

# Report for Congress

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## **Bankruptcy Reform Legislation in the 107<sup>th</sup> Congress: A Comparison of H.R. 333 As Passed by the House and the Senate**

**Updated July 10, 2002**

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# Bankruptcy Reform Legislation in the 107<sup>th</sup> Congress: A Comparison of H.R. 333 As Passed by the House and the Senate

## Summary

H.R. 333, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001), the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2001” and its counterpart in the Senate, S. 220, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001), the “Bankruptcy Reform Act of 2001” were introduced on January 31, 2001.

As introduced, the bills were essentially identical both to each other and to H.R. 2415, 106<sup>th</sup> Congress, 2d Sess. (2000), which passed both chambers but was pocket vetoed by former President Clinton. On March 1, 2001, the House passed a slightly amended version of H.R. 333 by a vote of 306-108, after having first rejected a Democratic-sponsored substitute on a 160-258 vote.

The Senate Judiciary Committee completed a two-day mark up of S. 220 by reporting out a clean bill, S. 420, on a 10-8 vote. S. 420 was similar to S. 220. It was brought to the floor on March 7. After several days of debate, cloture was invoked. Amendments were agreed to and the bill was passed on March 15, 2001 by a vote of 85-15. On July 17, 2001 the Senate passed H.R. 333 with an amendment in the nature of a substitute. It struck the language of the House version and replaced it with the language of S. 420. H.R. 333, as amended, passed the Senate by a vote of 82-16.

The bills, which were identical when introduced, retain their core features. But, because H.R. 333 passed the House and the Senate in different forms, it required a conference. Both the House and the Senate appointed conferees in July, 2001. The conference met on May 22, 2002, but has not yet released its report.

So far, the 107<sup>th</sup> Congress has demonstrated widespread support for the bills evidenced by the votes. Although President Bush is expected to sign bankruptcy reform into law, the White House has indicated that a bankruptcy bill that contains a federal homestead cap may be unacceptable.

This report surveys the bills and the major amendments that have been adopted. It provides a sectional analysis comparing selected provisions, with an emphasis on consumer bankruptcy.

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## Introduction

H.R. 333, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001), the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2001” and its counterpart in the Senate, S. 220, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001), the “Bankruptcy Reform Act of 2001” were introduced on January 31, 2001.

As introduced, the bills were essentially identical both to each other and to H.R. 2415, 106<sup>th</sup> Congress, 2d Sess. (2000), which passed both chambers but was pocket vetoed by former President Clinton. On March 1, 2001, the House passed a slightly amended version of H.R. 333 by a vote of 306-108,<sup>1</sup> after having first rejected a Democratic-sponsored substitute on a 160-258 vote.

The Senate Judiciary Committee completed a two-day mark up of S. 220 by reporting out a clean bill, S. 420, on a 10-8 vote. S. 420, as introduced, was similar to S. 220. S. 420 was brought to the floor on March 7. After several days of debate, cloture was invoked. Amendments were agreed to and the bill passed on March 15, 2001 by a vote of 85-15.<sup>2</sup> Several of the amendments adopted represent the reintroduction of provisions which were passed by the Senate during the 106<sup>th</sup> Congress in H.R. 833 but were omitted from the conference version of the bill, H.R. 2415. These include, *e.g.*, adding a new category of “family fisherman” to chapter 12 governing family farmer reorganization,<sup>3</sup> making fines and penalties of the Federal Election Commission nondischargeable,<sup>4</sup> and prohibiting political committees from filing in bankruptcy.<sup>5</sup>

On July 17, 2001 the Senate passed H.R. 333 with an amendment in the nature of a substitute. It struck the language of the House version and replaced it with the language of S. 420. H.R. 333, as amended, passed the Senate by a vote of 82-16.<sup>6</sup>

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<sup>1</sup>147 CONG. REC. H601 (daily ed. March 1, 2001).

<sup>2</sup>147 CONG. REC. S2379 (daily ed. March 15, 2001).

<sup>3</sup>S. Amdt. 16, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001).

<sup>4</sup>S. Amdt. 49

<sup>5</sup>S. Amdt. 50

<sup>6</sup>147 CONG. REC. S7742 (daily ed. July 17, 2001).

The bills, which were identical when introduced, retain their core features. Because H.R. 333 passed the House and the Senate in different forms, it required a conference.

Both the House and the Senate appointed conferees in July, 2001. Members of the conference include Senators Leahy, Kennedy, Biden, Kohl, Feingold, Schumer, Durbin, Hatch, Grassley, Kyl, DeWine, Sessions, McConnell, and Representatives Sensenbrenner, Hyde, Gekas, Smith of Texas, Chabot, Barr, Boucher, Nadler, Watt, Oxley, Bachus, LaFalce, Tauzin, Barton, Dingell, Boehner, Castle, and Kildee. The conference met on May 22, 2002. Unofficial accounts suggest the conference was able to agree on all outstanding issues, including a compromise version of homestead exemption language. The sole outstanding issue is reported to be a compromise on language governing dischargeability of liability incurred in connection with violence against abortion clinics. Sen. Schumer and Rep. Hyde have been the lead negotiators on this issue.

So far, the 107<sup>th</sup> Congress has demonstrated widespread support for the bills evidenced by the votes. Although President Bush is expected to sign bankruptcy reform into law, the White House has indicated that a bankruptcy bill that contains a federal homestead cap may be unacceptable.

## Background in the 106<sup>th</sup> Congress

Bankruptcy reform legislation to amend the U.S. Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, was introduced shortly before the close of the first session of the 105<sup>th</sup> Congress. Supporters of bankruptcy reform hope to stem the historically high volume of consumer filings and to increase the recovery creditors realize on their claims by channeling more debtors in chapter 13. With respect to consumer filings, the thrust of the reform proposal is to increase the complexity of filing requirements by adding new jurisdictional requirements, *e.g.*, pre-bankruptcy financial counseling, imposing a means test on filers to determine whether they may file under chapter 7 or 13, and to impose uniform standards on debtor expense allowances in bankruptcy. The proposed changes to business bankruptcy are less dramatic, although small businesses will be subject to more rigid, hence stricter procedural requirements.

In the 106<sup>th</sup> Congress, the House passed H.R. 833 by a vote of 313-108. The Senate brought S. 625 to the floor on November 4, 1999. After considerable debate and the adoption of many germane and nongermane amendments, the Senate struck the language of the House version, substituted its language, and passed H.R. 833 by a vote of 83-14.

H.R.833 was informally negotiated by House and Senate Republican leadership. As the 106<sup>th</sup> Congress headed towards adjournment *sine die*, a final push toward enactment took place. The product of the negotiations was substituted as H.R. 2415, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999), previously entitled “the American Embassy Security Act of 1999.” On Oct. 12, 2000, the House passed the conference report to H.R. 2415. It was passed by the Senate on December 7, 2000. Because the bill retained features which the White House objected to, it was pocket vetoed by former President Clinton.

## **The 107<sup>th</sup> Congress: H.R. 333 as Passed by the House**

The House Judiciary Committee, by a vote of 19 to 8, reported H.R. 333 favorably.<sup>7</sup> The bill passed the House with few amendments by a vote of 306 to 108. In addition to a manager's amendment to make technical and conforming changes,<sup>8</sup> the House adopted a floor amendment to add public school – in addition to already existing private school – tuition costs to the debtor's permissible monthly expenses;<sup>9</sup> an amendment to prevent the names of children from being disclosed in bankruptcy filings;<sup>10</sup> and, an amendment to reflect changes made by enactment of the Commodity Futures Modernization Act and current market practices.<sup>11</sup>

## **S. 420 as Reported and Passed by the Senate**

The Senate Judiciary Committee reported a clean bill, S. 420, favorably on March 1, 2001. Among the amendments adopted in committee was a compromise provision sponsored by Senators Hatch and Schumer to make nondischargeable liability for violence at reproductive health clinics. The compromise language is broader than the provision adopted by the Senate during the 106<sup>th</sup> Congress. It does not refer specifically to reproductive health clinics but would make nondischargeable debts incurred through violations of laws relating to the provision of lawful goods and services.<sup>12</sup> Another amendment would create a “consumer privacy ombudsman” to prevent companies in bankruptcy from selling personal information about consumer customers.<sup>13</sup> The Committee also adopted an amendment which narrows the grounds upon which a lessor may evict a residential tenant in bankruptcy.<sup>14</sup> Several amendments were made to Title X of the bill dealing with chapter 12 of the Bankruptcy Code governing family farmer reorganization.<sup>15</sup> The bill changes the jurisdictional filing requirements by raising the permissible debt limit for farmers from \$1,500,000 to \$3,000,000 and broadens the requirement that over 50 percent of income in the year prior to filing under chapter 12 be derived from farming.

The Senate bill, like the house bill, provides that the automatic stay, 11 U.S.C. § 362, would no longer prevent the continuation or commencement of eviction proceedings against a residential tenant. The amendment to S. 420 conditions relief from the stay upon the debtor's making rent payments and the landlord certifying that certain conditions exist.

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<sup>7</sup>H.Rept. 107-3, Part 1, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001).

<sup>8</sup>Id. at H575.

<sup>9</sup>Id. at H577. H.R. 333 at § 102.

<sup>10</sup>Id. at H578. H.R. 333 at § 231.

<sup>11</sup>Id. at H579.

<sup>12</sup>S. 420, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. § 328 (2001).

<sup>13</sup>Id. at §§ 231, 232.

<sup>14</sup>Id. at § 311.

<sup>15</sup>Id. at §§ 1004 - 1006.

The Senate began debate on S. 420 the week of March 5 and passed it on March 15, 2001. On March 14, a motion for cloture to limit debate was passed by a vote of 80 to 19. Approximately fifty amendments were submitted. Several were provisions passed by the Senate during the 106<sup>th</sup> Congress. These include, *e.g.*, adding a new category of “family fisherman” to chapter 12,<sup>16</sup> making fines and penalties of the Federal Election Commission nondischargeable,<sup>17</sup> and prohibiting political committees from filing in bankruptcy.<sup>18</sup>

In addition to those listed below, nongermane amendments added new titles XIV and XVI to the bill. Title XIV, entitled “Emergency Energy Assistance and Conservation Measures,”<sup>19</sup> raises the amount authorized to be appropriated for weatherization programs under the Low-Income Home Energy Assistance Act of 1981. New Title XVI entitled “Miscellaneous Provisions” adds § 1601 directing the Federal Crop Insurance Corporation to promulgate specified regulations under 7 U.S.C. § 522(b).<sup>20</sup>

The amendments to S. 420 included:

- A provision adding a new § 1235 entitled “Involuntary cases.”<sup>21</sup>
- A provision, discussed above, to add a new category of “family fisherman” to chapter 12.<sup>22</sup>
- A provision that if a lender who makes predatory loans sells or transfers the loan to a third party, any claims or defenses that a customer may have against the lender will be preserved despite the lender’s filing in bankruptcy.<sup>23</sup>
- A provision adding a new § 329 making specified prepetition wages and benefits an administrative expense.<sup>24</sup>
- A provision adding a new § 420 permitting a debtor to continue as a plan administrator of an employee benefit plan.<sup>25</sup>

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<sup>16</sup>S. Amdt.16, 107<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2001).

<sup>17</sup>S. Amdt.49

<sup>18</sup>S. Amdt.50

<sup>19</sup>S. Amdt.28

<sup>20</sup>S. Amdt.109

<sup>21</sup>S. Amdt. 15

<sup>22</sup>S. Amdt. 16

<sup>23</sup>S. Amdt. 25

<sup>24</sup>S. Amdt. 30

<sup>25</sup>S. Amdt. 35

- A provision permitting the debtor's reasonable and necessary medical expenses to be deducted from the "disposable income" which must be paid to creditors under a chapter 13 plan.<sup>26</sup>
- A provision permitting a debtor to include in calculating monthly expenses reasonable and necessary actual expenses (that is costs in excess of the IRS Local Standards) for home energy costs.<sup>27</sup>
- A provision, similar to one adopted by the House, preventing the names of children from being disclosed in bankruptcy filings.<sup>28</sup>
- A provision which raises the threshold from \$250 to \$750 for amounts incurred within 90 days of bankruptcy which will be presumed to be nondischargeable. In other words, consumer debts owed to a single creditor for more than \$750 for luxury goods or services incurred within 90 days of filing will be presumed nondischargeable.<sup>29</sup>
- A provision which restores the status quo by permitting corporate debtors in chapter 11 to discharge debt. Prior to adoption of this amendment, the House and Senate bills would have made debts which are nondischargeable to individuals nondischargeable to chapter 11 corporate debtors as well. The amendment also limits nondischargeability of fraudulent debts incurred by a corporation to those owed to governmental units.<sup>30</sup>
- A provision requiring that small business reorganization plans be confirmed within 45 days after the plan is filed with possible extensions of time (rather than within 175 days of filing in bankruptcy).<sup>31</sup>
- A provision deleting § 1310 of the bill, popularly referred to as the "Lloyds of London" provision. This section of the S. 420 was intended to assist a small group of investors in Lloyds insurance company who have outstanding liability as a result of contracts and legal judgments entered in England.<sup>32</sup>
- A provision that would prohibit a chapter 13 discharge if the debtor received a discharge under chapters 7, 11, or 12 within the three preceding years, or a

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<sup>26</sup>S. Amdt. 38

<sup>27</sup>S. Amdt. 40

<sup>28</sup>S. Amdt. 41

<sup>29</sup>S. Amdt. 42

<sup>30</sup>S. Amdt. 43

<sup>31</sup>S. Amdt. 45

<sup>32</sup>S. Amdt. 51



chapter 13 discharge within two preceding years (unless the debtor can demonstrate “extreme hardship.”)<sup>33</sup>

- A provision that would alter § 1235 governing expedited bankruptcy appeals. It omits the deadlines for presuming “final” action by a U.S. district court.<sup>34</sup>
- A provision that lays out the procedure for a landlord to lift the automatic stay in order to evict or continue eviction proceedings against a residential tenant who files in bankruptcy.<sup>35</sup>
- A provision addressing the filing of tax returns by individual debtors with the expressed purpose of saving storage costs.<sup>36</sup>
- A provision imposing a federal cap of \$125,000 on state homestead exemptions available in bankruptcy.<sup>37</sup>
- A provision adding a new § 205 to the bill directing the General Accounting Office to study the reaffirmation process and report to Congress.<sup>38</sup>
- A provision to reduce the prohibition on cramdown – that is, lien stripping – on automobiles in chapter 13 from 5 years to 3 years.<sup>39</sup>
- A provision adding a new bankruptcy judgeship for the district of Nevada.<sup>40</sup>
- A provision amending the means test to allow a debtor to include in monthly expenses up to \$1,500 per year per child for tuition at public school. This amendment is comparable, but not identical, to the provision in H.R. 333 which added public school in addition to private school tuition.<sup>41</sup>

Additional amendments effected technical and conforming corrections.<sup>42</sup> Among the amendments that did not pass were provisions limiting the extension of

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<sup>33</sup>S. Amdt. 54

<sup>34</sup>S. Amdt. 58

<sup>35</sup>S. Amdt. 59

<sup>36</sup>S. Amdt. 66

<sup>37</sup>S. Amdt. 68

<sup>38</sup>S. Amdt. 81

<sup>39</sup>S. Amdt. 105

<sup>40</sup>S. Amdt. 107

<sup>41</sup>S. Amdt. 108

<sup>42</sup>*See, e.g.*, S. Amdts. 19, 20, 24, 60 and 106.

credit to minors,<sup>43</sup> an amendment discouraging “payday loans”,<sup>44</sup> and, an amendment removing the \$1,000,000 cap on exempt retirement funds.<sup>45</sup>

## Senate Passage of H.R. 333

As stated earlier, the Senate passed H.R. 333 on July 17, 2001 by striking the language of the House bill and substituting the language of S. 420. The Senate adopted one floor amendment sponsored by Sen. Wellstone which would require the General Accounting Office (GAO) to study the impact of bankruptcy reform on chapter 7 and 13 filings; on the number of confirmed and successful chapter 13 plans; on the costs of filing under chapters 7 and 13; on the availability and price of consumer credit; and, on low income debtors’ ability to obtain bankruptcy relief.<sup>46</sup> The GAO would report to Congress within two years of the law’s effective date.

## Structural Overview of the Bills

Like their predecessors, the bills in the 107<sup>th</sup> Congress are comprehensive. Selected provisions are examined below. Titles I through III of each bill deals with consumer bankruptcy reform. Title IV deals with business bankruptcy, including small business bankruptcies.

*Municipal bankruptcy.* Amendments to chapter 9 of the Code dealing with municipal reorganization are set forth in Title V. Provisions clarify that special rules govern the commencement of a voluntary case of an unincorporated tax or special assessment district, and that certain financial transactions are excepted from the automatic stay.

*Improved bankruptcy statistics and data.* Title VI establishes rules for enhanced collection and analysis of bankruptcy statistics. It is designed, in part, to create a standardized and centralized method for collecting relevant bankruptcy statistics, *e.g.*, how much debt is discharged, for cases involving consumer debts filed under chapters 7, 11, and 13.

*Bankruptcy tax provisions.* Title VII contains extensive provisions governing taxation of the bankruptcy estate. For example, it provides greater protection for holders (which are often school boards) of ad valorem tax liens. It simplifies the calculation of interest on tax claims in bankruptcy. It repeals the “superdischarge” for individuals under chapter 13 and prohibits discharge for corporations under chapter 11 for fraudulent or non-filed taxes. It addresses, *inter alia*, tax liens, priorities, timing of payments, and the dischargeability of tax obligations

*Ancillary and cross-border cases.* Title VIII would add a new chapter 15 to the Code to address issues arising from international insolvencies.

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<sup>43</sup>S. Amdt. 27

<sup>44</sup>S. Amdt. 36

<sup>45</sup>S. Amdt. 39

<sup>46</sup>S. Amdt. 977.

*Financial contract provisions.* Title IX deals with commercial banking and financial issues such as forward contracts, netting, swap and repurchase agreements, and asset-backed securitization.

*Protection of Family Farmers.* Title X would enact chapter 12 governing family farmer reorganization permanently, retroactive to its expiration date, July 1, 2000. It adjusts the jurisdictional debt limit so it may be adjusted periodically pursuant to the Consumer Price Index and provides different treatment for certain tax claims arising from the disposition of a family farm.

*Health care and employee benefits.* Title XI of the bills have provisions providing for the disposal of patient records and/or transfer of patients of a specified “health care facility” in the event of a bankruptcy necessitating closure. It designates the costs incurred by a trustee or federal agency in closing the business, disposing of records, and transferring patients as administrative expenses. The trustee is expressly directed to “use all reasonable and best efforts” in the transfer of patients to appropriate facilities. A patient ombudsman must be appointed by the court to monitor patient care and report to the court during the bankruptcy.

*Technical amendments.* Title XII is entitled “Technical Amendments.” It embodies a wide range of provisions, several of which are arguably substantive, for example:

- lifting the \$4,000,000 cap on single-asset real estate bankruptcy (§ 1201(5));
- adding “the Bankruptcy Judgeship Act of 2001” which creates 23 temporary judgeships;
- requiring debtors to provide requested tax documents in order to obtain a discharge or confirmation of a reorganization plan; and
- allowing parties to take expedited appeals to a court of appeals by imposing specified deadlines for district court actions (§ 1234 of the House’s version of H.R. 333).

*Consumer credit disclosure.* Title XIII would amend the Truth in Lending Act to require specified disclosures by credit lenders.

The Senate bill includes a new Title XIV entitled “Emergency Energy Assistance and Conservation Measures” and a new Title XVI which adds § 1601 directing specified rulemaking by the Federal Crop Insurance Corp. There are not comparable titles in the House version of H.R. 333.

## **Summary and Comparison of Selected Provisions**

The chart below provides a brief summary of and reference to selected provisions in the House and Senate bills as passed by their respective chamber. However, if and when the bankruptcy conference on H.R. 333 releases its report, Members are likely to be voting on a version of the bankruptcy reform bill that

contains additional amendments and substitute language governing the provisions reviewed below.

Selected Provisions	H.R. 333, 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the House	H.R. 333 (S. 420), 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the Senate
<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 and payments to victims of war crimes or crimes against humanity. § 102.	
<i>Presumed abuse</i>	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. § 102.	

Selected Provisions	H.R. 333, 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the House	H.R. 333 (S. 420),107 <sup>th</sup> Cong.,1 <sup>st</sup> Sess. (2001) As Passed by the Senate
<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 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; and average monthly expenses for secured and priority debts. § 102.</p>	<p>Comparable provisions at § 102.</p> <p>A m e n d m e n t s     t o individualized expenses added public (as well as private) school tuition, and reasonable and necessary costs for home energy costs.</p>
<i>To rebut the presumption of abuse</i>	A debtor must demonstrate "special circumstances."§ 102.	

Selected Provisions	H.R. 333, 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the House	H.R. 333 (S. 420),107 <sup>th</sup> Cong.,1 <sup>st</sup> Sess. (2001) As Passed by the Senate
<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>	
<i>IRS Living Standards applicable to chapter 13 reorganization plan</i>	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. § 102.	Comparable but adds a new 11 U.S.C. § § 1329(a)(4) permitting a chapter 13 debtor to deduct the costs of health insurance from plan payments.
<i>Attorney sanctions for improper motion</i>	If a panel trustee brings a successful motion for dismissal or conversion, counsel for the debtor will 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. § 102.	
<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 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	
Additional consumer provisions		

Selected Provisions	H.R. 333, 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the House	H.R. 333 (S. 420), 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the Senate
<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>	
<i>Promotion of alternative dispute resolution</i>	<p>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.</p>	
<i>Reaffirmation agreements</i>	<p>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.</p>	
<i>Preserving defenses against predatory lenders</i>	No comparable provision	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>	No comparable provision.	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. § 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>	

Selected Provisions	H.R. 333, 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the House	H.R. 333 (S. 420), 107 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2001) As Passed by the Senate
<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. § 224	
<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>	No comparable provisions.	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. § 231.	Comparable provision, but gives access to nonpublic records to U.S. trustee or auditor. § 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 5 years of the filing; or in other consumer goods purchased within 1 year of the filing. § 306.	Chapter 13 debtors would not be permitted to bifurcate security interests in an automobile purchased within 3 years of the filing; or in other consumer goods purchased within 1 year of the filing. § 306.



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<i>Homestead exemption</i>	<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 7 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 2 years of filing which exceeds in the aggregate \$100,000, unless the value in excess of that amount occurs from a transfer of residences within the same state. Exempts family farmers from the limit. § 322.</p>	<p>Comparable provision. § 307.</p> <p>Adds a federal cap to state homestead exemptions of \$125,000. § 308.</p> <p>Omitted.</p>
<i>Residential lease excepted from the automatic stay</i>	<p>The automatic stay will not operate to stop the continuation of, or in some cases, the commencement of eviction actions by a lessor against a debtor involving rental property in which the debtor resides. § 311.</p>	<p>Adds detailed requirements for lifting the automatic stay to continue with a residential eviction of a lessor and certification requirements for the assertions of both the landlord and the debtor/tenant with respect to actions under the automatic stay. § 311</p>
<i>Restrictions on chapter 13 filings.</i>	<p>Amends chapter 13 to disallow discharge if the debtor has received a discharge in any case filed within 5 years. § 312.</p>	<p>Amends chapter 13 to disallow discharge if the debtor filed under chapters 7, 11, or 12 within 3 years, or under chapter 13 within 2 years. § 312.</p>

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<i>Definition of “household goods”</i>	Defines household goods to include clothing, furniture, appliances, 1 radio, 1 television, 1 VCR, linens, china, crockery, kitchenware, educational materials used by minor dependent children (including 1 personal computer) , medical equipment and supplies, furniture used exclusively by minors and disabled or elderly dependents, and personal effects. § 313.	
<i>Debtor’s duty to disclose tax filings.</i>	Comparable provision requiring a debtor to file, upon request, “all tax returns required under applicable law.” § 315.	Modifies debtor requirement under 11 U.S.C. § 521(f) to file tax returns with the court by limiting required filings to federal tax returns. § 315.
<i>Plan duration</i>	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	
<i>Withheld wages for contributions to employee benefit plans</i>	Withheld wages for contributions to employee benefit plans would be excluded from the debtor (employer’s ) estate. This would override the current unsecured priority at § 507(a)(3) which caps priority benefit claims at \$4,650. H.R. 333,§ 323; S. 420, §322.	
<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. H.R. 333, § 327; S. 420, §326.	
<i>Clarification of postpetition wages and benefits</i>	No comparable provision.	Makes specified prepetition and postpetition wages and benefits an administrative expense. § 329.
<i>Duties of a debtor who is also an employee benefit plan administrator</i>	No comparable provision.	Permits a debtor to continue as a plan administrator of an employee benefit plan. § 420.
<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.	

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<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 \$250 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	Consumer debts owed to a single creditor for more than \$750 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>	No comparable provision.	Makes nondischargeable liability incurred from violations of law prohibiting harassment or violence to persons who provide or consume lawful services; or damage or destruction of property that provides lawful goods or services. § 328
<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>	No comparable provision.	Fines and penalties under federal election law are made nondischargeable. § 1236.

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Consumer credit disclosure		
<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. § 1907	
Business bankruptcy		
<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.	

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<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 \$3,000,000. The debtor’s period of exclusivity to file a reorganization plan is 180 days.</p> <p>A plan must be confirmed within 175 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>	<p>A plan must be confirmed within 45 days after the plan is filed. § 438.</p>

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<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) for property obtained by false p r e t e n s e s or representations; or any debt for taxes for which the debtor willfully attempted to evade or made a fraudulent return. § 708.</p> <p>Also, a provision in § 321 dealing with chapter 11 cases filed by individuals would amend 11 U.S.C. § 1141(d) to make all debts which are nondischargeable by individuals applicable to corporate debtors. § 321(d).</p>	<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 p r e t e n s e s 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> <p>This provision is omitted.</p>

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<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. §§ 1001-1003.</p> <p>No comparable provision.</p> <p>No comparable provision.</p> <p>No comparable provision.</p>	<p>Includes comparable provisions.</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>
<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 125% of the income 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. § 1224.	By floor amendment, adds an additional bankruptcy judgeship for the district of Nevada. § 1223
<i>Discharge under chapter 12</i>	Makes a technical correction to 11 U.S.C. § 1228. § 1219	No comparable provision.

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<i>Expedited bankruptcy appeals to a court of appeals</i>	U.S. district court decisions shall be deemed “final” for appeals purposes 31 days after filed if the district court does not file a decision within 30 days. § 1234.	Allows immediate appeals from lower courts if decision involves a substantial question of law; a question requiring resolution of conflicting decision; or, a matter of public importance. §1233.
<i>Involuntary Bankruptcy</i>	No comparable provision.	Technical corrections made to 11 U.S.C. § 303 dealing with involuntary bankruptcy. § 1235.
<i>Insolvent political committees prohibited from filing in bankruptcy</i>	No comparable provision.	Political committees subject to jurisdiction of the Federal Election Commission may not file in bankruptcy. § 1237
<i>“Lloyds of London” provision barring enforcement of certain foreign judgments</i>	Prohibits U.S. courts from enforcing foreign judgments derived from fraudulent omissions that occur in the U.S. during January 1, 1975 through December 31, 1993. § 1310.	Omitted.
<i>Title XIV. Emergency Energy Assistance and Conservation Measures</i>	No comparable provision.	To provide assistance to consumers affected by high energy prices and to promote conservation investments in private and federal facilities. §§ 1401-1408.
<i>Title XVI. Miscellaneous Provisions</i>	No comparable provision.	Directs the Fed. Crop Ins. Corp. to promulgate regulations under 7 U.S.C. § 522(b). § 1601.
	No comparable provision	Directs the GAO to study the impact of enactment of bankruptcy reform on filing under chapters 7 and 13 and on consumer credit. § 1602.



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<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.	Identical provision. § 1501.