What's Wrong With H.R. 685, the Bankruptcy Bill?

H.R. 685 is identical to the bankruptcy bill passed by the U.S. Senate in March. It has been opposed by broad coalition of labor, women's groups, consumer groups, senior organizations, faith communities, civil rights organizations, law scholars, bankruptcy trustees, retired bankruptcy judges, economists and editorial boards of major national newspapers [Wash Post, NY Times, LA Times] and regional papers. The CEO of ING Direct has stated his opposition to the bill in recognition of Americans' low savings rates. This policy would aggravate household debt loads, directly affecting families' ability to save for retirement, education, and entrepreneurship.

The budgets of American families have been hit hard in recent years by massive layoffs, outsourcing of jobs, corporate scandals and ravaged pension and 401 (k) plans. Passage of the bankruptcy bill would make it harder for families struck by financial misfortune to get back on track. It would benefit the very profitable ($30 billion in 2004) credit card industry at the expense of the modest-income families who represent the great majority of those who declare bankruptcy.

Bankruptcies are driven by economic difficulties. The timing of this bill couldn't be worse. Ninety percent of all bankruptcies are triggered by the loss of a job, high medical bills or divorce. The economic recession has taken its toll on many families. Long-term unemployment continues to be a problem and the number of Americans without health insurance is at its highest level ever and growing. Seniors can't afford their prescriptions and more and more people are losing their pensions as companies continue to struggle to be profitable. The business bankruptcy provisions in the bill would also hurt business reorganization, causing further job loss.

Key problems with the bill include:

Imposes a rigid means test. The bill sets up an inflexible formula to determine if an individual debtor will be presumed ineligible for chapter 7 relief. A debtor whose Chapter 7 case is challenged due to these assumptions will have to litigate the issue— an expense many debtors cannot afford. The court is not allowed to waive the means test even if the debtor is seeking bankruptcy relief because of some terrible circumstance beyond his or her control.

Endangers child support. Despite extravagant claims to the contrary, the bill still threatens the welfare of children. If the parent who owes child support is the debtor, the bill will divert more money to other creditors (such as auto lenders) and allow more non-child support debts to survive bankruptcy. Thus after the bankruptcy is over the custodial parent will have to fight with creditors for the debtor's limited income.

Rewards an industry for tactics that turn manageable debt into bankruptcy cases. The rise in average credit card balances and bankruptcies has been brought on, in no small part, by new lending policies. The price of late and other penalty fees have doubled in less than a decade,

and are more quickly levied (payments arriving after a certain *hour* on the due date are now considered late). Even more damaging have been the accompanying penalty interest rates. These rates average 29 percent, are retroactive to the entire balance, and thanks to "universal default" policies, now create a domino effect with a consumer's other loans. Real bankruptcy reform would curb these practices, allowing debtors to pay down debts over reasonable periods, without having to resort to bankruptcy.

Allows millionaires to continue to shelter their assets in bankruptcy. The bill will still allow some rich debtors (those who have not been found to have committed certain types of wrongdoing, or those who have owned their home in the state longer than 40 months) to protect an unlimited amount of value in their residences.

Expands opportunities for creditor motions. Creditors will be able to threaten debtors with new costly litigation and make it more likely that debtors who cannot afford to defend themselves in court will be coerced into giving up their legal rights.

Makes chapter 13 plans to save homes and cars far more difficult. Contrary to the supposed aim of encouraging more chapter 13 payment plans, numerous provisions in the bill will make chapter 13 much harder and less attractive. For many debtors, the bill will require five year plans (up from three years), assuring that the failure rate will be even higher than the current two-thirds who can't complete plans because of unexpected income or job loss.

Makes debtors more vulnerable to eviction. The bill makes it easier for residential landlords to evict a tenant who is in bankruptcy.

Provides misleading information to debtors in the name of "credit disclosure." Instead of providing a borrower with the information he or she needs to borrow responsibly and avoid getting into financial difficulty, this bill allows creditors to provide misleading information that may give a borrower a false sense of financial security.

Limits the ability for businesses to reorganize. The bill contains many restrictions on the ability of businesses to reorganize under chapter 11 and protect jobs. For this reason, labor and business bankruptcy lawyers have opposed these provisions.