

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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H.R. 1529: The Involuntary Bankruptcy Improvement Act

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Abstract. H.R. 1529 is intended to combat what some believe is a growing trend of frivolous involuntary bankruptcy filings by creditors acting in bad faith, or to harass a debtor. The bill would amend 11 U.S.C. Section 303 by adding a new subsection. The subsection would give debtors two new remedies against bad faith filings. First, if a petition that is filed against an individual debtor is subsequently dismissed, and the court finds that the filing included false, fictitious, or fraudulent statements, then, at the debtors request, the court must expunge all records relating to the filing. Second, the court may issue an order prohibiting all consumer reporting agencies from reporting any information relating to the filing.

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H.R. 1529: The Involuntary Bankruptcy Improvement Act

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Summary

H.R. 1529 is intended to combat what some believe is a growing trend of frivolous involuntary bankruptcy filings by creditors acting in bad faith or to harass a debtor. The bill would amend 11 U.S.C. § 303 by adding a new subsection (*I*). The subsection would give debtors two new remedies against bad faith filings. First, if a petition that is filed against an individual debtor is subsequently dismissed, and the court finds that the filing included false, fictitious, or fraudulent statements, then, at the debtor's request, the court must expunge all records relating to the filing. Second, the court may issue an order prohibiting all consumer reporting agencies from reporting any information relating to the filing.

On April 1, 2003, Representative Sensenbrenner introduced H.R. 1529, 108th Cong., 1st Sess. (2003), the "Involuntary Bankruptcy Improvement Act of 2003." The House Judiciary Committee reported the bill favorably on May 19, 2003.¹ The bill passed the House by voice vote on a motion to suspend the rules on June 10, 2003. If enacted, it would amend the U.S. Bankruptcy Code, 11 U.S.C. § 303, which governs involuntary bankruptcy.

While the vast majority of bankruptcy cases are initiated voluntarily by a debtor, an involuntary filing by creditors *against* a debtor may be an adversarial proceeding. In a voluntary bankruptcy, the filing of the petition constitutes an "order for relief" which triggers important bankruptcy protections such as the automatic stay against collection activities by creditors.² In an involuntary bankruptcy, if the debtor challenges the filing, bankruptcy process is generally delayed until the court, after trial, enters an order for relief.³

¹ H.Rept. 108-110, 108th Cong., 1st Sess. (2003). An identical bill, S. 1128, 108th Cong., 1st Sess. (2003) was introduced in the Senate on May 22, 2003.

² 11 U.S.C. §§ 301, 362.

³ 11 U.S.C. § 303(h).

(continued...)

The Code prescribes rules for an involuntary filing. For example, the petition must be commenced by three or more creditors holding nondisputed, noncontingent claims that aggregate at least \$10,775. Or, if there are fewer than 12 creditors, by one or more holding a claim of \$10,775.⁴ If the creditors do not prevail, the court may award the debtor costs and attorneys fees. Or, if the court finds that the petition was brought in bad faith, the debtor may be awarded damages, including punitive damages.⁵

H.R. 1529 is intended to combat what is believed to be a growing trend of frivolous involuntary filings by creditors acting in bad faith or to harass a debtor.⁶ The bill would amend 11 U.S.C. § 303 by adding a new subsection (*l*). The subsection gives debtors two possible remedies. First, if a petition is filed against an individual debtor that is subsequently dismissed, and the court finds that the filing included false, fictitious, or fraudulent statements, then, at the debtor's request, the court must expunge all records relating to the filing. Second, the court may issue an order prohibiting all consumer reporting agencies from reporting any information relating to the filing.

³ (...continued)

⁴ Id., subsection (b).

⁵ Id., subsection (i).

⁶ News Advisory, *Sensenbrenner Introduces Legislation to Combat Frivolous Involuntary Bankruptcy Cases* at [<http://www.house.gov/judiciary/news040103b.htm>].