



The Cram-Down

Steven M. Berman, Editor

Tampa Bay Bankruptcy Bar Newsletter

Fall 1998

THE PRESIDENT'S MESSAGE

Bankruptcy law again is in the national news. The Senate passed S. 1301 in late September by a 97 to 1 vote. A conference committee has been formed in an attempt to reconcile the Senate bill with the House bill. Congress will attempt to produce bankruptcy reform legislation prior to the scheduled end of the Congressional Session on October 9, 1998.

Bankruptcy practitioners who represent debtors and creditors need to keep a close eye on the status of this bankruptcy legislation. The proposed legislation, for example, marks a significant change in consumer bankruptcy law with a move toward "means testing" for Chapter 7 relief. The Senate also passed a resolution instructing its conferees to insist that the \$100,000.00 cap on homestead exemptions contained in the Senate bill be preserved in conference. I hope you have read some of the proposed legislation from the House and the Senate, and have made your views known to your Congressman and Senators.

The Tampa Bay Bankruptcy Bar Association will make every effort to keep its members up to date on the changing legislation. Also, the American Bankruptcy Institute maintains an excellent web site where you can follow the movement of the current bankruptcy legislation on a daily basis (www.abiworld.org).

THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION

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*The Business Law Section of The Florida Bar
and the*

Tampa Bay Bankruptcy Bar Association

*request your attendance at a cocktail reception
in conjunction with the*

View From the Bench Seminar

October 28, 1998 — 6:00 pm - 7:30 pm

The Tampa Club

Barnett Plaza

101 E. Kennedy Boulevard

Suite 4200

Tampa, Florida

*FREE to registrants of the
View From the Bench Seminar*

*\$15.00 per non-registrant who is a
TBBA member or their guest*

\$20.00 per other non-registrants

*RSVP to Hilda Portales
(813) 229-0144*

*For those attending the reception but not the seminar,
checks should be made payable to:
Tampa Bay Bankruptcy Bar Association and mailed c/o*

Scott A. Stichter

Stichter, Riedel, Blain & Prosser

110 Madison Street, Suite 200

Tampa, Florida 33602

IRS / BANKRUPTCY

On September 25th, the Internal Revenue Service issued Announcement 98-89 setting forth procedures to improve the handling of bankruptcy cases and to minimize the potential for IRS collection actions inadvertently violating bankruptcy laws; the facilitate the prompt correction of any violations; and to provide an administrative process for handling any damage claims for such violations. The IRS has designed specific contacts within local collection divisions to oversee the process.

*-- David P. Goch
Commercial Law League of America*

**TITLES OF VARIOUS SECTIONS OF S.1301
(AS PASSED BY THE SENATE ON SEPTEMBER 23, 1998)**

EXCERPTS

TITLE I—NEEDS-BASED BANKRUPTCY

- Sec. 101. Conversion.
- Sec. 102. Dismissal or conversion.

**TITLE II—ENHANCED PROCEDURAL
PROTECTIONS
FOR CONSUMERS**

- Sec. 201. Allowance of claims or interests.
- Sec. 202. Exceptions to discharge.
- Sec. 203. Effect of discharge.
- Sec. 204. Automatic stay.
- Sec. 205. Discharge.
- Sec. 206. Discouraging predatory lending practices.
- Sec. 207. Enhanced disclosure for credit extensions secured by dwelling.
- Sec. 208. Dual-use debit card.
- Sec. 209. Enhanced disclosures under an open end credit plan.
- Sec. 210. Violations of the automatic stay.
- Sec. 211. Discouraging abusive reaffirmation practices.
- Sec. 212. Sense of the Senate regarding the homestead exemption.
- Sec. 213. Encouraging creditworthiness.
- Sec. 214. Treasury Department study regarding security interests under an open end credit plan.

**TITLE III—IMPROVED PROCEDURES
FOR EFFICIENT ADMINISTRATION OF THE
BANKRUPTCY SYSTEM**

- Sec.301. Notice of alternatives.
- Sec.302. Fair treatment of secured creditors under chapter 13.
- Sec.303. Discouragement of bad faith repeat filings.
- Sec.304. Timely filing and confirmation of plans under chapter 13.
- Sec.305. Application of the codebtor stay only when the stay protects the debtor.
- Sec.306. Improved bankruptcy statistics.
- Sec.307. Audit procedures.
- Sec.308. Creditor representation at first meeting of creditors.
- Sec.309. Fair notice for creditors in chapter 7 and 13 cases.
- Sec.310. Stopping abusive conversions from chapter 13.
- Sec.311. Prompt relief from stay in individual cases.
- Sec. 312. Dismissal for failure to timely file schedules or provide required information.
- Sec. 313. Adequate time for preparation for a hearing on confirmation of the plan.
- Sec.314. Discharge under chapter 13.
- Sec.315. Nondischargeable debts.
- Sec.316. Credit extensions on the eve of bankruptcy presumed non-dischargeable.
- Sec.317. Definition of household goods and antiques.
- Sec.318. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec.319. Adequate protection of lessors and purchase money secured creditors.
- Sec.320. Limitation.
- Sec.321. Miscellaneous improvements.

- Sec.322. Bankruptcy judgeships.
- Sec.323. Definition of domestic support obligation.
- Sec.324. Priorities for claims for domestic support obligations.
- Sec.325. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec.326. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec.327. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec.328. Continued liability of property.
- Sec.329. Protection of domestic support claims against preferential transfer motions.
- Sec.330. Protection of retirement savings in bankruptcy.
- Sec.331. Additional amendments to title 11, U.S. Code.
- Sec.332. Debt limit increase.
- Sec.333. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
- Sec.334. Prohibit retroactive assessment of disposable income.
- Sec.335. Amendment to 1325 of title 11, U.S. Code.
- Sec.336. Protection of savings earmarked for the postsecondary education of children.

TITLE IV—FINANCIAL INSTRUMENTS

- Sec. 401. Bankruptcy Code amendments.
- Sec. 402. Recordkeeping requirements.
- Sec. 403. Damage measure.
- Sec. 404. Asset-backed securitizations.
- Sec. 405. Prohibition on certain actions for failure to incur finance charges.
- Sec. 406. Fees arising from certain ownership interests.
- Sec. 407. Bankruptcy fees.
- Sec. 408. Applicability.

**TITLE V—ANCILLARY AND OTHER
CROSS-BORDER CASES**

- Sec. 501. Amendment to add a chapter 6 to title 11, U.S. Code.
- Sec. 502. Amendments to other chapters in title 11, U.S. Code.

TITLE VI—MISCELLANEOUS

- Sec. 601. Executory contracts and unexpired leases.
- Sec. 602. Expedited appeals of bankruptcy cases to courts of appeals.
- Sec. 603. Creditors and equity security holders committees.
- Sec. 604. Repeal of sunset provision.
- Sec. 605. Cases ancillary to foreign proceedings.
- Sec. 606. Limitation.
- Sec. 607. Amendment to 546 of title 11, U.S. Code.
- Sec. 608. Amendment to 330(a) of title 11, U.S. Code.

TITLE VII—TECHNICAL CORRECTIONS

- Sec. 701. Definitions.
- Sec. 702. Adjustment of dollar amounts.
- Sec. 703. Extension of time.
- Sec. 704. Who may be a debtor.

Sec. 705. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 706. Limitation on compensation of professional persons.
Sec. 707. Special tax provisions.
Sec. 708. Effect of conversion.
Sec. 709. Automatic stay.
Sec. 710. Amendment to table of sections.
Sec. 711. Allowance of administrative expenses.
Sec. 712. Priorities. I
Sec. 713. Exemptions.
Sec. 714. Exceptions to discharge.
Sec. 715. Effect of discharge.
Sec. 716. Protection against discriminatory treatment.
Sec. 717. Property of the estate.
Sec. 718. Preferences.
Sec. 719. Post-petition transactions.

Sec. 720. Technical amendment.
Sec. 721. Disposition of property of the estate.
Sec. 722. General provisions.
Sec. 723. Appointment of elected trustee.
Sec. 724. Abandonment of railroad line.
Sec. 725. Contents of plan.
Sec. 726. Discharge under chapter 12.
Sec. 727. Extensions.
Sec. 728. Bankruptcy cases and proceedings.
Sec. 729. Knowing disregard of bankruptcy law or rule.
Sec. 730. Rolling stock equipment.
Sec. 731. Curbing abusive filings.
Sec. 732. Study of operation of title 11 of the U.S. Code with respect to small businesses.
Sec. 733. Transfers made made by non-profit charitable corporations. Effective date; application of amendments.

The following articles courtesy of Cathy McEwen from the Commercial Law League



BANKRUPTCY LEGISLATION

The House and Senate Conference Committee has been meeting to negotiate bankruptcy legislation to be submitted for a final vote in Congress.

The Bankruptcy & Insolvency Section of the Commercial Law League met with members of the Senate and House Conference Committee and their staffs, as well as members of the Clinton Administration who are responsible for bankruptcy matters.

The League's position paper, as submitted this week on the recently passed Senate version of bankruptcy reform (originally introduced as S. 1301 but now H.R. 3150) is available on the CLLA's web site as is the complete text of the bill as passed the Senate and the version that previously passed the House. Updates of what is happening with the Conference Committee and Congress are also posted on

the League's web site and sent automatically to those who are on the CLLA email list server. The League's web site is: www.clla.org

Once the House/Senate Conference Committee agrees on language for the final bill, both the House and Senate must vote to approve the legislation and the President must sign the bill into law.

The League plans to keep you informed on as instantaneous a basis as possible as developments arise. We plan to send a broadcast fax and a bulk email notice once the legislation becomes law. A copy of the law will be posted on the League's web site.

Within a week or so of the signing of the bill, the League plans to present a two hour telephone conference seminar to inform you of the provisions of the new law that will most impact your practice. Shortly thereafter, there will be a series of telephone conference seminars focusing on particular provisions in the law.

BIG PROBLEM FOR DEBTORS ON STUDENT LOAN NONDISCHARGEABILITY

All student loans will be entirely non-dischargeable in bankruptcy except for "undue hardship." (H.R. 6, section 971).

When the education appropriation bill went to conference, we were told that the final bill would not have any bankruptcy provisions. It appeared that the House conferees didn't want their student loan non-dischargeability provisions. (There was nothing on this issue in the Senate bill.) People in a position to know told us not to worry about the issue—that it was dead.

The bill was enacted with language much stronger than the original House version of the bill (which only applied to completed four

year college and postgraduate education programs). All student loans will be permanently non-dischargeable in chapter 7 and 13 except under the undue hardship provision 523(a)(8)(B). Among other things, this will greatly expand the number of hardship cases which will have to be decided in Court.

The President is expected to sign the bill in the next few days. The change will apply to cases filed on or after the date of signing. (Note that this may create an urgent need to file in the next few days for some clients with old student loans.)

YOU DON'T WANT TO MISS

The Florida Bar Continuing Legal Education Committee
and the Business Law Section present

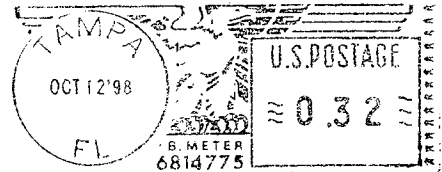
BANKRUPTCY LAW & PRACTICE VIEW FROM THE BENCH

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Marriott Westshore, Tampa — October 29, 1998

In addition to discussion of the various judges' views on certain
bankruptcy issues, the judges will discuss the states of the
current bankruptcy legislation.

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