

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 9, 1981

SUMMARIES OF

HOUSE BILL 411 -

Introduced by Reps. Burnett and Brand by request of the Department of Revenue reduces the annual all-beverage license fee for a veterans' organization post to: \$250 in a rural area or in a town of less than 2,000 population; \$350 in a city of population between 2,000 and 5,000; \$500 in a city of population between 5,000 and 10,000; and \$650 in a city of population over 10,000. In each instance the fee for the veterans' organization would be \$150 less than private licensees.

HOUSE BILL 459 -

Introduced by Rep. Williams and others by request of the office of the governor, is identical to HB 138 previously considered by the committee, and repeals Montana's store license law.

HOUSE BILL 468 -

Introduced by Rep. Thoft and others by request of the Study Committee on Container Deposits, prohibits sale of beverages in metal containers openable by a detachable device. Each day on which a violation occurs would be a separate offense punishable by a fine of up to \$500 or by a jail term of up to 6 months or both fine and jail term.

HOUSE BILL 495 -

Introduced by Rep. Bergene and others, removes the exemption from bankruptcy proceeding for any property except necessary household property, property necessary to carry on a trade or profession, property necessary to carry out government functions, the earnings of the debtor for personal services rendered within 45 days preceding, the homestead as provided in state law, life insurance benefits on which the annual premiums are less than \$500, and one truck or automobile worth not more than \$300 if the debtor is the head of a family or more than 60 years, unless the debts were incurred for the common necessities of life.

## HOUSE BUSINESS AND INDUSTRY COMMITTEE

Rep. W. J. Fabrega, Chairman, called the meeting to order at 8:00 a.m., February 9, 1981 in Room 129 of the Capitol Building, Helena. All members were present except Rep. Manning who was excused. Bills to be heard were: HBs 411, 459, 468, 495.

## HOUSE BILL 468 -

REP. BOB THOFT, House District #92, Ravalli County, chief sponsor, introduced HB 468 by request of the study committee on container deposits. Many beverages have non-removable pull tabs, but there are still some that have removable pull tabs, primarily beer and there is no reason they can't switch over to non-removable tabs. It isn't going to cause any particular hardship on anybody. See EXHIBIT A.

SENATOR PAT REGAN, Senate District #31, Yellowstone County, explained HB 468 is an outgrowth of a side issue developed during the interim study of the litter bill. Montana seems to have been a dumping ground for the pull tabs. They were going to phase out these kinds of pull tabs. She thinks it is imperative and they are not doing so of their own free will because there are a number of brands of beer that still have these pull tabs. The Billings Gazette on Jan. 1 carried another of the tragedies caused by a pull tab dropped into the can and a boy drank it and suffocated. This bill will tell them that they must use a more reasonable opener.

REP. BOB PAVLOVICH, District #86, Silver Bow, wholeheartedly agrees with the bill. He wants to do away with removable tabs.

DAWN A. NORTH, League of Women Voters, Helena, support HB 468. This will make the tabs recycled along with the cans. See her testimony on a witness sheet.

There was other support as shown on the Visitors' Register.

OPPONENTS: None

## QUESTIONS -

Rep. Robbins asked about an effective date and some discussion ensued.

Rep. Kitselman asked the cost for the new tab in comparison with the old one. Rep. Thoft didn't know if there was any difference in cost. Senator Regan thought the cost might be somewhat higher, but the cost of the product is competitive no matter which tab is used. Ten states have already banned this type of tab and she hopes Montana does, too.

Rep. Fabrega will allow Roger Tippy to explain how his people feel about this bill when he is able to appear before the committee.

2/9/81

Page 2

## HOUSE BILL 495 -

REP. TONI BERGENE, House District #36, Cascade County, chief sponsor, said researching the bankruptcy laws has been an awesome job for her. In 1970 it became clear to Congress that the bankruptcy statutes enacted in 1898 hadn't been brought up to date. After 8 years of studying the Bankruptcy Act of 1898, new legislation changed the substance of the act and rendered it obsolete. This has triggered banks and other consumer lending agencies to have to tighten up on their lending policies. The Reform act of 1978 allowed state legislation to override the federal action but action of the Legislature sets forth a less generous schedule. Often husband and wife file a joint bankruptcy, and each spouse can take each of one schedule - one the federal and one the state, or parts of each.

JOHN ALKE, Montana Bankers Association, said they are now operating under a new federal bankruptcy code. The intent of the code was to deprive creditors of their rights and the effect of the code has done that. Valuation has caused trouble because it is very difficult to determine the value that a creditor puts on his property. If the creditor feels it is not warranted, he is put to an enormous task to prove his valuation.

The problem with the bankruptcy code is not simply limited to exemption. Most facets can be developed by the federal code. The federal code does give the one option that either the state or federal exemptions may be used, or both exemption schedules can be. Certain property is exempted from execution. Under federal law Homestead exemption is allowed for \$7,500. Under state \$20,000 is allowed. Under a joint petition for bankruptcy, a wife could take the state schedule and the husband could take the federal. If a couple had a home, they could take the state schedule and exempt \$20,000, and they could have \$7,500 cash in the bank. It is very difficult for people in the credit business to lend money that the creditor can declare bankruptcy and keep \$7,500 in cold, hard cash. The federal bankruptcy code permits diversion. Diversion means that the day before he files, if he possesses property which is exempt property, he can dispose of the non-exempt property and obtain exempt property. The \$7,500 exemption is the most onerous. You could exchange the non-exempt property for cash put the cash in the bank and claim the cash as an exemption.

Another difficult provision permits a debtor to abandon or declare abandoned, a creditor's claim. If he owned a car and wanted to borrow \$3,000 and he could claim that car is a tool of his trade, he could file bankruptcy and even though that car is security for a loan, he can take and keep the car and be absolved - the creditor is left holding the bag. The tools of the trade are very difficult to prove. What happens if a man's trade changes between purchase and filing? He can buy a car - you can think you have a security interest. He could change his trade and keep the car anyway. You either overexempt the one to protect the truly distraught debtor.

Utilizing the election in the federal law for this state to choose only the state schedule is necessary or it will not prevent abuses. The person in really hard times will be protected.

2/9/81

Page 3

GEORGE FLEMING, Cascade County Credit Association, Great Falls, Montana is divided into two districts. Figures deal with the east side of the state. It is a tremendously difficult problem. Bankruptcy law is lengthy, difficult to read, and hard to understand. Need to support and need this bill in the State of Montana. See his testimony, EXHIBIT B.

JOHN HOUGHTON, Cascade County Credit Association, Great Falls, supports HB 495. See his testimony attached, EXHIBIT C.

CURTIS B. HANSEN, Executive Vice President of Montana Retail Association, supports HB 495. The federal exemption makes it very easy to file for bankruptcy. We need to put bankruptcy back into its proper perspective. See his testimony, EXHIBIT D.

JEFFRY M. KIRKLAND, Montana Credit Unions League, Director of Governmental Relations, Helena, supports HB 495. He would merely stipulate those filing for bankruptcy would have to take state exemptions rather than both. The new federal bankruptcy code made sweeping changes. See his testimony, EXHIBIT E.

R. L. REIQUM, Vice President of the First National Bank in Miles City, and currently serving as President, thinks HB 495 will be a benefit to the lending industry and to the consumer. Bankruptcy hurts all businesses. There were 380,000 bankruptcies in 1980, Montana had more than its share. There was 72% in Montana - in eastern Montana it far exceeded that. Eight had a loss of \$10,000, and this loss would have been entirely eliminated under previous Legislatures because loans were made prior to the law. The bankrupts were able to escape without any loss. These 8 were more than all the others in the preceding years. See copy of clipping, EXHIBIT F.

Leniency of the laws is indicated by advertising for clients. Bankruptcy makes credit far more difficult for the conscientious debtor who fully thinks he will repay, especially on an unsecured basis. It is more difficult to obtain second real estate mortgages. Claims and all security can be wiped out under the new laws.

Those living and lending in eastern Montana have seen an increase in the number of bankruptcies. The lender has to travel to Billings - the 8 required no less than 300 miles of travel, 3 hours to get there and 3 hours back was the full loss of a day's time for the banker and attorney, so the travel cost is no small cost for this. Just a portion of the problems have been described. Bankrupts take all kinds of means. In most cases, they run their credit cards up to the maximum allowed because it is excluded. Charge accounts all are overrun so others than the prime lender are hurt. The true consumer should have a means to pay back his debts, and this would benefit all of Montana.

OPPONENTS: None

QUESTIONS -

Rep. Andreason said we are in effect substituting the option that an individual would have to choose the federal or state exemptions. Mr. Alke said yes. There are several sorts of security exempt under the anti-diversion statutes. Under the state exemptions, if a person suspected he was going to go bankrupt, he could sell everything and buy a race horse

2/9/81

Page 4

worth \$250,000 which could be exempted. You are entitled to one horse, one cow, and six chickens. It is a large technical loophole.

Rep. Andreason asked if under the homestead exemption other than the head of a household could be exempt if there were dependents. A car not worth over \$300 is exempt. Rep. Jensen asked if there is a value set on a homestead. \$20,000 is interpreted as equity. A \$75,000 home with a \$55,000 loan would be entirely exempt.

Rep. Fabrega said the homestead exemption only applies as head of a household, and you have to have dependents - do you have to be married and have dependent? Mr. Alke thought the bill should expand that definition, and without reviewing the specific language, under the current law you would have to be married and dependents would have to be your wife and children.

Rep. Ellison - what would be the difference between the state and federal exemptions providing they didn't have the choice of one choosing one and one choosing the other? Mr. Alke said you could not come up with a dollar comparison figure. The value under either exemption scheme would depend on what type of property you had. Each item in a household would be exempt to the value of \$200 under the federal schedule, and it is all exempt under the state schedule. A wife could take the federal exemption - the husband could take the state schedule. No dollar value can be stated.

Rep. Pavlovich asked what if a divorce or a widow with children at home? Mr. Alke said he would have to examine particular language relating to that. Rep. Ellerd - on a personal financial statement, this could be accepted as bonding on a personal financial statement? Mr. Alke said the equity in the home could be - it would make your bonding easier.

Rep. Wallin said they could go and buy something the day before they intended to file bankruptcy. Is there any attempt in this law that says this is out and out fraud. Mr. Alke said there is no good faith - there is the \$7,500 cash provision regardless of your schemes or motives. Rep. Wallin - so if you convert non-exempt property to cash, that is your right under federal law. There is no good faith requirement.

Rep. Fabrega - you could go and borrow \$7,500 and file bankruptcy and keep that \$7,500 and put it in your bank and file bankruptcy. As to a second mortgage on a car - if you had a car with substantial value, you could secure a non-purchase loan, take that money, and file it as a trade car. Mr. Alke said there is no similar cash provision in the state schedule.

Rep. Kitselman suggested they could take some things to the pawn shop. Mr. Alke said you could keep the money and buy something else with the money from the pawned material. When this act was originally introduced in Congress they did not want to give the states the provision of bankruptcy.

Rep. O'Hara asked if there are any other major differences between the state and federal schedules other than the cash. Mr. Alke said you are entitled to a \$1,200 car with the federal schedule, and \$300 equity under the state schedule. If they have more than \$20,000 equity, would they have to sell off their house. Mr. Alke said the bankruptcy code is a new act. If worth more than \$20,000, it appears that the whole property is not exempt. If you had a greater equity, the surplus would be subject to bankruptcy collections. You would have the protection of the equity value to back it.

2/9/81

Page 5

Mr. Fleming said you can call any financial company or bank - they borrow one day and file bankruptcy and get away with it. Premeditated fraud.

Rep. Robbins asked if there is anything in HB 495 that precludes students from filing bankruptcy? Mr. Alke said he didn't know. In addition to the provisions provided by the federal, they are exempt provided they are exempt by any other law. Congress was attempting to allow student loans to be exempt. Mr. Fleming advised a judge back east made them pay back their school loans.

Rep. Wallin - if you were to write this law, would you try to adjust this fraud problem? What would you say in here to adjust this? Mr. Fleming said 522 D portion of the federal law says specifically that the state can enact a law. Don't know whether we can make it any stricter or not. Mr. Alke said bankruptcy is purely a subject of the federal law and is not within the reach of the state. We are powerless to reach any of the other abuses that are in the federal realm.

Rep. Fabrega - would you consider giving only one option - say an individual can only take one exemption? Another problem is when they file as a couple. Mr. Alke said the federal law specifies the election and the state can only guess its exemption scheme, and if the state did not pass a law, the federal law would be the controlling law. The controlling federal law states that the election made by one spouse cannot be reached by state law.

Rep. Bergene closed saying lending agencies do protect distraught debtors through present laws. She will see that the committee each gets a copy of the federal and state schedules.

#### HOUSE BILL 459 -

REP. MELVIN WILLIAMS, House District #80, Yellowstone County, chief sponsor introduced HB 459 at the Request of the office of the Governor. This bill would repeal Montana's store license law establishing taxes as of January 1, 1982. The state would lose about \$350,000 in general fund revenue. There is no regulation associated with this tax. Chain store licenses will raise \$300,000 in each year of the biennium. House Bill 188 already does the same thing - both are designed to do the same thing. HB 459 was requested by the Governor to fit into his tax reform.

ELLEN FEAVER, Director of the Department of Revenue, explained there is no apparent purpose for this revenue measure. It costs about \$10,000 a year to print and mail the forms. There are no apparent penalties - they don't ever shut a business down because of lack of this license.

CURT HANSEN, Executive Vice President of the Montana Retail Association, supports HB 459. Granted, \$10,000 should be considered, but the amount of time it takes to complete a store's form and return it, for the amount of tax revenue it provides, is quite a problem and creates a lot of trouble. Hopes for a Do Pass.

2/9/81

Page 6

DAVE GOSS, Billings Chamber of Commerce, supports this legislation to kill this tax.

OPPONENTS: None

QUESTIONS -

Rep. O'Hara asked what the difference between HB 188 and HB 459 is. The wording in the repealer is somewhat different. This is a little more gentle repealer. There is a different effective date. Any businesses starting up in 1981 would be the same as it is now.

Rep. Fabrega mentioned store licenses have to be purchased by January 1, with a 30-day grace period. The original license tax was enacted in 1939.

Rep. Williams closed advising the effective date is the predominant difference between the bills. The bills use a little different semantics but both repeal the same section of the code. HB 459 is expressed in a little more professional way - calling any tax a nuisance as is done in HB 188 is not using the best professional language. HB 459 was introduced at the request of the Governor for his tax package.

HOUSE BILL 411 -

REP. JAMES BURNETT, House District #71, Carbon County, co-sponsor with Rep. Joe Brand, introduced HB 411 at the request of the Department of Revenue. He let the Department explain the bill.

ELLEN FEAVER, Executive Director of the Department of Revenue, asked for this legislation at the request of the veterans who wanted a break on liquor licenses which were in each case \$150 less than other retailers paid. In 1975 when the schedule was devised, they didn't notice the break for veterans was omitted and they continued to license veterans organizations at that rate. An auditor pointed out to the Revenue Department it was no longer in the code - the break for the veterans organizations had been omitted. The omission of the break was unintentional and they went ahead and continued the break to the veterans organizations, and so they are now asking the law to be brought into department practice and she apologized for not reading the code more carefully.

This bill would put back in the break for veterans. There was a fiscal note issued but if the bill is not passed, the Department of Revenue will start charging veterans the same fee as other retailers. See EXHIBIT G.

Rep. Burnett closed.

EXECUTIVE SESSION -

It was proposed that a joint resolution bill drafting request for an interim study on the transportation system in the state be admitted. Rep. Jacobsen so moved, and the motion passed with Rep. Ellerd voting No; Reps. Vincent and Manning were absent.

2/9/81

Page 7

## HOUSE BILL 468 Continued -

ROGER TIPPY, representative of the Beer and Wine Wholesalers Association, Helena, said the Board of Directors of the Association met last week and authorized him to appear in support of HB 468. The distributors are happy enough doing without the pull tabs. Most breweries have two types of tab openers now - states that are recycling have this law now. Most of the western breweries have more stock of the non-detachable kind than the detachable. He would ask that you keep in mind that the alternative to a bottle bill which the industry mentioned is honest to gosh in the legislative council somewhere, and is due to hit the floor in the Senate and it is still alive and breathing somewhere. It will include the pull tab bit in one section dealing with litter pick up. If that bill looks like it is going to fly, this will be redundant.

However, that bill could be in trouble on taxes, or something, and maybe this bill would pass and be necessary to accomplish its purpose. He would ask that the effective date be set back to December 31, 1981 because wholesalers can't always get from their breweries what they want and they would like to have an adequate time to dispose of what they have on hand and not have to dispose of it at distressed prices. One wholesaler bought Billy Beer and it turned out it wasn't a very hot item. He is now getting very good prices for it as a collectors' item! People can get stuck with things that don't move, and he would appreciate moving the effective date.

## QUESTIONS -

Rep. Ellison - what about having a certain subject in two different bills - if that subject is killed over in the Senate and the whole bill is killed, would that kill the whole thing in this bill? Mr. Tippy -- The title in the comprehensive bill at least would have to be changed.

Rep. Fabrega - if the bills were introduced and are all alive, the House cannot, once the Senate has killed them, suspend the rules and accept the subject - it affects the introduction of bills. Once the time of introduction has passed then it prevents the introduction of a bill on the same subject. It is a matter of interpretation - you can say a Senate bill came in and was killed and the House can't enter one, but this is not true. You can have ten bills having to do with pull tabs and they all have the right to be considered although some might be killed.

January 2, 1982 would be the proper date to have for an effective date. At the end of the session there is a correlation of all the bills. If it is stricken from the other bill if it passes both Houses, this would remain. If you have repealed a section and then there is something else that amends that section - is the last bill enacted upon the prevailing bill? Rep. Fabrega further explained it is true, but it is always a matter of meshing different ideas.

Rep. Bergene - pull tabs are a cause of death. Do you have anything you want to say about that? Mr. Tippy would like to know the statistics on this or if it is a very rare occurrence.



2/9/81

Page 8

THE COMMITTEE REVERTED TO EXECUTIVE SESSION AGAIN -

Rep. Andreason moved HOUSE BILL 469 DO PASS. He further moved HB 468 be amended in the title and a section setting out the effective date to be January 1, 1982. Motion carried unanimously, as did motion reworded to HOUSE BILL 468 DO PASS AS AMENDED. There were three members absent.

Rep. Schultz moved HOUSE BILL 411 DO PASS (Veterans license bill.) Motion carried unanimously. Two members were absent.

Rep. Kitselman moved HOUSE BILL 459 BE TABLED for further information. This motion was withdrawn.

Rep. Ellerd moved HOUSE BILL 495 DO PASS. After the following discussion this motion was withdrawn. Rep. Jensen - at what point can you declare bankruptcy? Rep. Fabrega - there are certain tax advantages to liquidate by taking bankruptcy. Could be an area of study.

Rep. Andreason suggested having someone from the bankruptcy court come and answer questions of the committee before we take action on this. Rep. Fabrega explained this bill does only one thing - it eliminates using both federal and state exemption schedules. Rep. Andreason - for that very reason that we are limited to that choice we should know what we are getting into with the different choices. Further action will not be taken until it is known if someone can explain in more detail the results of either choice.

After a quite lengthy discussion Rep. Harper moved that the committee authorize a bill draft request be made regarding liens filed on property because of non-payment of supplies used. Also there was an identical bill introduced in the last session he wanted to know about. He also wanted to consult with the clerk and recorder relating to a time period. Motion carried unanimously with Rep. Manning and Pavlovich absent.

This is a very real problem. Present law allows a mechanic's lien to be filed and the owner of the property might not know about it because the county clerk and recorder will not notify the owner unless you subscribe to a special report. The owner may not know about it until the clerk and recorder comes in and tells you your property has been sold for liens. Rep. Robbins suggested having the lienholder send a letter to the owner. Rep. Fabrega said there is no way that the lien holder can prove that he did so. He could just have a receipt showing that he has sent the information.

Rep. Meyer said you can force a lien at the end of three years. Rep. Ellison - could you check on a bill in the last session relative to this? Rep. Jensen said that bill went on the floor but it didn't pass - it was identical to this.

Rep. Kitselman moved HOUSE BILL 339 DO NOT PASS. (This is the eminent domain bill.) Rep. Andreason wanted this bill brought to the floor. Rep. Harper thought it should be considered carefully. Rep. Vincent wanted this out on the floor since there was no opposition at the hearing.

2/9/81

Page 9

Rep. Vincent made a substitute motion that HOUSE BILL 339 DO PASS. Rep. Fabrega said one or two jobs are as important to those persons as are theirs to 250. Rep. Harper made a substitute motion for all motions pending that HOUSE BILL 339 BE SENT TO THE FLOOR WITHOUT RECOMMENDATION. This motion failed - 3-15. Rep. Manning was excused this day.

Rep. Ellison thought the committee should get it in as good a condition as possible to be sent to the floor.

Rep. Harper moved adoption of an amendment on page 2, line 5, following "office" to insert "mine, railroad," this amendment was adopted, 12-6-1.

Rep. Ellison moved to strike "250" and insert "25" - motion failed.

Rep. Vincent moved proposed legislative housekeeping amendments be adopted. Motion was unanimously adopted. See EXHIBIT H.

Rep. Wallin felt this is an anti-business bill. Rep. Vincent - relative to the fiscal note, how are market values determined where the company and ownership says they are worthless to them? Would this value remain fixed? Rep. Fabrega said it has a value and if it is ever moved, the cost would be exorbitant. Rep. Metcalf suggested writing a HJR resolution. Rep. Andreason - not for the bill and wouldn't sign a minority report. He feels the best position would be a recommendation to get it on the floor.

Rep. Vincent's reworded motion that HOUSE BILL 339 DO PASS AS AMENDED failed 3-15 with Rep. Manning excused. The bill will leave the committee as a DO NOT PASS AS AMENDED recommendation by reversing the motion of DO PASS AS AMENDED.

Rep. Kitselman moved HOUSE BILL 31 BE TABLED. Motion was adopted unanimously.

Rep. Vincent moved HOUSE BILL 340 DO PASS. Motion failed 4-14. Bill will leave the committee with a DO NOT PASS recommendation with reversing approval.

Meeting adjourned at 11:45 a.m.

\_\_\_\_\_  
REP. W. J. FABREGA, CHAIRMAN

*Josephine Lahti*  
\_\_\_\_\_  
Josephine Lahti, Secretary

## SAFEWAY, HELENA

About two-thirds of the cans on the shelves had stay-on openers, including all the soft drinks and about 40% of the beer cans.

### Brands with pull-tabs:

Coors  
Lite  
Miller  
Ranier  
Olympia  
Generic  
Old Milwaukee  
Schlitz  
Bud

### Brands with stay-on openers:

Burgie  
Brown Derby  
Fabst  
Coors  
  
Cragmont  
Pepsi  
Mug Root Beer  
A & W  
Mountain Dew  
Dr. Pepper  
Sunkist  
7-Up  
Coke

NAME Dawn A. North BILL No. 468  
ADDRESS 914 ~~State~~ Backbridge St. DATE 8/9/81  
WHOM DO YOU REPRESENT Louise of Maine Voters  
SUPPORT X OPPOSE        AMEND       

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: We support House bill 468 because

of our strong position in favor of recycling.  
We feel that if the pull L.B.s are not attached  
the corn they will not be recycled.

NAME Roger Tippy BILL No. 43468  
ADDRESS 36 S. W. 1st Ave. Ft. Lauderdale DATE 2/4/81  
WHOM DO YOU REPRESENT 3rd S. W. Wholesalers Assn.  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The industry alternative to I-87, the  
litter control act, will be introduced in the  
Senate very soon. It will include a pull-tab  
ban among its provisions. If that bill  
succeeds at enactment, this bill would be  
redundant. However, beer wholesalers  
should support this concept staying alone -  
not as part of a bill - or as part of a more  
comprehensive agreement.  
Place col. dated after the date to  
12/31/81.

## VISITORS' REGISTER

HOUSE

B-1

COMMITTEE

BILL

463

Date 2 Feb 68

SPONSOR

407

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME John Galt BILL No. 495  
ADDRESS 400 Fuller DATE 2/9  
WHOM DO YOU REPRESENT MCA  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

## VISITORS' REGISTER

HOUSE

COMMITTEE

ELL 50.495

Date 2/2

INSOR *10000*

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



Exhibit B 495  
2.

	<u>STATE</u>	<u>FEDERAL</u>
1. Homestead	\$20,000	\$7,500
2. Car <sup>1</sup>	\$ 300	\$1,200
3. Necessary Furniture	No Limit	\$ 200 (Per Item) <sup>2</sup>
4. Life Insurance	No Limit <sup>3</sup>	Unmatured No Limit Cash Value \$4,000
5. 45 Days Earnings <sup>1</sup>	No Limit	See 12 Below
6. Clothes	No Limit	See 3 Above
7. 1 Horse, 2 Cows, 4 Hogs, 50 Fowl, 3 Months Feed	See 3 Above	See 3 Above
8. Clock & Family Pictures		See 3 Above
9. One Gun	No Limit	-----
10. Tools of Trade	No Limit	\$ 750
11. Jewelry		\$ 500
12. Omnibus		\$400 to \$7,900 <sup>4</sup>
13. Professionally Pre- scribed Health Aids		No Limit
14. Social Security, Welfare, Disability Benefits, Pension Plans, Alimony		No Limit <sup>5</sup>
15. Crime Victim Reparations, Wrongful Death Awards, Life Insurance Proceeds, Personal Injury Awards		Reasonably Necessary For Support

FOOTNOTES:

1. One-half of these exemptions not exempt for debts incurred for "necessities of life".

2. This exemption applies to household furnishings, goods, clothes, appliances, books, animals, crops, or musical instruments primarily for personal use.
3. This exemption applicable only if annual premiums less than \$500 per year.
4. The unused portion of the federal homestead exemption may be added to the base of \$400.00.
5. Alimony and pension plans are restricted. Both are limited to the amount reasonably necessary for support, and the type of pension plan qualifying is strictly limited by statute. Reference should be made to 11 USC 522(d)(10)(E) for all pension questions.

### III. ANTI-DIVERSION PROVISIONS:

Almost every form of state or federal benefit program has some sort of anti-diversion provision. These provisions are intended to prohibit creditors from being the beneficiaries of governmental benefit programs, instead of the intended beneficiary. These provisions generally prohibit attachment or execution on the benefits.

It should be noted that a substantial body of case law has arisen around the concept that such anti-diversion statutes apply not only to the benefit checks per se, but money or property "traceable" to such benefits. To a degree, the Bankruptcy Code probably incorporates this tracing concept. Additionally, the Bankruptcy Code specifically applies the tracing concept to crime reparation awards, personal injury awards, and wrongful death awards.

You, the lender should start with the assumption that any given governmental benefit program probably has an anti-diversion provision, but check the specific program to make sure.

NAME John L. L. L. BILL No. 100  
ADDRESS 1234 5th St. DATE 1/1/71  
WHOM DO YOU REPRESENT State of Ohio  
SUPPORT X OPPOSE        AMEND       

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



Associated Credit Bureaus, Inc.

December 11, 1980

## ACB MEMBERS

As we are all aware, consumer bankruptcies are mushrooming at a staggering rate. Some areas of the country are reporting increases of more than 100% over last year in petitions filed. Nationally, bankruptcy petitions are 70% greater than the record high filed in 1975. — 19, Million 11/80 thru 9/80.

*Eastern District*

Despite the recession, we feel that the preeminent causes of this increase are the lenient provisions of the new Bankruptcy Code. These provisions, along with the trend in attorney advertising, act as inducements to consumers to file for bankruptcy without considering either the alternatives or the consequences.

While we must wait for Congress to enact substantial revisions in the Bankruptcy Code, we can immediately undertake a public relations program to dissuade consumers away from the lure of bankruptcy. To be successful, it will be necessary to enlist the services of everyone in your credit-granting community.

The Public Affairs/Public Relations Department has compiled the enclosed bankruptcy "package." In the package, we have included a list of some of the steps to take in organizing a bankruptcy educational seminar. Such seminars for credit industry people have proven to be helpful in understanding the law and creditors' rights. We have also included a camera-ready newspaper advertisement that describes some of bankruptcy's consequences. The ad was initially conceived by the Credit Bureau of Galesburg, Illinois, and we have been given permission to reproduce it.

Finally, the enclosed pamphlet, entitled "Bankruptcy...some things to consider," was written for consumers contemplating their financial dilemmas. It can, and should, be made available at no cost to consumers at your credit bureaus and used as envelope stuffers in your mailings. As a public relations service, you might consider offering these pamphlets to your subscribers. They might put them to good use on their credit counters.

The bankruptcy problem may be with us for some time. It, therefore, is in the interests of the credit-granting community to work together and counter this unhealthy development.

Best personal regards.

Sincerely,

*John L. Spafford*  
John L. Spafford  
President

Enclosure

definite improvement and on the whole is a good law, a law which was long overdue and needed.

For purposes of this article, I will limit the discussion to the major substantive changes that relate to consumer bankruptcies and Chapter XIII cases — the so-called straight bankruptcy and wage-earner plans. Also, a brief word about the changes affecting court structure and its operation.

## Exemptions

For most bankrupts the new law will mean more liberal provisions. The Code represents the minimum exemptions available; however the bankrupt may elect to use the applicable state exemptions. The state legislatures, however, may pass a law that the federal law is not to be used. This, of course, defeats the goal of attaining uniform exemptions, but it was part of a compromise arrived at in the last few days before enactment in order to assure "states' rights."

In capsule form the Code exemptions are:

- *Real estate* — \$7,500
- *Motor vehicle* — \$1,200
- *Household goods, wearing apparel, etc.* . . that are held primarily for personal, family or household use — \$200
- *Jewelry* — (family use, etc.) — \$500
- *Tools of trade* — \$750
- *Unmatured life insurance owned by debtor*
- *Professionally prescribed health aids for debtor or dependent*
- *Social Security, unemployment compensation, public assistance, veterans disability, or sick benefits*
- *Alimony, support, or separate maintenance*
- *Stock bonus, pension, or profit sharing benefits*
- *Crime victim payments*
- *Wrongful death payments*
- *Negligence recovery up to \$7,500*

## Objections to discharge and non-dischargeability

No substantial changes were made in this area, except as to the effect caused by the changes in the bankrupt's right to redeem certain personal property and his right to reaffirm a debt.

However, a new provision provides that a consumer debtor shall be awarded costs and attorney fees if he successfully defends an action objecting to the discharge of a debt because of a false financial statement.

Also, educational loans are non-dischargeable unless the loan became due five years before the date of filing or the Court determines that such non-dischargeability would impose an undue hardship on the debtor or his dependents.

There appears to be a legislative oversight with regard to educational loans, in that the portion of the Higher Education Act which previously provided for the non-dischargeability of such debts was repealed by the new Bankruptcy Code and the Code will not be effective until October. Thus, it may be the case that such loans are dischargeable until the effective date of the Code. However, early Congressional action is expected to correct this hiatus.

Considerable litigation has been prevalent as to what is "alimony and support", which is non-dischargeable, and the Code attempts to clarify this confusion by defining what needs to be included in a separation agreement to make it non-dischargeable.

Also, the Code now clarifies considerable conflicting cases as to the non-dischargeability of debts that were listed in a previous bankruptcy, but later reaffirmed and thereafter scheduled in a subsequent petition. Such debts will not be non-dischargeable if they were or could have been scheduled in a prior bankruptcy or were reaffirmed by the bankrupt or denied a discharge as to such debt.

## Bankrupt's right to redeem

The individual debtor has the right to redeem

### Change in reporting bankruptcies in consumer credit reports

The new Bankruptcy Act Contains a section which amends the Fair Credit Reporting Act, Section 605 (Obsolescence), to restrict the reporting of all bankruptcies to 10 years instead of 14 years. The effective date of this provision is October 1, 1979.

When this amendment was first proposed, ACB conducted an informal poll of leading credit grantors from all types of businesses to assess its impact on their decision-making process. The overwhelming majority said the change would have little or no effect on their ability to make prudent credit decisions.

NAME John D. Houghton BILL No. 43495  
ADDRESS 3332-177 Ave. E. DATE 2/2/71  
WHOM DO YOU REPRESENT Credit Assoc. of Colorado  
SUPPORT yes OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

**Associated Credit Bureaus, Inc.**

16211 Park 10 Place • PO Box 218300

Houston, Texas 77218 • (713) 492-8155

**Key Points of Conversation**

1. We are sympathetic with those people who have studied all the options to bankruptcy but who must choose it as the only final way out of an intolerable situation. A modern bankruptcy law should exist for those people, but it should not be so lenient that virtually anyone can qualify for the relief of justifiable debts.
2. A Bankruptcy Code exists at this time that does not protect the rights of creditors but does enable debtors to escape just payments through very little sacrifice.
3. Certain bankruptcy attorneys advertise through newspapers and promote the false notion that bankruptcy is devoid of any long-term consequences. The advertisements that they place are designed so that the debtor will prematurely elect bankruptcy as the only solution to his financial problems. Once the debtor has been induced to seek legal advice, the attorney involved, in many cases, will not counsel the debtor on bankruptcy alternatives. Skip
4. Bankruptcy is the most devastating indication that an individual cannot handle his or her credit obligations in a responsible manner. A bankruptcy notation will be listed on a consumer's credit history for seven years, if he files a Chapter 13 plan, or for ten years, if he files for straight bankruptcy. During that time, the debtor will be unable to obtain credit from most credit grantors.
5. There are alternatives to bankruptcy. The first thing that a debtor should do is contact his creditors. They will try to work out a payment schedule that fits within his income. Credit counseling is another alternative as it allows the debtor to be schooled in the use of credit and in the best ways to readjust his spending priorities. Credit counseling services are often non-profit organizations run by community service groups.
6. If the reckless use of bankruptcy is encouraged, it is axiomatic that the costs for goods and services will increase.

Executive Office  
P.O. Box 440  
34 West Sixth  
Helena, MT 59624  
Phone (406) 442-3388



BEFORE THE HOUSE BUSINESS AND INDUSTRY COMMITTEE:

BANKRUPTCY REFORM

HOUSE BILL 495

MY NAME IS CURTIS B. HANSEN. I AM THE EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION. I APPEAR TODAY IN SUPPORT OF HOUSE BILL 495.

THE BANKRUPTCY REFORM ACT OF 1978 FORMALLY REPEALED THE 1938 BANKRUPTCY ACT IN ITS ENTIRETY AND REPLACED IT WITH AN ENTIRE NEW BANKRUPTCY CODE WHICH BECAME EFFECTIVE OCTOBER 1, 1979. CONGRESS ADDED MANY NEW SUBSTANTIVE PROVISIONS TO THE 1978 CODE WHICH HAVE THE EFFECT OF DECREASING SUBSTANTIALLY THE AMOUNT OF ASSETS AVAILABLE TO A CREDITOR IN THE TYPICAL CONSUMER BANKRUPTCY CASE, THUS INCREASING THE NUMBER OF NO ASSET CASES.

NO INCREASE IN THE RATE OF CONSUMER BANKRUPTCY IN HISTORY CAN COMPARE WITH THE EXPERIENCE UNDER THE NEW BANKRUPTCY CODE. DURING THE FIRST 12 MONTHS SINCE THE BANKRUPTCY REFORM ACT WENT INTO EFFECT THERE HAVE BEEN APPROXIMATELY 400,000 BANKRUPTCIES OR A 100 PERCENT INCREASE. ALTHOUGH CURRENT ECONOMIC CONDITIONS HAVE PLAYED A ROLE IN THIS INCREASE, IT MUST BE ATTRIBUTED LARGELY TO THE PROVISIONS OF THE NEW BANKRUPTCY CODE ITSELF.



ALTHOUGH THE 1978 CODE MADE A NUMBER OF CHANGES IN BASIC BANKRUPTCY LAW AND PROCEDURE, THE ONE PROVISION MOST RESPONSIBLE FOR THE ESCALATION IN CONSUMER BANKRUPTCIES IS THE SECTION WHICH GIVES THE DEBTOR A RIGHT TO CHOOSE BETWEEN STATE EXEMPTIONS AND A NEWLY CREATED LIST OF FEDERAL EXEMPTIONS. THE PROVISION IS AN IMPORTANT CONTRIBUTOR TO THE RISE IN BANKRUPTCY FILINGS, BECAUSE THE NEW FEDERAL EXEMPTIONS ARE FAR MORE GENEROUS TO CONSUMERS THAN ARE PROPERTY EXEMPTIONS TYPICALLY AVAILABLE UNDER STATE LAW. IT IS ALSO IMPORTANT IN THE CONTEXT OF STATE ACTION BECAUSE IT PERMITS A STATE TO BAR THE AVAILABILITY OF FEDERAL EXEMPTIONS BY ENACTING LEGISLATION SPECIFICALLY PROHIBITING A DEBTOR WITHIN THAT STATE FROM CLAIMING THE FEDERAL EXEMPTIONS.

THE 1978 BANKRUPTCY CODE PROVISIONS HAVE BECOME AN ENTICEMENT FOR CONSUMERS TO SEEK BANKRUPTCY AS AN EASY ALTERNATIVE TO FACING FINANCIAL PROBLEMS. THERE ARE ALSO ABUSES IN LAWYER ADVERTISING. AS A RESULT, RETAILERS ARE SUFFERING INCREASED CREDIT LOSSES.

ENACTMENT OF LEGISLATION (SUCH AS HOUSE BILL 495) WILL STILL ALLOW EASY ACCESS TO BANKRUPTCY WHEN NECESSARY, BUT WILL HELP TO MAKE BANKRUPTCY A LAST RESORT RATHER THAN A FIRST CHOICE, FOR THOSE THAT ARE FACING FINANCIAL DIFFICULTIES. AS IT NOW STANDS, THERE IS NO NEED FOR ANY DETERMINATION THAT THERE ARE OTHER ALTERNATIVES BECAUSE LIBERALIZED EXEMPTIONS HAVE MADE BANKRUPTCY TOO ATTRACTIVE TO TRY TO WORK OUT ANY LONG RANGE PLANS TO GET OUT OF DEBT OR IN CONTROL OF ANY ADVERSE FINANCIAL SITUATION.

HOUSE BILL 495

TESTIMONY OF JEFFRY M. KIRKLAND  
DIRECTOR OF GOVERNMENTAL RELATIONS  
MONTANA CREDIT UNIONS LEAGUE

BEFORE THE HOUSE BUSINESS & INDUSTRY COMMITTEE  
ON MONDAY, 9 FEBRUARY, 1981

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM JEFF KIRKLAND, DIRECTOR OF GOVERNMENTAL AND COMMUNITY RELATIONS FOR THE MONTANA CREDIT UNIONS LEAGUE. OUR LEAGUE IS A TRADE ASSOCIATION REPRESENTING 133 OF 136 CREDIT UNIONS IN MONTANA, AND IT IS ON THEIR BEHALF THAT WE STAND IN SUPPORT OF HOUSE BILL 495.

HOUSE BILL 495 WOULD MERELY STIPULATE THAT A DEBTOR IN A BANKRUPTCY PROCEEDING UTILIZE THE EXEMPTIONS PROVIDED WITHIN STATE LAW RATHER THAN THE EXEMPTIONS PROVIDED WITHIN THE FEDERAL BANKRUPTCY REFORM ACT OF 1978. IN OTHER WORDS, UNDER HOUSE BILL 495 A DEBTOR COULD ONLY SHIELD FROM HIS CREDITORS PROPERTY LISTED IN TITLE 25, CHAPTER 13, PART 6, M.C.A. AS HAD ALWAYS BEEN THE CASE UNTIL PASSAGE OF THE FEDERAL BANKRUPTCY CODE IN 1978.

THE NEW CODE MADE NUMEROUS CHANGES TO BANKRUPTCY LAW, AND ONE OF THE MOST SWEEPING OF CHANGES WAS THE INCLUSION OF FEDERAL EXEMPTIONS THAT A DEBTOR MIGHT CHOOSE INSTEAD OF STATE EXEMPTIONS, DEPENDING ON WHICH WOULD BE MOST FAVORABLE FOR HIM. UNDER PREVIOUS BANKRUPTCY LAW, THE ESTABLISHMENT OF SUCH EXEMPTIONS WAS EXCLUSIVELY WITHIN THE PROVINCE OF THE STATE LEGISLATURES.

THE FEDERAL EXEMPTIONS ARE GENERALLY MUCH MORE FAVORABLE THAN

MOST OF THE STATE EXEMPTIONS, WITH THE EXCEPTION OF THE HOMESTEAD EXEMPTION, WHICH IS MORE FAVORABLE THAN THE FEDERAL EXEMPTION. AND CURRENTLY, THE DEBTOR HAS HIS CHOICE OF EITHER THE FEDERAL OR THE STATE EXEMPTIONS, WHICHEVER HAPPENS TO BE MOST FAVORABLE TO HIM.

IN ADDITION, SHOULD A HUSBAND AND WIFE FILE JOINTLY FOR BANKRUPTCY, ONE CAN CHOOSE THE FEDERAL EXEMPTIONS AND THE OTHER CAN CHOOSE THE STATE EXEMPTIONS TO ENSURE THE MOST FAVORABLE CIRCUMSTANCES. UTILIZING THE MORE FAVORABLE FEDERAL EXEMPTIONS OR, IF FILING JOINTLY, A FAVORABLE COMBINATION OF FEDERAL AND STATE EXEMPTIONS, SOME PRE-BANKRUPTCY PLANNING BY THE DEBTOR'S ATTORNEY CAN OFTEN ELIMINATE MOST, IF NOT ALL, OF THE DEBTOR'S ASSETS FROM THE BANKRUPTCY ESTATE, THEREBY LEAVING LITTLE OR NOTHING FOR DISTRIBUTION TO THE CREDITORS.

BANKRUPTCY HAS TRADITIONALLY BEEN A METHOD FOR OBTAINING A "FRESH START" FOR THOSE WHO HAVE BECOME OVERWHELMED BY DEBT, EITHER FROM POOR ECONOMIC JUDGMENT OR FROM SOME CATASTROPHIC OCCURRENCE SUCH AS ILLNESS, LOSS OF EMPLOYMENT, OR AN ACCIDENT. AS LENDERS, EVEN THOUGH WE SUSTAIN LOSSES FROM BANKRUPTCIES, WE AGREE WITH THE "FRESH START" CONCEPT OF BANKRUPTCY.

HOWEVER, WE ALSO BELIEVE THAT BANKRUPTCY SHOULD RESULT IN EQUITABLE TREATMENT FOR BOTH THE DEBTOR AND HIS CREDITORS. THAT IS, THE DEBTOR SHOULD BE ABSOLVED FROM HIS UNMANAGEABLE DEBT, AND THE CREDITORS SHOULD RECEIVE AS MUCH OF WHAT THEY ARE CONTRACTUALLY ENTITLED TO RECEIVE AS POSSIBLE.

AS LENDERS, WE SEEK AN ELEMENT OF FAIRNESS IN A BANKRUPTCY PROCEEDING, AND THE ABILITY TO PICK AND CHOOSE THE EXEMPTIONS THAT WOULD ALLOW THE DEBTOR TO SHIELD THE MOST PROPERTY FROM HIS CREDITORS DOES NOT PROVIDE COMPARABLE FAIRNESS TO CREDITORS. THE EXEMPTIONS

PROVIDED FOR IN BANKRUPTCY SHOULD PROVIDE THE DEBTOR A REASONABLE BASIS FOR STARTING OVER. THEY SHOULD NOT, HOWEVER, SERVE AS A DEVICE TO BETTER HIS ECONOMIC POSITION AT THE EXPENSE OF HIS CREDITORS.

AS NON-PROFIT COOPERATIVE LENDING INSTITUTIONS OWNED AND OPERATED BY OUR MEMBERS, CREDIT UNIONS HAVE ALWAYS BEEN DEMONSTRABLY CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS. IN FACT, FINANCIAL COUNSELING FOR MEMBERS WHO ARE IN ECONOMIC DIFFICULTY IS ONE OF OUR MOST IMPORTANT SERVICES.

HOWEVER, EVERY TIME A CREDIT UNION SUSTAINS A LOSS THROUGH BANKRUPTCY, IT IS NOT A SELECT GROUP OF STOCKHOLDERS THAT GETS HURT-- IT IS EACH AND EVERY ONE OF THE CREDIT UNION'S MEMBER-OWNERS. WE ARE CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS, BUT WE ARE JUST AS CONCERNED WITH THE EQUITABLE TREATMENT OF OUR MEMBER-OWNERS. WE DON'T BELIEVE THAT THE ABILITY TO PICK AND CHOOSE THE MOST FAVORABLE LIST OF EXEMPTIONS TO SHIELD THE MOST PROPERTY PROVIDES THAT EQUITABLE TREATMENT.

NOR, IT SEEMS, DO 16 OTHER STATE LEGISLATURES (ALABAMA, ARIZONA, FLORIDA, GEORGIA, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, NEBRASKA, OHIO, OKLAHOMA, SOUTH DAKOTA, TENNESSEE, VIRGINIA, AND WYOMING) THAT HAVE ALREADY ENACTED SIMILAR LEGISLATION.

IN CONCLUSION, WE URGE THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 495 DO PASS.

Exhibit F 495

# Your Money Matters

## Debtors File for Bankruptcy at a Record Rate, Spurred by New Code, Recession, Tight Credit

By WILLIAM G. FLANAGAN

Staff Reporter of THE WALL STREET JOURNAL

Have you ever heard an advertisement for going bankrupt? Well, in New York City just dial (212) 697-4004. You'll hear, in a smooth, radio-quality voice, the wisdom of going into Chapter 13 as a means of getting all those nasty creditors off your back.

A lot of debt-ridden consumers are getting the message about going under, whether they dial the office of bankruptcy lawyer A. Gerald Kagan or not. This is the biggest year ever for personal bankruptcies. In April alone, the latest month for which national figures are available, 39,494 people filed for bankruptcy, compared with 25,897 a year earlier. The 12 months ending today will see a record total of 355,000 filings, according to a projection by the Bankruptcy Division, Administrative Office of U.S. Courts. The highest number previously recorded was during the last recession in 1975, when there were 254,484 filings.

The reasons so many people are going under are threefold, say the experts:

—A new federal bankruptcy code that took effect in October 1979 makes the terms and conditions for going bust a lot more palatable. The net effect of the new code is that many people facing bankruptcy can keep most, if not all, of what they own and leave most creditors holding the bag.

—The recession and high unemployment in some parts of the country have taken their toll. For families where the principal breadwinner—or even the working spouse whose income was once largely a luxury—is laid off, bankruptcy is sometimes a tempting way out of debt. In April, for example, aside from California, the states reporting the highest numbers of filings were Ohio (2,156), Illinois (2,204), and Michigan (1,260). These are the industrial states hit hardest by layoffs.

California is, as in many other things, a special case; it had 3,677 filings. Its terms for going bust are the most attractive in the nation. In most states, an individual filing for bankruptcy can choose to accept the ground rules set up by the state or those in the new federal code. (Those rules in California are so liberal that some people even move into the state before going bust.)

—The Federal Reserve's tightening of consumer credit has also had an effect. Consumers with no cash reserves who are suddenly hit with an unexpected financial crisis or elimination of anticipated income for a period can't borrow to get out of the hole as easily as they once could. So-called consolidation loans now are more difficult to obtain from finance companies. Lines of credit from banks have evaporated. Personal loans have been cut back, and other traditional sources of easy credit have been shut off.

### The Creditors' View

The jump in the number of bankruptcies has naturally alarmed the nation's largest creditors. "Under the new code, there are more benefits to the debtor, at the creditor's expense," notes William R. Moroney, a spokesman for the National Consumer Finance Association.

Already the dollar losses are showing up. One large bank reports that its bankruptcy losses doubled in the first four months of this year from a year earlier. And the consumer-financial group recently surveyed a number of large finance companies that reported dollar losses from bankruptcies up an average of 50% from the first quarter of 1979. ("Skip-outs"—people who simply move without any notice—still account for greater losses than bankruptcies, however, says Mr. Moroney.)

Not surprisingly, the lending industry thinks many consumers are ill-advised in seeking bankruptcy as a means of getting out of debt. "The fact that there is legal advertising now, and bankruptcy being one of

### Buying & Borrowing

Here are some recent figures on financial trends affecting consumers and individual investors.

—DOW JONES INDUSTRIALS—

Closing: 881.83. Year earlier: 841.98.

—MOODY'S CORPORATE YIELDS—

Average for Aa-rated bonds:

June 26: 11.19%. Year earlier: 9.55%

—FEDERAL HOME LOAN BANK—

Average effective conventional mortgage rate on new homes.

May: 13.67%. Year earlier: 10.47%

Average price on new homes:

\$88,800. Year earlier: \$72,300.

rupty—Chapter 7 and Chapter 13, under the federal code. The latter is not really formal bankruptcy, but a wage-earner plan. The essential difference is that in the first instance, you throw up your hands and surrender your assets for your creditors to squabble over. In the second, you work out a repayment schedule—usually partial—over a period of three years or so. In most cases the second alternative is preferable if you have substantial assets such as a home.

They can't take everything away from you if you go under. In fact, there is quite a bit of property that is exempt.

Under the new federal code, creditors cannot touch \$7,500 equity in your home (\$15,000 if you file jointly for bankruptcy with your spouse); \$1,200 value of your car; all household furnishings, goods, clothes, books, etc., not to exceed \$200 per item; \$500 of personal jewelry; \$400 in any property; \$750 of tools; and all health aids for debtor and dependents.

Other federal exemptions include unmatrued life insurance; Social Security, welfare, unemployment or veterans' disability payments; alimony, support and maintenance; and pension or profit-sharing benefits.

Some states have more liberal exemptions that you can choose. In California, for example, the head of household can keep up to \$30,000 of equity in his home.

It isn't necessary to hire a lawyer to go into Chapter 7 or Chapter 13, although a \$50 filing fee must be paid to the federal court where you file. But if you have any assets at

all, it makes sense to hire a lawyer, who may charge \$300 to \$1,500 or more, depending upon services rendered. Beware: There are plenty of pitfalls for the unwary. If you transfer assets to your children or family, for example, you may be acting illegally if such actions are deemed to have been made in anticipation of bankruptcy. On the other hand, other transfers of assets—such as buying insurance with your savings—are perfectly aboveboard.

Not only the destitute go bust, of course. One New York doctor with an \$80,000 annual income went into Chapter 13 to avoid the hounding of creditors, then arranged repayment of his debts over a three-year period. But even with high-income debtors, total repayment of debts under Chapter 13 is rare. "Ten cents on the dollar is typical," says one creditor.

The act of filing and declaring bankruptcy is quite simple. You file your petition, schedules of assets and earnings, and statement of affairs in the federal court district in which you have resided for six months. (A lawyer can help you with this, but many debtors can manage it themselves. The forms themselves are available from legal stationers.)

As soon as you submit your petition for bankruptcy, you are off the hook with your creditors. The court will notify them that you have filed, and they can no longer harass you. Within 10 to 30 days of filing, they will have an opportunity to question you at what is known as a meeting of creditors. But, as a matter of practice, few creditors ever appear.

If the filing is complex, a judge may appoint a trustee to conserve the assets, check for other assets, and make equitable distribution to creditors. The creditors then have some time to react to a debtor's receiving a discharge of debts. But, after the final discharge, the creditors cannot do a thing.

If you choose Chapter 13 and find the repayment burden too harsh, you can still file for Chapter 7 bankruptcy. In fact, many debtors in Chapter 13 eventually declare formal bankruptcy later.

Two sources for further information: "How to Get Out of Debt," by Ted Nicholas (Enterprise Publishing, 725 Market St., Wilmington, Del., 19801 \$4.95), and "The Consumer Guide to Bankruptcy & Chapter 13," (American Bankruptcy Council, 2525 Van Ness Ave., San Francisco, 94109 \$5).

## VISITORS' REGISTER

HOUSE

COMMITTEE

# BILL

Date \_\_\_\_\_

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE

COMMITTEE

Date

INSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## DEPARTMENT OF REVENUE

## HOUSE BILL NO. 411

HB 411 adjusts the annual license fee for an all-beverage license for a unit of a nationally chartered veterans' organization. The change reflects the situation as it was prior to the 1975 revision of the liquor code. The 1975 revision in enacting the forerunners to subsection (7) of present section 16-4-501, MCA (4-4-401, R.C.M. 1947) failed to preserve the distinction in fees for veterans' organizations and other licensees. Consequently, the code after 1975 provided for a single fee for both veterans' organizations and other licensees. However, the Department of Revenue through its Liquor Division continued to charge the fees in effect prior to the 1975 revision. Thus, the Department was not in compliance with the law. This failure to comply was not the result of intentional disregard of the legislative mandate, but was rather the result of a failure to carefully read the license fee provisions of the new (1975) alcoholic beverage code and a belief that the 1975 revision was not intended to make any changes in the treatment of veterans' organizations. This does not excuse the failure to comply but hopefully explains why it occurred. In order to restore the pre-1975 treatment, the Department has submitted the proposed amendments. The Department also apologizes for this failure in following the Legislature's wishes.



## Section Analysis

Section 1. Amends 16-4-501, MCA. The amendments occur in subsection (7) of the section and restore the lower fees for units of nationally chartered veterans organizations, as more fully discussed above.

PRE-1975 LICENSE FEES

<u>Beer</u>		<u>Liquor</u>
Veterans:	\$ 50	All: \$200
Others:	\$200	\$300
		\$450
		\$600

AFTER 1975 LICENSE FEES

<u>Beer Only</u>	<u>All Beverage</u>
Veterans: \$ 50	All: \$400
Others: \$200	\$500
	\$650
	\$800

The post-1975 All Beverage fee had been computed by adding the pre-1975 beer and liquor fees. In doing so, the drafters neglected to add the fees for veterans and others separately. This change was overlooked in drafting and review of the 1975 revision.

HOUSEKEEPING CHANGE FROM LEGISLATIVE COUNCIL

HOUSE BILL 339

1. Page 2, line 1  
Following: "(1)"  
Strike: ""Closing""  
Insert: ""Closure""

2. Page 10, line 11  
Following: "(1)"  
Strike: ""Closing""  
Insert: ""Closure""

Amendments to HB 339

Page 2, line 5.

Following: "office"

Insert: "mine, railroad,"