

**Austin Bar Association Construction Law Section
September 21, 2006 CLE Luncheon –
Bankruptcy Basics for the Non-Bankruptcy Lawyer,
and How to Avoid Common Traps**

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I. Recent Changes to United States Bankruptcy Code

In June, 1998, the United States House of Representatives passed what almost became the most sweeping bankruptcy reform legislation in twenty years. A parallel but slightly less stringent bill was passed by the Senate in September of 1998. The Senate and House versions were then reconciled just before Congress adjourned in October of 1998. The House approved the reconciled legislation but the Senate never voted on the final bill and it died on the Senate floor. Similar legislation was introduced in 1999. That legislation failed to pass in the fall session of Congress.

Similar reform legislation was passed by Congress at the close of the 2000 session but President Clinton vetoed the bankruptcy reform legislation on December 19, 2000, too late for Congress to override his veto, saying that it was unfair to ordinary debtors and working families who fall on hard times.

Similar legislation was again introduced in 2001. A conference committee meeting was scheduled for September 12, 2001, but never took place due to the events of 9/11. The House and Senate Bills were finally reconciled in 2002, but stalled after House-Senate conferees added language to bar the discharge of debts arising from abortion clinic protests

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, was passed by the United States Senate on March 10, 2005 and the United States House of Representatives on April 14, 2005, provides the most substantial revision to the Bankruptcy Code since its inception. The passage, for now, completes congressional efforts to change the Bankruptcy Code. The vote margin was less than in prior years, owing to heightened concerns raised by the bill's critics over the past several months. All 229 House Republicans who voted supported the bill. They were joined by 73 Democrats; 125 Democrats opposed the bill.

While most provisions apply to new cases filed 180 days after the date of enactment, there are important exceptions to this general rule. For example, several provisions relating to the homestead exemption are effective on the date of enactment. A provision concerning the courts' exclusive jurisdiction over matters relating to professionals employed in bankruptcy cases applies to new cases filed after the date of enactment. The provision increasing the wage priority to \$ 10,000 and expanding the look-back for such priorities from 90 to 180 days, is effective on the date of enactment, but applies only to cases filed on or after that date. A similar effective date applies to the expansion of the look-back period for fraudulent transfers for the benefit of insiders under employment contracts not in the ordinary course of business. The same is true of a provision requiring reinstatement of retiree benefit plans under certain circumstances and a provision requiring the United States Trustee to move for appointment of a trustee in chapter 11 cases where there are reasonable grounds to suspect fraud, dishonesty or criminal conduct on the part of certain corporate officials.

The revisions mandate pre-filing credit and budget counseling for consumers seeking bankruptcy protection under both chapters 7 and 13. In addition, the revisions require a "means test" for debtors to be eligible for a discharge under chapter 7. Section 707(b) of the

