

## S 256

### Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

**Congress:** 109 (2005–2007, Ended)

**Chamber:** Senate

**Policy Area:** Finance and Financial Sector

**Introduced:** Feb 1, 2005

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**Law:** 109-8 (Enacted Apr 20, 2005)

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### Sponsor

**Name:** Sen. Grassley, Chuck [R-IA]

**Party:** Republican • **State:** IA • **Chamber:** Senate

### Cosponsors (12 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Carper, Thomas R. [D-DE]	D · DE		Feb 1, 2005
Sen. Enzi, Michael B. [R-WY]	R · WY		Feb 1, 2005
Sen. Hatch, Orrin G. [R-UT]	R · UT		Feb 1, 2005
Sen. Nelson, Ben [D-NE]	D · NE		Feb 1, 2005
Sen. Sessions, Jeff [R-AL]	R · AL		Feb 1, 2005
Sen. Shelby, Richard C. [R-AL]	R · AL		Feb 1, 2005
Sen. Thune, John [R-SD]	R · SD		Feb 1, 2005
Sen. Sununu, John E. [R-NH]	R · NH		Feb 3, 2005
Sen. Crapo, Mike [R-ID]	R · ID		Feb 7, 2005
Sen. DeMint, Jim [R-SC]	R · SC		Feb 7, 2005
Sen. Vitter, David [R-LA]	R · LA		Feb 16, 2005
Sen. Hagel, Chuck [R-NE]	R · NE		Mar 3, 2005

### Committee Activity

Committee	Chamber	Activity	Date
Financial Services Committee	House	Discharged From	Apr 8, 2005
Judiciary Committee	Senate	Reported By	Feb 17, 2005
Judiciary Committee	House	Reported By	Apr 8, 2005

### Subjects & Policy Tags

*No subjects or policy tags are listed for this bill.*

Related Bills

Bill	Relationship	Last Action
109 HR 685	Related bill	<b>May 13, 2005:</b> Referred to the Subcommittee on Financial Institutions and Consumer Credit.
109 HRES 211	Procedurally related	<b>Apr 14, 2005:</b> Motion to reconsider laid on the table Agreed to without objection.

**(This measure has not been amended since it was passed by the Senate on March 10, 2005. The summary of that version is repeated here.)**

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 - **Title I: Needs-Based Bankruptcy** - (Sec. 101) Amends Federal bankruptcy law to revamp guidelines governing dismissal or conversion of a Chapter 7 liquidation (complete relief in bankruptcy) to one under either Chapter 11 (Reorganization) or Chapter 13 (Adjustment of Debts of an Individual with Regular Income).

Permits the bankruptcy court to convert a Chapter 7 case to either Chapter 11 or 13 with a debtor's consent. (Current law requires the debtor's request for such a conversion.)

(Sec. 102) Permits the court upon its own motion, or upon the motion of the bankruptcy trustee, bankruptcy administrator, or any party in interest, to move for a dismissal. (Current law prohibits a party in interest from entering such motions.)

Lowers the "substantial abuse" standard for dismissal or conversion to one of simple abuse.

Replaces the presumption in favor of granting the relief sought by the debtor with a presumption that abuse exists if the debtor's current monthly income exceeds an amount determined according to specified formulae.

Prohibits inclusion of any payments for debts within the statutory calculation of debtor's applicable and actual expenses. Includes within the calculation of debtor's monthly expenses: (1) reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as identified under the Family Violence Prevention and Services Act; (2) continuation of actual expenses paid by the debtor for the care and support of an elderly, chronically ill, or disabled household or nondependent immediate family member; and (3) an additional allowance for housing and utilities based upon documented home energy expenses.

Provides that the presumption of abuse may only be rebutted with detailed documentation of special circumstances requiring additional expenses or adjustment of current monthly total income for which there is no reasonable alternative.

Prohibits the court from dismissing or converting a case based on any form of means testing, if the debtor is a disabled veteran and the indebtedness occurred primarily during a period during which he or she was: (1) on active duty or (2) performing a homeland defense activity.

Requires the debtor's counsel to reimburse the bankruptcy trustee for legal fees in prosecuting a dismissal or conversion motion if the court finds that counsel's filing under Chapter 7 was in violation of certain bankruptcy rules.

Requires the court, upon motion by the victim of a crime of violence or a drug trafficking crime (or at the request of a party in interest), to dismiss a voluntary case filed by an individual debtor convicted of that crime (unless the debtor establishes that filing of the case is necessary to satisfy a claim for a domestic support obligation).

Redefines "disposable income" of a chapter 13 debtor to exclude a domestic support obligation that first becomes payable after the date the petition is filed.

Cites circumstances under which a chapter 13 wage earner's plan may be modified after confirmation to include a special allowance for health insurance coverage.

(Sec. 103) Expresses the sense of Congress that the Secretary of the Treasury has the authority to alter Internal Revenue Service (IRS) standards established to set guidelines for repayment plans as needed to accommodate their use under the Bankruptcy Code.

Instructs the Director of the Executive Office for U.S. Trustees to report to certain congressional committees regarding the use of IRS standards for determining specified monthly debtor expenses and the impact of such standards upon debtors and the bankruptcy courts.

(Sec. 104) Revises procedural guidelines to mandate a written notice to the individual consumer debtor before commencement of a case stating: (1) the types of services available from credit counseling agencies; (2) the criminal penalties for fraudulent concealment of assets; and (3) that all creditor-supplied information is subject to examination by the Attorney General.

(Sec. 105) Instructs the Director of the Executive Office for U.S. Trustees to: (1) develop a financial management training curriculum and materials to educate individual debtors on how to better manage their finances; and (2) test, evaluate, and report to Congress on the curriculum's effectiveness.

(Sec. 106) Prohibits an individual debtor from filing under Federal bankruptcy law unless the individual has received a briefing from an approved nonprofit budget and credit counseling service prior to filing a bankruptcy petition, unless the U.S. trustee or bankruptcy administrator determines that the service for the district in which the debtor lives is not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling because of such requirement.

Exempts from such prerequisite a debtor whom the court determines is unable to comply due to incapacity, disability, or active military duty in a military combat zone.

Conditions a Chapter 7 or Chapter 13 discharge in bankruptcy upon the debtor's completion of an approved instructional course concerning personal financial management.

Requires the clerk of each district to maintain a public list of credit counseling agencies and instructional courses concerning personal financial management. Prescribes criteria for approval of such agencies and courses.

Prohibits such a counseling service from informing a credit reporting agency whether an individual debtor has received or sought personal financial management instruction. Establishes civil penalties for noncompliance.

(Sec. 107) Requires the Director of the Executive Office for United States Trustees to issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

**Title II: Enhanced Consumer Protection - Subtitle A: Penalties for Abusive Creditor Practices** - (Sec. 201) Cites circumstances under which the court may reduce a claim based upon unsecured consumer debts by up to 20 percent if the debtor can show by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on the debtor's behalf.

(Sec. 202) States that a creditor's willful failure to credit payments received from a debtor is a violation of a discharge operating as an injunction against a collection action if such failure caused material injury to the debtor (with certain exceptions).

(Sec. 203) Modifies debt reaffirmation guidelines governing wholly unsecured consumer debts to mandate specified detailed disclosures and explanations to the debtor for dischargeable debt agreements. Exempts a Credit Union creditor from such detailed disclosures and explanations.

Amends Federal criminal law to instruct the Attorney General to designate U.S. attorneys and agents of the Federal Bureau of Investigation (FBI) to implement enforcement activities relating to: (1) abusive reaffirmations of debt; and (2) materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. Directs the bankruptcy court to establish procedures referring those cases to the U.S. attorneys and FBI agents.

(Sec. 204) Preserves consumer claims and defenses against predatory loans that have been sold by the bankruptcy trustee and that are subject to either the Truth in Lending Act or any consumer credit contract.

(Sec. 205) Instructs the Comptroller General to study and report to Congress on the overall treatment of consumers within the context of the debt reaffirmation process, including recommendations for legislation to address abusive or coercive tactics.

**Subtitle B: Priority Child Support** - (Sec. 212) Revises priority payment guidelines to place within the first priority claim category certain unsecured claims for domestic support obligations, if the funds received by a governmental unit are applied in a prescribed order. Grants priority over such claims, however, to specified administrative expenses of certain trustees.

(Sec. 213) Conditions court confirmation of a debt repayment plan under Chapters 11, 12 (Debts of a Family Farmer), and 13 upon certification that the debtor has paid in full all adjudicated domestic support obligations that become due after the petition filing date.

(Sec. 214) Excepts from an automatic stay specified choses-in-action pertaining to domestic support obligations proceedings, including: (1) child custody or visitation; (2) dissolution of marriage; (3) domestic violence; (4) withholding of income that is property of the bankrupt estate for payment of domestic support obligations; (5) suspension of drivers' licenses and professional licenses; (6) reporting of overdue support owed by a parent to certain consumer reporting agencies; (7) interception of specified tax refunds; and (8) enforcement of medical obligations under title IV, part D (Child Support and Establishment of Paternity) of the Social Security Act.

(Sec. 215) Revamps guidelines governing the nondischargeability of certain debts for alimony, maintenance, and support to repeal the exceptions granted the debtor under specified conditions.

(Sec. 216) Modifies guidelines governing property exempt from the bankruptcy estate to declare such property liable for a debt arising from domestic support obligations.

(Sec. 217) Prohibits the bankruptcy trustee from avoiding a transfer that is a bona fide payment of a debt for a domestic support obligation.

(Sec. 218) Excludes income payments for postpetition domestic support obligations from "disposable income" for purposes of a Chapter 12 confirmation plan.

(Sec. 219) Sets forth the duties of the bankruptcy trustee to notify the claim holder and the appropriate State child support agency of the debtor's last known address.

(Sec. 220) Declares dischargeable any debts for certain qualified educational loans which, if not discharged, would

impose an undue hardship upon either the debtor or the debtor's dependent.

**Subtitle C: Other Consumer Protections** - (Sec. 221) Modifies guidelines governing nonattorney bankruptcy petition preparers to mandate that as a prerequisite to any collection of fees for services: (1) such preparers officially disclose to debtors that they cannot practice law or give legal advice; and (2) such disclosure be signed by the debtor and filed with the requisite court documents. Prescribes enforcement and penalty guidelines for preparer noncompliance.

(Sec. 222) Expresses the sense of Congress that States should develop curricula relating to personal finance designed for use in elementary and secondary schools.

(Sec. 223) Places in tenth order of priority death or personal injury claims against the bankrupt estate that arise from the debtor's unlawful operation of a motor vehicle or vessel while under the influence of drugs or alcohol.

(Sec. 224) Permits an individual debtor to exempt from the property of the bankrupt estate certain tax-exempt retirement funds that have not been obligated in connection with any extension of credit.

Excepts from an automatic stay certain income withheld from debtor's wages for the benefit of an employer-sponsored pension, profit-sharing, stock bonus, or other specified plan.

Excepts from a discharge in bankruptcy amounts owed by the debtor to certain plans established under the Internal Revenue Code.

Sets an asset limitation on debtor's retirement funds that debtor may exempt from the estate in bankruptcy.

(Sec. 225) Sets forth criteria for excluding certain education individual retirement accounts from the property of the bankruptcy estate if the designated beneficiary is the debtor's child or grandchild.

(Sec. 227) Sets forth restrictions on debt relief agency practices. Establishes civil penalties for intentional violations.

(Sec. 228) Requires a debt relief agency providing bankruptcy assistance to: (1) provide prescribed disclosures to the assisted person; and (2) comply with other specified contractual and advertising requirements.

(Sec. 230) Instructs the Comptroller General to study and report to Congress on the feasibility, effectiveness, and cost of requiring bankruptcy trustees to promptly provide the Office of Child Support Enforcement with a debtor's name, Social Security account, and address upon commencement of the case.

(Sec. 231) Prohibits a bankruptcy trustee from selling or leasing to unaffiliated third parties, any personally identifiable information possessed by the debtor concerning an individual if that is contrary to the debtor's privacy policy, unless specified conditions have been met, or the court approves such sale or lease after a consumer privacy ombudsman has been appointed.

(Sec. 232) Prescribes procedural guidelines for appointment of a consumer privacy ombudsman.

(Sec. 233) States that a debtor may be required to provide information regarding a minor child in a bankruptcy case, but may not be required to disclose the child's name in the public records of the case. Prohibits bankruptcy officials from disclosing the name maintained in a nonpublic record.

(Sec. 234) Restricts public access to certain information contained in bankruptcy case files by authorizing the bankruptcy court to bar disclosure of information that it finds would create undue risk of identity theft or other unlawful injury to the

individual or the individual's property.

**Title III: Discouraging Bankruptcy Abuse** - (Sec. 301) Modifies exceptions to a discharge in bankruptcy to prohibit discharge of a filing fee imposed by any court upon a prisoner.

(Sec. 302) Terminates the automatic stay 30 days after filing of a petition if a chapter 7, 11, or 13 petition was pending and dismissed within the preceding year, unless the subsequent filing is in good faith. Specifies conditions under which a history of previous petitions in bankruptcy gives rise to a rebuttable presumption that the case is not filed in good faith.

(Sec. 303) Directs the court to grant two-year relief from the automatic stay upon request of a party in interest in connection with certain real property actions if the court finds that filing the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors.

(Sec. 304) Modifies debtor's duties to mandate specified affirmative actions incumbent upon a chapter 7 debtor, including reaffirmation of the debt, or redemption of the property within 45 days, in order to retain possession of personal property. Allows a creditor to take action with respect to such property under nonbankruptcy law if the debtor fails to act within 45 days, unless the court determines upon trustee motion that such property is of consequential value or benefit to the estate.

(Sec. 305) Terminates the automatic stay governing property of the debtor's estate that secures a claim, or is subject to an unexpired lease, if the debtor fails to complete within a revised, accelerated time frame an intended surrender of consumer debt collateral, or an intended property redemption, or debt reaffirmation to retain such collateral (unless the court determines upon trustee motion that such property is of consequential value or benefit to the estate).

(Sec. 306) Requires the bankruptcy court to confirm a Chapter 13 plan if it provides that the holder of a secured allowed claim shall retain the attendant lien until payment or discharge of all debts.

Provides that if a Chapter 13 proceeding is dismissed or converted without completion of the plan, the holder shall retain such lien to the extent recognized by applicable nonbankruptcy law.

States that statutory guidelines to determine the secured status of a creditor's claim do not apply if: (1) the creditor has a purchase money security interest securing the debt; (2) the underlying debt was incurred within the 910-day period preceding the filing of the petition; and (3) the collateral for that debt consists of a motor vehicle acquired for the debtor's personal use (or if the collateral consists of any other thing of value if the debt was incurred during the one-year period preceding such filing).

(Sec. 307) Increases from 180 days to 730 days the duration of debtor's domicile for purposes of determining which State law governs the debtor's selection of property exempt from the bankrupt estate. Provides for determination of an immediately earlier domicile if the debtor's domicile has not been located in a single State for the 730-day period. Allows a debtor to exempt certain property if the effect of the domiciliary requirement is to render the debtor otherwise ineligible for any exemption.

(Sec. 308) Requires reduction of the value of the homestead exemption to the extent that it is attributable to any portion of property disposed of in the ten-year period before the petition filing date with the intent to hinder, delay, or defraud a creditor.

(Sec. 309) Revises requirements governing the effects of conversion from chapter 13 to another chapter. Declares that: (1) valuations of property and of allowed secured claims in a chapter 13 case shall not apply in a case converted to

chapter 7; and (2) with respect to cases converted from Chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full claim amount, as determined under applicable nonbankruptcy law, has been paid in full as of the conversion date. States that a prebankruptcy default shall have the effect given under applicable nonbankruptcy law unless it has been fully cured pursuant to the plan at the time of conversion.

Provides for a Chapter 7 debtor's assumption of unexpired leases of personal property. Declares that in a Chapter 11 case in which the debtor is an individual, and in a Chapter 13 case, if the lease is not assumed in the plan, it is rejected (thus no longer subject to an automatic stay).

Specifies a cash payment plan for chapter 13 debtors for payments to any lessor of personal property and to any creditor holding a claim secured by personal property in order to ensure adequate protection to the claim holder during the payment period. Requires a debtor-in-possession to provide reasonable evidence of any requisite insurance coverage with respect to the use or ownership of such property.

(Sec. 310) Revamps nondischargeability guidelines to narrow the window of dischargeability from \$1,075 to \$500, for aggregate consumer debts owed to a single creditor on luxury goods incurred within 90 days (currently 60 days) prior to the order for bankruptcy relief. Reduces, likewise, from \$1,075 to \$750, nondischargeable cash advances that are extensions of consumer credit under an open end credit plan if acquired within 70 days (currently 60 days).

(Sec. 311) Denies an automatic stay of specified residential real property eviction proceedings by a lessor against a debtor if: (1) the lessor obtained judgment for possession prior to the bankruptcy filing date; or (2) lessor furnishes certification of specified debtor offenses.

Provides a procedure by which the debtor may avoid the application of such a denial of the automatic stay of eviction proceedings.

(Sec. 312) Extends the time between Chapter 7 discharges from six to eight years. Denies a chapter 13 discharge to any debtor who has received a discharge: (1) in a chapter 7, 11, or 12 case within the preceding four years; or (2) in another chapter 13 case within the preceding two years.

(Sec. 313) Defines a debtor's household goods to include specified items. Excludes from such goods: (1) electronic entertainment equipment, antiques or jewelry with more than \$500 in aggregate fair market value; (2) works of art; (3) more than one personal computer and related equipment; and (4) motor vehicles, boats, motorized recreational devices, conveyances, vehicles, watercraft, or aircraft. Requires the Director of the Executive Office for U.S. Trustees to report to specified congressional committees about use of this definition of household goods with respect to: (1) the avoidance of nonpossessory, nonpurchase money security interests in household goods; and (2) the impact that such definition has had on debtors and on the bankruptcy courts.

(Sec. 314) Includes as nondischargeable chapter 13 debts those incurred: (1) to pay a tax to a non-Federal governmental unit; (2) for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime; (3) for fraud or defalcation while acting in a fiduciary capacity; or (4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury or death to an individual.

(Sec. 315) Prescribes notice procedures for Chapter 7 and Chapter 13 creditors.

Expands debtor's duties to require filing with the bankruptcy court of: (1) Federal tax returns; (2) evidence of employer payments received; (3) monthly net income projections; and (4) anticipated income or expenditure increases. Permits a



Chapter 7 or chapter 13 creditor to request the debtor's petition, tax schedules, and statement of affairs, including the debt adjustment plan filed by the debtor.

Requires dismissal of a Chapter 7 or 13 case upon debtor's failure to provide to the bankruptcy trustee within seven days before the initial date for the first meeting of creditors a tax return for the latest taxable period prior to filing.

Requires that, at the time of filing with the taxing authority, a Chapter 7 or 13 debtor file with the bankruptcy court specified tax documentation pertaining to the period from case commencement until case termination.

Requires a Chapter 13 debtor to file with the court a statement of income and expenditures in the preceding tax year, and monthly net income, showing how calculated.

Makes debtor's mandatory documentation available for inspection and copying to certain bankruptcy officers and any party in interest. Requires debtors to furnish driver's license, passport, or other photograph-containing documentation establishing debtor identification.

(Sec. 316) Requires automatic dismissal if a voluntary Chapter 7 or 13 debtor fails to furnish all mandatory information, or fails to timely file the requisite schedules within 45 days of filing a petition. Requires the court to order dismissal within five days of a request by a party in interest for debtor's failure to timely submit requisite documentation. Permits the court, upon trustee motion, to decline to dismiss a case if the debtor made a good faith effort to file all required information and the best interests of creditors would be served by administration of the case.

(Sec. 317) Requires a Chapter 13 confirmation hearing to be held not later than 45 days after the first meeting of creditors.

(Sec. 318) Sets forth a statutory formula to determine whether a Chapter 13 debt readjustment payment plan shall be of either three-year or five-year duration.

(Sec. 319) Expresses the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure should include a requirement that all debtors' documents be submitted to the court only after debtors have made reasonable inquiry to verify that all information therein is well grounded in fact, and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law.

(Sec. 320) Revises automatic stay guidelines to provide that in the case of an individual filing under Chapters 7, 11, or 13, the automatic stay shall terminate 60 days after a request for its release by a party in interest, unless the court orders, or the parties agree to a longer time.

(Sec. 321) Revamps guidelines governing a Chapter 11 business reorganization case filed by an individual to: (1) identify the property of the estate in bankruptcy; and (2) revise the contents, confirmation, and modification of a reorganization plan.

(Sec. 322) States that a debtor may not exempt a homestead interest acquired during the 1215-day period preceding petition filing which exceeds in the aggregate \$125,000 in value in specified real or personal property. Exempts from such limitation the principal residence of a family farmer.

(Sec. 323) Excludes employee benefit plan participant contributions from the property of the bankruptcy estate.

(Sec. 324) Amends the Federal judicial code to grant the district court presiding over a title 11 case exclusive jurisdiction

over: (1) property of the debtor and the estate in bankruptcy; and (2) actions pertaining to employment of professionals by the bankruptcy trustee, or related disclosure rules.

(Sec. 325) Revises U.S. Trustee program filing fees (currently \$155 for either chapter 7 or chapter 13) to \$200 for chapter 7 and \$150 for chapter 13. Revises requirements for deposit of portions of such fees as offsetting collections in the United States Trustee System Fund by increasing the current 27.42 percent of such fees to 40.63 percent of the chapter 7 fee and 70 percent of the chapter 13 fee. Establishes a sunset date for such increases.

Earmarks sums resulting from such filing fee increase for the salaries and benefits of additional bankruptcy judgeships created by this Act.

(Sec. 326) Exempts from the prohibition against sharing of compensation or reimbursement with respect to administrative expenses of a debtor's estate any sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services, and with rules of professional responsibility applicable to attorney acceptance of referrals.

(Sec. 327) States that, if the debtor is an individual chapter 7 or 13 debtor, the value of personal property securing an allowed claim shall be determined based on its replacement value as of the date of petition filing without deduction for costs of sale or marketing.

(Sec. 328) Revises requirements for the assumption by a trustee of a defaulted executory contract or unexpired lease. Exempts from the requirement that the trustee cure such a default any default that is a breach of a provision relating to the satisfaction of any non-penalty provision relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption. Provides, however, that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with specified law.

Makes the same exception to requirements a plan must meet to avoid impairing a class of claims or interests. Requires a plan, to avoid impairment, to compensate a claim holder for any actual pecuniary loss incurred by such holder resulting from a failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to certain requirements.

(Sec. 329) Expands permissible administrative expenses to include certain wages and benefits awarded as back pay (resulting from a debtor employer's violation of law), if the court determines that the award will not substantially increase the probability of layoff or termination of current employees or nonpayment of domestic support obligations during the case.

(Sec. 330) Instructs the court to withhold a debtor's discharge upon its reasonable belief that a proceeding is pending in which debtor may be found guilty of a felony, or become liable for specified debts.

(Sec. 331) Prescribes guidelines for the denial as an allowance as an administrative expense certain retention bonuses, severance pay, and transfers or obligations incurred for the benefit of officers, managers, or consultants hired after the date of the filing of the bankruptcy petition.

(Sec. 332) Involuntary Bankruptcy Improvement Act of 2005 - Requires the court, upon motion of an individual debtor, to

seal court records relating to an involuntary bankruptcy petition filed against such debtor (including all references to such petition) if the court had dismissed the petition because it was either false, or contained a materially false, fictitious, or fraudulent statement.

Authorizes such court to prohibit consumer reporting agencies from making any consumer report that contains information relating to such petition or to the case commenced by the filing of such petition.

Permits the court, upon the motion of the debtor and for good cause, to expunge any records relating to an involuntary bankruptcy petition upon expiration of the statute of limitations governing criminal sanctions for bankruptcy fraud.

#### **Title IV: General and Small Business Bankruptcy Provisions - Subtitle A: General Business Bankruptcy**

**Provisions** - (Sec. 401) Denies a debtor an automatic stay of: (1) the commencement of an investigation or action by a securities self-regulatory organization to enforce compliance with its regulations; (2) the enforcement of any order or decision obtained by such an organization, other than for monetary sanctions; or (3) any act taken by the securities self-regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.

(Sec. 402) Authorizes the bankruptcy court, upon request of a party in interest, to order that the U.S. trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan for which acceptances have been solicited before commencement of the case.

(Sec. 403) Increases from ten days to 30 days the length of time for the perfection of a transfer of property with respect to a trustee's authority to avoid such a transfer.

(Sec. 404) Amends guidelines for rejection and surrender of executory contracts and unexpired leases.

(Sec. 405) Authorizes the bankruptcy court, upon request of a party in interest, to order a Chapter 11 trustee to increase the membership of a committee of creditors and equity security holders to include a creditor that is a small business concern following the court's determination that such creditor holds claims of the kind represented by the committee, the aggregate amount of which is disproportionately large in comparison to the creditor's annual gross revenue. Requires such committee to provide access to information to certain creditors who are not committee members.

(Sec. 406) Prohibits the bankruptcy trustee from avoiding a warehouseman's lien for costs incidental to the storage and handling of certain goods.

(Sec. 407) Directs the bankruptcy court to treat the compensation awarded a trustee as a commission.

(Sec. 408) States that acceptance or rejection of a chapter 11 plan may be solicited from a holder of a claim or interest if: (1) the solicitation complies with applicable nonbankruptcy law; and (2) it was made before commencement of the case in a manner complying with applicable nonbankruptcy law.

(Sec. 409) Prohibits the bankruptcy trustee from avoiding a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000.

(Sec. 410) Amends the Federal judicial code to allow a bankruptcy trustee to commence a proceeding to recover a non-consumer debt against a noninsider of under \$10,000 only in the district court for the district in which the defendant resides.

Increases from \$5,000 to \$15,000 the maximum amount of a consumer debt for whose recovery a proceeding may be commenced only in the district court for the district in which the defendant resides.

(Sec. 411) Amends the bankruptcy code to limit the extensions of time permitted for filing a Chapter 11 reorganization plan.

(Sec. 412) Denies a discharge in bankruptcy for a debt for a fee or assessment arising from a debtor's interest in a lot in a homeowners association for as long as the debtor retains specified interests in such lot.

(Sec. 413) Authorizes a creditor holding a consumer debt to participate in a meeting of creditors in a chapter 7 or 13 case, either alone or in conjunction with an attorney.

(Sec. 414) Redefines "disinterested person" to repeal conflict-of-interest prohibitions that disqualify the debtor's prebankruptcy investment banker, and any attorney for such banker, from continuing advisory services as part of the debtor-in-bankruptcy proceedings.

(Sec. 415) Requires a court, in determining the amount of reasonable compensation to a professional person, to take into account whether the person is board certified or has otherwise demonstrated skill and experience in the bankruptcy field.

(Sec. 416) Terminates the appointment of an emergency bankruptcy trustee upon election at a meeting of creditors of another eligible, disinterested trustee.

(Sec. 417) Specifies actions constituting assurance of payment to a service utility a trustee or debtor must make within 20 days of the order for relief to avoid the utility's altering, refusal, or discontinuance of service. Makes additional requirements for adequate assurance of payment.

(Sec. 418) Amends the Federal judicial code to authorize the district court or bankruptcy court to waive the Chapter 7 filing fee and other attendant fees for certain Chapter 7 debtors whom the court has determined to be unable to pay fees in installments.

(Sec. 419) Directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States (Advisory Committee) to propose amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing chapter 11 debtors to disclose information relating to the value, operations, and profitability of any closely held corporation, partnership, or other entity in which the debtor holds a substantial or controlling interest.

**Subtitle B: Small Business Bankruptcy Provisions** - (Sec. 431) Sets forth mandatory factors for court consideration in determining whether the disclosure statement regarding a small business reorganization plan provides adequate information.

(Sec. 432) Defines a small business debtor, generally, as a person (including a debtor affiliate) with not more than \$2 million in aggregate non-contingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief (excluding debts owed to affiliates or insiders).

(Sec. 433) Directs the Advisory Committee to propose for adoption standardized disclosure statements and plans of reorganization for small business debtors.

(Sec. 434) Sets forth uniform national reporting requirements for small business debtors.

(Sec. 435) Directs the Advisory Committee to propose for adoption revisions to the Federal Rules of Bankruptcy

Procedure and Official Bankruptcy Forms enabling small business debtors to comply with such uniform national reporting requirements.

(Sec. 436) Sets forth duties and administrative procedures in small business reorganization cases, including serial filer provisions and expanded grounds for dismissal or conversion and appointment of a trustee.

(Sec. 443) Directs the Small Business Administration to study and report to Congress on: (1) the factors that cause small businesses to become debtors in bankruptcy; and (2) how Federal bankruptcy laws can be made more efficient in assisting small businesses to retain their viability.

(Sec. 444) Revises the circumstance precluding relief from an automatic stay of an act against secured single asset real estate by a creditor whose claim is secured by an interest in such real estate. Prohibits such relief where a debtor has commenced monthly payments to each such creditor that may, in the debtor's sole discretion, be made from rents or other income generated before or after the commencement of the case by or from the property. Requires such payments to be in an amount equal to the interest at the then-applicable nondefault contract interest rate (currently, at the fair market rate) on the value of the creditor's interest in the real estate.

(Sec. 445) Allows as an administrative expense, for the two-year period following either the later of the rejection date or date of actual turnover of the premises, all monetary obligations due from a nonresidential real property lease previously assumed and subsequently rejected under the requirements governing executory contracts and unexpired leases.

(Sec. 446) Requires a debtor who served as administrator of an employee benefit plan to continue to perform the obligations incumbent upon such service.

(Sec. 447) Confers responsibility upon the bankruptcy trustee to appoint members to a committee of retired employees.

**Title V: Municipal Bankruptcy Provisions** - (Sec. 501) Makes technical amendments to requirements for a municipal bankruptcy petition.

**Title VI: Bankruptcy Data** - (Sec. 601) Amends the Federal judicial code to require the clerk of each district, or a specially certified clerk of the bankruptcy court, to compile bankruptcy statistics for individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13. Directs the Administrative Office of the United States Courts (Administrative Office) to make such statistics public and to report them annually to Congress.

(Sec. 602) Instructs the Attorney General to issue rules requiring uniform forms for: (1) final reports by trustees in cases under chapters 7, 12, and 13; and (2) periodic reports by chapter 11 debtors or trustees in possession. Prescribes report contents.

(Sec. 603) Directs the Attorney General (in judicial districts served by U.S. trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) to establish guidelines for procedures to audit debtors.

(Sec. 604) Expresses the sense of Congress that: (1) the national policy should be that all public record data held in electronic form by bankruptcy clerks should be released in electronic form in bulk to the public subject to appropriate privacy concerns and safeguards as Congress and the Judicial Conference may determine; and (2) a bankruptcy data system should be established that employs a single set of data definitions to collect data nationwide, and that aggregates in the same electronic record all data for any particular bankruptcy case.

**Title VII: Bankruptcy Tax Provisions** - (Sec. 701) Amends the bankruptcy code to modify the treatment of certain tax liens.

(Sec. 702) Provides that a claim for debtor's liability for fuel tax which is filed by the base jurisdiction designated under the International Fuel Tax Agreement shall be allowed as a single claim.

(Sec. 703) Requires the clerk of each district to maintain a listing under which a governmental entity responsible for the collection of taxes within such district may designate an address for service of requests and describe where further information for filing such requests may be found.

(Sec. 704) Prescribes the rate of interest to be paid on mandatory interest payments on tax claims.

(Sec. 705) Revises the specifications for income tax claims receiving eighth priority (allowed unsecured claims of governmental units). Provides for tolling of the time periods covering such tax claims for stays of proceedings in a prior bankruptcy case, and the pendency or effect of offers in compromise or installment agreements.

(Sec. 707) Prohibits a Chapter 13 discharge of any debt for fraudulent tax payments.

(Sec. 708) States that confirmation of a bankruptcy plan under Chapter 11 does not discharge a corporate debtor from any debt for: (1) money or credit obtained by false representation owed to a domestic governmental unit or to a person as the result of an action filed with respect to certain claims against the Federal or a State government; or (2) a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted to evade or defeat such tax.

(Sec. 709) Limits the automatic stay of U.S. Tax Court proceedings to prepetition taxes.

(Sec. 710) Sets as a prerequisite for court confirmation of a Chapter 11 bankruptcy plan that includes tax claims, that the debtor make regular cash installment payments over a period ending not later than five years after the date of entry of the order for relief, and in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan.

(Sec. 711) Prohibits the avoidance of statutory tax liens by certain purchasers.

(Sec. 712) Amends the Federal judicial code to require officers and agents conducting any business under court authority to pay all Federal, State, and local taxes when due in the course of the business, unless it is a property tax secured by a lien against estate property which is abandoned by the bankruptcy trustee, or payment of the tax is excused under a specific bankruptcy law. Cites circumstances in which payment of such taxes may be deferred in a case pending under chapter 7 until final distribution is made.

Entitles to administrative expense priority payment certain secured and postpetition unsecured taxes incurred by the bankruptcy estate, including ad valorem property taxes.

Declares that a governmental unit shall not be required to file a request for the payment of administrative expenses relating to a tax liability or tax penalty.

Allows a trustee to recover from property securing a claim for the payment of all ad valorem property taxes relating to such property.

(Sec. 713) Requires as a condition for payment of tardily filed priority tax claims that they be filed either before the trustee commences distribution, or ten days following the mailing to creditors of the summary of the trustee's final report,

whichever is earlier (currently, before the trustee commences distribution of the estate).

(Sec. 716) Conditions court confirmation of a chapter 13 bankruptcy plan upon filing by the debtor: (1) of all prepetition tax returns; and (2) before the day on which the first meeting of the creditors is convened, of all tax returns for taxable periods ending in the four-year period that ends on the date of the filing of the petition. Directs the court to dismiss a plan or convert it to chapter 7, whichever is in the best interests of the creditors and the estate, if a chapter 13 debtor fails to comply with such time frame.

Expresses the sense of Congress that the Judicial Conference should propose for adoption amended Federal Rules of Bankruptcy Procedure pertaining to objections to tax returns and to plan confirmation.

(Sec. 717) Redefines "adequate disclosure," for Chapter 11 postpetition disclosure and solicitation purposes, to include full discussion of the potential material Federal and State tax consequences of the plan to the debtor and to a hypothetical investor that is representative of the holders of claims or interests in the case.

(Sec. 718) Denies an automatic stay (unless specified conditions are met) to the setoff of an income tax refund for a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief.

(Sec. 719) Revises special provisions related to the treatment of State and local taxes, including the creation of a separate taxable estate when such is done for Federal tax purposes.

(Sec. 720) Permits a taxing authority to petition the court to convert or dismiss a case if the debtor fails to timely file a tax return or obtain an extension, whichever is in the best interests of creditors and the estate.

**Title VIII: Ancillary and Other Cross-Border Cases** - (Sec. 801) Expands the scope of bankruptcy law to incorporate the Model Law on Cross-Border Insolvency, and to establish a statutory mechanism for: (1) dealing with cases of cross-border insolvency; and (2) cooperation between U.S. courts, trustees, and debtors and their foreign counterparts. Prescribes guidelines for: (1) access of foreign representatives and creditors to Federal and State courts; (2) recognition of a foreign proceeding and relief; (3) cooperation and direct communication with foreign courts and representatives; and (4) concurrent proceedings and the coordination of foreign and domestic proceedings.

**Title IX: Financial Contract Provisions** - (Sec. 901) Amends the Federal Deposit Insurance Act (FDIA) to redefine specified contracts, agreements, and transfers entered into with an insolvent insured depository institution before a conservator or receiver was appointed.

States that no person shall be stayed or prohibited from exercising any right to cause the acceleration of any QFC with an insured depository institution which arises upon the appointment of the Federal Deposit Insurance Corporation (FDIC) as receiver at any time after such appointment.

(Sec. 902) Amends the FDIA and the Federal Credit Union Act to prohibit construction of any provision of law as limiting the right or power of the FDIC, or the National Credit Union Administration Board, respectively, to transfer, disaffirm, or repudiate a qualified financial contract (QFC) of a failed institution, or as authorizing any court or agency, to limit or delay such FDIC action.

Prohibits enforcement of a walkaway clause in the QFC of an insured depository institution in default (a clause that either does not create a payment obligation of a party, or extinguishes it solely because of such party's status as a nondefaulting party).

(Sec. 903) Revises guidelines governing transfers of QFCs of an insolvent institution to include: (1) transfers to a foreign bank or foreign financial institution (including its branch or agency); and (2) transfers of contracts subject to the rules of a clearing organization. Defines financial institution to include a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by FDIC regulation.

Suspends certain termination rights of counterparties to a QFC with an insolvent insured depository institution until after the receiver's appointment, or after receipt of notice that the contract has been transferred.

Declares that none of the following institutions shall be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding: (1) a bridge bank; or (2) an FDIC-organized depository institution for which a conservator is appointed either immediately upon organization, or at the time of a purchase and assumption transaction between such institution and the FDIC as receiver for a depository institution in default (thereby permitting the FDIC to transfer QFCs to such entities).

(Sec. 904) Prescribes guidelines for: (1) the disaffirmance or repudiation of QFCs by the conservator or receiver for a failed depository institution; and (2) the treatment of a master agreement as a single agreement and as a single QFC. Amends the Federal Credit Union Act to declare such treatment applicable to Federal insured credit unions.

(Sec. 906) Amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to make conforming amendments with respect to: (1) bilateral netting contracts; (2) security agreements; (3) clearing organization netting contracts; (4) contracts with uninsured national banks; and (5) contracts with uninsured Federal branches or agencies.

(Sec. 907) Amends the Federal Bankruptcy Code to reflect the changes made by this Act and to: (1) deny an automatic stay to set-offs under certain swap agreements and netting agreements; and (2) restrict the avoidance power of the bankruptcy trustee regarding certain master netting agreement transfers to those transfers that are fraudulent in nature. Defines financial participants.

Sets forth statutory guidelines for: (1) the termination or acceleration of designated contracts and agreements; and (2) commodity broker and stockbroker liquidation with respect to the priority of unsecured claims, or customer property or distributions.

(Sec. 908) Amends the FDIA to authorize the FDIC to prescribe more detailed recordkeeping requirements for QFCs, including market valuations, only if an insured depository institution in troubled condition.

(Sec. 909) Exempts specified collateralization agreements from the contemporaneous execution requirement that deems invalid certain agreements against FDIC interests in certain asset acquisitions.

(Sec. 910) Amends Federal bankruptcy law to specify the timing for the measure of damages in connection with: (1) rejection by the bankruptcy trustee of designated contracts and agreements relating to executory contracts and unexpired leases; or (2) the liquidation, acceleration, or termination of such contracts and agreements.

(Sec. 911) Amends the Securities Investor Protection Act of 1970 to provide that neither the filing of a protective decree by the Securities Investor Protection Corporation, nor any court protective order, shall operate as a stay of a creditor's contractual rights to liquidate, terminate, or accelerate designated contracts and agreements. Allows such application, order, or decree, however, to operate as a stay of foreclosure on securities collateral pledged, sold, or lent by the debtor.

**Title X: Protection of Family Farmers and Family Fishermen** - (Sec. 1001) Amends the Federal bankruptcy code to



reenact Chapter 12, Adjustment of Debts of a Family Farmer with Regular Annual Income, as amended by this Act (thereby reinstating permanently family farmer bankruptcy relief).

(Sec. 1002) Provides for triennial adjustments of the debt limit for family farmers.

(Sec. 1003) Cites circumstances under which the claim of a governmental unit that arises from the disposition of a farm asset used in the debtor's farming operation shall be treated as an unsecured claim not entitled to priority.

(Sec. 1004) Increases from \$1.5 million to \$3.237 million the maximum aggregate debt that qualifies an individual, or individual and spouse engaged in a farming operation as family farmers for debt adjustment purposes. Reduces from 80 percent to 50 percent the minimum percentage of aggregate, noncontingent, liquidated debts arising out of such a farming operation.

(Sec. 1005) Repeals the requirement that the family farmer and spouse receive over 50 percent of income from farming operations in the year before a bankruptcy petition is filed. Allows such income requirement to be met during either the taxable year preceding the year in which the bankruptcy petition is filed, or the taxable year in the second and third taxable years preceding the bankruptcy petition.

(Sec. 1006) Allows the court to confirm a family farmer bankruptcy plan, notwithstanding the objection of the trustee or holder of an allowed unsecured claim, if the value of the property to be distributed under the plan in a specified period is not less than the debtor's projected disposable income for such period.

Prohibits any post-confirmation modification of a bankruptcy plan that would increase the amount of payments that were due before such modification. Provides that, unless the debtor proposes the modification, a modified plan may not: (1) require payments to unsecured creditors in any particular month greater than the debtor's disposable income for that month based on an increase in the debtor's disposable income; or (2) if the modification takes place in the plan's last year, require any payments that would leave the debtor with insufficient funds after plan completion to carry on the farming operation.

(Sec. 1007) Extends Chapter 12 coverage to family fishermen.

**Title XI: Health Care and Employee Benefits** - (Sec. 1102) Prescribes guidelines for disposal of the patient records of a health care business (not including a health maintenance organization) that commences a proceeding for debtor relief when the trustee does not have sufficient funds to pay for the storage of patient records as required by law.

(Sec. 1103) Allows as an administrative expense claim the costs of closing a health care business, including disposal of patient records and transfer of patients.

(Sec. 1104) Requires the bankruptcy court to appoint an ombudsman to represent the interests of the patients of a health care business within 30 days after commencement of a case under chapters 7 (Liquidation), 9 (Adjustment of Debts of a Municipality), or 11 (Reorganization), unless the court finds that this is not necessary for the protection of patients under the specific facts of the case.

(Sec. 1105) Requires the bankruptcy trustee to use all reasonable and best efforts to transfer to an appropriate substitute all patients from a health care business in the process of being closed.

(Sec. 1106) Denies an automatic stay to a debtor's exclusion by the Secretary of Health and Human Services from participation in the Medicare program or any other Federal health care program (thus precluding the debtor's continuation

or reinstatement in such a program).

**Title XII: Technical Amendments** - (Sec. 1201) Makes technical corrections to Federal bankruptcy, judicial, and criminal law.

Redefines single asset real estate to exclude family farms and to repeal the \$4 million ceiling on the amount of noncontingent, liquidated secured debts on such property. Defines the term "transfer" to include: (1) creation of a lien; (2) retention of title as a security interest; (3) foreclosure of the debtor's equity of redemption; and (4) every mode of disposing of property or parting with an interest in property.

(Sec. 1202) Requires triennial adjustment of the \$5,000 value of certain implements, professional books, tools of the trade, farm animals, and crops which a debtor may exempt from the property of the estate (protecting them from creditors' liens).

(Sec. 1206) Provides that a trustee or a creditors' and equity security holders' committee may pay a professional person they employ on a fixed or percentage fee basis, as well as on other bases already permitted.

(Sec. 1208) Excludes from compensable professional services any expenses incurred for an attorney or an accountant by an individual member of a creditors' and equity security holders' committee.

(Sec. 1209) Declares nondischargeable in bankruptcy a debt for death or personal injury caused by the debtor's operation of a vessel or aircraft while intoxicated from alcohol, a drug, or other substance.

(Sec. 1213) Revises guidelines governing preferences to provide that, if the trustee avoids a security interest given between 90 days and one year before the date of the filing of the petition, by the debtor to a noninsider for the benefit of a creditor that is an insider, then such security interest shall be considered to be avoided only with respect to the insider creditor.

(Sec. 1221) Permits the bankruptcy trustee to sell, use, or lease property in accordance with nonbankruptcy law governing the transfer of property by nonprofit charitable corporations, if doing so is not inconsistent with certain relief granted under the automatic stay.

(Sec. 1222) Extends from 20 to 30 days the length of time after a debtor receives possession of property for perfection of a security interest in such property created by a transfer which the trustee may not avoid.

(Sec. 1223) Bankruptcy Judgeship Act of 2005 - Amends the Federal judicial code to require appointments for additional temporary bankruptcy judgeships in California, Delaware, Florida, Georgia, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Tennessee, Virginia, South Carolina, and Nevada.

Provides that the first vacancy occurring in such district five years or more after a judge is appointed under this Act shall not be filled. Applies such prohibition specifically to certain vacancies in the Central District of California, the Southern District of Florida, and the districts of Delaware and Maryland.

Extends temporary bankruptcy judgeship positions authorized for the northern district of Alabama, and the districts of Delaware and Puerto Rico, and the eastern district of Tennessee.

(Sec. 1224) Prescribes compensation guidelines for the services and expenses of a trustee who has petitioned the court to convert or dismiss a chapter 7 case.

(Sec. 1225) Denies an automatic stay with respect to creation or perfection of a statutory lien for a special tax or special assessment on real property whether or not ad valorem, if the tax or assessment comes due after the filing of a petition for debtor relief.

(Sec. 1226) Requires the Director of the Federal Judicial Center to develop materials and conduct training useful to courts in implementing this Act.

(Sec. 1227) Cites conditions under which the rights of the trustee are subject to the right of the seller to reclaim goods received by the insolvent debtor within 45 days before commencement of the case. Sets a time-frame for seller's written demand for reclamation.

(Sec. 1228) Prohibits a court from granting a discharge in a chapter 7 case, or from confirming a reorganization plan in a chapter 11 or 13 case, unless requested tax documents have been provided to the court.

(Sec. 1229) Expresses the sense of Congress that: (1) consumer credit may sometimes be offered indiscriminately without lender action to ensure consumer repayment capacity, and in a manner which may encourage additional debt accumulation; and (2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

Instructs the Board of Governors of the Federal Reserve System to study indiscriminate solicitation and extension of credit by the credit industry. Authorizes the Board to: (1) promulgate regulations requiring additional disclosures to consumers; and (2) take measures to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

(Sec. 1230) Excludes from property of the estate in bankruptcy certain tangible personal property (other than securities or written or printed evidences of indebtedness or title) pledged or sold by the debtor as collateral for a loan or money advance, where: (1) the pledgee or transferee possesses such property; (2) the debtor has no obligation to repay or redeem; and (3) neither the debtor nor the trustee has exercised any right to redeem in a timely manner.

(Sec. 1231) Amends the Federal judicial code to authorize private trustees and standing trustees, after exhausting administrative remedies, to obtain judicial review in a U.S. district court of: (1) any suspension or termination; or (2) denial of a claim of actual, necessary expenses.

(Sec. 1233) Prescribes procedural guidelines for a court of appeals to exercise appellate jurisdiction over a bankruptcy order or decree following the submission of specified certifications.

(Sec. 1235) Declares debts incurred to pay fines or penalties imposed under Federal election law nondischargeable in bankruptcy.

**Title XIII: Consumer Credit Disclosure** - (Sec. 1301) Amends the Truth in Lending Act to require: (1) specified minimum payment warnings applicable to an open end credit plan upon which finance charges are accruing; and (2) disclosure of a toll-free number to call for an estimate of the time required to repay the balance making only minimum payments. Requires the Federal Trade Commission (FTC) to establish a toll-free number for the same purpose in the case of a creditor with respect to which the FTC is enforcing compliance with such Act. Directs the Board of Governors of the Federal Reserve System (the Board) to promulgate implementing regulations.

Authorizes the Board to study and report to Congress on the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying such borrowers for credit, repayment requirements, and the consequences of default.

(Sec. 1302) Requires additional disclosures for credit extensions secured by a dwelling that exceed such dwelling's fair market value, as well as related credit advertisements, including a statement that the interest on the excess portion of such extension is not tax deductible for Federal income tax purposes.

(Sec. 1303) Requires specified additional disclosures for: (1) introductory rates and temporary annual percentage rates of interest; (2) Internet-based credit card solicitations; and (3) late payment deadlines and penalties.

(Sec. 1306) Prohibits a creditor from terminating an open end consumer credit account before its expiration date solely because finance charges have not been incurred on such account.

(Sec. 1307) Authorizes the Board to study and report to Congress on certain consumer protections limiting consumer liability for unauthorized use of a debit card or similar access device.

(Sec. 1308) Instructs the Board to study and report to Congress on the impact that credit extensions to dependent students enrolled in postsecondary educational institutions have upon the rate of Federal bankruptcy cases.

(Sec. 1309) Instructs the Board to promulgate regulations to provide guidance regarding the meaning of the term "clear and conspicuous" as used in the Truth in Lending Act.

**Title XIV: Preventing Corporate Bankruptcy Abuse** - (Sec. 1401) Extends the look-back period for employee priority wages and benefits from 90 days to 180 days prior to bankruptcy (or cessation of debtor's business). Raises the ceiling for those wages and benefits entitled to third order priority from \$4,000 to \$10,000.

(Sec. 1402) Extends from one year to two years the look-back period during which the bankruptcy trustee may avoid fraudulent transfers and obligations incurred by either a debtor or partnership debtor under an employment contract and not in the ordinary course of business, including any transfer to or for the benefit of an insider, or any obligation incurred to or for the benefit of an insider.

Empowers the trustee to avoid any transfer of an interest of the debtor in property that was made on or within ten years before the date of the filing of the petition, if: (1) such transfer was by the debtor to a self-settled trust or similar device of which the debtor is a beneficiary; and (2) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(Sec. 1403) Instructs the court, upon motion of a party in interest, to order reinstatement of retiree benefits if the debtor modified them during the 180-day period prior to petition filing and was insolvent on the date of modification (unless the court finds that the balance of the equities clearly favors such modification).

(Sec. 1404) Declares nondischargeable in bankruptcy the debt of an individual that results before, on, or after the date on which the petition in bankruptcy was filed. Identifies the effective date of such nondischargeability as July 30, 2002, (the date of enactment of the Sarbanes-Oxley Act).

(Sec. 1405) Requires the bankruptcy trustee to move for the appointment of a trustee if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief execut

## Actions Timeline

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- **Apr 20, 2005:** Signed by President.
- **Apr 20, 2005:** Signed by President.
- **Apr 20, 2005:** Became Public Law No: 109-8.
- **Apr 20, 2005:** Became Public Law No: 109-8.
- **Apr 15, 2005:** Presented to President.
- **Apr 15, 2005:** Presented to President.
- **Apr 14, 2005:** Rule H. Res. 211 passed House.
- **Apr 14, 2005:** Considered under the provisions of rule H. Res. 211. (consideration: CR H1993-2077)
- **Apr 14, 2005:** Rule provides for consideration of S. 256 with 1 hour of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. The rule waives all points of order against the bill and against its consideration. Measure will be considered read. Bill is closed to amendments.
- **Apr 14, 2005:** DEBATE - The House proceeded with one hour of debate on S. 256.
- **Apr 14, 2005:** The previous question was ordered pursuant to the rule.
- **Apr 14, 2005:** Ms. Schakowsky moved to recommit with instructions to Judiciary.
- **Apr 14, 2005:** Floor summary: DEBATE - The House proceeded with ten minutes of debate on the Schakowsky motion to recommit with instructions.
- **Apr 14, 2005:** The previous question on the motion to recommit with instructions was ordered without objection.
- **Apr 14, 2005:** On motion to recommit with instructions Failed by the Yeas and Nays: 200 - 229 (Roll no. 107). (consideration: CR H2074)
- **Apr 14, 2005:** Passed/agreed to in House: On passage Passed by the Yeas and Nays: 302 - 126 (Roll no. 108).(text: CR H1993-2047)
- **Apr 14, 2005:** On passage Passed by the Yeas and Nays: 302 - 126 (Roll no. 108). (text: CR H1993-2047)
- **Apr 14, 2005:** Motion to reconsider laid on the table Agreed to without objection.
- **Apr 14, 2005:** Cleared for White House.
- **Apr 13, 2005:** Rules Committee Resolution H. Res. 211 Reported to House. Rule provides for consideration of S. 256 with 1 hour of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. The rule waives all points of order against the bill and against its consideration. Measure will be considered read. Bill is closed to amendments.
- **Apr 8, 2005:** Reported by the Committee on Judiciary. H. Rept. 109-31, Part I.
- **Apr 8, 2005:** Reported by the Committee on Judiciary. H. Rept. 109-31, Part I.
- **Apr 8, 2005:** Committee on Financial Services discharged.
- **Apr 8, 2005:** Committee on Financial Services discharged.
- **Apr 8, 2005:** Placed on the Union Calendar, Calendar No. 14.
- **Mar 16, 2005:** Committee Consideration and Mark-up Session Held.
- **Mar 16, 2005:** Ordered to be Reported by the Yeas and Nays: 22 - 13.
- **Mar 15, 2005:** Referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
- **Mar 15, 2005:** Referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
- **Mar 15, 2005:** Referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
- **Mar 14, 2005:** Received in the House.
- **Mar 14, 2005:** Held at the desk.
- **Mar 14, 2005:** Message on Senate action sent to the House.
- **Mar 10, 2005:** Considered by Senate. (consideration: CR S2416-2417, S2424-2428, S2459-2462, S2462-2474)
- **Mar 10, 2005:** Passed/agreed to in Senate: Passed Senate with amendments by Yea-Nay. 74 - 25. Record Vote Number: 44.(text: CR 3/11/2005 S2531-2585)

- Mar 10, 2005:** Passed Senate with amendments by Yea-Nay. 74 - 25. Record Vote Number: 44. (text: CR 3/11/2005 S2531-2585)
- **Mar 9, 2005:** Considered by Senate. (consideration: CR S2306-2342)
  - **Mar 8, 2005:** Considered by Senate. (consideration: CR S2200-2216, S2216-2230)
  - **Mar 8, 2005:** Cloture on the bill invoked in Senate by Yea-Nay Vote. 69 - 31. Record Vote Number: 29. (consideration: CR S2216)
  - **Mar 7, 2005:** Considered by Senate. (consideration: CR S2111-2143)
  - **Mar 4, 2005:** Considered by Senate. (consideration: CR S2053-2081)
  - **Mar 4, 2005:** Cloture motion on the bill presented in Senate. (consideration: CR S2053-2054; text: CR S2053-2054)
  - **Mar 3, 2005:** Considered by Senate. (consideration: CR S1979-1997)
  - **Mar 2, 2005:** Considered by Senate. (consideration: CR S1892-1927)
  - **Mar 1, 2005:** Considered by Senate. (consideration: CR S1820-1831, S1834-1857)
  - **Mar 1, 2005:** The committee amendments agreed to by Unanimous Consent.
  - **Feb 28, 2005:** Measure laid before Senate by unanimous consent. (consideration: CR S1726-1788; text of measure as reported in Senate: CR S1726-1779)
  - **Feb 17, 2005:** Committee on the Judiciary. Ordered to be reported with amendments favorably.
  - **Feb 17, 2005:** Committee on the Judiciary. Reported by Senator Hatch for Senator Specter with amendments. Without written report.
  - **Feb 17, 2005:** Committee on the Judiciary. Reported by Senator Hatch for Senator Specter with amendments. Without written report.
  - **Feb 17, 2005:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 14.
  - **Feb 10, 2005:** Committee on the Judiciary. Hearings held. Hearings printed: S.Hrg. 109-1014.
  - **Feb 1, 2005:** Introduced in Senate
  - **Feb 1, 2005:** Read twice and referred to the Committee on the Judiciary. (text of measure as introduced: CR S768-821)