

Executive Summary of the Bankruptcy Abuse Prevention and Consumer Protection Act As Signed by the President on April 20th 2005

On April 20, 2005, President Bush signed the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” (S. 256—PL 109-8). The law takes effect 180 days after signature making October 17 the official day the law becomes effective. The purpose of the act is to improve bankruptcy law by restoring personal responsibility and integrity in the bankruptcy system and ensuring that the system is fair for both debtors and creditors. To do this, the bill makes changes impacting both consumer and business bankruptcy cases. The bill also includes numerous Consumer protection provisions. Highlights of the bill include:

Consumer Bankruptcy

- Needs-Based Reform—Implements an income/expense screening mechanism which is intended to ensure that debtors repay creditors to the maximum extent they can afford (bumps people out of Chapter 7 which gives complete relief to Chapter 11 or 13 which allows for reorganization). Replaces the current law’s presumption in favor of the debtor with a mandatory presumption of abuse that would arise under certain conditions. The court is given discretion to assess all reasonable costs, including attorney’s fees and civil penalties if the debtor’s counsel violated the Federal Rules of Bankruptcy Procedure by filing a chapter 7 (complete relief) case to begin with.
- Limits a debtor’s ability to file successive bankruptcy cases.
- Caps the amount of homestead equity a debtor may shield from creditors under certain circumstances. If the debtor was convicted of a felony, violated a securities law, or committed a criminal act or intentional tort or engaged in reckless misconduct that caused serious physical injury or death, the homestead exemption is limited to \$125,000. The debtor must have owned the homestead for 40 months to qualify for a generous state homestead exemption.
- Accords domestic and child support claimants a broad spectrum of special protections giving them the highest payment priority. Child support claimants as well as state child support agencies receive specified information and notices relevant to pending cases.
- Increases protections for secured creditors. Terminates the automatic stay with respect to personal property if the debtor does not timely reaffirm the underlying obligation or redeem the property. Specifies that a secured claimant retains its lien in a chapter 13 case until the underlying debt is paid or the debtor receives a discharge.

- Requires chapter 13 debtors to remain current on their personal property leases and to provide proof of adequate insurance. The bill addresses the problem of tenants filing for bankruptcy relief solely for the purpose of staying pending eviction proceedings.
- Requires that specified notices be given to consumers by professionals and others who provide bankruptcy assistance.
- Amends the Truth in Lending Act to require certain credit card solicitations, monthly billing statements and related materials to include disclosures and explanatory statements regarding introductory interest rates and minimum payments.
- Contains provisions that help debtors better understand their rights and obligations with respect to reaffirmation agreements. Requires the Attorney General to designate a US Attorney for each judicial district and an FBI agent for each field office to have primary law-enforcement responsibility regarding abusive reaffirmation practices.
- Allows a consumer debtor to exempt certain education IRAs and state tuition plans for a child's postsecondary education from the claims of creditors.
- Requires debtors to participate in credit counseling programs before filing for bankruptcy relief.

Business Bankruptcy

- Establishes a new form of bankruptcy relief for transnational insolvencies intended to promote international comity and greater certainty.
- Protects state ring-fencing provisions. Ring-fencing provisions require branches and agencies of foreign banks licensed to do business in the United States to keep assets in the U.S. for the protection of the branches' or agencies' creditors. This provision would keep those assets from being sent overseas for liquidation.
- Significantly restricts a corporate debtor's ability to pay bonuses, severance payments and other payments to insiders of the debtor after the bankruptcy case is filed.
- Provides heightened protections for employees of debtor companies and allows for back-pay awards to receive one of the highest payment priorities. Increases the monetary cap on wage and employee benefit claims entitled to priority from \$4,650 to \$10,000 and lengthens the reach-back period for wage claims from 90 to 180 days. Limits the ability of chapter 11 debtors to unilaterally terminate retiree benefit plans on the eve of bankruptcy.

- Addresses special problems concerning small business cases by instituting a variety of time frames and enforcement mechanisms designed to weed out small business debtors not likely to reorganize and requires these cases to be more actively monitored by the U.S. trustees and the bankruptcy courts.
- Makes several amendments in regard to single-asset real estate debtors including: eliminating the monetary cap from the definition; making them subject to all of the small business reforms; and amending the automatic stay by permitting the debtor to make requisite interest payments out of rents or other proceeds generated by the real property.
- Amends provisions of the banking, investment and bankruptcy laws to allow the expeditious termination or netting of certain types of financial transactions. (From the President's Working Group on Financial Markets)
- Makes the specialized form of bankruptcy relief (chapter 12) for family farmers permanent and extends those provisions to family fishermen. More than doubles the debt eligibility limit and requires it to be periodically adjusted for inflation. Lowers the requisite percentage of a farmer's income that must be derived from farming operations and gives farmers more flexibility with respect to how certain creditors can be repaid.
- Establishes a separate chapter under the Bankruptcy Code devoted to transnational insolvencies reflecting the consensus recommendations of the National Bankruptcy Review Commission.
- Makes it easier for a small business to defend itself from being sued by a bankruptcy trustee for monies previously paid to it by a firm that later files for bankruptcy protection (preferential transfers).
- Adds provisions intended to give patients of bankrupt health care providers various protections (including privacy concerns resulting from the bankruptcy). Authorizes the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients.
- Restricts public access to certain personal information pertaining to an individual contained in a bankruptcy case file if it creates an undue risk of identity theft or other unlawful injury. Prohibits the disclosure of the names of the debtor's minor children in the public record.
- Authorizes 28 additional bankruptcy judgeships on a temporary basis.
- And authorizes a direct appeal from a bankruptcy court decision to the court of appeals, under certain circumstances.