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Proposed Bankruptcy Legislation to Address Natural Disaster Victims

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Summary

Several bills have been introduced in the 109th Congress to amend the U.S. Bankruptcy Code, 11 U.S.C. § 101 *et seq.* in the wake of Hurricane Katrina. H.R. 3662 would delay the effective date for the means test amendments to the Code enacted in the Bankruptcy Abuse Prevention and Consumer Protection Act. H.R. 3697, S. 1647, S. 1765, and S. 1766 would make substantive amendments to the Code to deal with victims of natural disasters. They are discussed below. This report will be updated as events warrant.

Many members of the public and of Congress have expressed concern over how bankruptcy law in general and implementation of the new bankruptcy provisions in the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), P.L.109-8, many of which take effect on October 17, 2005, will affect victims of Hurricane Katrina.¹ This report reviews bills introduced to date which would amend provisions of the U.S. Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

Two provisions, a bill, H.R. 3662, entitled the “Financial Safeguards for Hurricane Survivors Act of 2005” and a proposed (but not adopted) amendment to H.R. 2862,² would delay the effective date for the BAPCPA amendments by two years or one year respectively. This would allow hurricane victims more time to file under the current (soon to expire) provisions of chapters 7, 11, and 13.³

H.R. 3697, the “Hurricane Katrina Bankruptcy Relief and Community Protection Act of 2005” would make substantive changes to the Code.

¹ For more background, see CRS Report RL33082, *Bankruptcy Relief and Natural Disaster Victims*.

² S.Amdt. 1678, 109th Cong., 2nd Sess. (2005).

³ Both individual and business bankruptcy filings have increased in anticipation of the BAPCPA. Two airlines, Delta and Northwest, filed on the same day. See 17 BNA BANKR. L. REP. 762, *U.S. Bankruptcy Filings Up 16 Percent, Marking Record Number for Any Quarter*, Sept. 1, 2005.

It would add a definition of “natural disaster” derived from federal or state law to the Code, and define “victim” as one whose home, place of business, or principal assets are located in the area of the disaster and whose financial condition is materially adversely affected by it.

In addition, it would:

- exempt disaster victims from the BAPCPA’s mandatory credit counseling requirements.
- exempt them from liberalized provisions under the BAPCPA permitting the lifting of the automatic stay, 11 U.S.C. § 362(b)(22), to facilitate residential evictions.
- permit the court to extend time periods for the many debtor responsibilities under amended 11 U.S.C. § 521. For example, a debtor must provide copies of all payment advices or other evidence of payment received within 60 days of filing; an itemized statement of monthly net income; and a statement at the beginning of the case disclosing reasonably anticipated increases in income or expenditures for the coming year. Failure to file (along with other required information) results in mandatory dismissal after 45 days.
- amend the means test under the BAPCPA to include “the actual reasonably necessary expenses incurred as a result of being a victim of a natural disaster.”
- exempt natural disaster victims from dismissal or conversion to chapter 13 based on the means test.
- amend chapter 11 business reorganization to allow the court to consider a debtor’s status as a disaster victim when weighing whether dismissal of the chapter 11 case would be in the best interests of creditors and the estate.
- allow additional time for filing a chapter 11 reorganization plan for a debtor who can’t meet deadlines because of a natural disaster;
- extend deadlines for small business chapter 11 debtors when in the best interest of creditors or warranted by a natural disaster.
- allow chapter 13 debtors additional time to file prepetition tax returns if the debtor’s status as a disaster victim so necessitates.
- amend 28 U.S.C. § 1408 by adding a new provision allowing debtors to file bankruptcy cases outside of their domiciliary venue if the debtor is a natural disaster victim.

S. 1647, a companion bill of the same title, has comparable provisions. In addition, it includes a one year grace period during which those provisions of the BAPCPA which become effective on October 17, 2005, would not apply to individuals who reside or resided in areas affected by the hurricane whose financial condition is materially adversely affected.

Two Senate bills, S. 1765 and S. 1766, both entitled the “Louisiana Katrina Reconstruction Act,” have identical provisions to amend the Bankruptcy Code at Title III, Subtitle D, §§ 331- 336. The bills would not delay implementation of the BAPCPA. They define the terms “natural disaster” and disaster victim, and disaster zone.

They would exclude from income payments made to victims solely on account of their victim status and amend the means test to allow them to include certain expenses in their calculation of monthly living expenses, namely:

...the actual reasonably necessary expenses incurred as a result of being a victim of natural disaster if the debtor provides documentation of such expenses, and a detailed explanation of why such expenses are reasonable and necessary and why such expenses are not accounted for by the national standards, local standards, and other necessary expenses[.]⁴

They would amend the means test to include natural disasters when invoking “special circumstances” to rebut the presumption of abuse.

The bills would also amend specified provisions of the Code to allow disaster victims to extend various statutory deadlines such as for mandatory conversion of a case, filing of a reorganization plan, or filing a tax return.

⁴ § 333 of S. 1765 and S. 1766.

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