

105TH CONGRESS  
2D SESSION

# H. R. 3801

To amend title 11 of the United States Code to modify the application  
of chapter 7 relating to liquidation cases.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1998

Mr. ANDREWS introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To amend title 11 of the United States Code to modify  
the application of chapter 7 relating to liquidation cases.

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. NEEDS-BASED BANKRUPTCY.**

4       Title 11 of the United States Code is amended—

5               (1) in section 101—

6                       (A) by inserting after paragraph (10) the  
7               following:

8               “(10A) ‘current monthly total income’ means  
9       the average monthly income derived from all sources  
10      that the debtor, or in a joint case the debtor and the

1 debtor's spouse, receive without regard to whether  
2 such income is taxable income, in the 180-day period  
3 ending on the date the case is commenced, and in-  
4 cludes any amount paid by anyone other than the  
5 debtor, or in a joint case the debtor and the debtor's  
6 spouse, on a regular basis for the household ex-  
7 penses of the debtor or the debtor's dependents, and  
8 in a joint case the dependents of the debtor's  
9 spouse;"; and

10 (B) by inserting after paragraph (52) the  
11 following:

12 "(52A) 'State median family income' means the  
13 State median family income reported by the Bureau  
14 of the Census as of January 1 following the then  
15 most recently concluded calendar year for the State  
16 in which the debtor's domicile has been located for  
17 the 180 days immediately preceding the date of the  
18 filing of the petition, or for a longer portion of such  
19 180-day period than in any other place.

20 "(52B) 'State median household income for 1  
21 earner' means the State median household for 1  
22 earner income reported by the Bureau of the Census  
23 as of January 1 following the then most recently  
24 concluded calendar year for the State in which the  
25 debtor's domicile has been located for the 180 days

1 immediately preceding the date of the filing of the  
2 petition, or for a longer portion of such 180-day pe-  
3 riod than in any other place.”;

4 (2) in section 104(b)(1) by striking “109(e)”  
5 and inserting “subsections (b), (e), and (h) of sec-  
6 tion 109”;

7 (3) in section 109(b)—

8 (A) in paragraph (2) by striking “or” at  
9 the end;

10 (B) in paragraph (3) by striking the period  
11 and inserting “; or”; and

12 (C) by adding at the end the following:

13 “(4) an individual, or in a joint case an individ-  
14 ual and such individual’s spouse, who have income  
15 available to pay creditors as determined under sub-  
16 section (h) and whose additional expenses estab-  
17 lished under subsection (h)(4) are less than 10 per-  
18 cent of current monthly total income.”;

19 (4) by adding at the end of section 109 the fol-  
20 lowing:

21 “(h)(1) An individual, or in a joint case an individual  
22 and such individual’s spouse, have income available to pay  
23 creditors if the individual, or in a joint case the individual  
24 and the individual’s spouse combined, as of the date of  
25 the order for relief, have—

1           “(A) current monthly total income exceeding 75  
2           percent of the State median family income for a  
3           family of equal size or, in the case of a household  
4           of 1 individual, or exceeding 75 percent of the State  
5           median household income for 1 earner, as of the  
6           date of the order for relief;

7           “(B) projected monthly net income exceeding  
8           \$50; and

9           “(C) projected monthly net income sufficient to  
10          repay 20 percent or more of unsecured nonpriority  
11          claims during a 5-year repayment plan.

12          “(2) Projected monthly net income shall be sufficient  
13          under paragraph (1)(C) if, when multiplied by 60 months,  
14          such income is not less than 20 percent of the total  
15          amount scheduled as payable to unsecured nonpriority  
16          creditors.

17          “(3) For purposes of this subsection, ‘projected  
18          monthly net income’ means current monthly total income  
19          less the sum of—

20                 “(A) the expense allowances under the applica-  
21                 ble National Standards, Local Standards and Other  
22                 Necessary Expenses allowance (excluding payments  
23                 for debts) for the debtor, the debtor’s dependents,  
24                 and in a joint case the debtor’s spouse the depend-  
25                 ents of the debtor’s spouse, in the area in which the

1 debtor resides as determined under the Internal Rev-  
2 enue Service financial analysis for expenses, as in ef-  
3 fect on the date of the order for relief;

4 “(B) the average monthly payment on account  
5 of secured creditors, which shall be calculated as the  
6 total of all amounts scheduled as contractually pay-  
7 able to secured creditors in each month of the 60  
8 months following the date of the petition by the  
9 debtor, or in a joint case by the debtor and the debt-  
10 or’s spouse combined, and dividing that total by 60  
11 months; and

12 “(C) the average monthly payment on account  
13 of priority creditors, which shall be calculated as the  
14 total amount of debts entitled to priority, reasonably  
15 estimated by the debtor as of the date of the peti-  
16 tion, and dividing that total by 60 months.

17 “(4) If the debtor establishes extraordinary cir-  
18 cumstances that require allowance for additional expenses,  
19 projected monthly net income for purposes of this sub-  
20 section shall be the amount calculated under paragraph  
21 (3) less such additional expenses as such extraordinary  
22 circumstances require.

23 “(A) This paragraph shall not apply unless the  
24 debtor files with the petition—

1           “(i) a written statement that this para-  
2 graph applies in determining the debtor’s eligi-  
3 bility for relief under chapter 7 of this title;

4           “(ii) a list itemizing each additional ex-  
5 pense which exceeds the expenses allowances  
6 provided under paragraph (3)(A);

7           “(iii) a detailed description of the extraor-  
8 dinary circumstances that explains why each of  
9 the additional expenses itemized under subpara-  
10 graph (II) requires allowance; and

11           “(iv) a sworn statement signed by the  
12 debtor and, if the debtor is represented by  
13 counsel, by the debtor’s attorney, that the infor-  
14 mation required under this paragraph is true  
15 and correct.

16           “(B)(i) Until the trustee or any party in inter-  
17 est objects to the debtor’s statement that this para-  
18 graph applies and the court rejects or modifies the  
19 debtor’s statement, the projected monthly net in-  
20 come in the debtor’s statement shall be the projected  
21 monthly net income for the purposes of this sub-  
22 section.

23           “(ii) If an objection is filed with the court not  
24 later than 60 days after the debtor has provided all  
25 the information required under subsections (a)(1)

1       and (c)(1)(A) of section 521 of this title, the court,  
 2       after notice and hearing, shall determine whether  
 3       such extraordinary circumstances exist and shall es-  
 4       tablish the amount of the additional expense allow-  
 5       ance, if any. The burden of disproving such extraor-  
 6       dinary circumstances shall be on the objector.

7       “(5) If a party in interest files a motion, or makes  
 8       an objection, to cause the dismissal or conversion of a case  
 9       under chapter 7 on the ground that an individual may not  
 10      be a debtor, or in a joint case that an individual and such  
 11      individual’s spouse may not be debtors, under such chap-  
 12      ter and fails to prevail on the motion or the objection, such  
 13      party shall pay to the debtor or debtors, a reasonable at-  
 14      torney’s fee and costs incurred by the debtor or debtors  
 15      in opposing the motion or the objection.”;

16               (5) in section 704—

17                       (A) by striking “and” at the end of para-  
 18                       graph (8);

19                       (B) by striking the period at the end of  
 20                       paragraph (9) and inserting “; and”; and

21                       (C) by adding at the end the following:

22                       “(10) with respect to an individual debtor, re-  
 23                       view all materials provided by the debtor under sub-  
 24                       sections (a)(1) and (c)(1) of section 521, investigate  
 25                       and verify the debtor’s projected monthly net income

1 and not later than 30 days after the order for relief  
2 under this chapter, file a report with the court as to  
3 whether the debtor may be a debtor under this chap-  
4 ter.”;

5 (6) in section 1302(b)—

6 (A) in paragraph (1)—

7 (i) by striking “704(7) and” and in-  
8 serting “704(7),”; and

9 (ii) by inserting “and 704(10)” after  
10 “704(9)”; and

11 (B) in paragraph (4) by striking “and” at  
12 the end;

13 (C) in paragraph (5) by striking the period  
14 and inserting a semicolon; and

15 (D) by adding at the end the following:

16 “(6) investigate and verify the debtor’s monthly  
17 net income and other information provided by the  
18 debtor pursuant to sections 521 and 1322, and pur-  
19 suant to section 111 if applicable; and

20 “(7) file annual reports with the court, with  
21 copies to holders of claims under the plan, as to  
22 whether a modification of the amount paid creditors  
23 under the plan is appropriate because of changes in  
24 the debtor’s monthly net income.”.



1 **SEC. 2. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-  
3 section (b), this Act and the amendments made by this  
4 Act shall take effect on the date of the enactment of this  
5 Act.

6 (b) APPLICATION OF AMENDMENTS.—The amend-  
7 ments made by this Act shall apply only with respect to  
8 cases commenced under title 11 of the United States Code  
9 on or after the date of the enactment of this Act.

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