



Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

UPDATED APRIL 21, 2005

Special Report

HIGHLIGHTS

- ❖ Means Testing Required
- ❖ Reduced Superdischarge
- ❖ Priority Child Support
- ❖ Military Accommodations
- ❖ Automatic Stay Exceptions Expanded
- ❖ Credit Counseling
- ❖ Exemption Law Changes
- ❖ Retirement/Education Savings
- ❖ 180-Day Effective Date Delay

Bankruptcy Overhaul Enacted—New Rules for Bankruptcy Implemented

After seven failed attempts and massive lobbying largely by banks and credit card companies, the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* (S. 256) was signed into law by President Bush on April 20, 2005. Most provisions of the law are effective October 17, 2005. The Act was passed by the Senate in March and was approved by a vote of 302-126 in the House of Representatives on April 14, 2005.

The legislation represents the largest overhaul of the Bankruptcy Code since its enactment in 1978. The intent of Congress was to improve bankruptcy law and practice with a dominant theme of restoring personal responsibility and integrity in the bankruptcy system.

The 2005 Act largely impacts consumer bankruptcy, but has provisions affecting corporations, farmers and small business. The 2005 Act also has many important provisions for securities, financial contracts, privacy, taxes, cross-border cases, health care and employee benefits and consumer credit disclosures.

ments, including a special home-stead exemption for the elderly, exemptions from means-testing for all veterans and debtors in bankruptcy due to medical expenses and identity theft were soundly defeated. No amendments could be offered during the two hours of House debate. Special accommodations are made, however, under the Act's income-test for active-duty military personnel, low-income veterans and those with serious medical conditions.

CONSUMER BANKRUPTCY

Congress has passed a comprehensive set of bankruptcy reforms in response to several factors, including escalating bankruptcy filings, significant creditor losses associated with bankruptcy, loopholes and incentives in the current system that allow for opportunistic personal filings and abuse and lack of financial accountability. The consumer provisions are specifically targeted to address factors contributing to escalating filings and abuses in the system such as the proliferation of serial filings and "the absence of effective oversight" to eliminate abuse in the system. The Act creates new responsibilities for those charged with administering consumer bankruptcy and those who counsel debtors to achieve bankruptcy relief.

Comment: *The defeat of the controversial Schumer amendment regarding nondischargeability of certain fines incurred during illegal abortion protests paved the way for bankruptcy reform by Congress. Several Senate amend-*

Inside

Introduction.....	1
Consumer Bankruptcy.....	1
Consumer Protection.....	3
Abuse.....	5
Highlights of Other Changes.....	6
Effective Dates.....	7

Means Testing

At the heart of the Act is the “means test,” designed to force those debtors who have the ability to pay some of their debts into Chapter 13 as opposed to liquidating under Chapter 7 and wiping the slate clean. The Act would eliminate the presumption that, without a finding of substantial abuse, a debtor is entitled to relief under Chapter 7. Instead, a debtor’s Chapter 7 case would be dismissed or, with the debtor’s consent, converted to Chapter 13 upon a finding of abuse. The Act lowers the “substantial abuse” standard for dismissal or conversion to one of simple abuse. Whether abuse would be presumed would depend on the outcome of the means test that projects the debtor’s current monthly income, less specified expenses, over a five-year period.

Under the means test, a debtor at the low end of the income range would remain eligible for Chapter 7 relief if the amount of his or her income net of expenses is less than \$100 per month (\$6,000 over five years). At the high end, a debtor would not be eligible for Chapter 7 relief if his or her net income is equal to or exceeds \$166.67 per month (\$10,000 over five years). In the middle are debtors whose net monthly income is \$100-\$166.66 (\$6,000-\$9,999 over five years). If income less expenses multiplied by 60 is between \$6,000 and \$10,000 conversion or dismissal is only required if the debtor has sufficient income to pay 25 percent of nonpriority unsecured claims.

In a nutshell, debtors’ whose net current monthly income exceeds their state’s median income would be subject to a means test. A “bright line” rule for abuse is created requiring dismissal or conversion pursuant to Bankruptcy Code Sec. 707(b)(2)(A)(i) if:

- the debtor had at least \$166.67 in current monthly income after the al-

lowed deductions, (\$10,000 for five years), abuse is presumed regardless of the debtor’s unsecured debt; or

- the debtor had at least \$100 of such income (\$6000 for five years), abuse is presumed if the income is sufficient to pay at least 25 percent of the debtor’s nonpriority unsecured debt over five years.

EXAMPLE: *Lisa Brown’s net monthly income exceeds that for the median of the state of Illinois. After deducting allowed expenses, Lisa has \$150 net*

The Act lowers the “substantial abuse” standard for dismissal or conversion to one of simple abuse.

monthly income. She has \$35,000 in unsecured nonpriority debt. Lisa passes muster under the first prong of the means test because her net monthly income after deductions is less than \$166.67. Over a five-year period, Lisa could repay \$9,000 of her unsecured debts. Abuse would be presumed because Lisa could repay at least 25 percent of \$35,000 or \$8,750. Thus, Lisa is ineligible for Chapter 7 relief. Assuming in the same scenario that Lisa had \$40,000 of unsecured nonpriority debt, Lisa would be eligible for Chapter 7 bankruptcy. Lisa is ineligible for Chapter 7 relief if she can pay at least 25 percent of \$40,000 or \$10,000. Since she could only pay \$9,000 of the unsecured debt, she is eligible for Chapter 7 relief.

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.

Calculation of Income and Expenses

The Act strictly construes amounts that debtors can claim as expenses. Reasonable monthly living expenses are specified under IRS standards. National standards establish allowances for food, clothing, personal care, and entertainment depending on the debtor’s family size. Under means testing, if reasonable and necessary, debtors are allowed an increase up to 5 percent on the food and clothing allowance. Local standards establish allowances for transportation on a regional basis and housing on a county by county basis. A third category of “other necessary expenses” is recognized by the IRS for which it does not specify an allowance.

IMPACT: *The amount of plan payments is based on IRS allowances and other expenses (excluding pension loan repayments and Social Security) based on a six-month average minus amounts necessary for support of the debtor, postpetition domestic support obligations, charitable contributions up to 15 percent of gross income, and public or private school expenses up to \$1500 annually per child per year subject to certain restrictions. Deductions are also allowed for expenses for protection from family violence; continued contributions to care for nondependent family members; actual expenses to cure an arrearage of the debtor’s mortgage on his or her residence, automobile or other property necessary for support, divided by 60; and additional home energy costs.*

Attorney Sanctions

The court may award costs and fees to a trustee who successfully pursues a Sec. 707(b) motion against an attorney if the lawyer violated Rule 9011 in filing the Chapter 7 bankruptcy. The attorney may also be sub-

ject to civil penalties. The attorney's signature on the petition certifies that the petition is well-grounded in fact and that the attorney has no knowledge after a reasonable inquiry that the information in the schedules is incorrect.

IMPACT: *The Act essentially requires attorneys to guarantee Chapter 7 means testing. With attorneys facing the prospect of such penalties, the Act is likely to have a chilling effect on Chapter 7 filings making it the exception rather than the rule. Attorneys have great incentive to err in favor of filing Chapter 13, and in close instances, will be forced to weigh their best interests against that of the client's.*

Debtor Duties Expanded

In addition to current filing duties, debtors must provide or file the following:

- certificate of credit counseling and repayment plan from an approved agency within 180 days of filing (may be waived if debtor certifies exigent circumstances or was denied service);

Comment: The credit counseling requirement does not apply for debtors who are incapacitated, disabled or on active duty in a military zone

- statement demonstrating debtor has received and read Sec. 342(b) notice;
- pay stubs—evidence of employer payments within 60 days of filing;
- statement and anticipated postpetition income or expenditure increases;
- itemized monthly net income;
- debtor's most recent federal income tax return (must be submitted to any creditor timely requesting it);
- a continuing duty to provide tax returns during the case from commencement to termination (case may be dismissed or converted for failure to comply);

- in Chapter 13, annual statement of income and expenses required for each tax year;
- disclosure of qualified education savings accounts and tuition programs; and
- if requested by trustee, a photo ID.

Additional Duties

- Debtors must perform their intent to surrender, reaffirm or redeem debt secured by property of the estate within 30 days after the first date set for the meeting of creditors.
- In the case of personal property secured by a purchase money security interest (PMSI), within 45 days after the first meeting of creditors, debtors must reaffirm, redeem, or surrender the property. Failure to do so will result in an automatic lifting of the stay without creditor motion.

CONSUMER PROTECTION

Support Obligations

A broad spectrum of special protections is granted for support debts including:

- a uniform definition of domestic support obligations for priority, discharge, exemptions and lien avoidance;
- first priority for domestic support obligations;
- priority treatment to claims assigned to governmental units;
- maintenance of current support as a condition for confirmation and discharge;
- expanding exceptions to the automatic stay to permit support collections; and
- requiring trustees to provide support claimants with specified notices.

IMPACT: *Collection activities specifically excluded from the stay include income withholding under a court order; suspension of drivers' licenses, reporting of overdue support to credit bureaus; interception of tax refunds; and enforcement of*

medical obligations. Domestic actions in general (including paternity, support, custody, visitation, and domestic violence) are not stayed by a bankruptcy filing.

As under current law, support claims must be paid in full. However, the 2005 Act permits a debtor to pay less than the full balance of domestic support obligations owed or assigned to states if all disposable income during the period of a five-year plan is committed to the repayment of all allowed claims in full.

Reaffirmation agreements. The 2005 Act creates several changes in reaffirmation agreement practices and imposes enhanced requirements for approval of reaffirmation agreements.

The Act eliminates the ride-through option permitted by some courts. Thus, debtors may no longer retain secured property without reaffirmation by continuing to make installment payments.

Comment: A broad safe harbor is provided for creditors permitting them to accept payments under a non-compliant reaffirmation as long as the creditor "believes in good faith" that the agreement is effective.

Caution: Reaffirmation agreements have been the subject of a long history of blatant abuses. The final report of the National Bankruptcy Review Commission indicated that "debtors' attorneys should narrowly and strictly construe the 'best interest' requirement, as this is a critical component of zealous representation." The 2005 Act also requires amendments to federal criminal laws instructing the designated officials to investigate abusive reaffirmation practices.

Penalties for Abusive Creditor Practices

Subject to certain restrictions, unsecured debts may be reduced by up to

Additional Consumer Provisions

Many more consumer bankruptcy provisions warrant mentioning including:

- ✓ **Landlord protection:** Under certain conditions, landlords are protected from the stay and may proceed with eviction actions under residential rental agreements.
- ✓ **Additional clerk responsibilities:** Clerks are required to give expanded notices to debtors and to notify all creditors if there is a presumption of abuse under Sec. 707(b). Creditors may file a notice with the court stating its address for notice in cases of Chapter 7 and 13. Clerks must send notices of new cases to that address.
- ✓ **Audit misstatements:** Failure to explain misstatements in audits and failure to make records available for audits is added as a basis for denying discharge.
- ✓ **Interest:** Chapter 13 plans may provide for payment of interest on nondischargeable debts if the debtor has sufficient disposable income after paying all allowed claims in full.
- ✓ **Discharge:** Proof of completion of a financial management course is required for discharge. The superdischarge in Chapter 13 has been reduced. The Act now provides that the following debts are excepted from superdischarge: debts for taxes for which returns were never filed or were filed late, taxes for which the debtor filed a fraudulent return or evaded tax; fraudulent and false statements; unscheduled debts, defalcation by a fiduciary, domestic support obligations, student loans, drunk driving injuries, criminal restitution and fines and civil restitution or damages rewarded for willful or malicious injuries.

20 percent if a creditor unreasonably refuses to negotiate with an approved credit counseling agency proposing payment of 60 percent of the debt over the period of the loan or a reasonable extension. Creditors may also violate the discharge injunction if they willfully refuse to credit payments received under the plan, but only if it results in material injury to the debtor, and only if a plan is not dismissed, is not in default, and the creditor has received payments in accordance with the plan.

Retirement Savings

The Act provides a new exemption for tax-exempt retirement funds without regard to whether the debtor elected state or federal exemptions. The Act

clarifies that retirement accounts that are tax exempt under the Internal Revenue Code are exempt from the debtor's estate. The Act also responds to a line of cases regarding the treatment of retirement loans and contribution and clarifies that such contributions should not be treated as disposable income. Stay relief is provided for loan repayments to qualified retirement plans and also makes such debts nondischargeable. Prior to enactment of the 2005 Act, the U.S. Supreme determined in *Rousey v. Jacoway*, (USSCt 2005), CCH BankrLRep ¶ 80,263, that IRAs are exempt from the bankruptcy estate under Bankruptcy Code Sec. 522(d)(10)(E) because they fulfill the purposes of statute—they confer a

right to receive payments based on age and are similar to other plans or contracts cited in the law which are exempted. The ruling extended the protection afforded under Sec. 541 that is generally granted to retirement plans that have anti-alienation provisions under ERISA law. The 2005 Act however, limits the exemption for IRAs to a \$1,000,000 cap as adjusted for inflation. Eligible rollovers are protected without dollar limitation.

Education Savings

Savings for postsecondary education through education IRAs and 529 plans are excluded from the bankruptcy estate if certain criteria are met. For contributions placed in an account or accounts having the same beneficiary within 365 to 720 days before filing, the exemption is limited to \$5,000. Contributions to qualified state tuition programs are also excluded from the estate with similar monetary limitations.

Debt Relief Agencies

New provisions are added to the Code consistent with the intent of Congress to strengthen the professionalism standards of attorneys and others who assist consumer debtors with their bankruptcy cases. Newly defined as "Debt Relief Agencies," such professionals, including attorneys, are required to provide expanded notices to consumer debtors that include alternatives to bankruptcy and matters pertaining to the integrity of the bankruptcy system. Additional penalties and limits are added for bankruptcy petition preparers. To ensure compliance with the Act's provisions, a host of regulations and enforcement mechanisms are instituted. The provisions generally apply to persons who provide goods or services relating to the advice or filing of a bankruptcy by consumer debtors whose nonexempt assets are less than \$150,000.

IMPACT: *In any advertising of bankruptcy assistance services, the agency (including bankruptcy attorneys) must disclose that the services provided are for bankruptcy relief. In the advertisement, the agency must include the following statement: “We are a debt relief agency. We help people file for relief under the Bankruptcy Code.”*

ABUSE

Some of the major provisions to discourage abuse under the current bankruptcy system would increase secured creditors’ protection during the bankruptcy process; require prompt filings of schedules and other information; adjust notice requirements to ensure that creditors receive notice of bankruptcy filings; require Chapter 13 plans to extend to five years for debtors with income above the statutory threshold; and limit the extent to which real estate assets could be sheltered in bankruptcy. The Act also addresses other abuses in bankruptcy.

Serial/Bad Faith Repeat Filings

The Act addresses the so-called “Chapter 20” bankruptcy, or the process of filing a Chapter 7 bankruptcy to discharge unsecured debts followed by a Chapter 13 filing to handle secured debt, generally a mortgage. Under the Act, the time between subsequent Chapter 7 discharges is expanded from six to eight years. Debtors must also wait two years after receiving a Chapter 13 discharge to refile, or three years if the debtor received a discharge under Chapters 7, 11, or 12. The stay terminates 30 days after the petition is filed if a previous Chapter 7, 11, or 13 was filed and dismissed within the preceding year (unless subsequent case is filed in good faith). A history of previous filings gives rise to a rebuttable presumption under various circumstances including

a presumption of bad faith against any creditor who received relief from the automatic stay pending when the case was dismissed.

Nondischargeable Debts Expanded

The Act expands the types of debts that are nondischargeable in bankruptcy. Generally, the following debts are nondischargeable:

- definition of nondischargeable tax debts expanded;

The Act eliminates the so-called Chapter 20 bankruptcy.

- debts for money, credit etc. obtained through fraud or false statement in writing;
- debts made for luxury goods and services owed to a single creditor totaling more than \$500 made within 60 days of filing;
- cash advances in excess of \$750 made within 70 days of filing (per line of credit) are presumed to be nondischargeable;
- debts that require timely request for a dischargeability determination if a creditor lacks notice or does not have actual knowledge of the case in time to make such request;
- death or injury caused while intoxicated expanded to include operation of motor vehicles, vessels, or aircraft (a new 10th priority is added for such debts);
- domestic support obligations;
- nondischargeable student loans expanded to include for-profit and non-governmental entities;
- debt incurred to pay state and local taxes;
- debt incurred to pay fines and penalties;
- nonsupport obligations incurred from divorce or separation;

- homeowner association, condominium and cooperative fees;
- fees on prisoners; and
- pension, profit sharing debts.

Cramdown

Debtors may not “strip down” a purchase money security interest:

- if the collateral was a motor vehicle and the debt was incurred within 910 days (2½ years) of the date the petition was filed; or
- if the collateral was other than personal property and debt was incurred within one year of the date the petition was filed.

Additional Changes in Exemption Laws

The domiciliary requirements to claim a state’s exemption other than the homestead is increased from 180 days to 730 days preceding the filing. If the debtor did not reside in one state during that 730-day period, the state exemptions are those for the state in which the debtor lived the majority of the time for the 180 days or longer in any one state. If the debtor does not meet domiciliary requirements of any state, the debtor may elect federal exemptions.

Regardless of the level of state exemptions, the debtor may only exempt up to \$125,000 of interest in a homestead that was acquired within the 1,215-day period prior to the filing, but the calculation of that amount does not include any equity that has been rolled over during that period from one house to another within the same state.

Debtors may not exempt more than \$125,000 under a state-law homestead exemption if the debtor has engaged in certain criminal conduct or violated securities laws irrespective of a higher state homestead exemption. To the extent that the homestead was obtained through fraudulent conversion of nonexempt assets during the 10-year period before the filing, the exemption is reduced by the amount attributable to the fraud.

The classification of household goods for purposes of avoiding liens that impair exemptions has been severely restricted as specified in Sec. 522(f)(4).

IMPACT: *Household goods for purposes of lien avoidance under the Act are limited to: clothing, furniture, and appliances. Electronic equipment is limited to 1 radio; 1 television; 1 VCR and 1 personal computer and related equipment. Exemptions are also granted for linens; china; crockery; kitchenware; educational materials and equipment for the use of the debtor's minor dependent children; medical equipment and supplies; furniture (exclusively for the use of the debtor's minor dependent children); Exceptions to exemptions are (among other things) works of art not created by the debtor (or a relative), jewelry worth more than \$500 (except wedding rings), and motor vehicles.*

A state-law homestead exemption is reduced by the amount of time that the value of the exemption is attributable to any property disposed of by the debtor during the preceding 10 years with the intent to hinder, delay or defraud a creditor, to the extent that the property was not exempt at the time of the disposition.

HIGHLIGHTS OF OTHER CHANGES

Business Bankruptcy

Comprehensive business bankruptcy reforms are included with heightened oversight of small business bankruptcy.

Bankruptcy Tax Provisions

Highlights of the tax provisions would include simplifying the calculation of interest applicable to tax claims; simplifying the treatment of fuel tax claims; providing greater protection for holders of *ad valorem* tax liens on real personal property;

prohibiting discharge of fraudulent tax payments; and setting priority for tax claims. A comprehensive overview of the bankruptcy tax provisions is provided in a separate [CCH Tax Briefing](#).

Cross-border Cases

A new bankruptcy Chapter is added for transnational bankruptcy cases to

The Act creates a consumer privacy ombudsman to protect personal privacy in bankruptcy proceedings.

provide for more efficient administration of cross-border insolvencies.

Financial Contracts

The treatment of certain financial contracts in bankruptcy, including commodities contracts, would be changed. The financial instrument netting provisions would reduce the risk that occurs when a counterparty to a derivatives contract become insolvent.

Family Farmers

The bankruptcy provisions addressing financial difficulties for farmers are made permanent. Eligibility requirements are expanded. Bankruptcy relief is extended under Chapter 12 to certain fisherman with similar eligibility requirements.

Health Care Providers

Special rules would be established governing the bankruptcy of health care businesses.

Consumer Credit Disclosures

Consumer lenders would be required to make new disclosures in credit card statements. Additional disclosure

requirements relate to minimum payments, introductory rates, late fees, tax consequences of home equity loans, and Internet-based credit card solicitations.

Corporate Bankruptcy Abuse

Greater restrictions would be put on fraudulent transfers to insiders, protections for insurance benefits for retired employees would be increased, and discharge of debts incurred in violation of securities laws would be prohibited.

Privacy

Bankruptcy courts are permitted to honor the privacy policies of business debtors. The Act creates a consumer privacy ombudsman to protect personal privacy in bankruptcy proceedings. Measures are implemented to prevent identity theft and to guide what information is readily accessible to the public. Debtors are permitted to request that courts protect sensitive information before it is placed in public records. Debtors may not be required to disclose minors' names in public records.

Technical Amendments

The new law devotes a separate title to "Technical Amendments" covering various substantive issues. The Act addresses a number of issues that need to be resolved due to developments in case law or errors in drafting previous amendments to the Bankruptcy Code. Purely technical or stylistic amendments are excluded.

Definitions. The definition of single asset real estate is amended to clarify that debtors who are family farmers are not included and it eliminates the \$4 million aggregate debt limitation on single asset real estate. The definition of "transfer" expressly includes the creation of a lien.

Compensation of Professionals. Bankruptcy professionals are permitted to be employed on a fixed or percentage fee basis.

Continued on page 8

Effective Dates

Generally, the legislation is effective 180 days after enactment (measured from the April 20, 2005 date that the President signed the legislation), making the effective date October 17, 2005. This creates a six-month window for bankruptcy protection under current bankruptcy law. Selected provisions are set forth below:

Act Secs.	Effective Date	Description (Code Secs.)
§§308, 322	made effective by Bankruptcy Code Sec. 1501(b)(2)	Limiting the Homestead exemption to \$125,000
§324	immediate	Regarding district court's exclusive jurisdiction over professionals employed in bankruptcy (28 U.S.C. §1334)
§330	applies to cases commenced on or after April 20, 2005 pursuant to §1501(b)(2)	Delay of discharge
§434(b)	effective 60 days after date rules become effective for new forms under 28 USC §2075	Reporting requirements for small business debtors in Chapter 11 (§308)
§601(c)	effective 18 months after enactment	Compiling data in consumer cases (28 U.S.C. §159)
§603(e)	effective 18 months after enactment	Random audits, 28 U.S.C. §586 (Judicial procedure; Supervision by Attorney General; §521(a); §727(d))
§1001(a)(2)	July 1, 2005	Permanently reenacting Chapter 12
§1003(c)	immediate/not retroactive	Chapter 12 debtors may pay less than full payments to debts owed or assigned to government for support (§1222(a)(2); §1231(b))
§1213	immediate	Overruling <i>DiPrezio</i> rule
§1221	immediate	Transfers made by non-profit debtors
§1223(e)	immediate	Additional judgeships (28 U.S.C. §152(a))
§1234(b)	immediate, applies only to cases filed on or after enactment	Involuntary cases (§303)
§1301(b)(2)	the later of: (A) 18 months after the date of enactment; or (B) 12 months after publication of final regulations by the Federal Reserve Board	Commerce and trade, open end consumer credit plans, (15 U.S.C. Sec. 1637(b)(11))
§1302(c)(2); §1303(b)(2); §1304(b)(2); §1305(b)(2); §1306(b)(2)	the later of: (A) 12 months after the date of enactment; or (B) 12 months after publication of final regulations by the Federal Reserve Board	Commerce and trade, open end consumer credit plans (15 U.S.C. §1637(a)(13); 15 U.S.C. §1637(c)(6); 15 U.S.C. §1637(c)(7); 15 U.S.C. §1637(b)(12); 15 U.S.C. §1637(h))
§1404(b)	prepetition and postpetition effect/retroactive to 7-30-02	Nondischargeable debts for securities fraud

Continued from page 6

Administrative Expenses. Compensation to members of committees for expenses incurred in the performance of their duties is not permitted. Expenses incurred for professional services incurred by the committees themselves would be compensable.

Exceptions to Discharge. The exception to discharge for debts related to personal injury or death caused by a debtor's operation of a motor vehicle while under the influence is expanded to include the operation of a vessel or aircraft. Debts incurred to pay fines or penalties imposed under election laws are nondischargeable. Tax documentation is required before granting a Chapter 7 discharge. Courts may not destroy documents in support of a bankruptcy claim no sooner than three years after the date of the conclusion of the individual's bankruptcy case subject to an extension for an audit.

Preferences. Addresses the *De-Prizio* rule and clarifies that a transfer made between 90 days and one year of the petition avoidance shall only be valid with respect to the insider.

Transfers by Nonprofit Charities. Restricts authority of trustee to use, sell or lease property of a nonprofit corporation or trust. Transfers made by nonprofit charitable corporations must be in accordance with applicable nonbankruptcy law governing such transfers.

Protection of Valid PMSI. Protects creditors from preference actions

by extending from 20 to 30 days the period within which a lien may be perfected after the debtor acquires possession of collateral.

Bankruptcy Judgeships. Additional judgeships are provided for in various districts.

Trustee Compensation. Provides for and sets forth the manner and

The Act eliminates the ride-through option permitted by some courts in reaffirmation agreements.

amounts of compensation available to trustees serving in cases converted or dismissed pursuant to Sec. 707(b).

Automatic Stay. Creates an exception to the stay for the creation or perfection of a statutory lien for an *ad valorem* tax, or a special tax or assessment on real property, whether or not *ad valorem*, imposed by a governmental unit if the tax or assessment comes due after the petition date.

Judicial Education. Provides for development of materials and training useful to courts in implementing the reform legislation.

Reclamation. Expands the limitation on the trustee's avoidance powers relative to a seller of goods' right of reclamation. The reclamation period is extended from 10 to 45 days, or if the 45-day period expires after the commencement of the case,

within 20 days from commencement. A seller's failure to provide notice to the debtor does not extinguish the seller's right to assert a claim for an administrative expense. That administrative expense claim is for the value of goods and services received by the debtor within 20 days before the commencement of the case.

Creditworthiness. Requires a study by the Board of Governors of the Federal Reserve System of indiscriminate consumer lending practices. The Federal Reserve Board may issue regulations requiring additional disclosures to consumers or take other actions to ensure responsible industry practice.

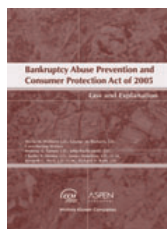
Redemption. Under certain circumstances, an interest of the debtor in tangible personal property that the debtor pledged or sold as collateral for a loan or advance is excluded from the bankruptcy estate.

Trustees. Trustees are permitted to obtain judicial review of decisions involving termination of appointments, cessation of assignment of cases, or denial of a claim for actual necessary expenses. The trustee must exhaust all administrative remedies. An agency decision must be affirmed unless it is unreasonable and without cause.

Bankruptcy Forms. Forms must be prescribed for the statement required under Sec. 707(b)(2)(C).

Involuntary Cases. Disputed claims can be disputed as to liability or amount.

**For Indepth Coverage—
Order This Publication Today!**



Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Law and Explanation—Includes full text of the legislation and selected committee reports, along with CCH editorial and practitioner expert explanation and analysis. Provides specialized treatment of the legislation's tax provisions in a chapter authored by bankruptcy tax expert, Kenneth C. Weil.

Price: \$57.00 per copy. *Est. pub.:* April 2005, about 400 pages. **Book #:** 04488301 [Click here to order.](#)

To order by phone, call 800-248-3248.