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LEGISLATION

Bankruptcy Stealth Move Sparks Outrage

■ A House GOP plan to prevent debate on a reform act by adding it to a Senate bill makes some attorneys see red.

By John Roemer
Daily Journal Staff Writer

The consumer bankruptcy bar reacted with outrage Thursday to reports out of Washington that House Republicans plan a parliamentary maneuver to evade Senate Democratic opposition to the controversial and long-stalled Bankruptcy Reform Act.

The House-approved bill, strongly backed by the credit card industry, would make bankruptcy lawyers criminally responsible for misstatements by their clients and stiffen the obstacles confronting people seeking debt relief in court.

Now the House majority leader, Texas Republican Tom DeLay, plans to attach the 450-page House-approved bill, H.R. 975, as an amendment to a five-line Senate-passed temporary extension of a law granting bankruptcy relief to family farmers, according to lobbyists monitoring the situation.

That procedural move would block Senate floor amendments that have proved fatal to the bill in the past, according to opponents of the measure.

Last year, for example, Sen. Charles Schumer, D-N.Y., added an amendment to make court-ordered fines against abortion clinic blockaders nondischargable in bankruptcy court. The Schumer amendment added right-to-life conservatives to the lobbying against the bill. DeLay's reported maneuver would deny Schumer an opportunity to offer his amendment again.

The Senate, where Republicans hold a 51 to 49 majority, would be required under DeLay's plan to vote bankruptcy reform up or down, making passage likely. President Bush has pledged to sign the bill.

Los Angeles bankruptcy authority Ken Klee appreciated the gamesmanship even as he deplored the potential result.

"I admire the parliamentary creativity, but because I detest the bill I'm sorry to see this happen," said the lead name partner at Klee Tuchin Bogdanoff & Stern. "I'm very worried that this could lead to passage.

"If that happens, it will be devastating to consumer bankruptcy lawyers and hard on Chapter 11 lawyers who represent unsecured bond holders, trade creditors and debtors. Lawyers who represent landlords and secured creditors will do very well."

Klee said he has spoken with House Democratic staffers about the prospects for a motion to reconsider the DeLay plan.

"They and I are pessimistic," he said. "I believe the votes are there to achieve passage of the amendment."

A contrary view came from the Commercial Law League of America, a Chicago creditors' rights group that opposes the bill.

See STEALTH, Page 7

STEALTH: Move Called 'Hostile'

Continued From Page 1

The DeLay move "is unlikely to work in the Senate," the league's Washington lobbyist, David Goch, wrote in an e-mail to the Daily Journal.

"As one might imagine, Senate Democrats do not take well to any attempt by the House to sidestep its procedural rules, regardless of the issue," said Goch, a partner at Washington's Webster Chamberlain & Bean.

Goch said sources within the House leadership told him the bill was scheduled for a hearing Tuesday by the House Rules Committee and possible floor action Wednesday. He declined to name his sources.

DeLay's Washington office did not return a call seeking confirmation of the plan. Neither did a spokesman for Schumer.

Alerts posted on the American Bankruptcy Institute Web site and e-mailed throughout the network of opponents Thursday warned that the new plan to gain the bill's passage was in the works.

At bankruptcy attorney Norma Hammes' San Jose office Thursday, blues music played while a caller waited on hold, reflecting the melancholy mood pervading the legal community adverse to the bill.

"This is an effort to cheat voters out of an honest legislative process," said the Gold & Hammes partner, a past president of the National Association of Consumer Bankruptcy Attorneys. "In an election year when so many Americans are in desperate need of fair bankruptcy relief, taking that away would be an outrageous thing to do."

Hammes said she had just met with a woman with two small children who has been unemployed since 2002 and must declare bankruptcy.

"For her to have to jump through a million more hoops [if the bill passes] would be so unfair," she said. "There is a serious access to justice issue here."

Sam Gerdano, executive director of the nonpartisan American Bankruptcy Institute in Arlington, Va., said the DeLay plan is the buzz of Washington. The ABI takes no policy position on the dispute but has analyzed various parts of the complex bill for lawmakers.The ABI Web site, www.abiworld.org, reported the plan Thursday as a rumor attributed to Capitol Hill sources. Gerdano declined to pinpoint the story's source but said the plan appears to be well established and on track.

"It would be a hostile act, no doubt about it," said Gerdano, a former chief legal counsel to Sen. Charles Grassley, R-Iowa, a member of the Senate Judiciary Committee. "The minority would scream. It's a strategy designed to shake people up and avoid these troublesome, problematic Senate floor amendments."

Matthew Mason, a Detroit lawyer who heads the National Association of Consumer Bankruptcy Attorneys, said the group's Washington, D.C., lobbyists got wind of the DeLay plan late Wednesday.

"The Republicans are trying to bypass the process," said Mason, who works for an auto union legal services plan. "The bill as it stands is very harmful to debtors. It needs debate and amendments and balance."

Mason said the attorney liability provisions of the bill are not matched by similar liability for creditors.

"There are plenty of things wrong with this bill, and we are letting opponents know that it's in danger of stealth passage," he said.

Banks, credit unions and retailers have pushed for passage since 1997.

"We won't be happy until legislation that puts an end to the misuse of bankruptcy by people who can afford to repay their debts becomes the law of the land," the National Retail Federation said in a written statement last year.

A coalition of more than 225 groups, including the National Association of Consumer Bankruptcy Attorneys, the AFL-CIO and the Consumer Federation of America have battled the bill.

"The credit card industry has created a culture of debt that is overwhelming millions of Americans," declared Rep. William Delahunt, D-Mass., a former district attorney who is a strong critic of the bill's provisions.

Credit card debt almost tripled between 1989 and 2001, according to a study by Demos, a nonpartisan public policy group. Consumer debt averages almost $19,000 per U.S. household, for a total of $1.98 trillion nationally.

There were 1.66 million personal bankruptcies during the 12 months ending Sept. 30, 2003, an increase of 7.4 percent from the previous year.