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## Bankruptcy Bill May Make Consumer Filing Process Harder

By PHYLLIS PLITCH and LYNNETTE KHALFANI

Of Dow Jones Newswires

NEW YORK -- Congress passed sweeping bankruptcy reform legislation earlier this year to make it tougher for consumers to wipe out personal debt.

But a little-discussed byproduct of the proposed legislation is that the bankruptcy process will become lengthier, more expensive and subject to additional bureaucracy, lawyers and others say.

"Justice is going to be very, very slow, time-consuming, and it's going to cost consumers a lot more money," to file for bankruptcy protection, said Howard Bader, a partner and insolvency specialist at Ballou Stoll Bader & Nadler in New York.

In March, the House and Senate passed companion bills that would overhaul the rules governing virtually all aspects of consumer bankruptcy filings. The two sides are now trying to iron out the differences in their bills, which were lobbied for heavily by the banking and credit card industries. The compromise version would still require President Bush's signature before it becomes law.

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At present, most individuals seeking refuge from mounting debt through bankruptcy file under Chapter 7, a relatively simple way to escape creditors' clutches. A smaller percentage of consumers, who can work out a plan to pay part of their bills, ordinarily file for Chapter 13, known as the wage-earner plan.

In seeking to reform the bankruptcy laws, Congress is hoping to shift the exploding number of Chapter 7 filers into Chapter 13.

According to the Alexandria, Va.-based American Bankruptcy Institute, the number of bankruptcies filed during the first quarter of 2001 rose 17.5% from the year-ago period to 366,841 filings. The figure marked the highest-ever for a first quarter. Chapter 7 filings accounted for more than 70% of the total.

One key feature of the pending bankruptcy reform legislation is a means test that evaluates consumers' income and expenses to make sure they truly qualify for Chapter 7.

The test, which would be based on Internal Revenue Service guidelines, is expected to use "a fairly complicated" calculation, said David Allard, president of the National Association of Bankruptcy Trustees.

The financial test would require a lot more effort to shepherd individuals through a review of their income sources and necessary expenses, such as food and utilities. The calculations will mean many more hours of work for bankruptcy trustees and lawyers.

There's another wrinkle in the proposed legislation: Consumers will be forced to get debt counseling.

Who Pays?

"The problem is, who's going to do the counseling, and who's going to pay for it?" asked Bader. He said the time required to schedule debt counseling and then have individuals go through the sessions will drag out the process further.

The law also contains provisions that put a higher level of responsibility on lawyers to ensure that everything contained in a client's bankruptcy filing is kosher. Since lawyers will be dealing with a more complex process and could be on the hook for any shenanigans, observers predict that the bankruptcy bar will change dramatically.

"The good lawyers will make more money. The lawyers not as competent will probably get out of the business," Allard said. He noted that the average debtor attorney now files more than a thousand bankruptcies a year, with the client paying only a couple hundred bucks for the process. "There won't be any \$200 bankruptcies any more."

It's not just attorneys and trustees who will be more tied up in the

bankruptcy process; judges and creditors are also expected to play a bigger role.

For one, more disputes are likely to emerge between creditors and consumers over whether certain individuals belong in Chapter 7 because, for the first time, creditors will be able to challenge an individual's eligibility to obtain Chapter 7 protection.

"Now it's a clean test," says George Singer, vice chair of the legislative subcommittee of the American Bar Association's bankruptcy section. "There will probably be more hearings and judicial involvement in addressing disputes. The law is essentially brand-spanking new and (judges) will have to work through the new standards."

Additionally, consumers now get an automatic reprieve against creditors coming after them when they file for bankruptcy protection, notes Lawrence Friedman, president-elect of the National Association of Bankruptcy Trustees and a partner at the law firm of Friedman and Kohut in Southfield, Mich. In certain instances, though, debtors who are repeat filers would have to secure the court's blessing to extend any reprieve, Friedman says.

Because the legislation has so many gray areas, bankruptcy specialists said it's likely to take litigation to resolve many issues. With all the complexities and mind-boggling details, some observers are skeptical that the legislation will deliver more money into the hands of frustrated creditors.

These industry watchers point out that the banking, credit card and retail industries might be disappointed if they hope that a slew of individuals seeking bankruptcy protection will be thrown into Chapter 13. In the end, the bankruptcy filers may wind up in Chapter 7 anyway, some said.

"It probably won't accomplish the intended effects of reform," said Allard, whose trustees association describes itself as neutral on the reform effort. Still, Allard adds: "There's no question it will be more expensive along the way."

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