

BANKRUPTCY BILL WILL HARM ECONOMICALLY VULNERABLE WOMEN AND THEIR FAMILIES (February 2003)

The 2002 bankruptcy conference report (H.R. 333, House Rpt. 107-617), would inflict additional hardship on over a million economically vulnerable women and their families each year: those forced into bankruptcy because of job loss, divorce, or medical expenses, and those who are owed child support by men who file for bankruptcy. Contrary to the claims of proponents of the bill, low- and moderate-income families are *not* protected from its harsh provisions, and mothers and children owed child support are *not* protected from increased competition from credit card companies and other commercial creditors during and after bankruptcy that will make it harder for them to collect child support.

The conference report does address one serious abuse of the bankruptcy process, ensuring that perpetrators of threats and violence against women and the health professionals who serve them at reproductive health clinics cannot use the bankruptcy system to avoid responsibility for their illegal actions. However, the bill fails to adequately address other abuses, such as favored treatment of wealthy debtors with luxury homes and irresponsible and predatory lending practices by creditors. At a time when many Americans are struggling to cope with the loss of their jobs, their health insurance, and their savings, the bill assists the credit card industry at the expense of families struggling to get back on their feet.

? **WOMEN WILL BE AMONG THE HARDEST HIT BY THE BANKRUPTCY BILL.**

? **Women are the largest group in bankruptcy.** In 2001, women filing independently for bankruptcy represented 39% of the households filing: more than men filing independently (29%) or married couples (32%).¹ Including women filing on their own and with their husbands, about a million women filed for bankruptcy in 2001.²

? **The economic vulnerabilities many women face forces some into bankruptcy.** Nine out of ten women filing for bankruptcy have been hit by job loss, medical emergency, and/or divorce.³ These are the major factors in men's bankruptcies as well,⁴ but women are especially vulnerable to declines in household income or increases in expenses, because they have less income and fewer assets than male filers, and are more likely to be caring for children or aging parents.⁵

? **Single mothers have been especially hard hit by the current economic downturn.** Between December 2000, when unemployment was at its lowest, and December 2002, the overall unemployment rate increased 50% (from 4.0% to 6%). The unemployment rate among single mothers increased even more, by 74% (from 5.0% to 8.7%).⁶ And single mothers already were the most at-risk group for bankruptcy.⁷

? **Many women are affected by the bankruptcy system because they are owed child support by men who file for bankruptcy.** In 2001, about 180,000 men owing child or spousal support filed for bankruptcy.⁸ Under current law, support obligations to families have priority during bankruptcy and are among the few debts that cannot be discharged in bankruptcy. When fewer other creditors can pressure the ex-spouse for payment, women owed child support have a better chance of collecting.

? **WOMEN AND OTHER LOW - AND MODERATE-INCOME DEBTORS WILL BE SUBJECT TO MANY OF THE HARSH PROVISIONS OF THE BANKRUPTCY BILL.**

? **Access to bankruptcy will be more difficult, especially for low-income women unable to afford legal assistance.** The means test will make filing more complex, even for the poorest individuals and families. All consumer debtors, including those with incomes below the median, must file the detailed statements necessary to do the complex calculations under the means test⁹ and file additional paperwork.¹⁰

Debtors with above-median income for their state will be presumed to be abusing the bankruptcy system -- and subject to having their Chapter 7 bankruptcy case dismissed or converted to a Chapter 13 case -- if they have a modest amount of income beyond allowable expenditures: \$100 to \$167 per month, depending on the amount of their unsecured (primarily credit card) debt.¹¹ Allowable expenditures will be defined primarily by rigid Internal Revenue Service allowances, with a few additional deductions allowed by the bill.¹² The way allowable expenditures are defined will disadvantage middle-income families relative to the wealthy. For example, a couple that purchased two new luxury automobiles can fully deduct the cost of making payments on those car loans under the means test, while a family in which one parent commutes by car while the other commutes by public transportation may be unable to deduct its public transportation costs. And wealthy corporate executives whose debts are business-related will not be subject to the means test, which applies to those with consumer debts.¹³

The bill gives bankruptcy judges no discretion to consider the reasons for filing in applying the means test. Whether the financial crisis is the result of a layoff from WorldCom, a serious illness or accident, or even a terrorist attack is irrelevant (the only concession to victims of terrorism is the exclusion of payments to victims from the definition of income).¹⁴

? **Debtors of modest means will find it harder to save a home, car, and necessary household goods in bankruptcy.** Only a limited list of household goods will be protected from repossession.¹⁵ The bill's requirement -- applicable to debtors of all income levels -- that many car loans and other debts "secured" by collateral of limited value must be paid in full in Chapter 13 will make it more difficult to make the payments to save a home, car, or washing machine.¹⁶

? **After bankruptcy, more debts will survive, making it more difficult to regain economic stability.** Under current law, only a few types of debt of special importance, such as child and spousal support obligations, are nondischargeable in bankruptcy. Most credit card debts and other unsecured debts can be discharged; however, to protect against abuse, charges to purchase "luxury goods" within 60 days of filing for bankruptcy cannot be discharged under current law.

H.R. 333 would make many more debts, especially credit card debts, nondischargeable. For example, it redefines “luxury goods,” so that if a person charges more than \$500 *total* on a single credit card over the 90 days prior to filing – about \$40 of charges per week – the charges are presumed to be for luxury goods. Debtors with purchases above this very modest level would bear the burden of proving that they were for necessities: a challenge for low- and moderate-income people who cannot afford to take time off from work or pay additional legal expenses.

? **THE CHILD SUPPORT PROBLEM IS NOT FIXED: THE BILL WILL MAKE IT HARDER FOR WOMEN OWED CHILD SUPPORT TO COLLECT DURING AND AFTER BANKRUPTCY.**

? **Moving support claims to 1st priority in Chapter 7 sounds good, but is virtually meaningless.** Supporters of the bill claim that it “puts child support first” because women owed child support will be first in line among unsecured creditors if there are assets to distribute in a Chapter 7 case. However, even today, with no means test limiting access to Chapter 7, over 96% of Chapter 7 debtors have no assets to distribute, according to the Department of Justice.¹⁷ The bill will let women and children wait at the head of the line in Chapter 7 – to receive nothing.

? **After bankruptcy, women trying to collect support will face increased competition from credit card companies and other creditors.** Under current law, child and spousal support are among the few debts that survive bankruptcy. Under H.R. 333, more debts -- especially high-interest credit card debt -- will survive the bankruptcy, putting women and children owed support in competition with the sophisticated collection departments of commercial creditors for the debtor’s limited income. *Being “first priority” during the bankruptcy process is legally irrelevant when the bankruptcy process is over.*

? **In Chapter 13, many “secured” creditors will be entitled to larger payments from the debtor’s limited income – so payments of past-due child support will have to be smaller.** Chapter 13 repayment plans must provide for payments to secured creditors as well as to priority creditors such as families owed support. However, under current law, secured creditors are only entitled to receive payments equal to the value of the collateral. For example, under current law, if a debtor owes \$12,000 for a car worth only \$7,000, plan payments would have to cover only \$7,000, plus interest on that amount. For the \$5,000 unsecured balance, the car lender would stand in line with other unsecured creditors, *behind* priority creditors owed child support.

Under H.R. 333, if the car was bought in the last two and a half years, the plan would have to provide for payment of the full \$12,000.¹⁸ Other debts incurred within one year of bankruptcy for which some security interest was taken – such as purchases with retail credit cards which claim a security interest in all items charged – also would have to be paid in full, even if the resale value of the property is low.¹⁹ A debtor’s income is limited: if it has been stretched to pay larger amounts to these commercial creditors, payments of past-due child support will have to be made in smaller amounts and over a longer period of time, increasing the risk that child support debts will not be paid in full. As the National Association of Attorneys General stated in connection with a similar provision in an earlier version of the bill:

“[This provision] could allow credit card debt to be elevated to the same or a higher level than domestic support claims and make it far more difficult to ensure that debtors will be able to satisfy their obligations to their spouses and children.”²⁰

? **Saying that child support must be paid in full will not make it so, when there is not enough money to go around.** The bill states that debtors must pay domestic support claims in full to get a repayment plan approved and a discharge of debts in Chapter 13.²¹ But current law already requires support owed to families to be paid in full. (The major change made by this section would be an increase in the rights of states to payment of child support assigned to them as reimbursement for public assistance.²²) And other provisions of the bill, as discussed above, would require that many additional creditors receive larger payments in Chapter 13. H.R. 333 may *say* that debtors must pay all these claims; but if there isn't enough money to go around, fewer plans will be approved and more plans will fail,²³ making it *less* likely that women and children will get the support they are due in Chapter 13.

The conference report does address one serious abuse of the bankruptcy process. It will ensure that perpetrators of threats and acts of violence against women and the health care professionals who care for them at reproductive health clinics will not be able to escape liability for their illegal actions by filing for bankruptcy.²⁴ However, the bill fails to adequately address other abuses, such as favored treatment in a few states of wealthy debtors with luxury homes.²⁵ Indeed, professors of bankruptcy law agree that the unintended effect of the language in the conference report will be to *expand* the luxury home loophole by allowing the unlimited exemption of a few states to be transported to all states by wealthy debtors with good legal advice and advance planning.²⁶

The bill also fails to curb irresponsible and predatory lending practices by creditors. In 2001, credit card companies mailed five billion solicitations to American families, a 43% increase over the record 3.5 billion solicitations mailed in 2000.²⁷ But the bill does not require credit card companies to provide adequate information to consumers about the costs of credit, nor does it address marketing of credit to students, predatory mortgage loans, or high-cost “payday” loans.²⁸

The bankruptcy bill is unfair and unbalanced: harsh on women and other economically vulnerable Americans, but generous to the most affluent debtors and the credit card industry.

Endnotes

1. Warren, *What Is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 *Harvard Women's Law Journal* 19, 28 (2002).
2. *Id.* at 29.
3. Warren, *A Quiet Attack on Women*, *New York Times* (May 29, 2002); see also, Teresa Sullivan et al., *The Fragile Middle Class: Americans in Debt* 238-261 (2000).
4. Warren, *Bankrupt Children*, 86 *Minnesota Law Review* 1003, 1022 (2002).
5. Driscoll, *Consumer Bankruptcy and Gender*, 83 *Georgetown Law Journal* 525, 534, 537 (1994); Davis, *Bankruptcy: A Moral Dilemma for Women Debtors*, 22 *Law & Psychology Review* 235, 241 (1998).
6. Bureau of Labor Statistics, U.S. Dep't of Labor, Table A-5. Selected Unemployment indicators, seasonally adjusted (January 2002), available at <http://www.bls.gov/news.release/empsit.t05.htm>.

7. Warren, *Bankrupt Children*, *supra* n. 4, at 1017.
8. Warren, *Women's Issue*, *supra* n. 1, at 38.
9. See House Rpt. 107-617, 107th Cong., 2nd Session (2002), accompanying H.R. 333, §102 [hereinafter "H.R. 333 Conference Report"], and Wedoff, *Major Effects of the Consumer Bankruptcy Provisions of the 2002 Bankruptcy Legislation (H.R. 333 Conference Report)* 2 (August 6, 2002), <http://www.abiworld.org/table.pdf>.
10. See H.R. 333 Conference Report, §315.
11. Abuse is presumed if the debtor has \$166.67 per month after allowable deductions, regardless of the amount of the unsecured debt, or \$100.00 per month after allowable deductions if the income is sufficient to pay 25% of unsecured debt over five years. For example, a debtor with \$100 a month after allowable deductions and \$24,000 in debts would be subject to the presumption of abuse. See H.R. 333 Conference Report, §102, and Wedoff, *supra* n. 9 at 2.
12. See H.R. 333 Conference Report, §102, and Wedoff, *supra* n. 9 at 2.
13. See Collins, *A Practitioner's Guide to the Means Test* (2001), <http://www.abiworld.org/abidata/online/conference/01nbc/collins.html>
14. See H.R. 333 Conference Report, §102.
15. See H.R. 333 Conference Report, §313.
16. See H.R. 333 Conference Report, §§306, 309(c), 327.
17. U.S. Dept. of Justice, U.S. Trustee Program, *Preliminary Report on Chapter 7 Asset Cases 1994-2000* 9 (2001), <http://www.usdoj.gov/ust/library/chapter07/assetcases/Publicat.pdf>.
18. See H.R. 333 Conference Report, §306.
19. *Id.*
20. Resolution of the National Association of Attorneys General (March 1999).
21. See H.R. 333 Conference Report, §213.
22. See H.R. 333 Conference Report, §211.
23. See National Ass'n of Chapter 13 Trustees, *Results of Informal Survey on Impact of Section 306(b) of S. 625* (May 25, 1999).
24. See H.R. 333 Conference Report, §330.
25. See H.R. 333 Conference Report, §322.
26. Letter from bankruptcy law professors to Senator Patrick Leahy and Congressman F. Sensenbrenner, <http://www.abiworld.org/research/homeletter52202.html>; Shenon, *Law Professors Express Concern Over Pending Bankruptcy Bill*, *New York Times* (May 22, 2002).
27. Consumer Federation of America, *Credit Card Issuers Expand Marketing and Available Credit While Consumers Increasingly Say No* (August 15, 2002), http://www.consumerfederation.org/backpage/081402bankruptcy_credit_card_report_02_2.html
28. *Id.*