

**The Debtor is Back: Consumers “Charge” Forward Under The New Bankruptcy Law**  
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When President Bush signed the Bankruptcy Abuse Prevention, Consumer Protection Act (hereinafter “Act”) into law on April 20, 2005, there was no shortage of opinions about the need for bankruptcy reform and the impact reform will have on consumer bankruptcies. This article will summarize some of the changes faced by consumer debtors and will also discuss the initial data that is emerging after six months of filings under the Act.

**What are the Major Changes?**

A great resource for gathering information about the Act, as well as discussions about its effectiveness, is the American Bankruptcy Institute’s website [www.abiworld.org](http://www.abiworld.org). For example, *25 Changes to Personal Bankruptcy Law* discusses changes to consumer bankruptcy law at a basic level of bankruptcy law. Some of the changes discussed include:

1. Means Test for Chapter 7 Eligibility: If the debtor’s income is greater than the state’s median income, the debtor must file a Chapter 13 if that income after deduction of certain allowed expenses is greater than \$100 per month.
2. Mandatory Credit Counseling/Education: A requirement to file a bankruptcy is that the debtor receive credit counseling from an approved counseling agency. Prior to receiving a discharge, a debtor must complete a debtor education course in financial management from an approved agency.
3. Homestead Exemption: In an effort to close the “mansion loophole”, the homestead exemption is limited to \$125,000.00 if the homestead was purchased within 3-1/3 years of a bankruptcy filing. Any amount over the cap becomes property of the estate and is used to pay creditors unless the excess is from the sale of another homestead within the same state or the home is the principal residence of a family farmer.

4. Domestic Support Obligations: Support obligations are now a first priority payment above all other creditors. The automatic stay also does not apply to payment of domestic support obligations from property which is not property of the bankruptcy estate (i.e. exempt property) or to the enforcement of wage-withholding orders.
5. Attorneys as “Debt Relief Agencies”: Perhaps the most blatant attempt to insult lawyers who provide bankruptcy advice to consumers is the definition of those practitioners as “Debt Relief Agencies” and the requirement to include a statement similar to “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code”.

Despite the seemingly drastic overhaul of the bankruptcy system, consumer filings are on the rise and the tougher pre-filing screenings are not forcing more people into consumer credit counseling as was hoped by those in favor of reform as discussed below.

#### **What are the Statistics?**

Not surprisingly, 2005 saw a spike in consumer bankruptcy filings. According to the U.S. Trustee’s Office, the number of non-business filings rose from 1,563,145 in 2004 to 2,039,214 in 2005, a difference of 476,069. The Middle District of Florida reported an increase for Chapter 7 and 13 filings from 51,526 in 2004 to 63,567 in 2005, a difference of 12,041 in this district alone.

When the large number of filings leading up to the effective date of October 17, 2005 of the Act in this District are considered, the numbers are even more dramatic: compare September 2004 total filings of 3,523 with September 2005 filings of 7,342 (7,332 of which were Chapter 7/13) and October 2004 total filings of 4,142 with October 2005 filings of 18,800 (18,772 of which were Chapter 7/13)!!

At the time of writing this article, the U.S. Trustee had not released any data for the 1st Quarter 2006 national filings. However, statistics are available from the Middle District of Florida. Not surprisingly, Chapter 7/13 bankruptcy filings dropped off significantly in November 2005 to a total of 340 from the record October 2005 filings. However, the Chapter 7/13 filings have steadily increased with each month: 583 filings in December 2005; 742 filings in January 2006, and 892 filings in February 2006.

Certainly, the massive filings just prior to the effective date captured many debtors who may have otherwise waited to file and the hesitation to seek bankruptcy advice under the “tougher” will take some time to dissipate. Nevertheless, an early survey from the National Association of Consumer Bankruptcy Attorneys concludes that the justifications for reform are not supported by its data compiled after several months of executing the Act.

### **What are the Early Forecasts of the Act’s Impact?**

On February 22, 2006, the National Association of Consumer Bankruptcy Attorneys (NACBA) ([www.nacba.com](http://www.nacba.com)) issued its report *Bankruptcy Reform’s Impact: Where are all the “Deadbeats”?* The report was based on data collected by the NACBA from a survey of six credit counseling agencies that serviced 61,335 consumers under the Act. The NACBA listed the following as its “key” findings:

- Almost none of those seeking bankruptcy protection are able to repay their debts.
- The vast majority of Americans seeking bankruptcy protection are victims of unfortunate circumstances, not imprudent spenders seeking to cancel their debt.

The data collected revealed the following:

Of the 61,335 consumers served-

- 3.3% qualified for a debt management plan through the agency

- 79% were seeking protection due to circumstances beyond their control
- 21% were seeking protection due to circumstances within their control

If it remains a constant, the 3.3% qualifying rate for debt management plan is a telling number as to the impact of requiring credit counseling to screen out those who should be repaying their debts outside of bankruptcy and is indicative that while some debtors pre-Act could have afforded to repay their debts, most were in the right place in bankruptcy. Also, 79% of individuals in financial distress caused not by their own doing signifies that there was not a volume of credit card abusers in bankruptcy as was suggested by proponents of reform.

### **Conclusion**

The Act created quite a frenzy and an interesting study in statistics but early numbers do not demonstrate a marked impact on excluding or capturing “abusive” filers. It will be interesting to read future studies which compare percentages of recovery on claims and the number of Chapter 7 filings compared to Chapter 13 filings pre-Act and post-Act. In the meantime, people will continue to face unexpected financial challenges, others will live beyond their means and some will abuse the credit extended to them. Just as before the Act, bankruptcy may or may not be an alternative for each of them for a variety of fact specific reasons. In sum, consumers will undoubtedly charge forward under the new law and we will likely never know who was the “real” victor in the argument over bankruptcy reform.

**Iurillo & Associates, P.A.**, located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder and **Sabrina C. Beavens**, Associate. **Ms. Iurillo** has been active in the St. Petersburg Bar Association for several years, including her current tenure as Secretary. **Ms. Iurillo** is President-Elect of the Bar for 2007-2008 Membership Year. In addition, she is a member of the Board of Directors of the St. Petersburg Bar Foundation and the Chair Elect of The Florida Bar’s Practice Management and Development Section for the 2005-2006 Membership Year. **Ms. Beavens** is also very active in the St. Petersburg Bar Association and is currently serving as its Membership Committee Chair.

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