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Comparison of Selected Consumer Provisions in H.R. 833 and S. 625, the Bankruptcy Reform Acts of 1999

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Summary

The Senate Judiciary committee reported S. 625 favorably on April 27, 1999 by a vote of 14-4. Many of the controversial issues that were not addressed in committee are likely to be addressed on the floor.

The House passed its version of bankruptcy reform, H.R. 833, on May 5, 1999 by a vote of 313-108. The bill, a manager's amendment to H.R. 833, is similar to H.R. 3150, passed by the House during the 105th Congress, although several amendments were adopted. The President has threatened to veto the Bankruptcy Reform Act if it is enacted in a form comparable to H.R. 833 as passed by the House.

This report will be updated as legislative developments warrant.

The full Senate may soon consider S. 625, 106th Cong., 1st Sess. (1999), addressing bankruptcy reform.¹ In the meantime, the House recently passed H.R. 833, 106th Cong., 1st Sess (1999).² Several floor amendments were agreed to, including those which expand the scope of nondischargeability of student loans to include all qualified loans rather than just federally backed ones;³ an amendment to modify the Truth in Lending Act (TILA) to require credit card issuers to make disclosures regarding minimum monthly payments;⁴ and an amendment imposing certain disclosure and notice requirements on debt relief

¹ See S.Rept. 106-49 (1999). See also, S. 945, 106th Cong., 1st Sess. (1999), entitled the "Consumer Bankruptcy Reform Act of 1999," introduced May 3, 1999 by Sen. Durbin.

² 145 CONG. REC. H2769 (daily ed., May 5, 1999). See H.Rept. 106-123, Part I (1999).

³ H.R. 833 at § 218

⁴ Id. at § 112.

agencies.⁵ Among proposed amendments to the bill which did *not* pass was the Hyde-Conyers proposal to soften the means test by substituting Internal Revenue Service living expense standards with cost-of-living guidelines based on a “reasonable and necessary” standard that would be tailored to bankruptcy purposes.

The chart below provides a summary comparison of selected consumer provisions in the Senate and House bills as they presently stand:

Selected Provisions	S. 625 as reported by the Senate Judiciary Committee	H.R. 833 as passed by the House
Means test:		
<i>Implementation</i>	Would amend 11 U.S.C. § 707 to permit creditors, the trustee, or any party in interest to challenge a debtor’s eligibility to file under chapter 7. If indicated, the U.S. trustee must file a statement indicating that the debtor’s case would be a presumed abuse of chapter 7. § 102.	All parties may move for conversion to chapter 13, but the standing trustee must review each filing and move for conversion where abuse is found. § 102.
<i>Presumed abuse</i>	If challenged, the debtor would be presumed to be abusing chapter 7 if current monthly income, multiplied by 60, would permit a debtor to pay the lesser of 25% of nonpriority unsecured debt or \$15,000. § 102.	Abuse exists if, by calculating monthly income after deducting charitable contributions, administrative expenses, private school tuition of up to \$10,000, and secured debt payments, and multiplying by 60 months, there is a surplus of not less than \$6,000 (or \$100 per month). § 102

⁵ Id. at § 154.

<i>Calculation of monthly living expenses</i>	Expenses to be calculated “under standards issued by the Internal Revenue Service for the area in which the debtor resides.” §102.	Expenses to be calculated as specified under the 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. § 102.
<i>To rebut the presumption</i>	The debtor must demonstrate “special circumstances.” § 102.	The debtor must demonstrate “extraordinary circumstances.” § 102.
<i>Exemption</i>	The U.S. trustee or bankruptcy administrator may file a statement that a conversion motion would not be appropriate if the debtor’s current monthly income is less than the highest national or applicable State median family income. § 102.	No party may make a motion to convert the debtor to chapter 13 if the debtor (and spouse combined) have a monthly income “equal to or less than the regional median household income calculated on a semiannual basis.” § 102.
<i>Attorneys’ fees</i>	If a trustee determines that a debtor’s case should be converted, the debtor must reimburse costs, including attorneys’ fees. § 102.	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. § 102.
Mandatory credit counseling	Debtor must undergo credit counseling within 180 days of filing, and may not obtain a chapter 13 discharge until completion of a personal financial management instructional course. Chapter 7 debtors must also complete an approved instructional course. § 105.	Comparable provisions, but the debtor must undergo credit counseling within 90 days of filing. Chapter 7 debtors must also complete an approved instructional course. § 302.

<p>Promotion of alternative dispute resolution</p>	<p>Creditor’s allowable claim may be reduced by 20% if a court finds that the creditor “unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency.” § 201.</p>	<p>The court may reduce a creditor’s claim by 20% if the debtor can prove by “clear and convincing” evidence that a creditor unreasonably refused to negotiate alternative repayment of at least 60% of the debt. § 109.</p>
<p>Reaffirmation agreements</p>	<p>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; authorizes states attorney generals to bring class actions to recover damages for violations of reaffirmation provisions. § 204.</p>	<p>Imposes enhanced requirements for approval of a reaffirmation agreement when the debtor is not represented by counsel. § 108.</p> <p>Allows a debtor to recover actual damages or \$1000, whichever is greater, when a creditor violates reaffirmation agreement requirements, but prohibits class actions to enforce abusive reaffirmation practices by creditors. § 114.</p>
<p>Homestead exemption</p>	<p>No monetary cap; imposes lengthened residency requirements. §§ 307-308.</p>	<p>Imposes lengthened residency requirements. §§ 124-125.</p> <p>Imposes a \$250,000 cap on homestead exemptions (except for family farmers). Allows states to opt out of the monetary cap; delays effective date until the end of the first regular session of each state legislature following enactment. § 147.</p>
<p>Exemption for saving for postsecondary education</p>	<p>No comparable provision.</p>	<p>Allows a debtor, subject to certain requirements, to exempt up to \$50,000 for one child, or \$100,000 per family for postsecondary education. § 113.</p>

Domestic support owed to individuals and government units made first priority	Would move domestic support obligations to first priority, which is currently allocated to administrative expenses of the bankruptcy estate. § 212.	Comparable provision at § 139.
Trustee notification of child support claim holders	Would 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.	Comparable provision at § 149.
Definition of “household goods”	Defines household goods narrowly 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.	Defines household goods more broadly to include “personal property normally found in or around a residence,” excluding motor vehicles. § 145.
Plan duration	Debtors who have been converted to chapter 13 from chapter 7 will have 5 year plans; other debtors will have 3 year plans. § 318.	Chapter 13 plans to have 5 year duration for families whose monthly income is not less than the highest national median family income. Families below the highest national median income would have 3 year plans. § 606.
Debts incurred to pay nondischargeable debts are nondischargeable	Debts incurred with an intent to pay a nondischargeable debt will become nondischargeable; debts incurred within 70 days will be presumed to be nondischargeable. § 314.	Comparable provision, but all debts incurred within 90 days of filing to pay nondischargeable debts are nondischargeable without regard to intent. § 146.
Lien stripping on security interests in consumer goods	Chapter 13 debtors would not be permitted to bifurcate security interests in an automobile purchased within 5 years of the filing; or in other consumer goods purchased within 6-months of the filing. § 306.	Consumer debtors would not be permitted to bifurcate secured claims for consumer goods purchased within 5 years of the bankruptcy filing. A secured creditor’s allowable claim would be the retail cost to replace the item. §§ 122- 123.