

103^D CONGRESS
2^D SESSION

H. R. 4711

To amend title 11 of the United States Code with respect to certain debts in connection with divorce or separation; to establish a commission to analyze bankruptcy issues; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1994

Ms. SLAUGHTER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code with respect to certain debts in connection with divorce or separation; to establish a commission to analyze bankruptcy issues; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AMENDMENTS TO**
4 **TITLE 11 OF THE UNITED**
5 **STATES CODE**

6 **SEC 101. SHORT TITLE.**

7 This title may be cited as the “Spousal Equity in
8 Bankruptcy Amendments of 1994”.

1 **SEC. 102. AMENDMENTS.**

2 (a) RELIEF FROM AUTOMATIC STAY.—Section
3 362(b)(2) of title 11, United States Code, is amended to
4 read as follows:

5 “(2) under subsection (a) of this section—

6 “(A) of the commencement or continuation
7 of an action or proceeding for—

8 “(i) the establishment of paternity; or

9 “(ii) the establishment or modification
10 of an order for alimony, maintenance, or
11 support; or

12 “(B) of the collection of alimony, mainte-
13 nance, or support from property that is not
14 property of the estate;”.

15 (b) PRIORITY OF CLAIMS.—(1) Section 507 of title
16 11, United States Code, is amended—

17 (A) in subsection (a)—

18 (i) in paragraph (8) by striking “(8)
19 Eighth” and inserting “(9) Ninth”,

20 (ii) in paragraph (7) by striking “(7) Sev-
21 enth” and inserting “(8) Eighth”, and

22 (iii) by inserting after paragraph (6) the
23 following:

24 “(7) Seventh, allowed unsecured claims due to
25 a spouse, former spouse, or child of the debtor for
26 alimony to, maintenance for, or support of such

1 spouse or child, in connection with a separation
2 agreement, divorce decree, or other order of a court
3 of record, a determination made in accordance with
4 State or territorial law by a governmental unit, or
5 a property settlement agreement, but not to the ex-
6 tent that—

7 “(A) such debt is assigned to another en-
8 tity, voluntarily, by operation of law, or other-
9 wise (other than debts assigned pursuant to
10 section 402(a)(26) of the Social Security Act,
11 or any such debt which has been assigned to
12 the Federal Government or to a State or any
13 political subdivision of such State); or

14 “(B) such debt includes a liability des-
15 ignated as alimony, maintenance, or support,
16 unless such liability is actually in the nature of
17 alimony, maintenance or support;”, and

18 (B) in subsection (d) by striking “or (6)” and
19 inserting “(6), or (7)”.

20 (2) Title 11 of the United States Code is amended—

21 (A) in sections 502(i), 503(b)(1)(B)(i),
22 523(a)(1)(A), and 1123(a)(1) by striking
23 “507(a)(7)” and inserting “507(a)(8)”,

24 (B) in section 724(b)(2) by striking “or
25 507(a)(6)” and inserting “507(a)(6), or 507(a)(7)”,

1 (C) in section 726(b) by striking “or (7)” and
2 inserting “, (7), or (8)”, and

3 (D) in section 1129(a)(9)—

4 (i) in subparagraph (B) by striking “or
5 507(a)(6)” and inserting “, 507(a)(6), or
6 507(a)(7)”, and

7 (ii) in subparagraph (C) by striking
8 “507(a)(7)” and inserting “507(a)(8)”.

9 (c) PROTECTION OF LIENS.—Section 522(f)(1) of
10 title 11, United States Code, is amended to read as fol-
11 lows:

12 “(1) a judicial lien (other than a judicial lien
13 that secures a debt to a spouse, former spouse, or
14 child of the debtor, for alimony to, maintenance for,
15 or support of the spouse or child, in connection with
16 a separation agreement, divorce decree or other
17 order of a court of record, determination made in
18 accordance with State or territorial law by a govern-
19 mental unit, or property settlement agreement, to
20 the extent that the debt—

21 “(A) is not assigned to another entity, vol-
22 untarily, by operation of law, or otherwise; and

23 “(B) includes a liability designated as ali-
24 mony, maintenance, or support, unless such li-

1 ability is actually in the nature of alimony,
2 maintenance or support).”.

3 (d) EXCEPTION TO DISCHARGE.—Section 523 of title
4 11, United States Code, is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (11) by striking “or” at
7 the end,

8 (B) in paragraph (12) by inserting “or”
9 after the semicolon at the end, and

10 (C) by adding at the end the following:

11 “(13) assumed or incurred by the debtor in the
12 course of a divorce or separation or in connection
13 with a separation agreement, divorce decree or other
14 order of a court of record, a determination made in
15 accordance with State or territorial law by a govern-
16 mental unit, or property settlement agreement, un-
17 less—

18 “(A) excepting such debt from discharge
19 under this paragraph would impose an undue
20 hardship for the debtor; and

21 “(B) discharging such debt would result in
22 a benefit to the debtor that outweighs the det-
23 rimental consequences to a spouse, former
24 spouse, or child of the debtor.”, and

1 (2) in subsection (c)(1) by striking “or (6)”
2 each place it appears and inserting “, or (13)”.

3 (e) PROTECTION AGAINST TRUSTEE AVOIDANCE.—
4 Section 547(c) of title 11, United States Code, is amend-
5 ed—

6 (1) by striking “or” at the end of para-
7 graph (6);

8 (2) by redesignating paragraph (7) as
9 paragraph (8); and

10 (3) by inserting after paragraph (6) the
11 following new paragraph:

12 “(7) to the extent that the transfer was a bona
13 fide payment of a debt to a spouse, former spouse,
14 or child of the debtor, for alimony to, maintenance
15 for, or support of such spouse or child, in connection
16 with a separation agreement, divorce decree or other
17 order of a court of record, determination made in
18 accordance with State or territorial law by a govern-
19 mental unit, or property settlement agreement, but
20 not to the extent that such debt—

21 “(A) is assigned to another entity, volun-
22 tarily, by operation of law, or otherwise; or

23 “(B) includes a liability designated as ali-
24 mony, maintenance, or support, unless such li-

1 ability is actually in the nature of alimony,
2 maintenance or support; or”.

3 (f) APPEARANCE BEFORE COURT.—A child support
4 creditor or its representative shall be permitted to appear
5 and intervene without charge and without meeting any
6 special local court rule requirement for attorney appear-
7 ances in any bankruptcy proceeding in any bankruptcy
8 court or district court of the United States if the creditor
9 or representative files with the court a statement describ-
10 ing in detail the child support debt, its status, and other
11 characteristics.

12 **TITLE II—BANKRUPTCY REVIEW** 13 **COMMISSION**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “National Bankruptcy
16 Review Commission Act”.

17 **SEC. 202. ESTABLISHMENT.**

18 There is established the National Bankruptcy Review
19 Commission (referred to as the “Commission”).

20 **SEC. 203. DUTIES OF THE COMMISSION.**

21 The duties of the Commission are—

22 (1) to investigate and study issues and prob-
23 lems relating to title 11, United States Code (com-
24 monly known as the “Bankruptcy Code”);

1 (2) to evaluate the advisability of proposals and
2 current arrangements with respect to such issues
3 and problems;

4 (3) to prepare and submit to the Congress, the
5 Chief Justice, and the President a report in accord-
6 ance with section 208;

7 (4) to solicit divergent views of all parties con-
8 cerned with the operation of the bankruptcy system;
9 and

10 (5) to study the impact of the bankruptcy laws
11 on the family and particularly on the increase in the
12 number of women and children living in poverty
13 after divorce.

14 **SEC. 204. MEMBERSHIP.**

15 (a) NUMBER AND APPOINTMENT.—The Commission
16 shall be composed of 10 members appointed from among
17 individuals who have experience and expertise in bank-
18 ruptcy law as follows:

19 (1) Four members appointed by the President,
20 one of whom shall be designated as chairman by the
21 President.

22 (2) One member shall be appointed by the
23 President pro tempore of the Senate.

24 (3) One member shall be appointed by the Mi-
25 nority Leader of the Senate.

1 (4) One member shall be appointed by the
2 Speaker of the House of Representatives.

3 (5) One member shall be appointed by the Mi-
4 nority Leader of the House of Representatives.

5 (6) Two members appointed by the Chief Jus-
6 tice.

7 (b) TERM.—Members of the Commission shall be ap-
8 pointed for the life of the Commission.

9 (c) QUORUM.—Six members of the Commission shall
10 constitute a quorum, but a lesser number may conduct
11 meetings.

12 (d) APPOINTMENT DEADLINE.—The first appoint-
13 ments made under subsection (a) shall be made within 60
14 days after the date of enactment of this Act.

15 (e) FIRST MEETING.—The first meeting of the Com-
16 mission shall be called by the chairman and shall be held
17 within 90 days after the date of enactment of this Act.

18 (f) VACANCY.—A vacancy on the Commission result-
19 ing from the death or resignation of a member shall not
20 affect its powers and shall be filled in the same manner
21 in which the original appointment was made.

22 (g) CONTINUATION OF MEMBERSHIP.—If any mem-
23 ber of the Commission who was appointed to the Commis-
24 sion as a member of Congress or as an officer or employee
25 of a government leaves that office, or if any member of

1 the Commission who was not appointed in such a capacity
2 becomes an officer or employee of a government, the mem-
3 ber may continue as a member of the Commission for not
4 longer than the 90-day period beginning on the date the
5 member leaves that office or becomes such an officer or
6 employee, as the case may be.

7 (h) CONSULTATION PRIOR TO APPOINTMENT.—Prior
8 to the appointment of members of the Commission, the
9 President, the President pro tempore of the Senate, the
10 Speaker of the House of Representatives, and the Chief
11 Justice shall consult with each other to ensure fair and
12 equitable representation of various points of view in the
13 Commission and its staff.

14 **SEC. 205. COMPENSATION OF THE COMMISSION.**

15 (a) PAY.—

16 (1) NONGOVERNMENT EMPLOYEES.—Each
17 member of the Commission who is not otherwise em-
18 ployed by the United States Government shall be en-
19 titled to receive the daily equivalent of the annual
20 rate of basic pay payable for level IV of the Execu-
21 tive Schedule under section 5315 of title 5, United
22 States Code, for each day (including travel time)
23 during which he or she is engaged in the actual per-
24 formance of duties as a member of the Commission.

1 (2) GOVERNMENT EMPLOYEES.—A member of
2 the Commission who is an officer or employee of the
3 United States Government shall serve without addi-
4 tional compensation.

5 (b) TRAVEL.—Members of the Commission shall be
6 reimbursed for travel, subsistence, and other necessary ex-
7 penses incurred by them in the performance of their du-
8 ties.

9 **SEC. 206. STAFF OF COMMISSION; EXPERTS AND CONSULT-**
10 **ANTS.**

11 (a) STAFF.—

12 (1) APPOINTMENT.—The chairman of the Com-
13 mission may, without regard to the civil service laws
14 and regulations, appoint, and terminate an executive
15 director and such other personnel as are necessary
16 to enable the Commission to perform its duties. The
17 employment of an executive director shall be subject
18 to confirmation by the Commission.

19 (2) COMPENSATION.—The chairman of the
20 Commission may fix the compensation of the execu-
21 tive director and other personnel without regard to
22 the provisions of chapter 51 and subchapter II of
23 chapter 53 of title 5, United States Code, relating
24 to classification of positions and General Schedule
25 pay rates, except that the rate of pay for the execu-

1 tive director and other personnel may not exceed the
2 rate payable for level V of the Executive Schedule
3 under section 5316 of that title.

4 (b) EXPERTS AND CONSULTANTS.—The Commission
5 may procure temporary and intermittent services of ex-
6 perts and consultants under section 3109(b) of title 5,
7 United States Code.

8 **SEC. 207. POWERS OF THE COMMISSION.**

9 (a) HEARINGS AND MEETINGS.—The Commission or,
10 on authorization of the Commission, a member of the
11 Commission, may hold such hearings, sit and act at such
12 time and places, take such testimony, and receive such evi-
13 dence, as the Commission considers appropriate. The
14 Commission or a member of the Commission may admin-
15 ister oaths or affirmations to witnesses appearing before
16 it.

17 (b) OFFICIAL DATA.—The Commission may secure
18 directly from any Federal department, agency, or court
19 information necessary to enable it to carry out this title.
20 Upon request of the chairman of the Commission, the
21 head of a Federal department or agency or chief judge
22 of a Federal court shall furnish such information, consist-
23 ent with law, to the Commission.

24 (c) FACILITIES AND SUPPORT SERVICES.—The Ad-
25 ministrator of General Services shall provide to the Com-

1 mission on a reimbursable basis such facilities and support
2 services as the Commission may request. Upon request of
3 the Commission, the head of a Federal department or
4 agency may make any of the facilities or services of the
5 agency available to the Commission to assist the Commis-
6 sion in carrying out its duties under this title.

7 (d) EXPENDITURES AND CONTRACTS.—The Commis-
8 sion or, on authorization of the Commission, a member
9 of the Commission may make expenditures and enter into
10 contracts for the procurement of such supplies, services,
11 and property as the Commission or member considers ap-
12 propriate for the purposes of carrying out the duties of
13 the Commission. Such expenditures and contracts may be
14 made only to such extent or in such amounts as are pro-
15 vided in appropriation Acts.

16 (e) MAILS.—The Commission may use the United
17 States mails in the same manner and under the same con-
18 ditions as other Federal departments and agencies of the
19 United States.

20 (f) GIFTS.—The Commission may accept, use, and
21 dispose of gifts or donations of services or property.

22 **SEC. 208. REPORT.**

23 The Commission shall submit to the Congress, the
24 Chief Justice, and the President a report not later than
25 2 years after the date of its first meeting. The report shall

1 contain a detailed statement of the findings and conclu-
2 sions of the Commission, together with its recommenda-
3 tions for such legislative or administrative action as it con-
4 siders appropriate.

5 **SEC. 209. TERMINATION.**

6 The Commission shall cease to exist on the date that
7 is 30 days after the date on which it submits its report
8 under section 208.

9 **SEC. 410. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated \$1,500,000 to
11 carry out this title.

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