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Comparison of Two Key Provisions in the Bankruptcy Reform Act Conference Report: The Homestead Exemption and Dischargeability of Liability for Abortion Clinic Violence

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Summary

This report examines two provisions in the Conference Report on the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, H.R. 107-617, 107th Cong., 2d Sess. (2002): the homestead exemption and dischargeability of liability for abortion clinic violence.

Background. H.R. 333, 107th Cong., 1st Sess. (2001), the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001"passed the House on March 1, 2001. The Senate passed H.R. 333 with an amendment in the nature of a substitute on July 17, 2001. Both chambers appointed conferees in July, 2001. Conferees met on May 22, 2002 to mark up the bill. It was widely reported that consensus on the legislation was reached with the exception of two outstanding issues: the homestead exemption and the provision for discharge of liability incurred in connection with abortion clinic violence (known as the "Schumer amendment").

The Conference Report Provisions. On July 26, 2002, the conference filed its report, H.R. Rept. 107-617, 107th Cong., 2d Sess. (2002). The House Rules Committee cleared the bill for same-day consideration, although the House adjourned without taking it up. The Senate is also poised to consider the bill. President Bush has indicated that he will sign the bill into law.

This report examines the Conference Report provisions governing the homestead exemption and dischargeability of abortion clinic violence.

The Homestead Exemption. The Senate version of H.R. 333 added a federal cap to state homestead exemptions of $125,000. The House version imposed a cap of $100,000 only on a debtor who transfers his or her domicile and residence within two

years of the bankruptcy filing, presumably to take advantage of another state's more generous homestead exemption. In addition, the House version imposed lengthened residency requirements to qualify for a state's homestead exemption, and reduced the value of the exemption if the value was attributable to property that the debtor disposed of within seven years of filing in bankruptcy with the intent to hinder, delay or defraud creditors.

The Conference Report abandons the Senate's federal cap on homestead exemptions and continues to permit state opt-out. It more closely tracks the House version, but provides:

- In order to claim state exemptions, the debtor must be a domiciliary in a given state for 730 days, rather than the current 180 days. If a debtor's domicile has not been located within a single state for 730 days (approx. 2 years), then the domiciliary state may be where the debtor's domicile was located for 6 months preceding the two-year period. If the debtor has not resided in any state long enough to establish residency under the provision, the debtor may elect federal exemptions. § 307. This provision is identical to current provisions in the House and Senate bills.

- The conference's compromise between a federal homestead cap and a 7 year look-back for fraudulent conversions of assets appears in § 308. The conference version has a 10 year look- back for fraudulent conversions of non-exempt property into an exempt homestead. If it can be shown that the debtor disposed of property that would be nonexempt within10 years of filing with the intent to hinder, delay or defraud a creditor, the exempt homestead will be reduced to the extent that value is attributable to the fraudulent conversion.

- A debtor electing a state homestead exemption may not exempt any interest acquired within 1215 days of filing which exceeds in the aggregate $125,000, unless the value in excess of that amount occurs from a transfer of residences within the same state. Exempts family farmers from the limit. § 322.

- The conference adds a new provision to § 322 which caps homestead exemptions at $125,000 if the debtor has been convicted of a felony which demonstrates that the bankruptcy filing was an abuse of the Code; or if the debtor owes (1) a debt for violations of securities law; (2) a debt for fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of specified securities; (3) a debt for any civil remedy under 18 U.S.C. § 1964; or (4) a debt for any criminal act, intentional tort, or willful or reckless misconduct that caused serious injury within the preceding five years. The cap does not apply to any amount reasonably necessary for the support of the debtor and his or her dependents.

Although most of the bankruptcy reform bill will not take effect until 180 days *after* enactment, the limitations on the homestead exemption under §§ 308 and 322 will take effect on the date of enactment. § 1401.

Nondischargeability of debt related to abortion clinic violence. The Senate-passed version contained a variation of the Schumer amendment (originally adopted during the 106th Congress). The provision made nondischargeable liability incurred from violations of law prohibiting harassment or violence to persons who provide or consume lawful services, or for damage or destruction of property that provides lawful goods or services. The House bill did not have a comparable provision. Consensus and compromise on this issue promised to be a "deal breaker." Extensive negotiations took place under the leadership of Sen. Schumer and Rep. Hyde. It was reported in the press that the conference had reached agreement on the entire bill, but for the Schumer amendment. Rep. Hyde and Sen. Schumer apparently agreed that anti-abortion protesters should not be able to file for bankruptcy to escape fines and civil penalties for acts or threats of violence. But they disagreed on the extent to which anti-abortion protesters who file for bankruptcy should be compelled to pay fines for non-violent acts of protest.

The controversy over this provision has been rigorous. As in the Senate bill, reference in the Conference Report is made to "laws relating to the provision of lawful goods and services." Sec. 330 of the Conference Report makes nondischargeable liability for any judgment for the violation of any federal or state law that results from "intentional actions of the debtor that (i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person from, obtaining or providing lawful goods or services;... ."

Section 328 of the Senate-passed version of H.R. 333 makes nondischargeable liability for any judgment or settlement agreement for the violation of any federal or state law that results from "an action alleging the violation of any Federal, State, or local statutory law ... that results from the debtor's – (i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to or violence against, any person" ... because that person provides or obtains lawful goods or services.

The major distinction between the conference and the Senate provision is the requirement in the conference's § 330 that the debtor's actions be "intentional" with respect to personal injury and property damage. It omits the Senate reference to liability from judgments based upon "allegations" of harassment, intimidation, interference, etc. And, it omits reference to harassment as a ground for imposing liability for nondischargeable debt.

The Conference Report also encompasses intentional harm against persons seeking to exercise the First Amendment right of religious freedom at a place of religious worship, or the property of a place of worship. It covers violations of protective orders and injunctions that protect access to facilities if the violation is initially "intentional or knowing," or, subsequently, if the violation is repeated. It expressly excludes from coverage "any expressive conduct (including peaceful picketing, peaceful prayer, or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States."