

# EXTENSIONS OF REMARKS

## INTRODUCTION OF H.R. 3150, THE BANKRUPTCY REFORM ACT OF 1998

**HON. GEORGE W. GEKAS**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 4, 1998*

Mr. GEKAS. Mr. Speaker, yesterday, I had the honor, along with my colleagues Congressmen JIM MORAN of Virginia, RICK BOUCHER of Virginia, and BILL MCCOLLUM of Florida, to submit to the Congress legislation to reform the Bankruptcy Code. This measure, the Bankruptcy Reform Act of 1998—H.R. 3150—will be referred to the House Committee on the Judiciary, and then to the Judiciary Subcommittee on Commercial and Administrative Law. As the Chairman of the Subcommittee on Commercial and Administrative Law I can assure the Congress that this measure will be given an expeditious review and brought to the full House of Representatives as soon as possible. Why? Because bankruptcy reform is needed, and needed now.

Mr. Speaker, I would like to submit to the body two items for printing in the CONGRESSIONAL RECORD which detail my position on bankruptcy reform and the major provisions of H.R. 3150. There will be much, much more information offered on this topic, this bill and the arguments for, and against, what is here being proposed. I look forward to a spirited debate and enactment of the best bankruptcy reform bill possible.

### THE BANKRUPTCY REFORM ACT OF 1998 MAJOR PROVISIONS

The Bankruptcy Reform Act of 1998 was introduced on February 3rd by Rep. GEORGE GEKAS (R-Pa.), Rep. JAMES MORAN (D-Va.), Rep. BILL MCCOLLUM (R-Fla.), and Rep. RICK BOUCHER (D-Va.). The bill is designed to restore personal responsibility to the bankruptcy system and to ensure that it is fair for debtors, creditors and consumers. Topics covered by the bill include:

#### *Consumer Bankruptcy*

In 1997, Americans filed an all-time record of 1.33 million consumer bankruptcy petitions, which erased an estimated \$40 billion in consumer debt. Those losses are passed on to all consumers, resulting in a hidden tax of \$400 for every American household. In other words, consumers who pay their bills are forced to pick up the tab for those who do not. The consumer bankruptcy provisions of the Bankruptcy Reform Act of 1998 are designed to address a flaw in bankruptcy law that allows individuals to file for bankruptcy and walk away from their debts, regardless of whether they are able to repay a portion of what they owe.

Needs-based bankruptcy—The Bankruptcy Reform Act of 1998 creates a system that would determine the amount of financial relief a debtor needs and require people to repay what they can. The amount of relief would be calculated based on a formula that uses a debtor's income and obligations to determine his or her ability to repay.

If the debtor cannot repay all of his or her secured and priority debts, and at least 20 percent of unsecured debts over five years,

the debtor has the option of filing for complete relief under Chapter 7 of the bankruptcy code. (Examples of secured debts are car loans and mortgages. Priority debts are such obligations as alimony, child support and back taxes. Unsecured debts include installment loans and credit card debts.)

If the debtor could repay all of his or her secured and priority debts and at least 20 percent of unsecured debts over five years, the debtor may not file under Chapter 7; if the debtor still chooses bankruptcy, he or she would file under Chapter 13 and begin a repayment plan. (Under Chapter 7, a debtor receives nearly complete relief from debts. Under Chapter 13, the court establishes a timely repayment plan that can run up to five years.)

Those debtors with an annual income of less than 75 percent of the national median family income can choose automatically whether to file for bankruptcy under Chapter 7 or Chapter 13; the needs-based test does not apply to these individuals.

Debtor's Bill of Rights—This provision would protect consumers from "bankruptcy mills"—law firms and other entities that steer consumers into filing bankruptcy petitions without adequately informing consumers of their rights and the potential harm bankruptcy can cause. Under the legislation, an attorney is required to refund the full cost of representing the consumer if he or she does not provide full and fair representation. The bill would also crack down on misleading advertisements and other tactics by requiring full disclosure about an organization's services, and sets out a series of rules under which for-profit "debt relief counseling organizations" must operate so that consumers are assured that they will get proper and adequate advice.

Consumer Education—The bill contains two education-related provisions. First, each consumer must receive information prior to filing for bankruptcy about his or her options, both within the bankruptcy system and alternatives to bankruptcy. Second, the bill creates a pilot program of financial management training for debtors and allows the Court to require a debtor to complete such a program as a condition of having his or her debts discharged.

Exemptions—The bill increases from 180 to 365 days the time in which a debtor must live in a particular state in order to take advantage of that state's asset exemption rules. This provision is designed to limit a debtor's ability to move into a state with broader exemptions immediately prior to filing for bankruptcy.

#### *Small Business Bankruptcy*

More than 50,000 American businesses file for bankruptcy each year, including many small ones. The Bankruptcy Reform Act of 1998 implements reforms recommended by the National Bankruptcy Review Commission to streamline the treatment of small business Chapter 11 cases. The legislation defines a small business as one with less than \$5 million in debts. The Commission found that the Chapter 11 process, which is designed to give business owners time to reorganize and get the business back on its feet, often had inadequate oversight and was ineffective for small businesses. Major reforms in this area include:

Requiring all small businesses to confirm Chapter 11 plans within 150 days of filing, or

prove that they are deserving of an extension.

Enlarging the grounds for conversion to Chapter 7, under which a Bankruptcy Trustee is required to liquidate the business.

Charging U.S. Trustees and Bankruptcy Administrators with overseeing small business debtors and "blowing the whistle" early on cases that cannot succeed in Chapter 11. (The current oversight system, which involves court-appointed creditors' committees, has proven ineffective).

#### *Single-Asset Realty Cases*

These provisions also implement recommendations of the National Bankruptcy Review Commission in a specific area of Chapter 11. Single-asset realty cases typically involve in office or apartment building where the rents are inadequate to cover payments due on the mortgage. Owners often file Chapter 11 to postpone foreclosure. Usually there are few or no creditors other than the mortgage holder. The Commission found that owners in this situation often propose "new value" plans, whereby the mortgage holder's claim is reduced to the current value of the building, the excess claim is canceled, and the owner contributes a new amount of money toward the new value. The Bankruptcy Reform Act of 1998 takes steps to streamline this process and to ensure that the "new value" must be in cash equal to 25% of the full value of the property.

#### *Enhanced Data Collection*

A common complaint about the current bankruptcy system is that data is limited, making it difficult for Congress to recommend changes. The Bankruptcy Reform Act of 1998 would require: Uniform, national reporting forms for Chapters 7, 11 and 13; monthly filing forms for Chapter 11, so that the progress of a business reorganization can be easily monitored; a "sense of the Congress" declaration that all non-confidential data should be stored electronically and be made available to the public via the Internet; and a "Sense of the Congress" declaration that a national data system should be established for tracking bankruptcy trends.

#### *Bankruptcy Tax Issues*

The Bankruptcy Reform Act of 1998 makes a number of changes to existing law to close loopholes that limit the government's ability to collect taxes. The bill also improves the system for notifying government representatives of a bankruptcy filing in which taxes may be involved.

The Bankruptcy Reform Act of 1998 also incorporates the major elements of S. 1149, the Investment in Education Act, which was unanimously reported by the Senate Judiciary Committee last October. This language ensures that local school districts and governments are given a priority in bankruptcy proceedings to recover back property taxes. School districts around the country are losing money because they tend to be last in line to collect back taxes owed by property owners who have filed for bankruptcy. These provisions ensure that more money is put back into schools.

#### *Direct Appeals*

Under current law, there are two levels of appeals in bankruptcy cases. The first is an appeal to a district court or a bankruptcy appellate panel and the second is to the U.S. Court of Appeals. This proposal would

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

streamline and expedite the appeals process by eliminating the first step and allowing appeals to be taken directly to the U.S. Court of Appeals.

#### *Making Chapter 12 Permanent*

The bill would also make permanent Chapter 12 of the Bankruptcy Code, which is scheduled to expire in 1998. Chapter 12 is designed to preserve family farms by limiting the power of a bank to exercise a veto over a farmer's reorganization plan. This provision was adopted unanimously by the Senate in October.

#### STATEMENT OF CHAIRMAN GEORGE W. GEKAS, CHAIRMAN, JUDICIARY SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW—BANKRUPTCY REFORM ACT OF 1998

The greatest, and perhaps most dangerous, irony I have come across in the past decade is that despite economic growth, low inflation, low unemployment, and increasing personal income, our nation has seen an alarming increase in the number of bankruptcy filings—1.3 million in 1997 to be exact. Think about that for a second. That's more than one family per every hundred in the United States and over \$40 billion in debt that has been erased—in a year of strong economic growth. It only further illustrates the problem when you consider that the number of filings in the '90s is eight times as many, per household, as there were during the Depression.

It wasn't always this way. The so-called "bankruptcy of convenience" is a new phenomenon, borne out of the loss of stigma the word "bankruptcy" once, but no longer, carried. It used to be a sense of responsibility, or perhaps more appropriately, a sense of disgrace and embarrassment that discouraged Americans from declaring bankruptcy. Deals were cut to make sure that creditors would at least eventually see their money and that debtors paid off, rather than legally erased, their debt.

Harry S. Truman, the 33rd President of the United States, spent the better part of the 1920s in debt due to the collapse of his clothing business in 1922. Truman was both a man and a President of the highest moral character with a tremendous sense of responsibility, which was reflected in the motto that sat on his desk in the Oval office—"The buck stops here." Truman eventually paid off all of his creditors by working out deals and payment schedules, thereby keeping himself out of bankruptcy court and ensuring that he lived up to bills he amassed.

As an attorney in practice, I can remember negotiating such a repayment arrangement for a client in the late '60s. With just a few phone calls I was able to appease my client's creditors and arrange for payments to be made on a regular basis until my client's debt could be discharged. While my client's creditors were demanding their pound of flesh, they know all too well that a deal was in their best interests. The creditors would get paid, albeit not immediately. The other option was for my client to declare bankruptcy, which would have erased his debt and left his creditors high and dry. Both parties agreed that an arrangement based on responsibility and good faith was the better alternative.

Today's situation is tremendously difficult to comprehend, because times are good. The only reasonable explanation is that the stigma of bankruptcy is all but dead. How do we know? Other than the last two decades, we only see "spikes" in the number of bankruptcy filings during times of recession—which makes sense. During difficult economic times it is always tougher to make ends meet. But the past six years have been a period of unparalleled economic growth—

as any Wall Street broker would be happy to tell us. So obviously the growth in the personal bankruptcy market is not a response to the economy.

Nor can we justifiably point an accusing finger at the credit card industry. The popular myth is that the credit card industry is flooding consumers with credit they can't afford thereby causing a surge in filings. However, those accusations are misdirected. Credit card debt accounts for only 16% of all bankruptcy debt. With some quick calculations you can see that leaves \$33.6 billion of some \$40 billion in debt still unaccounted for—so it is not likely nor is it fair to blame the credit card industry for the rapid increase in bankruptcy filings.

The lack of stigma has become a weed infesting the bankruptcy landscape. And the seed that sprouted this condition was Congress, or more correctly our predecessors in Congress. The Bankruptcy Reform Act of 1978 changed the code dramatically, making the system decidedly pro-debtor. The 1978 reforms were appropriate for the times. But the times have changed. In the twenty years since, filings have gone from 200,000 to 1.3 million.

In his 1997 Economic Report, President Clinton also acknowledged that the Bankruptcy Reform Act of 1978 is the primary culprit for the increased filings of the past two decades. The report states that "recent rises in nonbusiness bankruptcies is probably the result of changes in the bankruptcy law and a number of broader social changes . . . researchers generally attribute much to the increase in bankruptcies since the late 1970s to effects of the Bankruptcy Reform Act of 1978."

The weed has spread as bankruptcy became viewed more as a financial planning tool, government debt forgiveness program, and a first choice, rather than a last resort. Bankruptcy has even become fashionable—the Hollywood trend setters do it. People Magazine recently ran a cover story to illustrate the problem. Willie Nelson, Burt Reynolds, Kim Basinger, M.C. Hammer, former Baseball Commissioner Bowie Kuhn, Arizona Governor Fife Symington, former Philadelphia Eagles owner and Pennsylvania trucking magnate Leonard Tose are just a few of the high profile filers lending their help, albeit unconsciously, to make bankruptcy en vogue. Just last week, Grammy Award winning singer Toni Braxton, who has sold more than 15 million records in the past 5 years, declared bankruptcy.

It is simply too easy to file. I sent my bankruptcy counsel, Dina Ellis, to Bankruptcy court a few weeks back and what she reported to me was mind boggling. Lawyers who have never met their clients looking like limousine drivers at the airport as they try to identify their clients and get them in front of the judge. Scores of cases decided over the course of a few hours, spending an average of 1 to 5 minutes to decide each case. Can you imagine? Spend a couple of hours filling out forms and a couple of minutes before a judge and you can kiss your debts goodbye. You want to put that in perspective? By the time this press conference is finished 20 people will have had their debts discharged.

Of course, any remnants of the bankruptcy stigma are easily erased by our daily dose of media. Bankruptcy lawyers have taken to advertising on TV, radio and in the papers to tout the benefits of stiffing your creditors or how to restore your credit immediately after declaring bankruptcy. The way they make it sound, you would think that you are crazy to responsibly pay your bills or mortgage. It pays to go into debt.

The crux of the problem is that too many consumers are choosing convenience rather

than responsibility for the debts that they have accrued and can afford to pay. This is why you and I should care about stemming the tidal wave of bankruptcies.

When irresponsible spenders who can afford to pay all or some of their debt declare bankruptcy, you and I get stuck with the bill. It's a \$40 billion bill that we share this year, or \$400 per household. I don't know about you but \$400 dollars is 5 weeks' worth of groceries or 20+ fill-ups at the gas pump to me. It has also been estimated that it takes 15 responsible borrowers to cover the cost of one bankruptcy of convenience.

When consumers file for bankruptcy, retailers pass on the costs in the form of higher prices, layoffs and/or buying less from suppliers. Lenders redistribute bankruptcy debt by charging you and me higher interest rates and insurance premiums.

Now my colleagues and I have a decision to make: plow new ground or let the weeds grow. Mr. Moran, Mr. McCollum, Mr. Boucher and I have decided to plow. The bill we are introducing here today is a conglomeration of ideas, strategies and solutions that, when enacted, will put an end to the abuse, protect the downtrodden and keep you and I from footing the bill for someone else's irresponsibility.

The genesis of this reform was the Bankruptcy Reform Act of 1994 and its major tenet, the formation of the National Bankruptcy Review Commission. The Commission was charged with the duty of studying the bankruptcy code and submitting a report in two years suggesting proposed reforms. Last October, the Commission released its report and recommendations to Congress. To put it lightly, the report was disappointing (even by several Commissioner's own admissions), for it failed to identify the problem of increased consumer bankruptcies or offer adequate solutions. However, in its defense, it did provide a starting point for our debate.

Our bill is comprehensive—tackling both consumer and business bankruptcy. Let me highlight some of the fine points of our bill:

Our bill emphasizes responsibility and cuts down on abuse by implementing a needs-based system. Our plan mirrors previous legislation introduced by Congressmen McCollum and Boucher.

A unique portion of our legislation is what I call the "Debtor's Bill of Rights," which outlines protection for those who legitimately require bankruptcy's safety net and in particular would save them from becoming victims of the "bankruptcy mills."

There is also language included in the bill that provides a pilot program for consumer education to help debtors better manage their finances.

We have addressed the exemption issue, making it more difficult for those who are dodging their debts to hide their wealth in exempted assets.

Our bill also permanently extends Chapter 12 bankruptcy to protect family farmers under the Code.

What you see before you is a tremendous accomplishment—reestablishing the link between bankruptcy and the ability to pay one's debts. Yet it still preserves the foundation of bankruptcy—providing the safety net that supports those who suffer a major life crisis.

My home state of Pennsylvania passed one of the first bankruptcy laws in our nation's history. The Pennsylvania Bankruptcy Act of 1785, called for consumers convicted of bankruptcy to be nailed to the pillory by the ear and then publicly flogged. After the flogging the ear would be cut off. By no means do we wish to return to those days.

To paraphrase my former colleague and former Treasury Secretary Lloyd Bentsen: while there is nothing wrong in legitimately

admitting financial defeat by filing bankruptcy when it becomes impossible to repay one's debts, we must make an effort to restore the justifiable sense of embarrassment Americans once felt asking their neighbors to shoulder their burden.

Another concern is that the current system—which breeds financial irresponsibility—is not the cure-all imagined by those who live beyond their means. By allowing people to escape from their financial obligations, we are doing those individuals a disservice by not encouraging them to manage their finances and control their debt. The end result is a citizenry caught in a never-ending cycle of debt. With bankruptcy filings expected to reach historic levels this year, I have grave concerns for the stability—economic and emotional—of the American family.

The time is now, while our economy is robust, to reform. Waiting until the dawn of the next recession or economic downturn will only allow this outbreak of bankruptcy to run into an uncontrollable epidemic. Historically, bankruptcy was intended as a last resort pursued only under the most dire of situations. We are committed to ensuring that the code will help those in dire circumstances get back onto their feet while protecting responsible consumers who are unfairly bearing the cost.

HONORING TROUSDALE HIGH  
SCHOOL STATE FOOTBALL  
CHAMPIONS FOR AN OUTSTAND-  
ING SEASON

**HON. BART GORDON**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 4, 1998*

Mr. GORDON. Mr. Speaker, I rise today to acknowledge the accomplishments of a dedicated group of young men who worked together in the true spirit of sportsmanship to achieve a long-awaited goal.

The group is the Trousdale High School Yellow Jackets football team of Hartsville, Tennessee, and that goal was winning the state 1-A championship game. Their hard-fought victory, and the hard work and dedication they demonstrated throughout the year will not go unnoticed.

After all, they were honored as Region 3 1-A Champions, 1-A State Champions, and had a perfect 15-0 record.

These men of Trousdale High School trained vigorously, played tirelessly, and deserve recognition for a job well done.

I congratulate each member of the team, their Head Coach, Clint Satterfield, and all the assistant coaches, managers, school administrators and all other support staff. I know they won't soon forget this milestone, and those that are still to come.

The players are true champions: Taylor Dillehay, Brandon Eden, Thomas Payne, Ell Sanders, Robert Duncan, Chris Sutton, Travis Marshall, Casey Marshall, Jason Evitts, Dominique Harper, Jason Vootoo, Corey Harper, Brandon Samson, Brent Dalton, Colin Meyer, Ryan McCellan, Nick West, Renard Woodmore, Craig Moreland, Bowdy Fain, Shawn Vaughn, Jatarius Osborne, Adam Harper, Daniel Towns, Joe Cornwell, Bobby Livingston, Adam Keeton, Tony Jewell, Junior

Fields, Benjamin Blair, Earl Carman, Timmy Tomlinson, James Keller, Pete Wilkerson, Michael Scruggs, Blake Holder, Baxton Adams, Dion Burnley, Adam Bratton, Brian Haney, Corey Timberlake, Justin Smith, John Carey and Kevin Gregory.

IN RECOGNITION OF MONTANA  
PERRY ROMINE

**HON. NICK J. RAHALL II**

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 4, 1998*

Mr. RAHALL. Mr. Speaker, I rise to pay special tribute to Montana Perry Romine, a native of Mount Hope, West Virginia, who retired from the Mine Safety and Health Administration on January 3, 1998, after more than 47 years of federal service.

Mrs. Romine was first hired on June 26, 1950, by the U.S. Bureau of Mines in Mount Hope. During her career, she offered professional and dedicated service to the people of the United States through her work at the Bureau of Mines, the former Mining Enforcement and Safety Administration, and finally with the Mine Safety and Health Administration. In recognition of her service and professionalism, Mrs. Romine earned numerous awards, including a distinguished career service award.

I am sure that Mrs. Romine's many friends and colleagues at the Mine Safety and Health Administration will miss her both personally and professionally. Today, I join them in congratulating her for her service and wishing her continued health and happiness in retirement.

TRIBUTE TO DR. HAROLD P.  
SMITH, JR., ASSISTANT TO THE  
SECRETARY OF DEFENSE FOR  
NUCLEAR AND CHEMICAL BIO-  
LOGICAL DEFENSE PROGRAMS

**HON. RONALD V. DELLUMS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 4, 1998*

Mr. DELLUMS. Mr. Speaker, I would like to pay tribute today to the numerous accomplishments of my constituent, Dr. Harold P. Smith, Jr., the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs. He is leaving his position to return to California. In his service to the Administration, he directed programs that re-focused national defense to respond to the growing threat posed by the potential proliferation of Weapons of Mass Destruction (WMD).

One of the most noteworthy programs benefiting from Dr. Smith's skillful leadership was the Cooperative Threat Reduction (CTR) program. This program was designed to help the successor states to the Former Soviet Union eliminate WMD delivery systems and to promote the safety and security of the weapons remaining in Russia. Dr. Smith established a dedicated Program Office which successfully implemented agreements with the Former Soviet Union that eventually resulted in the denuclearization of Belarus, Kazakhstan, and

Ukraine. This program initiated the construction of a major fissile material storage facility in Russia to provide secure, long-term storage for approximately 12,500 nuclear warheads. In addition, supercontainers, specialized railcars, emergency response equipment, computerized inventory and personnel reliability capabilities were provided to enhance the safe and secure transportation and storage of Russia's nuclear warheads. He personally negotiated an agreement with Russia to design the first Chemical Weapons Destruction Facility to begin the destruction of 40,000 metric tons of chemical weapons.

Dr. Smith significantly advanced the U.S. Chemical Demilitarization Program. The destruction process for the United States chemical weapons stockpile is currently underway at Johnston Island and Tooele Army Depot in Utah. Construction of destruction facilities at the other seven storage sites in the United States is on schedule to meet the requirements of the Chemical Weapons Convention Treaty that entered into force in 1997.

Unprecedented changes affecting nuclear matters occurred during Dr. Smith's assignment. He worked successfully with the Department of Energy and the Department of Defense to balance the nuclear stockpile in a non-testing environment. In anticipation of implementation of a Comprehensive Test Ban Treaty, he collaborated with the Department of Energy to develop the Stockpile Stewardship and Management Plan (SSMP). This plan will eliminate nuclear explosive testing requirements. Dr. Smith also improved significantly our capability to monitor world-wide nuclear testing and organized the Department of Defense for this support.

In response to shortfalls in military capabilities identified during Operation Desert Storm, Dr. Smith established a Joint Program Office to ensure better management and higher visibility of Department of Defense chemical and biological defense programs. Resources required to counter proliferation of weapons of mass destruction were moved from research and development status to procurement programs in support of troops on the battlefield. He was instrumental in joint military service improvements of biological agent detection systems such as the establishment of the Joint Vaccine Acquisition contract. As a result, shortages of equipment critical for U.S. forces to survive and fight on contaminated battlefields have been remedied.

Two Defense agencies have enhanced their missions under Dr. Smith's leadership. The Defense Special Weapons Agency (DSWA) has responsibility for supporting a variety of programs dealing with WMD. This mission includes support for CTR, research and development for counter proliferation and arms control, as well as facility vulnerability assessments. DSWA is now the center for nuclear expertise in the Department of Defense. The On-Site Inspection Agency has set international standards in arms control monitoring through professional execution of inspection, reduction, liaison, escort, and monitoring missions for various regimes.

I commend Dr. Smith's leadership and accomplishments in reducing the threat of Weapons of Mass Destruction. He successfully tackled a very challenging mission and his contributions towards improving our nation's security are many and enduring.