

## **Title II—Extortionate Credit Transactions**

Title II of the conference substitute is aimed directly at the activities of organized crime. This title, which passed the House as section 102 of the House's amendment to S. 5, makes it a Federal offense to make extortionate extensions of credit, to finance the making of extortionate extensions of credit, or to collect any extensions of credit by extortionate means.

An extortionate extension of credit is defined as any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

Similarly, an extortionate means is defined as any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

### **CONSTITUTIONAL BASIS**

Article I, section 8, of the Constitution expressly empowers Congress to make "uniform laws on the subject of bankruptcies." In the exercise of this power, Congress has enacted the Bankruptcy Act, which confers on any debtor the statutory right, with certain qualifications, to be discharged of his debts by applying substantially all of his property toward their repayment. It is obvious, however, that obligations as to which there is an understanding that they may be collected by extortionate means, or which are actually so collected, are not susceptible of being "discharged" in bankruptcy in any meaningful sense. Such transactions thus deprive the debtor of a Federal statutory right, and at the same time defeat one of the principal purposes of the Bankruptcy Act, which is to afford insolvent persons the opportunity to make a fresh start. Thus, it seems clearly within the power of the Congress to protect the Federal statutory right, and to assure that the bankruptcy laws will be carried into execution, by enacting legislation to prohibit extortionate credit transactions. In addition, there is ample evidence that such transactions are being carried on on a large scale and that they have a substantial impact on interstate commerce. Section 201 of the conference substitute is an explicit statement of the foregoing rationale.

### **TECHNICAL STRUCTURE**

Section 202 adds to title 18 of the United States Code a new chapter 42 consisting of sections numbered 891 through 896. Section 891 sets forth definitions and rules of construction, the most important of which are the definitions of extortionate extensions of credit and extortionate means, which are quoted above.

### **EXTORTIONATE EXTENSION OF CREDIT**

Section 892(a) provides—

Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.