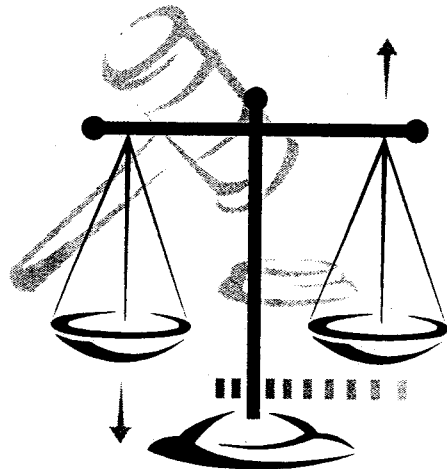


# **Bankruptcy Abuse Prevention and Consumer Protection Act: Selected Provisions**



Presented by:  
Rebecca R. DeMarb  
Murphy Desmond S.C.

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### **Overview**

- Most sweeping revision in more than 25 years
- Various effective dates for different provisions
- Common theme: more paperwork
- Meaning likely to be litigated for years

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### **Additional Disclosure Requirements**

- 60 days worth of pay statements
- Itemized statement of monthly income
- Budget
- Drivers License
- Tax Returns
- Chapter 13
  - Tax returns for four years
  - Annual tax returns

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## Income Test

- 6 month average
- Includes spouse's income
- What about seasonal employees?
- \$525 per person more for 5-person

1-person	\$3,089
2-person	\$3,951
3-person	\$4,953
4-person	\$5,412

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## Housing Costs

- Varies by County
- Includes:
  - Rent
  - Mortgage payment
  - Taxes
  - Utilities
- Dane County is \$1,486
- Grant County is \$942

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## Transportation Costs

- Ownership cost
  - \$475 for first car
  - \$338 for second car
- Operating cost
  - \$212.00 without car
  - \$247.00 for first car
  - \$341.00 for second car
- [www.irs.gov/business/small/article/0,,id+10462300.html](http://www.irs.gov/business/small/article/0,,id+10462300.html)

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<b>Allowed Expenses</b>	
<ul style="list-style-type: none"> <li>■ Protection from family violence</li> <li>■ Care of family members</li> <li>■ 401(k) contributions</li> <li>■ \$1,500/year private school</li> </ul>	

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<b>Other Allowable Living Expenses</b>	
Food	\$622.00
Housekeeping	108.00
Clothing	204.00
Personal Care	61.00
Miscellaneous	161.00
<b>Total</b>	<b>\$1,156.00</b>

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<b>Also Subtract:</b>	
<ul style="list-style-type: none"> <li>■ Expenses for protection from family violence</li> <li>■ Expenses for care of elderly, chronically ill, or disabled household member who cannot pay for expenses</li> <li>■ Contributions to 401(k)</li> <li>■ \$1,500/year in tuition</li> </ul>	

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## Keep subtracting. . .

- Average payments on secured debts
- Payments of all priority claims
- Actual expenses of administering Chapter 13
- Additional home energy costs (with documentation)

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## Now, What's Left?

<b>Amount left over</b>	<b>Presumption of Abuse</b>
Less than \$100	No presumption
\$100 to \$149.99	Presumption if the debt is less than \$24,000
\$150 to \$166.65	Presumption if the debt is less than \$36,000
\$166.66	Presumption of abuse if the debt is less than \$39,998
More than \$166.66	Presumption of Abuse

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## Means Test Example

- Family of 3
- Joint Petition
- Live in Janesville. Husband works in Madison and wife works in Beloit.
- Husband paying \$425/mo in child support
- Total monthly income \$5,400
- Total unsecured debt \$38,000
- Student loan payment of \$600/mo
- Two leased vehicles-- \$700/mo
- Rent & utilities average \$1,400/mo
- Daycare is \$650/mo

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## Means Test

- Income is more than median. Go to Step 2.
- Start subtracting
  - \$1,152 for housing
  - \$700 for auto leases
  - \$588 for commuting
  - Other expenses of \$1,156
  - Day care of \$650
  - Student loan payment of \$600
  - Child support of \$425
  - Costs of administering case of \$50

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## What's Left for Them?

- Subtractions total \$5,321
- They have \$79.00 "left over"
- They pass and stay in Chapter 7

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## Other Consumer Changes

- Bankruptcy Counseling
- Term of Chapter 13 Plan
- Reaffirmation and Ride-Throughs
- Priorities
- Exemptions
- Non-Dischargeable Debts

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## Discharge timeline

Waiting Period	Chapter 7	Chapter 11	Chapter 13
Prior Chapter 7	8 years	None	4 years
Chapter 11	8 years	None	4 years
Chapter 13	Current law (6 years)	None	2 years

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## Preferences

- Relaxed ordinary course of business defense
- \$5,000 floor to bring a preference
- \$10,000 floor for preferences in debtor's venue

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## Small Business Cases

- \$2 million or less in debt
- Stay
- Disclosure documents
- Plan filing deadlines
- Confirmation timing
- Individual Cases

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