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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
Public Law No. 109-8
April 20, 2005

Effective Date and Exceptions to the General Effective Date

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May 31, 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) was signed into law on April 20, 2005. The Act provides, at Section 1501, a general effective date of October 17, 2005. Section 1501 further provides that the Act’s amendments are applicable only to cases filed on or after the effective date.

The following is a summary of the provisions of the Act for which there is an exception to the general effective date.

- Sections 308, 322 and 330, all relating to matters involving the homestead exemption, are effective on the date of enactment, as provided for in Section 1501(b)(2).
- Section 324, concerning the district courts’ exclusive jurisdiction over matters pertaining to professionals employed in bankruptcy cases, applies to cases filed after the date of enactment.
- Section 325, addressing bankruptcy filing fees, is effective for the two year period beginning on the date of enactment. Only subsections (b) and (c) of Section 325 are governed by the Section’s effective date. These deal with the U.S. trustee system fund and the collection and deposit of miscellaneous bankruptcy fees. The Section’s amendment to the fees for commencing cases under chapters 7, 11 and 13 are governed by Section 1501’s general effective date.

Update: On May 11, 2005, the President signed into law H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Pub. L. No. 109-13). Section 6058 of the Appropriations Act replaces Section 325 of S. 256 in its entirety and eliminates the effective date disparity between the fee increase and the allocation of those fees. The Appropriations Act provides: “This section and the amendments made

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by this section shall take effect immediately after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.”

- Section 434, which sets forth specific reporting requirements by small business debtors in chapter 11, takes effect “60 days after the date on which rules are prescribed under [28 U.S.C. 2075] to establish forms to be used to comply” with the reporting requirements. Although the Advisory Committee on Bankruptcy Rules of the Judicial Conference is required to propose such forms for adoption under Section 435 (in accordance, under the Act, with 28 U.S.C. § 2073), no specific timeframe has been set forth for doing so.
- Section 601, requiring the compilation and reporting of various data in consumer bankruptcies, is not effective until 18 months from the date of enactment.
- Section 603, requiring random audits of individual chapter 7 and 13 cases, takes effect 18 months from the date of enactment. This includes the Section’s language adding as a ground for revocation of discharge the debtor’s failure to satisfactorily explain material misstatements discovered in a random audit or the failure to provide information and records requested in conjunction with an audit.
- Section 1001, permanently reenacting the provisions of chapter 12, is effective July 1, 2005.
- Section 1213, overruling the *Deprizio* rule, applies to any case that is pending or commenced on or after the date of enactment.
- Section 1221, which requires that transfers made by nonprofit debtors comply with applicable nonbankruptcy law, applies to cases pending or commenced on or after the date of enactment. However, before confirming a chapter 11 plan, the court must consider whether the provisions of Section 1221 would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition.
- Section 1223, providing for additional bankruptcy judgeships, is effective on the date of enactment.
- Section 1234, amending provisions of § 303 and involuntary cases, is effective on the date of enactment and applies to cases commenced before, on or after that date.
- Sections 1301 through 1306 make various amendments to the Truth in Lending Act and require the Board of Governors for the Federal Reserve System, *inter*

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alia, to promulgate implementing regulations. Each of these sections is effective upon the later of 1) 12 months from the date of enactment, or 2) 12 months from the publication of the Board's final regulations, except Section 1301, which is effective upon the later of 1) 18 months from the date of enactment, or 2) 12 months from the publication of the Board's final regulations. However, it does not appear that the Board is required to undertake its duties under these Sections by any specified date.

- Section 1401, which increases the cap on the wage priority to \$10,000 and expands the look-back period from 90 to 180 days, is effective on the date of enactment, but is applicable only to cases filed on or after that date.
- Section 1402 expands the look-back period for fraudulent transfers from one to two years and adds language to § 548 to allow avoidance of certain transfers to or for the benefit of insiders under employment contracts not in the ordinary course of business. The look-back expansion would apply only to cases filed one year after the date of enactment. Avoidability of the insider transfers would be effective on the date of enactment and applicable to cases filed on or after the date of enactment.
- Section 1403, requiring reinstatement of retiree benefit plans under certain circumstances, is effective on the date of enactment, but applies only to cases filed on or after the date of enactment.
- Section 1404 amends § 523(a)(19), added by Sarbanes-Oxley in 2002, which excepts from discharge certain debts relating to securities fraud, but the effective date of this amendment is not clear. Section 1404 makes the amendment retroactively effective to July 30, 2002, the date of enactment of Sarbanes-Oxley. Under Section 1406, which concerns the effective dates for the Sections within Title XIV, Section 1404's effective date would be the date of its own enactment, applicable to cases filed on or after that date.
- Section 1405, which requires that the U.S. trustee move for the appointment of a trustee where there are reasonable grounds to suspect fraud, dishonesty or criminal conduct on the part of certain corporate officials, is effective on the date of enactment, applicable to cases filed on or after that date.



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