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## The “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” in the 109<sup>th</sup> Congress

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## **Summary**

S. 256, the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” (BAPCPA), 109<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2005) was passed by the Senate with several amendments on March 10, 2005. The House passed the Senate version, without amendment, on April 14, 2005. The bill was signed into law, P.L. 109-8, by President Bush on April 20, 2005. The new law addresses many areas of bankruptcy practice, including consumer filings, small business bankruptcy, tax bankruptcy, ancillary and cross-border cases, financial contract provisions, amendments to chapter 12 governing family farmer reorganization, and health care and employee benefits. This report surveys selected provisions of the new law.

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# The “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” in the 109<sup>th</sup> Congress

## Introduction

After many years of deliberation and debate, Congress passed major bankruptcy reform legislation. S. 256, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2005) was passed by the Senate with several amendments on March 10, 2005. The Senate version was passed by the House, without amendment, on April 14, 2005. The Bankruptcy Abuse Prevention and Consumer Protection Act, P.L. 109-8, was presented to President Bush and signed into law on April 20, 2005.

The U.S. Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, is divided into eight chapters — chapters 1, 3, 5, 7, 9, 11, 12, and 13. Chapters 1, 3, and 5 govern general procedures involving management and administration of the bankruptcy estate which are applicable, as specified, to the operative chapters. Chapters 7 through 13, the operative chapters, address the different forms of bankruptcy relief. Chapter 7 governs liquidation; chapter 11 governs business reorganization; chapter 12, family farmer reorganization; and, chapter 13, consumer reorganization.

Also codified under Title 11 of the United States Code are the Rules of Bankruptcy Court and officially authorized bankruptcy forms.

## S. 256 in the Senate

The bill was reported favorably by the Senate Judiciary Committee on February 17, 2005, with several amendments. Among them are provisions which

- add health and disability insurance and health savings account expenses for the debtor and dependents as allowable monthly expenses under the means test;
- impose standards and limitations for court approval of executive retention bonuses and severance pay. A bankruptcy court may not approve a retention bonus unless the payment is essential to the retention of the individual who has a bona fide job offer from another business; the individual’s services are essential; and the payment is not greater than either 10 times the amount of payments made to non-managerial employees, or, if no such payments were made, then 25 percent of executive compensation payments made during the year before the bankruptcy filing. Severance payments are limited as well. New § 331;

- makes nondischargeable any liability for violation of a federal securities law regardless of whether the liability arises before, during, or after the bankruptcy filing. New § 1404; and
- directs the U.S. Trustee to move for appointment of a chapter 11 bankruptcy trustee when there are reasonable grounds to suspect members of the debtor's governing body have participated in fraud, dishonesty, or criminal conduct in the management of the debtor or its public financial reporting. New § 1405.

The Senate took up consideration of the bill on March 1, 2005, and passed it by a vote of 74 to 25 on March 10, 2005.<sup>1</sup> Of 56 amendments offered, 8 were accepted. Among floor amendments adopted were provisions:

- to amend the criteria to rebut the presumption of bankruptcy abuse to specify that "special circumstances" may include a serious medical condition or a call to active duty military service;<sup>2</sup>
- to add a new § 234 to the bill entitled "Protection of Personal Information." This provision would replace 11 U.S.C. § 107(b) and amend 11 U.S.C. § 342(c) with language that substantially broadens the authority of the bankruptcy court to protect personal information about the debtor in bankruptcy documents;<sup>3</sup>
- to increase bankruptcy filing fees to support the U.S. Trustee System Fund and new bankruptcy judgeships;<sup>4</sup>
- to add new monetary categories that are adjusted at three-year intervals under 11 U.S.C. § 104. New categories include the value of exemptible household goods, property that may be excluded from the bankruptcy estate; property that may *not* be claimed as an avoidable preference; and, the formula for determining whether a chapter 13 debtor will be subject to a three or five-year reorganization plan;<sup>5</sup>
- to add a new § 332 to the bill entitled the "Involuntary Bankruptcy Improvement Act of 2005." It would amend 11 U.S.C. § 303 governing involuntary bankruptcy filings to give debtors remedies against involuntary filings made by creditors asserting false, fictitious, or fraudulent statements;<sup>6</sup>
- to amend § 106 of the bill to liberalize the jurisdictional requirement that a debtor receive credit counseling within 180 days prior to filing. Allows the court to waive or postpone the requirement if the debtor can demonstrate exigent circumstances. Amends 11 U.S.C. § 521 to submit a sworn statement asserting exigent circumstances.

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<sup>1</sup> Rollcall vote no. 44, 151 CONG. REC. S2474 (Daily ed. Mar. 10, 2005).

<sup>2</sup> S.Amdt. 23.

<sup>3</sup> S.Amdt. 26

<sup>4</sup> S.Amdt. 48.

<sup>5</sup> S.Amdt. 87.

<sup>6</sup> S.Amdt. 91. Cf. H.R. 1529, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

“Exigencies” include eviction, home foreclosure or utility shutoff that would deprive the debtor of property or necessary services before the debtor could obtain counseling; lack of transportation; disability, or circumstances beyond the debtor’s control. Requires that in order to be federally-approved, credit counseling agencies must charge a reasonable fee and provide services without regard to ability to pay the fee;<sup>7</sup>

- to exempt disabled veterans from the means test if indebtedness occurs primarily during a period during which the debtor veteran was on active duty or performing homeland defense activities;<sup>8</sup> and,
- to amend 11 U.S.C. § 548 governing fraudulent transfers to provide that a trustee may avoid a transfer made by a debtor within 10 years of bankruptcy if the transfer is made to a self-settled trust such as an asset protection trust if the debtor makes the transfer, is the beneficiary of the trust, and makes the transfer with actual intent to hinder, delay or defraud creditors.<sup>9</sup>

Many of the amendments that were not adopted had also been introduced in previous congresses, such as amendments to regulate various credit extension practices or to raise the minimum wage.<sup>10</sup> The amendment sponsored by Senator Schumer to prohibit the discharge of debts resulting from a debtor’s unlawful interference with the provision of lawful goods or services, which had been incorporated into Senate-passed bankruptcy bills in the 106<sup>th</sup> and 107<sup>th</sup> Congresses, was defeated.<sup>11</sup> Another amendment failed which would prohibit an investment banker for any outstanding security of the debtor within five years of the filing from being a “disinterested person.”<sup>12</sup> Although investment bankers were *not* disinterested persons under prior 11 U.S.C. § 101(14), § 414 of P.L. 109-8 amends the Code to allow them to be considered as such. The disinterested person standard was intended to ensure that professionals who advise a company in bankruptcy have no conflicts of interest.<sup>13</sup> Only “disinterested persons” may provide professional services to the debtor in the course of bankruptcy pursuant to 11 U.S.C. § 327(a).

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<sup>7</sup> S.Amdt. 92.

<sup>8</sup> S.Amdt. 112.

<sup>9</sup> S.Amdt. 121.

<sup>10</sup> *See, e.g.*, S. Amdts. 19, 31, 38, 40, and 44.

<sup>11</sup> S.Amdt. 47.

<sup>12</sup> S.Amdt. 83.

<sup>13</sup> 151 CONG. REC. S2328 (daily ed. March 9, 2005)(“If the bill is passed in its current form, the investment banks that advised or underwrote securities for companies such as Enron or WorldCom prior to bankruptcy, having advised or underwritten those securities, could then be hired to represent the interests of the defrauded creditors during the bankruptcy proceeding. Just think of this. The people who were involved in putting the creditors and the investors and the people whose pension money was in there, the people who were involved putting all their money at risk, can now be hired to represent their interest.”)(statement of Sen. Sarbanes).

**S. 256 in the House.** The House Judiciary Committee reported S. 256 favorably on April 8, 2005.<sup>14</sup> The bill passed the House without amendment on April 14, 2005 by a vote of 302 to 126.<sup>15</sup>

## Survey of Selected Provisions

The BAPCPA addresses many areas of bankruptcy practice, including consumer filings, small business bankruptcy, tax bankruptcy, ancillary and cross-border cases, financial contract provisions, amendments to chapter 12 governing family farmer reorganization, and health care and employee benefits.

The chart below surveys selected provisions of the new law.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<b>Means test, 11 U.S.C. § § 704, 707:<sup>16</sup></b>	
<i>Implementation</i>	Would amend 11 U.S.C. § 707 to permit creditors, the trustee, or any party in interest to challenge a debtor's eligibility to file under chapter 7. If indicated, the U.S. trustee must file a statement that the debtor's case is a presumed abuse of chapter 7. § 102.
<i>Definition of "current monthly income"</i>	Excludes Social Security benefits; payments to victims of war crimes or crimes against humanity; and payments to victims of international terrorism . § 102.

<sup>14</sup> See H.Rept. 109-31, Part 1, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2005).

<sup>15</sup> Rollcall vote no. 108, 151 CONG. REC. H2076 (Daily ed., Apr. 14, 2005).

<sup>16</sup> For more background on the means test, see CRS Report RS22058, *Bankruptcy Reform: The Means Test* by Mark Jickling.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>Presumed abuse</i>	<p>Debtor presumed to be abusing chapter 7 if current monthly income, excluding allowed deductions, secured debt payments, and priority unsecured debt payments, multiplied by 60, would permit a debtor to pay not less than the lesser of (a) 25% of nonpriority unsecured debt or \$6,000 (or \$100 a month), whichever is greater, or (b) \$10,000.</p> <p>In addition to the means test, the court may find that the debtor's filing was in bad faith or that the totality of the circumstances demonstrates abuse. § 102.</p>
<i>Calculation of permissible monthly living expenses</i>	<p>Expenses to be calculated as specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides. Expenses include reasonably necessary health insurance, disability insurance, and health savings account expenses for a debtor, the debtor's spouse, or dependents. A debtor may also subtract, if reasonably necessary, an allowance of up to 5% of the IRS food and clothing categories.</p> <p>Individualized expenses may include debts incurred to protect the debtor's family from domestic violence; actual expenses for the care and support of nondependent, elderly, ill or disabled household or family members; private or public school tuition of up to \$1,500 per year; administrative expenses for chapter 13 candidates; average monthly expenses for secured and priority debts; actual expenses for housing and utilities, if reasonably necessary; and, charitable contributions of up to 15% of gross income.</p> <p>Dollar amounts will be adjusted at three-year intervals in accordance with the Consumer Price Index. § 102.</p>
<i>To rebut the presumption of abuse</i>	<p>A debtor must demonstrate and justify "special circumstances" such as a serious medical condition or active military service in order to adjust current monthly income determination. § 102.</p>



<b>Selected Provisions</b>	<b>P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.</b>
<i>Safe harbor exemption from the means test</i>	<p>Only the judge, U.S. trustee or bankruptcy administrator may bring an abuse motion if the debtor's current monthly income is less than the applicable state median family income.</p> <p>No party may make a motion to dismiss or convert the debtor to chapter 13 under the means test if the debtor (and spouse combined) have a monthly income equal to or less than the state median household income reported by the Bureau of the Census.</p> <p>A disabled veteran whose indebtedness occurred primarily during active duty or while performing homeland defense is exempt from the means test. § 102.</p>
<i>IRS Living Standards applicable to chapter 13 reorganization plan</i>	<p>A chapter 13 debtor's "disposable income" which may be directed to the repayment plan will be calculated in accordance with IRS Living Standards if the debtor meets the applicable means test for state median family income.</p> <p>A chapter 13 debtor may deduct from plan payments the costs of health insurance; domestic support obligations; charitable contributions of up to 15% of gross income; and expenses necessary to operate a business. § 102.</p>
<i>Attorney sanctions for improper motion</i>	<p>If a panel trustee brings a successful motion for dismissal or conversion, counsel for the debtor may be liable to reimburse the trustee for costs, attorneys' fees, and payment of a civil penalty if the court finds a violation of Bankruptcy Rule 9011.</p> <p>An attorney's signature on the bankruptcy petition certifies that the attorney has performed an investigation into the circumstances that gave rise to the petition; that the attorney has determined that the petition is well grounded in fact and is warranted by existing law; and that the attorney has no knowledge after an inquiry that the information in accompanying schedules is incorrect. § 102.</p>
<i>Restrictions on "debt relief agencies"</i>	<p>Imposes sanctions on entities defined to be debt relief agencies, including debtors' bankruptcy attorneys, for specified misrepresentations and misleading statements or counsel. § 227.</p>

<b>Selected Provisions</b>	<b>P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.</b>
<i>Creditor sanctions for an improper motion</i>	The court may award the debtor costs for contesting an unsuccessful motion to convert if the court finds that the motion violated Rule 9011, or was intended to coerce the debtor into waiving rights under the Bankruptcy Code. A small business creditor whose claim is less than \$1000 is not liable for sanctions. § 102.
<i>Dismissal of filings by persons convicted of violent crimes or drug trafficking</i>	A crime victim or party in interest may request dismissal of the voluntary bankruptcy case of the convicted debtor. The court must grant the dismissal unless the filing is necessary to satisfy a domestic support obligation. § 102.
<b>Selected consumer provisions</b>	
<i>Mandatory credit counseling</i>	<p>Debtor must undergo credit counseling within 180 days of filing, and may not obtain a discharge until completion of a personal financial management instructional course.</p> <p>The jurisdictional filing requirement may be waived or postponed if the debtor certifies exigent circumstances such as pending eviction, foreclosure, lack of transportation, disability, or circumstances beyond the debtor's control.</p> <p>The U.S. trustee or bankruptcy administrator for the judicial district is directed to oversee and approve nonprofit budget and credit counseling agencies. § 106.</p>
<i>Promotion of alternative dispute resolution</i>	A creditor's allowable claim may be reduced by 20% if a court finds that the creditor "unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency that provides repayment of at least 60% of the debt, and the debtor can prove by "clear and convincing" evidence that a creditor unreasonably refused to consider the offer." § 201.
<i>Reaffirmation agreements</i>	Imposes enhanced requirements for approval of a reaffirmation agreement when the debtor is not represented by counsel but exempts credit unions from creditor disclosure requirements; requires U.S. Attorney and FBI to investigate abusive reaffirmation practices. § 203.
<i>Preserving defenses against predatory lenders</i>	Amends 11 U.S.C. § 363 to add a new subsection preserving defenses that a party to a consumer credit transaction may have if the contract is sold by a debtor in bankruptcy. § 204.
<i>GAO reaffirmation study</i>	Requires a study of reaffirmation practices and a report to Congress. § 205.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>Domestic support owed to individuals and government units made first priority</i>	<p>Would move domestic support obligations to first priority, which is currently allocated to administrative expenses of the bankruptcy estate. Administrative expenses would become second priority.</p> <p>However, if a trustee is appointed under chapter 7, 11, 12, or 13, the trustee's expenses may be paid before domestic support. § 212.</p>
<i>Trustee notification of child support claim holders</i>	<p>Would direct the trustee to notify a priority child support recipient of the existence of a state child support enforcement agency, and, upon discharge, the existence of nondischargeable and reaffirmed debt. § 219.</p>
<i>Priority assigned to claims for liability incurred by the debtor DUI</i>	<p>A new § 507 tenth priority is created for unsecured claims for liability incurred by a debtor from operating a vessel while under the influence of alcohol or drugs. Claims of this nature are also nondischargeable. § 223.</p>
<i>Retirement savings exemption broadened</i>	<p>Would clarify and expand the law to provide that retirement accounts that are tax exempt under the Internal Revenue Code are exempted from the debtor's estate up to a \$1,000,000 cap, which may be increased if "the interests of justice so require." § 224.</p>
<i>Exemption for saving for postsecondary education</i>	<p>Subject to certain IRS requirements, excludes funds up to \$5000 per specified beneficiary made within a year of filing in an education individual retirement account and/or any funds used to purchase a tuition credit or certificate under a qualified state tuition program. §225.</p>
<i>Protection of nonpublic personal information and consumer privacy ombudsman</i>	<p>Prohibits the transfer by the debtor of personal customer information unless approved by the court. Provides for the appointment of a consumer privacy ombudsman if a debtor wishes to sell or lease such information. §§ 231, 232.</p>
<i>Prohibition on disclosure of identify of minor children</i>	<p>Debtor may not be required to disclose the name of a minor child in public records. U.S. trustee or auditor may have access to nonpublic records maintained by the court. § 233.</p>
<i>Lien stripping on security interests in consumer goods (cramdown)</i>	<p>Chapter 13 debtors would not be permitted to bifurcate security interests in an automobile purchased within 910 days (2½ years) before the filing; or in other consumer goods purchased within one year of the filing. § 306.</p>

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>Homestead exemption</i>	<p>Definition of “debtor’s residence” includes mobile homes or trailers. § 306.</p> <p>Imposes lengthened residency requirements to qualify for state exemption. § 307.</p> <p>Reduces the value of the exemption if the value is attributable to property that the debtor disposed of within 10 years of bankruptcy with the intent to hinder, delay or defraud a creditor. § 308.</p> <p>Debtors’ electing a state homestead exemption may not exempt any interest acquired within 1215 days (3.3 years) of filing which exceeds in the aggregate \$125,000, unless the value in excess of that amount occurs from a transfer of residences within the same state. Exempts family farmers from the limit. Limitations may not apply to amounts reasonably necessary to support the debtor and any dependents.</p> <p>Imposes a firm \$125,000 cap on an individual who is convicted of specified felonies (including violations of federal securities laws) or who commits criminal acts, intentional torts, or willful or reckless misconduct that caused serious physical injury or death within five years preceding the bankruptcy filing. § 322.</p>
<i>Residential lease excepted from the automatic stay</i>	<p>Adds new provisions permitting a landlord/lessor to bypass the automatic stay to continue with a residential eviction of a tenant/lessee. § 311.</p>
<i>Restrictions on chapter 7 and chapter 13 filings.</i>	<p>Extends time within which a debtor who has received a chapter 7 discharge may not receive another from six to eight years.</p> <p>Amends chapter 13 to disallow discharge if the debtor filed under chapters 7, 11, or 12 within four years prior to the 13 filing, or under chapter 13, within two years of the subsequent filing. § 312.</p>
<i>Definition of “household goods”</i>	<p>Defines household goods to include clothing, furniture, appliances, 1 radio, 1 television, 1 VCR, other electronic entertainment equipment with a market value of under \$500, linens, china, crockery, kitchenware, educational materials used by minor dependent children, medical equipment and supplies, furniture used exclusively by minors and disabled or elderly dependents, personal effects, 1 personal computer and antiques and jewelry with a value less than \$500. § 313.</p>
<i>Debtor’s duty to disclose tax filings.</i>	<p>Modifies debtor filing requirements under 11 U.S.C. § 521 to include federal tax returns. § 315.</p>

<b>Selected Provisions</b>	<b>P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.</b>
<i>Plan duration</i>	Chapter 13 plans to have five year duration for families whose monthly income is not less than the highest state median family income. Families below the highest state median income would have three year plans. § 318.
<i>Wages withheld by an employer for contributions to employee benefit plans</i>	Withheld wages for contributions to employee benefit plans would be excluded from the debtor (employer's) estate. § 323.
<i>Valuation of collateral</i>	A secured creditor's allowable claim would be the retail cost to replace the item without deduction for costs of sale or marketing. Personal property's replacement value would be the price a retail merchant would charge for like items. § 327.
<i>Wages and benefits awarded as back pay</i>	Makes specified prepetition and postpetition wages and benefits awarded as back pay in a judicial proceeding a high-priority administrative expense. § 329.
<i>Audit</i>	The Attorney General is directed to establish a procedure to ensure random audits of no less than 1 out of every 250 individual filings; the U.S. trustee is authorized to enter into contracts with auditors, and to take action when misstatements in the debtor's petition and schedules are identified. § 603.
<b>Nondischargeable debts</b>	
<i>Debts to government units for domestic support</i>	Defines "domestic support obligation" to include debts owed to or recoverable by a governmental unit. §§ 211, 215.
<i>Expanded definition of student loan</i>	Adds qualified educational loans as defined under § 221 of the IRC to those educational loans that are currently nondischargeable. § 220.
<i>Loan repayments to debtor's retirement savings or thrift plan</i>	Makes nondischargeable, i.e., allows an employer to continue to withhold, loan repayments to debtor's savings/retirement plan from debtor's wages. § 224(c).
<i>Consumer debts presumed fraudulent</i>	Consumer debts owed to a single creditor for more than \$550 for "luxury goods" incurred within 90 days of filing; and cash advances for more than \$750 under an open end credit plan within 70 days of filing are presumed to be nondischargeable. § 310.
<i>Debts incurred to pay nondischargeable debts are nondischargeable</i>	Debts incurred to a third party to pay a tax to a state or local government unit become nondischargeable. § 314.
<i>Debts under chapter 7 made nondischargeable under chapter 13</i>	Under current law, some debts that are nondischargeable under chapter 7 can be partially paid and subsequently discharged under chapter 13. Amends 11 U.S.C. § 1328 to make more categories of debt which are fully nondischargeable under chapter 7 fully nondischargeable under chapter 13 as well. § 314.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>Expanded definition of nondischargeable condominium and homeowners association fees</i>	Expands the types of post-petition condo and homeowners association fees that are nondischargeable by omitting requirement that in order to be nondischargeable the debtor must reside in the residence postpetition. § 412.
<i>FEC penalties nondischargeable</i>	Fines and penalties under federal election law are made nondischargeable. § 1235.
<i>Liability for violation of securities laws nondischargeable</i>	Amends 11 U.S.C. § 523(a)(19) which makes liability for violation of securities laws nondischargeable to provide that the violations and judgments therefor may occur prior to or <b>after</b> the bankruptcy filing. § 1404.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<b>Consumer credit disclosure</b>	
<i>Amendments to the Truth in Lending Act (TILA)</i>	TILA amended to require enhanced minimum payment disclosures under an open end credit plan; enhanced disclosures regarding the tax deductibility of credit extensions which exceed the fair market value of a dwelling for credit transactions secured by the consumer's dwelling; disclosures related to introductory "teaser" rates; disclosures related to Internet-based open end credit solicitations; and disclosures related to late payment deadlines and penalties. TILA would be amended to prohibit termination of a credit account because the consumer has not incurred finance charges. §§ 1301-1306.
<i>Study of bankruptcy impact of credit extended to dependent students</i>	The Board of Governors of the Federal Reserve is directed to study bankruptcy impact of credit extensions to students in postsecondary school. § 1308.
<i>Consumer credit studies</i>	The Board of Governors of the Federal Reserve is directed to study existing protections for consumers for unauthorized use of a dual use debit card. § 1307.
<b>Business bankruptcy</b>	
<i>Limitation on executive retention bonuses and severance payments</i>	Amends 11 U.S.C. § 503 governing allowable expenses to impose standards and limitations for court approval of executive retention bonuses and severance pay. A bankruptcy court could not approve a retention bonus unless the payment is essential to retain the individual who has a bona fide job offer from another business; the individual's services are essential; and the payment is not greater than either 10 times the amount of payments made to non-managerial employees, or, if no such payments were made, then 25 percent of executive compensation payments made during the year before the bankruptcy filing. Severance payments are limited as well. § 331
<i>Trustee to appoint retiree committees</i>	Amends 11 U.S.C. § 1114 to provide that in the event that a retiree committee is appointed, the appointment of members will be made by the U.S. Trustee, not the court. § 447.
<i>Increased employee wage and benefit priority</i>	Increases the high-priority categories for employee wages and benefits from \$4925 earned within 90 days of filing to \$10,000 earned within 180 days of filing. § 1401.
<i>Retiree insurance benefits</i>	Amends 11 U.S.C. § 1114 to allow the court to reinstate retiree benefits that are modified by a debtor within 180 days <i>prior</i> to the bankruptcy filing unless the court finds that the balance of equities supports such modifications. § 1403.

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>U.S. Trustee to appoint chapter 11 trustee</i>	Amends 11 U.S.C. § 1104 to direct the U.S. Trustee to seek appointment of a trustee in a chapter 11 case if there are reasonable grounds to suspect fraud, dishonesty, or criminal conduct by the debtor's governing body in management of the debtor or its public financial reporting. § 1405.
<i>Avoidable preferences</i>	Amends 11 U.S.C. § 547 to liberalize the rules for defending against an avoidable transfer in the ordinary course of business; creates a new preference exception to aggregate transfers of less than \$5,000. § 409.
<i>Fraudulent transfers</i>	<p>Amends 11 U.S.C. § 548 to increase the time period for setting aside certain fraudulent transactions from one year to two and expressly includes certain transfers made pursuant to an employment contract.</p> <p>Allows the avoidance of self-settled trusts such as asset protection trusts created within ten years of filing when the transfer was by the debtor, for the benefit of the debtor, and was made with intent to hinder, delay or defraud creditors. § 1402.</p>
<i>Small business bankruptcy</i>	<p>Subtitle B of Title IV has provisions defining a "small business" for chapter 11 purposes as one with debts under \$2,000,000. The debtor's period of exclusivity to file a reorganization plan is 180 days. A plan and disclosure statement must be filed within 300 days of the initial filing.</p> <p>A plan must be confirmed within 45 days of filing in bankruptcy. § 438.</p> <p>Provisions require establishment of uniform accounting and reporting standards for small businesses. Grounds for appointment of a trustee and the trustee's general supervisory duties are expanded, as are grounds for dismissal or conversion of the case. §§ 431-442.</p>
<i>Health care business bankruptcy</i>	<p>Defines a broad variety of service-providing health care business, including skilled nursing facilities, assisted-living facilities and homes for the aged.</p> <p>Provides for the disposition and disposal of patient records and for the costs of closing the facility, including the transfer of patients. Permits the court to appoint a patient care ombudsman to monitor patient care and represent the interest of patients. Excludes participation in medicare from the automatic stay. §§ 1101- 1106.</p>



Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<i>Trustee to appoint retiree committees</i>	Amends 11 U.S.C. § 1114 to provide that in the event that a retiree committee is appointed, the appointment of members will be made by the U.S. Trustee, not the court. § 447.
<i>Definition of “disinterested person”</i>	Amends the 11 U.S.C. § 101(14) to omit investment bankers for the debtor’s outstanding securities from the group who may <i>not</i> be “disinterested.” Consequently, such bankers may provide services to the debtor’s estate pursuant to 11 U.S.C. § 327(a). § 414.
<i>Chapter 11 corporate nondischargeability</i>	Confirmation of a plan under chapter 11 would not discharge a corporate debtor from debts under 11 U.S.C. § 523(a)(2) that are owed to a domestic governmental unit for property obtained by false pretenses or representations; or owed to an individual under subchapter III of chapter 37 of Title 31, U.S.C.; or any debt for taxes for which the debtor willfully attempted to evade or made a fraudulent return. § 708.
<i>Title X dealing with chapter 12 family farmers</i>	<p>Makes chapter 12 permanent; includes jurisdictional debt limit in amount subject to readjustment in accordance with CPI; subordinates certain high priority unsecured claims owed to the government to nonpriority claims. Measure to take effect upon enactment, but will not apply to pending cases. §§ 1001-1003.</p> <p>Raises jurisdictional debt limit of family farmers to \$3,237,000 and lowers percentage requirement of income derived from farming and expands the time frame for measuring farm income from one to three years. §§ 1004, 1005.</p> <p>Prohibits retroactive assessment of disposable income. § 1006</p> <p>Amends chapter 12 to include “family fishermen.” § 1007.</p>

Selected Provisions	P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
<b>General provisions</b>	
<i>In forma pauperis filings</i>	Directs the Judicial Conference to prescribe procedures for waiving bankruptcy fees for an individual debtor under chapter 7 whose income is less than 150% of the official poverty line and who is unable to pay the fee in installments. § 418.
<i>Bankruptcy judgeships</i>	Creates new temporary bankruptcy judgeships for designated districts. § 1223.
<i>Procedure to certify appeals from a bankruptcy court to a court of appeals</i>	Establishes procedures to permit direct appeals from a bankruptcy court to a court of appeals if the decision involves a substantial question of law for which there is no controlling decision; a question requiring resolution of conflicting decisions; or, a matter of public importance. §1233.
<i>Involuntary Bankruptcy</i>	<p>Adds debtor protection to combat false, frivolous, or fraudulent involuntary bankruptcy filings by creditors. § 332.</p> <p>Makes technical corrections made to 11 U.S.C. § 303 dealing with involuntary bankruptcy. Measure applies upon enactment, but not to pending cases. § 1234.</p>
<i>General effective date<sup>17</sup></i>	Subject to express provisions otherwise in specified titles, the new law will take effect 180 days after enactment and will not apply to cases commenced before the effective date. § 1501.

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<sup>17</sup> For more background, see CRS Report RS22135, *Effective Dates of the Bankruptcy Abuse Prevention and Consumer Protection Act*, by Robin Jeweler.