on the part of debtors and creditors alike.³⁶ Specifically, he pointed to the bill's failure to limit homestead exemptions which some debtors use to shield multimillion dollar homes from creditors. He found the bill's failure to address this issue to be a glaring omission given the fact that many moderate-income debtors would be required to "live frugally under rigid repayment plans for 5 to 7 years."³⁷ Along with President Clinton, the National Bankruptcy Conference, the National Conference of Bankruptcy Judges, the National Association of Chapter 13 Trustees, and 91 law professors from various schools expressed their doubts about the ability of the Act to achieve balanced reform.³⁸ Despite their misgivings, the Act has enough support among Republicans, Democrats, and special interest groups to be enacted with little or no revision under the Bush administration.

As mentioned above, a major impetus for bankruptcy reform has been the dramatic increase in bankruptcy filings in recent years. However, in 1999 the number of petitions fell from the record high of 1.44 million set the year before to 1.3 million—an 8.5 percent

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decrease.³⁹ Although this recent tapering has caused some legislators to reconsider the urgency of reform efforts, the Bankruptcy Reform Act of 2001 is very close to being signed into law.⁴⁰ Two substantially similar bankruptcy reform bills passed by the House and Senate (H.R. 333 and S. 420) and are in the final stages of consideration by Congress. The following sections of this article will discuss a few key provisions of the Act that will potentially have the greatest impact on consumers and their attorneys.

1. Means Testing

The Bankruptcy Reform Act of 2001 will severely limit the availability of Chapter 7 to debtors. Currently, debtors may choose to file under Chapter 7 or Chapter 13 subject only to the “substantial abuse” language found in section 707(b). Under the proposed law the debtor’s election would be curtailed by the creation of a presumption that debtors who file under Chapter 7 but are able to pay a certain fixed amount or percentage of their debts, are actually filing in bad faith. The presumption can be rebutted by showing “special circumstances that justify

additional expenses or adjustments of current monthly total income for which there is no reasonable alternative.”⁴¹ If a debtor cannot overcome the presumption, his case may be dismissed or converted to a Chapter 13 reorganization.

The presumption of abuse would arise in

three situations and may be asserted by the bankruptcy judge, administrator, trustee, or any party in interest. First, the proposed changes would amend section 707(b) of the Code so that a debtor who can repay \$10,000 (\$166.67 per month) after allowed deductions would be prohibited from filing under Chapter 7—regardless of the amount of the debtor’s general unsecured debt.⁴² Second, the presumption would arise if the debtor has at least \$100 of monthly income available after allowed deductions and can pay 25% of general unsecured debt over five years. Therefore a debtor with \$100 in monthly income after deductions would be prohibited from filing under Chapter 7 if the debtor had general unsecured debt of \$24,000 or less (as would a debtor with \$150 in monthly income and \$36,000 or less in general unsecured debt). Finally, the third situation where abuse would be found is when the two presumptions above do not apply or have been rebutted but the debtor filed in bad faith or the totality of the debtor’s financial circumstances indicate abuse. The same parties may assert this finding of abuse except that creditors are limited to asserting it only in cases where the debtor’s income is above the defined state median. This proposed legislation is a significant change from the current 707(b) provision which specifically precludes a party in interest from requesting that a case be dismissed for substantial abuse.⁴³

Another notable change is that the word “substantial” is to be deleted from the provision.⁴⁴ The effect this rewording will have on the case law construing substantial abuse remains to be seen. If the debtor wishes to avoid removal, he must provide documentation

of the additional “expenses and a detailed explanation of the extraordinary circumstances [that] make [them] necessary and reasonable.”⁴⁵ The court would be required to serve this documentation on all creditors. Section 704 of the Code would be amended to require a panel trustee or a bankruptcy administrator to review all materials submitted by a debtor and file a report with the court stating whether or not the filing will constitute abuse.⁴⁶

The means-testing provision of the proposed Act is the most controversial aspect of the new legislation. It is premised on the assumption that too many debtors are abusing the bankruptcy system and shirking their obligations to repay debt. Critics of the means-testing provision claim that the focus on debtor behavior is over-emphasized and that the most significant cause of increased bankruptcy filings is irresponsible lending practices. The credit card industry has been subjected to major criticism with regards to the explosion in filings.⁴⁷ This criticism is not unfounded when you consider that last year Americans spent more than \$1 trillion using credit cards and the amount of revolving debt on bank, retail, and gas cards rose to \$585 billion.⁴⁸ Consumer groups say that competition in the industry has caused credit card companies to market their products and services more extensively and make offers to high-risk consumers.⁴⁹ However, industry spokespersons respond that they are “democratizing” credit by allowing a greater number of people to share in the economy and they cannot be responsible for those who cannot handle credit wisely.⁵⁰ Regardless, one must ask whether the credit industry should reap all of the benefits of marketing to a wider consumer audience without accepting the inherent risks accompanying such an endeavor.

Three studies were conducted to determine what effect a means test would have on bankruptcy filers.⁵¹ Two of the studies were introduced to Congress during the 1998 debate over bankruptcy reform. One of these was conducted by the Credit Research Center (CRC) which used the debtor’s own statement of monthly living expenses and calculated the amount of debt repayable by 3,800 Chapter 7 debtors.⁵² From that sample, about 25 percent of Chapter 7 debtors could have repaid at least 30 percent of their non-housing debts over a five year repayment period.⁵³ In a similar study, Ernst and Young found that 15 percent of Chapter 7 debtors would be affected by a means test similar to the one in the Bankruptcy Reform Act of 2000.⁵⁴ The third study was conducted by the American Bankruptcy Institute, which found that three percent of Chapter 7 debtors would be affected by a means test such as the one Congress considered.⁵⁵ No matter whose numbers are used, the results indicate that there is a significant number of households that can afford to repay their debt under Chapter 13. Whether or not this number is significant enough to merit the introduction of need-based bankruptcy remains to be seen.

2. Attorney Liability

Some reform measures are targeted at bankruptcy attorneys. For instance, if the court grants the trustee’s motion to dismiss or convert and finds that the Chapter 7 filing was not substantially justified, the court must order the debtor’s counsel to reimburse the trustee for all reasonable expenses incurred in prosecution of

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the action.⁵⁶ In addition, if the court finds that the attorney violated Rule 9011, the court will assess a civil penalty to be paid to the trustee.⁵⁷ Bankruptcy Judges will see the signature of the debtor's attorney on the bankruptcy petition as a certification that "the attorney has no knowledge after an inquiry that the information in the schedules filed with [the] petition is incorrect." The harshness of these provisions may cause some attorneys to reconsider their practice in the field of bankruptcy.⁵⁸ The American Bar Association's General Practice, Solo and Small Firm's section is sending a letter to members of Congress protesting the provision requiring attorney certification of information.⁵⁹ The author of the letter elaborated the stance by asking, "Why would you put yourself in the position of being personally liable over a potential \$900 case?"⁶⁰ Eventually, the reform measure may have the unintended consequences of causing bankruptcy lawyers to increase their fees to compensate for new liabilities.

3. Homestead Exemptions

Property exemptions have historically been a contentious issue in bankruptcy law, pitting state interests against federal interests.⁶¹ The controversy has carried over to the Bankruptcy Reform Act of 2001 with the issue of homestead exemptions. State laws vary widely on this topic as some states permit an unlimited exemption while others provide none at all. Texas, one of the most liberal states for debtor exemptions, recently exacerbated the conflict by increasing the amount of real property exempted in urban areas from one acre to ten acres.⁶² However, this seemingly pro-debtor stance does not ultimately aid debtors as a whole because very few bankruptcy debtors own and live on between one and ten acres of land. Furthermore, the change might even hurt debtors indirectly because reform advocates effectively use the image of the wealthy, irresponsible filer to press for pro-creditor changes.

The scope of homestead exemptions has been heavily debated in Congress and divergent provisions have emerged from the House and Senate bills. Both versions would amend section 522 of the Code by lengthening the residency requirement from 180 days to 730 days.⁶³ This provision would prevent many debtors from moving to a different state shortly before filing in order to take advantage of generous state law exemptions.⁶⁴ Debtors that already live in such states will be unaffected. The Senate bill, however, would limit the amount of equity a debtor could hold in a home to \$125,000. The Bush Administration has expressed strong disapproval of this limit and urged Congress "to return to the bipartisan compromise language that was adopted by the last Congress."⁶⁵ The bill passed by the 106th Congress did not contain limiting language with regard to homestead exemptions. President Clinton cited failure to limit homestead exemptions as a "loop-hole for the wealthy" and was one of the primary reasons he decided to veto the legislation.⁶⁶ Unlike its opposition to the Senates equity limitation, the Bush Administration did not express opposition to the House version of the Bankruptcy Reform Act of 2001 even though it too contains an equity limitation. The difference is that the House version would deduct value in excess of \$100,000 added to the homestead during the two years preceding the bankruptcy filing unless the equity was rolled over from another house in the same state. The House version also contains an exclusion from the

homestead exemption of any value added by the debtor with the intent to hinder or delay creditors during the 7 years prior to filing.

4. Pro-Consumer Provisions

The Bankruptcy Reform Act contains a provision requiring enhanced disclosure to credit card users that make only the minimum monthly payment. The Act will amend the Truth in Lending Act to force many credit card and charge card companies to include the following warning in their monthly bill statements:

Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of \$1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: XXXXXX. (the blank space to be filled in by the creditor).⁶⁷

While the admonition contained in this amendment may seem like common sense to many credit card holders, it is an important step toward reform based on debtor education. It will also bring credit card disclosures in line with other consumer agreements such as mortgages and car loans which reveal amortization rates or the total interest that will be paid if only the minimum monthly payment is made.

Finally, the legislation contains provisions addressing criticism that credit providers have exacerbated bankruptcy abuse. The Act would require studies to determine whether credit card issuers have extended credit without regard to the consumer's ability to pay and would prohibit issuers from canceling accounts of consumers who pay off their balance every month.⁶⁸

III. Conclusion

For better or worse, the Bankruptcy Code will be significantly different after the reforms take effect within the next few months.⁶⁹ Requiring more responsibility on the part of debtors may be necessary because for some debtors bankruptcy has become a convenient option for financial planning rather than an extraordinary remedy of last resort. Creditors insist that debtor abuse is the only plausible explanation for increased bankruptcy filings. However, the fact that almost anyone can attain credit regardless of past credit problems must be a factor contributing to the increased filings as well. Regardless, debtor education and enhanced disclosure by creditors would help prevent many problems before they arise. Rather than making less credit available to consumers, it would be more proper and less intrusive for the government to provide consumers with the tools and information needed to use credit wisely. Ultimately, effective bankruptcy reform should represent a well-balanced attempt at protecting the rights of both creditors and debtors.

¹ Act of July 24, 1970, Pub. L. No. 91-354, § 1(b), 84 Stat. 468, 468 (1970).

² See Daniel A. Moss & Gibbs A. Johnson, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?*, 73

Am. Bankr. L.J. 311, 328-29 (1999).

³ *Report of the Commission on the Bankruptcy Laws of the United States*, Government Printing Office, 1973.

⁴ See Moss & Johnson, *supra* note 2, at 328.

⁵ 11 U.S.C. § 522(b).

⁶ See Charles Jordan Tabb, *The History of the Bankruptcy Laws of the United States*, 3 AM. BANKR. INST. L. REV. 5, 36-37 (1995).

⁷ H.R. REP. NO. 95-595, at 118 (1977), reprinted in 1978

U.S.C.C.A.N. 5963, 6078-79.

⁸ 11 U.S.C. § 1328(a).

⁹ See Tabb, *supra* note 6, at 35.

¹⁰ *Id.* at 35

¹¹ See *id.* at 37.

¹² Pub. L. No. 98-353, 98 Stat. 333.

¹³ See Karen Gross, *Preserving a Fresh Start for the Individual Debtor: The Case for Narrow Construction of the Consumer Credit Amendments*, 135 U. PA. L. REV. 59, 60-63 (1986).

¹⁴ See, e.g., Gross, *supra* note 13, at 65.

¹⁵ 11 U.S.C. § 707(b).

¹⁶ 960 F2d 74, 77 (8th Cir. 1992).

¹⁷ See, e.g., *In re Watkins*, 216 B.R. 394, 396 (Bankr. W.D. Tex. 1997).

¹⁸ 11 U.S.C. § 1325(b).

¹⁹ *Id.*

²⁰ 126 CONG. REC. 31154 (1980).

²¹ 11 U.S.C. § 1329(a).

²² Pub. L. No. 103-394, 108 Stat. at 4147.

²³ 11 U.S.C. § 1322(c).

²⁴ 11 U.S.C. § 522(f). This section is not applicable to judicial liens that secure debts for alimony, maintenance and support. *Id.* § 522(f)(2). There were several additional amendments making it harder for debtors to avoid paying alimony, maintenance and support. See Robin E. Phelan et al., *1994 Consumer Bankruptcy Developments: The Bankruptcy Reform Act of 1994*, 50 BUS. LAW. 1193, 1204-05 (1995).

²⁵ Pub. L. No. 103-394, § 603, 108 Stat. at 4147.

²⁶ 140 CONG. REC. H10,764 (daily ed. Oct. 4, 1994).

²⁷ Act of July 24, 1970, Pub. L. No. 91-354, § 1(b), 84 Stat. 468, 468 (1970).

²⁸ See Carlos J. Cuevas, *The Consumer Credit Industry, the Consumer Bankruptcy System, Bankruptcy Code Section 707(b), and Justice: A Critical Analysis of the Consumer Bankruptcy System*, 103 COM. L.J. 359, 359 (1998).

²⁹ See Gary Klein, *Consumer Bankruptcy in the Balance: The National Bankruptcy Review Commission's Recommendations Tilt Toward Creditors*, 5 AM. BANKR. INST. L. REV. 293, 293 n.2 (1997).

³⁰ See generally *id.*

³¹ H.R. 3150, 105th Cong. (1998).

³² H.R. CONF. REP. NO. 105-794, at 1 (1998).

³³ See Corinne Ball et al., *Toward Consumer Bankruptcy Reform Legislation?*, 54 BUS. LAW. 1453, 1454 (1999).

³⁴ *For the Record*, THE WASHINGTON POST, Dec. 14, 2000, at V04. H.R. 2415 enacted S. 3186 which contained the substantive provisions of the Bankruptcy Reform Act.

³⁵ See *Bankruptcy Reform Bill Bound for Bush*, FINANCIAL PLANNING, Jan. 1, 2001.

³⁶ See *The White House: Memorandum of Disapproval*, Dec. 21, 2000, M2 PRESSWIRE, available in LEXIS, News Library, News Group File [hereinafter Memorandum of Disapproval].

³⁷ *Id.*; see also Letter from Jacob J. Lew, Director, Office of Management and Budget, Executive Office of the President, to Trent Lott, Majority Leader, U.S. Senate (Oct. 9, 1998) <<http://www.abiworld.org/legis/bills/ombletter-conferencereport10-9.html>>. The President was also critical of the lack of a provision in H.R. 2415 that would prevent

groups that use violence and intimidation to interfere with reproductive health services from using the bankruptcy system to escape personal liability. See Memorandum of Disapproval, *supra* note 36 (observing that an amendment foreclosing abuse of the bankruptcy system by these groups passed overwhelmingly in the Senate, but was dropped from the final legislation without public comment); see also Dianne Feinstein, *Decision to Vote Against Bankruptcy Reform Legislation*, CONGRESSIONAL PRESS RELEASES, Dec. 8, 2000 (disapproving of House and Senate Republicans' exclusion of Democrats from final negotiations of bankruptcy reform legislation).

³⁸ See Feinstein, *supra* note 37.

³⁹ See *Bankruptcy Rate Declined During '99*, CINCINNATI POST, Mar. 6, 2000, at 9B.

⁴⁰ See Margaret Graham Tebo, *A New Chapter*, ABA JOURNAL, July 2001, at 46.

⁴¹ S. 420, H.R. 333, at § 102, 107th Cong. (2001).

⁴² *Id.*

⁴³ 11 U.S.C. § 707(b).

⁴⁴ H.R. 333, S. 420, at § 102.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Paul Wenske, *House of Cards; Explosion of Credit Leads to Households Stuck in Debt*, KANSAS CITY STAR, Apr. 30, 2000, at A1.

⁴⁸ *Id.*

⁴⁹ See *Credit Cards at 50: The Problems of Ubiquity*, NEW YORK TIMES, Mar. 12, 2000, at B11.

⁵⁰ See Wenske, *supra* note 47.

⁵¹ See Michael E. Staten, *Bankruptcy Revision*, March 17, 1999 (transcript available at 1999 WL 150130 (F.D.C.H.) (analyzing the studies and attempting to resolve their discrepancies).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* (the Ernst and Young study used the means test found in H.R. 3150, 105th Cong. (1998) which was similar to the Bankruptcy Reform Act of 2000 except it would apply to debtors who could repay 30 percent of their debts over a 5 year period).

⁵⁵ *Id.* (results of the study may be found at <<http://www.abiworld.org/research/creightonstudy.html>>).

⁵⁶ H.R. 333, S. 420, at § 102(a)(4).

⁵⁷ *Id.*; see also Fed. R. Bankr. P. 9011 (setting forth requirements for signing and verification of papers).

⁵⁸ See Tebo, *supra* note 40, at 46.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See Tabb, *supra* note 6, at 20 n.132.

⁶² See TEX. PROP. CODE § 41.002

⁶³ S. 3186, at § 308, 106th Cong. (2000).

⁶⁴ But see Feinstein, *supra* note 37 (arguing that residency requirement can be easily side-stepped by debtors).

⁶⁵ See Letter from Mitchell E. Daniels, Director, Office of Management and Budget, Executive Office of the President, to the Honorable Patrick J. Leahy, U.S. Senate (undated) <<http://www.abiworld.org/research/adminhomestead.html>>.

⁶⁶ See Memorandum of Disapproval, *supra* note 36.

⁶⁷ S. 420, at § 1301. This warning would be required for open end credit plans that require a monthly minimum payment of not less than four percent. Credit plans that require a higher percentage would issue a similar disclaimer with repayment amounts adjusted respectively. *Id.*

⁶⁸ See Tebo, *supra* note 40, at 47-48.

⁶⁹ To keep abreast of the most recent developments visit <www.abiworld.org>.