

# Union Calendar No. 461

110TH CONGRESS  
2D SESSION

# H. R. 4044

[Report No. 110-726]

To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days.

---

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2007

Ms. SCHAKOWSKY (for herself, Mr. ROHRABACHER, Mr. ABERCROMBIE, Mr. BLUMENAUER, Mr. BUTTERFIELD, Mr. ANDREWS, Mr. BRADY of Pennsylvania, Mr. COSTELLO, Mr. DUNCAN, Mr. EHLERS, Mr. FARR, Mr. FATTAH, Ms. FOXX, Mr. GILCHREST, Mr. GORDON of Tennessee, Mr. HARE, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HONDA, Ms. HOOLEY, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. JONES of North Carolina, Mr. KUCINICH, Mr. MCGOVERN, Mr. MICHAUD, Mr. RUSH, Ms. SHEA-PORTER, and Mr. TIERNEY) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 20, 2008

Additional sponsors: Mr. KIRK, Mr. AL GREEN of Texas, Ms. SUTTON, Ms. DEGETTE, Mr. UDALL of Colorado, Mrs. CUBIN, Mr. BURTON of Indiana, Mr. FOSSELLA, Mr. SOUDER, Mr. WOLF, Mr. MILLER of Florida, Mr. NADLER, Mrs. MALONEY of New York, Mrs. CHRISTENSEN, Mr. DOYLE, Mr. ENGLISH of Pennsylvania, Mr. SHAYS, Mrs. GILLIBRAND, Mr. DELAHUNT, Mr. COHEN, Mr. FILNER, Mr. JOHNSON of Georgia, Mr. MCINTYRE, Ms. BORDALLO, Mr. WALZ of Minnesota, Mr. GRIJALVA, Mr. GONZALEZ, Mr. PETERSON of Minnesota, Mr. BISHOP of Georgia, Mr. HINOJOSA, Mr. HINCHEY, Mr. ALLEN, Ms. MCCOLLUM of Minnesota, Ms. MATSUI, Ms. HIRONO, Mr. GUTIERREZ, Mr. BISHOP of New York, and Mr. KAGEN

JUNE 20, 2008

Reported with amendments, committed to the Committee of the Whole House  
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

---

## A BILL

To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AMENDMENT.**

4       ~~Section 101(a)(2)(C) of the Bankruptcy Abuse Pre-~~  
5 ~~vention and Consumer Protection Act of 2005 (Public~~  
6 ~~Law 109–8) is amended by adding at the end of para-~~  
7 ~~graph (2) of section 707(b) of title 11 of the United States~~  
8 ~~Code, as added by such Act, the following:~~

9       ~~“(E) Subparagraphs (A) through (C) shall not apply,~~  
10 ~~and the court may not dismiss or convert a case filed~~  
11 ~~under this chapter based on any form of means testing—~~

12       ~~“(i)(I) while the debtor is on, and during the~~  
13 ~~180-day period beginning immediately after the~~  
14 ~~debtor is released from, a period of active duty (as~~

1 defined in section 101(d)(1) of title 10) of not less  
2 than 60 days; or

3 “(H) while the debtor is performing, and during  
4 the 180-day period beginning immediately after the  
5 debtor is no longer performing, a homeland defense  
6 activity (as defined in section 901(1) of title 32) per-  
7 formed for a period of not less than 60 days; and

8 “(ii) if after September 11, 2001, the debtor  
9 while a member of a reserve component of the  
10 Armed Forces or a member of the National Guard,  
11 was called to such active duty or performed such  
12 homeland defense activity.”.

13 **SEC. 2. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

14 (a) **EFFECTIVE DATE.**—Except as provided in sub-  
15 section (b), this Act and the amendment made by this Act  
16 shall take effect on April 20, 2005.

17 (b) **APPLICATION OF AMENDMENT.**—The amendment  
18 made by this Act shall apply only with respect to cases  
19 commenced under title 11 of the United States Code after  
20 April 20, 2005.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “National Guard and*  
23 *Reservists Debt Relief Act of 2008”.*

1 **SEC. 2. AMENDMENTS.**

2 *Section 707(b)(2)(D) of title 11, United States Code,*  
3 *is amended—*

4 *(1) in clauses (i) and (ii)—*

5 *(A) by indenting the left margin of such*  
6 *clauses 2 ems to the right, and*

7 *(B) by redesignating such clauses as sub-*  
8 *clauses (I) and (II), respectively,*

9 *(2) by striking “if the debtor is a disabled vet-*  
10 *eran” and inserting the following:*

11 *“if—*

12 *“(i) the debtor is a disabled veteran”,*

13 *(3) by striking the period at the end and insert-*  
14 *ing “; or”, and*

15 *(4) by adding at the end the following:*

16 *“(ii) while—*

17 *“(I) the debtor is—*

18 *“(aa) on, and during the 540-day pe-*  
19 *riod beginning immediately after the debtor*  
20 *is released from, a period of active duty (as*  
21 *defined in section 101(d)(1) of title 10) of*  
22 *not less than 90 days; or*

23 *“(bb) performing, and during the 540-*  
24 *day period beginning immediately after the*  
25 *debtor is no longer performing, a homeland*  
26 *defense activity (as defined in section*

1                   901(1) of title 32) performed for a period of  
2                   not less than 90 days; and

3                   “(II) if after September 11, 2001, the debtor  
4                   while a member of a reserve component of the  
5                   Armed Forces or a member of the National  
6                   Guard, was called to such active duty or per-  
7                   formed such homeland defense activity.”.

8 **SEC. 3. GAO STUDY.**

9           (a) *COMPTROLLER GENERAL STUDY.*—Not later than  
10 2 years after the effective date of this Act, the Comptroller  
11 General shall complete and transmit to the Speaker of the  
12 House of Representatives and the President pro tempore of  
13 the Senate, a study of the use and the effects of the provi-  
14 sions of law amended (and as amended) by this Act. Such  
15 study shall address, at a minimum—

16           (1) *whether and to what degree members of re-*  
17 *serve components of the Armed Forces and members*  
18 *of the National Guard avail themselves of the benefits*  
19 *of such provisions,*

20           (2) *whether and to what degree such members*  
21 *are debtors in cases under title 11 of the United*  
22 *States Code that are substantially related to service*  
23 *that qualifies such members for the benefits of such*  
24 *provisions,*

1           (3) *whether and to what degree such members*  
2 *are debtors in cases under such title that are materi-*  
3 *ally related to such service, and*

4           (4) *the effects that the use by such members of*  
5 *section 707(b)(2)(D) of such title, as amended by this*  
6 *Act, has on the bankruptcy system, creditors, and the*  
7 *debt-incurrence practices of such members.*

8       (b) *FACTORS.—For purposes of subsection (a)—*

9           (1) *a case shall be considered to be substantially*  
10 *related to the service of a member of a reserve compo-*  
11 *nent of the Armed Forces or a member of the National*  
12 *Guard that qualifies such member for the benefits of*  
13 *the provisions of law amended (and as amended) by*  
14 *this Act if more than 33 percent of the aggregate*  
15 *amount of the debts in such case is incurred as a di-*  
16 *rect or indirect result of such service,*

17           (2) *a case shall be considered to be materially re-*  
18 *lated to the service of a member of a reserve compo-*  
19 *nent of the Armed Forces or a member of the National*  
20 *Guard that qualifies such member for the benefits of*  
21 *such provisions if more than 10 percent of the aggre-*  
22 *gate amount of the debts in such case is incurred as*  
23 *a direct or indirect result of such service, and*

24           (3) *the term “effects” means—*

1           (A) *with respect to the bankruptcy system*  
2           *and creditors—*

3                   (i) *the number of cases under title 11*  
4                   *of the United States Code in which members*  
5                   *of reserve components of the Armed Forces*  
6                   *and members of the National Guard avail*  
7                   *themselves of the benefits of such provisions,*

8                   (ii) *the aggregate amount of debt in*  
9                   *such cases,*

10                  (iii) *the aggregate amount of debt of*  
11                  *such members discharged in cases under*  
12                  *chapter 7 of such title,*

13                  (iv) *the aggregate amount of debt of*  
14                  *such members in cases under chapter 7 of*  
15                  *such title as of the time such cases are con-*  
16                  *verted to cases under chapter 13 of such*  
17                  *title,*

18                  (v) *the amount of resources expended*  
19                  *by the bankruptcy courts and by the bank-*  
20                  *ruptcy trustees, stated separately, in cases*  
21                  *under title 11 of the United States Code in*  
22                  *which such members avail themselves of the*  
23                  *benefits of such provisions, and*

1                   (vi) *whether and to what extent there*  
2                   *is any indicia of abuse or potential abuse of*  
3                   *such provisions, and*

4                   (B) *with respect to debt-incurrence prac-*  
5                   *tices—*

6                   (i) *any increase in the average levels of*  
7                   *debt incurred by such members before, dur-*  
8                   *ing, or after such service,*

9                   (ii) *any indicia of changes in debt-in-*  
10                   *currence practices adopted by such members*  
11                   *in anticipation of benefitting from such*  
12                   *provisions in any potential case under such*  
13                   *title; and*

14                   (iii) *any indicia of abuse or potential*  
15                   *abuse of such provisions reflected in the*  
16                   *debt-incurrence of such members.*

17 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

18           (a) *EFFECTIVE DATE.—Except as provided in sub-*  
19           *section (b), this Act and the amendments made by this Act*  
20           *shall take effect 60 days after the date of the enactment of*  
21           *this Act.*

22           (b) *APPLICATION OF AMENDMENTS.—The amendments*  
23           *made by this Act shall apply only with respect to cases com-*  
24           *menced under title 11 of the United States Code in the 3-*  
25           *year period beginning on the effective date of this Act.*

Amend the title so as to read: “A bill to amend title 11 of the United States Code to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.”.

Union Calendar No. 461

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4044**

[Report No. 110-726]

---

---

## **A BILL**

To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days.

---

---

JUNE 20, 2008

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed