

# Report for Congress

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## **Bankruptcy Reform: A Recap**

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# Bankruptcy Reform: A Recap

## Summary

2003 will be the sixth year that Congress considers enacting a major overhaul of consumer bankruptcy laws. Originally introduced in 1998, during the second session of the 105<sup>th</sup> Congress, bankruptcy reform legislation came close to enactment in both the 106<sup>th</sup> and 107<sup>th</sup> Congresses. At the conclusion of the 106<sup>th</sup> Congress, a conference report bill was passed by both the House and the Senate, but was pocket vetoed by President Clinton. Late in the 107<sup>th</sup> Congress, an informal compromise between representatives of the House and the Senate over the “Schumer Amendment” – a provision intended to prevent the discharge of liability for willful violation of protective orders and violent protests against providers of “lawful services,” including reproductive health services – proved unacceptable to the House. Consequently, the conference report on H.R. 333, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001), did not come up for a vote in either chamber.

Since its introduction in 1998, the reform legislation has employed a complex “means test” for prospective debtors to determine whether they may file under chapter 7 governing liquidations. Failure to satisfy the means test is presumptive abuse of chapter 7, and the disqualified debtor either must file for reorganization under chapter 13, or refrain from filing. Likewise, since 1998, although the various versions of bankruptcy reform have incorporated many amendments, all have retained core features.

The legislation is broad and addresses many areas of bankruptcy practice beyond consumer filings. Topics include 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 reviews many of the core *consumer* bankruptcy features that have been common to most versions of bankruptcy reform legislation. It is based upon the most recent legislative version, the conference report to H.R. 333, H.Rept. 107-617, 107<sup>th</sup> Congress, 2d Sess. (2002), which is likely to be the basis for legislation considered in the 108<sup>th</sup> Congress. It also provides, in chart form, a survey of selected provisions.

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# Bankruptcy Reform: A Recap

**Background.** 2003 will be the sixth year that Congress considers enacting a major overhaul of consumer bankruptcy laws. Originally introduced in 1998 during the second session of the 105<sup>th</sup> Congress, bankruptcy reform legislation came close to enactment in both the 106<sup>th</sup> and 107<sup>th</sup> Congresses. At the conclusion of the 106<sup>th</sup> Congress, a conference report bill was passed by both the House and the Senate, but was pocket vetoed by President Clinton. Late in the 107<sup>th</sup> Congress, an informal compromise between representatives of the House and the Senate over the “Schumer Amendment” – a provision intended to prevent the discharge of liability for willful violation of protective orders and violent protests against providers of “lawful services,” including reproductive health services – proved unacceptable to the House.<sup>1</sup> Consequently, the conference report on H.R. 333, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001), did not come up for a vote in either chamber.<sup>2</sup>

Little has changed in the economic and legal landscape that has fueled both support for and opposition to bankruptcy reform. Statistics to date for 2002 indicate that personal bankruptcy filings are at an all time high.<sup>3</sup> 2002 also featured high profile bankruptcy filings by major corporations, rising unemployment rates, and rising health care costs.

The goal of proponents of consumer bankruptcy reform is to make filing more difficult and thereby thwart “bankruptcies of convenience”; to revive the social “stigma” of a bankruptcy filing; to prevent bankruptcy from being utilized as a financial planning tool; to determine who can pay their indebtedness and to ensure that they do; and, to maximize the distribution to both secured and unsecured creditors.

Opponents argue that making it more difficult to file will undermine the rehabilitative purpose of bankruptcy and have a disparate impact on financially less sophisticated debtors, including single parents and families with children. They continue to believe that there is insufficient evidence of pervasive *abuse* to warrant major revisions to bankruptcy law.

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<sup>1</sup> For background on this provision, see CRS Report RS21276, *Two Key Provisions in the Bankruptcy Reform Act Conference Report: The Homestead Exemption and Dischargeability of Liability for Violations of Laws Relating to the Provision of “Lawful Goods and Services”* by Robin Jeweler (Sept. 19, 2002).

<sup>2</sup> H.Rept. 107-617, 107<sup>th</sup> Cong., 2d Sess. § 330 (2002), *Bankruptcy Abuse Prevention and Consumer Protection Act of 2002*. The House, however, passed an amended version of H.R. 333 that omitted § 330, relating to the discharge of liability for violations of protective orders and violent protest against lawful service providers.

<sup>3</sup> *Fed Court Bankruptcy Filings Up Again; AOUSC Reports 7.7 Percent Jump in FY 2002*, 14 BNA BANKR. L. REPTR. 1142 (November 28, 2002).

Since its introduction in 1998, the reform legislation has employed a complex “means test” for prospective debtors to determine whether they may file under chapter 7 governing liquidation.<sup>4</sup> The legislation has never proposed applying the pre-existing, less complicated and more discretionary standards for determining “abuse” by prospective chapter 7 debtors employed by some bankruptcy courts, namely, finding an ability to pay creditors sufficiently from future income.<sup>5</sup> Although “ability to pay” may be considered by the court in limited circumstances under the bill, the primary emphasis for a presumption of abuse is the means test, which takes a formulaic approach to determining each debtor’s ability to pay past indebtedness from future income.<sup>6</sup> Failure to satisfy the means test is presumptive abuse of chapter 7, and the disqualified debtor either must file for reorganization under chapter 13, or refrain from filing.

Likewise, since the original bill’s introduction in 1998, the various versions of bankruptcy reform have incorporated many amendments, but the legislation nevertheless retains core features. This report reviews many of the consumer bankruptcy reform features based upon the most recent legislative version, the conference report to H.R. 333 from the 107<sup>th</sup> Congress. It provides, in chart form, a survey of selected provisions.

**Jurisdictional Filing Requirements.** In order to file in bankruptcy, a prospective debtor must receive credit counseling within six months prior to filing. The counseling may take place through an individual or group briefing which may be conducted in person, by phone, or over the Internet. Waivers may be available for various extenuating circumstances.<sup>7</sup> A debtor’s case would also be dismissed by the court for failure to file required information within 45 days of the filing.<sup>8</sup>

**The Means Test.** This test is intended to demonstrate whether a debtor should be able to pay unsecured debt from future income. If the debtor’s income for

<sup>4</sup> In a liquidation, the debtor pledges all of his or her pre-bankruptcy assets to pay off pre-bankruptcy debts. In a consumer reorganization, the debtor pays off pre-bankruptcy debts with post-bankruptcy income over a three to five year time period. Chapter 13 governs consumer reorganization while chapter 11 governs business reorganization (although individuals may file under chapter 11.) For general bankruptcy background, *see* CRS Rept. 97-1057A, *A Bankruptcy Primer: Liquidation and Reorganization under the U. S. Bankruptcy Code* by Robin Jeweler.

<sup>5</sup> *Stuart v. Koch* (In re Koch), 109 F.3d 1285 (8<sup>th</sup> Cir. 1997); *Zolg v. Kelly* (In re Kelly), 841 F.2d 908 (9<sup>th</sup> Cir. 1988). *See also* *Fonder v. United States*, 974 F.2d 996 (8<sup>th</sup> Cir. 1992)(In determining whether a debtor can fund a chapter 13 plan for purposes of dismissal of a chapter 7 case as substantial abuse, the essential inquiry is whether the debtor has the ability to repay creditors with future income sufficiently to make a chapter 7 filing a substantial abuse; there is no requirement that a debtor be eligible for chapter 13 relief, and in some cases, despite a substantial abuse dismissal, the debtor may not qualify under chapter 13.)

<sup>6</sup> The bill directs the court to consider whether the petition was filed in bad faith or whether “the totality of circumstances” demonstrates abuse only when the means test does not apply or has been rebutted by the debtor.

<sup>7</sup> H.Rept. 107-617 at § 106.

<sup>8</sup> *Id.* at § 316.

six months preceding bankruptcy, minus living expenses, results in the debtor's having \$166.67 per month in *excess* of living expenses, then abuse is presumed (and the debtor may not file under chapter 7). If the debtor has \$100 per month of excess income, abuse is presumed if unsecured indebtedness is \$24,000 or less; likewise for income in excess of \$150 per month with unsecured indebtedness of \$36,000 or less.<sup>9</sup>

The centerpiece of the means test, however, is the new method for calculating the debtor's living expenses. The test does not look at the debtor's *actual* expenses. It applies *hypothetical* expenses based upon the Internal Revenue Service's (IRS) National Standards and Local Standards. The formula is complex and, in addition to the National Standards, factors in other specific deductions which may be allowable, *e.g.*, child support and alimony, reasonable and necessary costs for the care of chronically ill or disabled family members, actual costs of up to \$1,500 per year per child for costs to attend public or private school, and payments to secured creditors. The debtor may also deduct an additional allowance of up to 5 percent of the IRS National Standard for food and clothing, and actual expenses in categories specified as Other Necessary Expenses issued by the IRS for the area in which the debtor resides, including excess housing and utility costs. Thus, abuse is presumed if a debtor's real income measured against the combination of hypothetical and real living expenses results in the monthly excess cited above.

All prospective debtors are subject to scrutiny under the means test, although there is a safe harbor from a finding of abuse for individuals and families whose income is less than the applicable median state income level.

The bill provides a variety of mechanisms for parties to challenge the debtor's eligibility to file in accordance with the means test. In many instances, attorneys fees will be awarded to the prevailing party – either a creditor challenging the debtor's qualification or the debtor defending it.

**New Regulations for Bankruptcy Attorneys.** Another important feature of the bill is the imposition of new controls on attorneys representing certain consumer debtors. Among controls are the following:

- Increased requirements for investigation and verification of the accuracy of the debtor's financial information, and increased sanctions if the debtor's chapter 7 filing proves to be ineligible under the means test. If a debtor loses a motion to have his chapter 7 case dismissed or converted to chapter 13, the debtor's attorney may have to pay the bankruptcy trustee costs and attorneys' fees. Further, an

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<sup>9</sup> Hon. Eugene Wedoff, *Major effects of the consumer bankruptcy provisions of the 2002 Bankruptcy Legislation (H.R. 333 Conference Report)* at [<http://www.abiworld.org/table.pdf>]. The statutory language provides that the court shall presume abuse "if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not the lesser of (I)25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or (II) \$10,000."

attorney may be liable for civil penalties for a violation of Rule 9011 of the Federal Rules of Civil Procedure.<sup>10</sup>

- Attorneys who represent or provide “bankruptcy assistance” to any person whose debts are primarily consumer debts and who has less than \$150,000 of nonexempt property will come within the definition of a “debt relief agency”<sup>11</sup> and be subject to new restrictions. Debt relief agencies are prohibited from advising a potential debtor to incur more debt in contemplation of such person filing a case under title 11, or to counsel a debtor to make a false or misleading statement that, upon the exercise of reasonable care, should have been known to the attorney to be false or misleading.<sup>12</sup>
- Attorneys who are debt relief agencies will be liable to a debtor for the agency’s fees, actual damages, reasonable attorneys fees for the challenger and legal costs if he or she provided assistance to a debtor whose chapter 7 case is dismissed or converted to chapter 13.
- Debt relief agencies will be subject to the new disclosure requirements governing advertising directed to the general public and contracts entered into with assisted persons.<sup>13</sup>

**Nondischargeable Debt.** New categories of debt are made nondischargeable under both chapters 7 and 13. Under current law, consumer debts of more than \$1075 for “luxury goods or services,” including cash advances and credit card charges, incurred within 60 days of the filing are presumed to be fraudulent and are nondischargeable.<sup>14</sup> The bill broadens the category of presumptively fraudulent transactions to those in excess of \$550 for luxury goods or services owed to a single creditor incurred within 90 days of the filing; and, for cash advances and credit card charges for more than \$750 incurred within 70 days of filing.

Other categories of nondischargeable debt include debts incurred to a third-party, *e.g.*, a credit card company, to pay a nondischargeable state or local tax. Such charges to pay a federal tax are already nondischargeable under current law.<sup>15</sup> Student loans, which are also nondischargeable under current law, are addressed by broadening the definition of a “student loan.” In addition, new categories include

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<sup>10</sup> Fed. R. Civ. Proc. 9011 addresses the responsibility of the attorney with respect to written material submitted to a court. The bill increases the attorney’s responsibility and legal liability in a bankruptcy case.

<sup>11</sup> H.Rept. 107-617 at § 226.

<sup>12</sup> *Id.* at § 227. The potential of the restriction to interfere with the attorney-client relationship as it may cover pre-bankruptcy planning is not considered herein.

<sup>13</sup> *Id.* at §§ 228, 229.

<sup>14</sup> 11 U.S.C. § 523(a)(2)(C).

<sup>15</sup> *Id.* at § 523(a)(14).

finances and penalties under federal election law and certain condominium fees. *See* chart *infra*.

One category of nondischargeable debt intended to benefit the debtor is that for loan repayments to the debtor's retirement savings or thrift plan. The function of nondischargeability is to permit a debtor who has borrowed from his or her retirement savings plan to continue to repay the loan through employer withholding despite the bankruptcy filing.

The most controversial category of nondischargeable debt was that for violence against providers of "lawful services" – reproductive health services in an earlier version of the legislation – and for intentional violations of protective orders and injunctions. Questions have been raised repeatedly about the scope and legal effect of this provision.<sup>16</sup>

**Child Support and Alimony.** Another contentious issue in the debate over bankruptcy reform is the effect it would have on the ability of families to collect child support and alimony, which are defined as "domestic support obligations."<sup>17</sup> Supporters of the legislation point to the fact that these payments are fully protected under the legislation. Indeed, they are protected throughout the entire course of a bankruptcy proceeding.<sup>18</sup> Subtitle II B of the bill deals with priority child support.<sup>19</sup> The bill elevates domestic support obligations from seventh to first priority among unsecured claims against the debtor. Under current law, the costs of administering the bankruptcy proceeding, that is "administrative expenses," hold first priority. This means that these expenses are paid first from any available assets of the bankruptcy estate. The conference report recognizes, however, the fact that the trustee's compensation is derived from marshaling the debtor's assets and is treated as an "administrative expense." Because trustees cannot be expected to expend effort to collect and distribute a debtor's assets with no prospect of compensation, the conference report creates a "superpriority" which will allow them to be paid before domestic support creditors when they administer assets that are otherwise available for domestic support.<sup>20</sup>

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<sup>16</sup> For a detailed explanation of the provision, *see* CRS Report RS21276, *Two Key Provisions in the Bankruptcy Reform Act Conference Report*, by Robin Jeweler (Sept. 19, 2002). *See also*, Letter from Kenneth Starr to Hon. Steve Bartlett (Oct. 4, 2002) posted at [<http://www.abiworld.org/Opinion100402.pdf>]. *Cf.* Republican Study Committee, *Discussion of Language Related to Protestors (Including Pro-Life Protestors) in the Bankruptcy Conference Report* (Aug. 28, 2002) posted at [<http://www.house.gov/burton/RSC/BankruptcyAbortQA.PDF>].

<sup>17</sup> H.Rept. 107-617 at § 211.

<sup>18</sup> Support payments are generally protected under current law. Child support and alimony are high priority unsecured claims and may not be discharged. 11 U.S.C. §§ 507(a)(7), 523(a)(5).

<sup>19</sup> H.Rept. 107-617 at §§ 211-220.

<sup>20</sup> *Id.* at § 212.



Additional features provide that a reorganization plan under chapters 11, 12 and 13 may not be confirmed unless outstanding domestic support obligations are paid. Domestic support obligations will be excepted from the automatic stay (which stops all collection activities when a debtor files in bankruptcy).

New notice requirements are imposed on trustees in a chapter 7 case. A trustee must advise a domestic support creditor of the right to use the services of a state child support enforcement agency; he or she must report a domestic support claim to the state child support agency, including the name and address of the creditor; and, if the debtor receives a bankruptcy discharge (for non-support claims), the trustee must report the debtor's name, address and employer to the state enforcement agency.<sup>21</sup>

As the foregoing illustrates, domestic support payments are fully protected against delay and discharge during and after bankruptcy proceedings. But critics of the legislation still contend that single-parent families and children will be adversely affected by the bill.<sup>22</sup> Among other things, critics argue that making it more difficult to get bankruptcy relief and making more categories of debt nondischargeable under both chapters 7 and 13 will leave domestic support creditors in a worse position *outside* of bankruptcy. Debtors who emerge from bankruptcy will have more creditors holding nondischargeable claims. And, in the competition for *post*-bankruptcy assets, or the assets of those who refrain from filing or go "underground," domestic creditors may fare more poorly than commercial creditors. Since state support enforcement agencies will also stand in the shoes of a domestic support creditor holding priority and nondischargeable domestic support claims, the debtor may owe money to them as well.

**Chapter 13, Adjustment of Debts of an Individual With Regular Income.** Chapter 13 of the Bankruptcy Code governs consumer reorganization. Amendments to this chapter would be among the most far-reaching of the proposed changes. The goal of channeling debtors into chapter 13 involuntarily is new to U.S. Bankruptcy Code practice. Under current law, debtors may choose this chapter voluntarily, often to take advantage of unique provisions such as the ability to cure arrearages in and continue payment on a home mortgage. The debtor proposes a reorganization plan which is generally performed over a three-year period, unless the court approves an extension to five years, for cause.

Two major changes to this chapter are first, as discussed above, debtors who are disqualified under the means test from filing under chapter 7 will have no choice but to file under chapter 13 (or to refrain from filing). Second, debtors, many of whom may have mandatory five-year plans, may be required to adhere to living budgets based upon the same IRS living standards employed in the means test.<sup>23</sup>

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<sup>21</sup> *Id.* at § 219.

<sup>22</sup> See, e.g., Rebecca M. Burns, *Killing Them With Kindness: How Congress Imperils Women and Children in Bankruptcy Under the Facade of Protection*, 76 AMER. BANKR. L.J. 203 (2002).

<sup>23</sup> See CRS Report 98-318E, *Bankruptcy Reform: IRS Living Expense Allowances for Chapter 13 Debtors* by Mark Jickling (March 7, 2001).

Currently, a chapter 13 debtor may be required to fund a reorganization plan with projected disposable income for a three-year period. “Disposable income” is defined in the Code as that reasonably necessary for the debtor’s support.<sup>24</sup> The bill, however, defines “reasonably necessary” disposable income by reference to the means test standards. The bill expressly permits chapter 13 debtors to include health insurance costs in a repayment plan if such expenses are reasonable and necessary.<sup>25</sup> Requiring chapter 13 debtors to live in accordance with hypothetical cost of living standards will be, like the means test itself, wholly new to bankruptcy practice.

Chapter 13 debtors will also be limited in the extent to which they may reduce indebtedness on automobiles and consumer goods. Currently, a chapter 13 debtor is permitted to bifurcate a secured claim for an automobile or other consumer good into a secured and unsecured claim. The secured claim is valued at the fair market value of the secured property, as opposed to the contract price of the item. The debtor must repay the secured portion of the claim but may discharge the unsecured portion. A debtor’s ability to split the claim – known as “lien stripping” – will be reduced by the bill. Reducing the amount owed on claims will not be permitted with respect to automobiles purchased within two and one-half years before filing, or for any other item purchased within one year of filing. For any item the claim for which may still be bifurcated, its value will no longer be fair market value, but will be its replacement or retail price.

Thus, in addition to enlarging the categories of nondischargeable debt which would apply to *all* debtors, the bill substantially curtails the scope of relief that is currently permitted in chapter 13. Critics argue that the net result will not be a greater repayment of creditor claims, but an exceedingly high failure rate for reorganization plans by chapter 13 filers.

**Survey of Selected Provisions.** The legislation addresses many areas of bankruptcy beyond consumer filings. Topics include 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 from the bankruptcy conference report on H.R. 333, H.Rept. 107-617, 107<sup>th</sup> Cong., 2d Sess. (2002). This bill is likely to be the basis for legislation considered in the 108<sup>th</sup> Congress.

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<sup>24</sup> Challenges to “reasonably necessary” expenses are determined by the bankruptcy court.

<sup>25</sup> H.Rept. 107-617 at § 102.

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<b>Means test, 11 U.S.C. § § 704, 707:</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.
<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>

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<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. 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.<sup>26</sup></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" in order to adjust current monthly income determination. § 102.</p>
<i>Safe harbor exemption from the means test</i>	<p>Only the judge, U.S. trustee or bankruptcy administrator may bring a substantial abuse motion if the debtor's current monthly income is less than the highest national or the applicable State median family income.</p> <p>No party may make a motion to convert the debtor to chapter 13 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>The U.S. trustee may also decline to file a motion to convert if the debtor's monthly income is between 100% and 150% of the national or applicable State median income, and would permit a debtor to pay the lesser of (a) 25% of nonpriority unsecured debt or \$6,000, whichever is greater, or (b) \$10,000. § 102.</p>

<sup>26</sup> Charitable contributions are permissible under current law, 11 U.S.C. § 707(b), and would not be altered by the bill.

<b>Selected Provisions</b>	<b>Conference Report on H.R. 333, 107<sup>th</sup> Cong., 2d Sess. (2002).</b>
<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.</p> <p>§ 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>Creditor sanctions for an improper motion</i>	<p>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 creditor whose claim is less than \$1000 is not liable for sanctions. § 102</p>
<i>Dismissal of filings by persons convicted of violent crimes or drug trafficking</i>	<p>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</p>
<b>Additional 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 for 30 to 45 days if the debtor certifies exigent circumstances or was denied service from an approved counseling agency.</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>

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<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
<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>	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.
<i>Priority assigned to claims for liability incurred by the debtor DUI</i>	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.
<i>Retirement savings exemption broadened</i>	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

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<i>Exemption for saving for postsecondary education</i>	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
<i>Protection of nonpublic personal information and consumer privacy ombudsman</i>	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.
<i>Prohibition on disclosure of identify of minor children</i>	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.
<i>Lien stripping on security interests in consumer goods (cramdown)</i>	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 1 year of the filing. § 306.
<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 individuals who are 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 5 years preceding the bankruptcy filing. § 322.</p>
<i>Residential lease excepted from the automatic stay</i>	Adds new provisions permitting a landlord/lessor to bypass the automatic stay to continue with a residential eviction of a tenant/lessee. § 311

<b>Selected Provisions</b>	<b>Conference Report on H.R. 333, 107<sup>th</sup> Cong., 2d Sess. (2002).</b>
<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 6 to 8 years.</p> <p>Amends chapter 13 to disallow discharge if the debtor filed under chapters 7, 11, or 12 within 4 years prior to the 13 filing, or under chapter 13, within 2 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>
<i>Plan duration</i>	<p>Chapter 13 plans to have 5 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 3 year plans. § 318.</p>
<i>Wages withheld by an employer for contributions to employee benefit plans</i>	<p>Withheld wages for contributions to employee benefit plans would be excluded from the debtor (employer’s) estate. § 323.</p>
<i>Valuation of collateral</i>	<p>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.</p>
<i>Wages and benefits awarded as back pay</i>	<p>Makes specified prepetition and postpetition wages and benefits awarded as back pay a high-priority administrative expense. § 329.</p>



Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<i>Audits</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 consumer 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>Violence against providers or users of lawful services (formerly reproductive health services)</i>	Makes nondischargeable liability incurred from violations of law prohibiting intentional intimidation or violence to persons who provide or consume lawful services; damage or destruction of property that provides lawful goods or services; or intentional violations of protective orders or injunctions. § 330
<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.

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<i>FEC penalties nondischargeable</i>	Fines and penalties under federal election law are made nondischargeable. § 1235.
<b>Consumer credit disclosure</b>	
<i>Amendments to the Truth in Lending Act</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>	Comptroller General 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 would be directed to study existing protections for consumers for unauthorized use of a dual use debit card. § 1307
<b>Business bankruptcy</b>	
<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.

Selected Provisions	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<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>Trustee to appoint retiree committees</i>	<p>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.</p>
<i>Chapter 11 corporate nondischargeability</i>	<p>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.</p>
<i>Title X dealing with chapter 12 family farmers</i>	<p>Makes chapter 12 permanent. Measure to be effective upon enactment; 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 \$3,000,000 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	Conference Report on H.R. 333, 107 <sup>th</sup> Cong., 2d Sess. (2002).
<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; a question requiring resolution of conflicting decisions; or, a matter of public importance. §1233.
<i>Involuntary Bankruptcy</i>	Makes technical corrections made to 11 U.S.C. § 303 dealing with involuntary bankruptcy. Measure applies upon enactment, but not to pending cases. § 1234.
<i>Insolvent political committees prohibited from filing in bankruptcy (Senate provision § 1237)</i>	Omitted.
<i>“Lloyds of London” provision barring enforcement of certain foreign judgments (House provision § 1310)</i>	Omitted.
<i>Title XIV. Emergency Energy Assistance and Conservation Measures (House provisions §§ 1401-1408)</i>	Omitted.
<i>Title XVI. Miscellaneous Provisions (House provisions §§ 1601-1602)</i>	Omitted.
<i>General effective date</i>	Subject to express provisions otherwise, the new law will take effect 180 days after enactment and will not apply to cases commenced before the effective date. § 1401.