



April 11, 2005

Dear Representative:

The National Consumer Law Center, on behalf of its low income clients, writes to let you know that S.256, the “Bankruptcy Abuse and Consumer Protection Act of 2005,” would hurt many Americans who are facing financial problems due to job loss, transition to lower paying jobs, divorce, child-rearing, inadequate health insurance, and predatory lending practices. It contains an alarming number of provisions that would prevent many families in financial crisis from obtaining the fresh start they need to remain productive members of society and provide necessary support for their dependents. Here are just a few things the bill’s sponsors have failed to discuss:

- The key cause of the increase in bankruptcies is simply that more families owe more money. The amount of consumer credit outstanding increased from 789 billion dollars in 1990 to 1.7 trillion dollars in 2001. Not surprisingly, there has been a steady increase in the amount of debt payments American families make as a percentage of their disposable income. ***Although the total number of bankruptcies has increased, the number of bankruptcies in relation to the amount of credit outstanding has actually gone down.***
- A big part of the equation is that some segments of the credit industry, such as credit card companies, make huge profits from lending to American families who cannot afford to pay big card balances and who therefore pay interest on those balances at rates of 29 percent or higher. ***The bill does nothing to reign in the excessive fees, interest charges, and aggressive collection tactics that drive hundreds of thousands of American families into bankruptcy every year. It also places no responsibility on a credit industry that sends over 4 billion credit card solicitations each year, knowing full well that they are reaching out to a significant portion of American families that will ultimately have financial problems.***
- The journal *Health Affairs* recently published a joint study by researchers at Harvard Law School and Harvard Medical School that reveals disturbing information about the medical causes of bankruptcy. The researchers found that illness and medical bills contributed to at least 46.2% of all bankruptcy filings. ***Families with children were especially hard hit – about 700,000 children lived in families that declared bankruptcy in the aftermath of serious medical problems.***
- Cutting down the number of bankruptcy filings will not result in savings for the credit industry that will be passed on to other consumers. Consumer lending, especially credit card lending, continues to be one of the most highly profitable businesses in the United States. The vast majority of debt discharged in bankruptcy would not be paid back in any event, since the debtors involved simply cannot afford to pay. ***A number of studies have shown that the “means test” will raise little in new money for creditors.***

S.256 contains a variety of poorly conceived provisions which are unbalanced and unfair. If enacted, S.256 would:

- Subject debtors to a “means test” that fails to screen for abuse and instead penalizes honest debtors by imposing additional costs and filing burdens.
- Require stricter scrutiny of low-income debtors’ expenses in chapter 13 than higher income debtors and make some debtors too rich for chapter 7 and too poor for chapter 13.
- Create a “safe harbor” from the means test for low-income debtors, but still subject them to increased costs and filing requirements.
- Erode bankruptcy’s fresh start by making more debts nondischargeable in both chapters 7 and 13.
- Promote predatory lending by encouraging creditors to take liens on household goods of nominal value.
- Create new creditor opportunities for reaffirmation abuses by weakening current debtor protections and giving creditors a safe harbor from liability.
- Undermine debtors’ ability to make reasonable payments in chapter 13 in order to get current on and pay off home and car loans.
- Drastically reduce fundamental protections afforded debtors under the automatic stay.
- Provide vast new opportunities for identity theft and other privacy invasion by making public tax returns and sensitive financial documents of consumers who file bankruptcy.

The National Consumer Law Center has represented poor people for over 30 years. The credit industry is wrong when it says that S.256 will not hurt low-income debtors. It is precisely those debtors who would be hurt the most. The myriad new procedural requirements together with dozens of opportunities for creditors to pursue new types of litigation against debtors will raise the cost of bankruptcy for all debtors and create traps that will prevent some debtors from getting a discharge of their debts. Other provisions will take away important rights under current bankruptcy law to save homes from foreclosure and evictions, and to challenge predatory lending practices. Now is not the time to drastically cut back on the availability of a system which provides a second chance to the unfortunate in the form of a fresh financial start.

Sincerely,

John Rao  
Senior Attorney