

The Evolution of U.S. Bankruptcy Law

CASES FILED

1899
22,446

1932
70,049

1946
10,196

1959
100,672

1967
208,329

1987
561,278

2000
1,262,102

2007
801,269

2010
1,596,355

2017
790,830

Bankruptcy Act of 1800 (ch. 19, 2 Stat. 19) passes by one vote. The Act applies solely to merchant debtors with cases initiated by creditors and allows discharges only if two-thirds of creditors (in number and dollar amount) agree. It authorizes district court judges to appoint nonjudicial commissioners to oversee and help administer bankruptcy proceedings. Early in President Jefferson's term, the Act is amended so that commissioners are instead appointed by the President. The Act mirrors existing English law and contains a five-year sunset provision.

Bankruptcy Act of 1841 (ch. 9, 5 Stat. 440) grants district courts "jurisdiction in all matters and proceedings in bankruptcy," including developing rules for proceedings and appointing bankruptcy commissioners and assignees. In addition, the Act

- allows voluntary cases
- extends relief to all debtors
- allows discharge of debtors who turn over assets
- provides for recovery of fraudulent transfers and preferences
- prohibits debtors from using state law exemptions

Bankruptcy Act of 1867 (ch. 176, 14 Stat. 517) marks the first time Congress refers to district courts as "constituted courts of bankruptcy" with original jurisdiction in all bankruptcy matters. Key provisions of the Act include

- allowing district judges to appoint nonjudicial assistants, known as "registers in bankruptcy," nominated by the Chief Justice
- including corporations under bankruptcy law for the first time
- allowing debtors to choose between state and federal exemptions

Bankruptcy Act of 1898 (ch. 541, 30 Stat. 544) is the first long-term bankruptcy legislation, in effect for the next 80 years. The U.S. district courts are made courts of bankruptcy and given original jurisdiction over all bankruptcy matters, while the Supreme Court and the U.S. courts of appeals are given appellate jurisdiction of controversies arising in bankruptcy cases. Referees are appointed to two-year terms by the district judge and can be removed only for incompetency, misconduct, or neglect of duty. The 1898 Act also establishes the office of trustee (previously assignee) in bankruptcy. In general, the Act aims to reduce administrative fees and expenses, allow all bankrupts to obtain a discharge of their debts at a nominal expense with relatively narrow exceptions, and enforce the acceptance of compositions. Corporations are ineligible for voluntary relief, but some can be involuntary debtors. Amendments enacted in 1910 make corporations eligible for voluntary bankruptcy. Within five years, more than 14,000 voluntary cases and 2,500 involuntary cases will be filed under the 1898 Act each year.

Chandler Act of 1938 (Pub. L. No. 75-696, 52 Stat. 840), in response to the Great Depression, overhauls the 1898 Act and reworks previous reorganization amendments into "Chapters": Chapter X for corporate reorganizations, Chapter XI for arrangements, Chapter XII for real property arrangements, and Chapter XIII for wage earner plans. The Act also converts bankruptcy referees into judicial officers, who will later become U.S. bankruptcy judges.

Bankruptcy Reform Act of 1978 (Pub. L. No. 95-598, 92 Stat. 2549), superseding the 1898 Act, establishes bankruptcy courts in each district. It allows for the President to appoint and the Senate to confirm bankruptcy judges for 14-year terms beginning in 1984 after a transition period (because of ensuing judicial and legislative action, this provision and others in the Act never took effect). While bankruptcy courts may now hear all matters arising in or related to bankruptcy cases, judges remain non-Article III adjuncts of the district courts. Also, a new Chapter 11 (replacing X, XI, and XII) and Chapter 13, which offers a "super" discharge, make filing and reorganizing easier for businesses and individuals. (Western Arabic rather than Roman numerals are adopted for chapter titles.) The following year a pilot U.S. trustee program is established.

Bankruptcy Amendments and Federal Judgeship Act of 1984 (Pub. L. No. 98-353, 98 Stat. 333) replaces the 1978 provisions dealing with jurisdiction, venue, jury trials, and appeals. Bankruptcy courts become units of the district courts, with jurisdiction by district court reference. The circuit courts are authorized to appoint bankruptcy judges to 14-year terms. Bankruptcy courts are authorized to enter final orders on core matters, with noncore matters subject to de novo review by the district court, absent consent of the parties.

Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Pub. L. No. 99-554, 100 Stat. 3088) establishes Chapter 12 temporarily for family farmers and makes permanent the U.S. Trustee program except in North Carolina and Alabama, where bankruptcy administrator programs are established. The trustee program moves the appointing and overseeing of case and standing trustees from the judicial to the executive branch in participating districts.

Bankruptcy Reform Act of 1994 (Pub. L. No. 103-394, 108 Stat. 4106) creates the second National Bankruptcy Commission to investigate changes in bankruptcy law. The Act expands bankruptcy courts' ability to hold jury trials in some proceedings and encourages circuit councils to establish bankruptcy appellate panels.

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8, 119 Stat. 23), substantially amending the 1978 Act, establishes a means test based on state median income for individual debtors, makes a briefing on credit counseling a condition for relief, and requires financial management training for Chapter 7 and 13 debtors to obtain a discharge. In addition, the Act

- appears to require dismissal if required documents are not filed (courts have not all interpreted this in the same way)
- eliminates the Chapter 13 "super discharge"
- eliminates "strip down" on most automobile loans in Chapter 13
- allows waiver of the bankruptcy filing fee for Chapter 7 individual debtors meeting certain criteria
- allows direct appeals to the court of appeals in certain circumstances

The Act also makes Chapter 12 permanent (and includes "family fishermen" with farmers), creates the role of consumer privacy ombudsman, and incorporates a model law on international insolvency cases.

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111-203, 124 Stat. 1376) aims to promote the nation's financial stability by improving accountability and transparency in the financial system, ending bailouts, and protecting consumers from abuses by financial services. The Federal Reserve is directed to stringently evaluate banks with assets over \$50 billion, while banks with over \$10 billion in assets must undergo annual stress tests. The Act establishes an orderly liquidation process for covered financial companies subject to FDIC regulation under the Act and establishes the Consumer Financial Protection Bureau to

- make rules and enforce laws
- restrict unfair, deceptive, and abusive practices
- promote financial education
- monitor financial markets for new risks to consumers

Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Pub. L. No. 115-174, 132 Stat. 1296). With bipartisan support, Congress rolls back certain provisions of the Dodd-Frank Act, easing restrictions on all but the largest banks by raising the threshold under which banks are subject to tight oversight and regulation to \$250 billion from \$50 billion. Banks below the new threshold no longer have to undergo annual Federal Reserve stress tests or submit for approval so-called living wills outlining how, if the bank failed, assets would be liquidated without causing a widespread financial meltdown. The Consumer Financial Protection Bureau stays in place.

Small Business Reorganization Act of 2019 (Pub. L. No. 116-54, 133 Stat. 1079) establishes a subchapter within Chapter 11 of the Bankruptcy Code under which small business debtors can reorganize using simplified and expedited procedures.

1800

1841

1867

1898

1938

1978

1984

1986

1994

2005

2010

2018

2019

1803
Citing excessive costs and corruption, Congress repeals the Act of 1800. For the next three decades, the states will fill the legal void.

1839
Federal law (ch. 35, 5 Stat. 321) abolishes imprisonment for debt.

1843
High administrative costs, lack of state law exemptions, and creditor frustration lead to the 1841 Act's repeal.

1874
Congress amends the 1867 Act (ch. 390, 18 Stat. 178), adding a composition provision so that debtors can create a plan for distributing assets among creditors while retaining property over time, foreshadowing the reorganization provisions of modern bankruptcy law.

1878
Congress repeals the Act of 1867 in its entirety (ch. 160, 20 Stat. 99) in response to abuses and excessive fees. States will continue to address insolvency through legislation and receiverships in the absence of comprehensive national legislation.

1933–1934
Congress amends the Act of 1898 to allow railroads and corporations to file plans of reorganization and to allow farmers and individual wage earners to seek arrangements permitting payment of all or part of their debt over a longer period compared to compositions. In the 1930s, Congress convenes the National Bankruptcy Conference to study bankruptcy reform and, in 1934, enacts its first municipal bankruptcy provisions, adding Chapter IX to the 1898 Bankruptcy Act (Pub. L. No. 251, 48 Stat. 798). In *Ashton v. Cameron County Water Improvement District No. 1*, 298 U.S. 513 (1936), the Supreme Court holds that this legislation violates core federalism principles by impeding state sovereignty and diminishing protections of the Contract Clause.

1937–1938
Congress passes a revised Municipal Bankruptcy Act (Pub. L. No. 302, 50 Stat. 653). Upheld by the Supreme Court in *United States v. Bekins*, 304 U.S. 27 (1938), the legislation will come to be known as Chapter 9 bankruptcy.

1964
Congress authorizes promulgation of the Supreme Court's Bankruptcy Rules.

1970
Amendments to the 1898 Act give referees jurisdiction to determine the effect of bankruptcy discharge. In addition, Congress creates the Commission on the Bankruptcy Laws of the United States to recommend changes to the laws reflecting current social and economic conditions.

1973
In *United States v. Kras*, 409 U.S. 434, the Supreme Court rules the due-process clause does not require bankruptcy courts to waive the filing fee for filers who cannot afford it. Also, per the Court's Rules of Bankruptcy Procedure, referees henceforth are known as bankruptcy judges and are conferred finality on findings. The Commission on Bankruptcy Laws submits its report, including draft legislation.

1983
The Supreme Court adopts the Bankruptcy Rules and Forms to govern bankruptcy proceedings under the 1978 Act.

1982
In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, the Supreme Court declares the broad delegation of jurisdiction to bankruptcy courts unconstitutional. The Court stays its decision until October 4, 1982, to give Congress time to respond. When Congress fails to meet an extended deadline, the Judicial Conference and Administrative Office propose an Emergency Rule allowing the bankruptcy system to continue operation. Though adopted, the fix causes many problems, including delay of judges' pay.

1986
The National Bankruptcy Review Commission recommends direct appeals from the bankruptcy courts to the courts of appeals and changing bankruptcy courts to Article III courts. Pursuant to the Bankruptcy Reform Act, the commission dissolves 30 days after completing its report. Congress disregards most of its recommendations.

1997

In *Central Virginia Community College v. Katz*, 546 U.S. 356, the Supreme Court rules that the Article I Bankruptcy Clause abrogates state sovereign immunity in private suits.

2006
Facing the disastrous bankruptcy of Lehman Brothers Holdings Inc. and American International Group's (AIG's) imminent collapse, Congress passes the Emergency Economic Stabilization Act of 2008 (Pub. L. No. 110-343, 122 Stat. 3765), creating the Troubled Assets Relief Program to pump money into the financial and automotive industries to stabilize them during a worldwide credit crisis.

2009
Congress passes the Credit CARD Act (Pub. L. No. 111-24, 123 Stat. 1734) prohibiting unfair and abusive practices and mandating rate and fee transparency.

2011
In *Stern v. Marshall*, 564 U.S. 462, the Supreme Court rules that bankruptcy judges lack the constitutional authority to enter final judgment based entirely on a state law counterclaim by a debtor against a claimant, a power reserved for Article III judges.

2014
In *Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25, the Supreme Court holds that when a bankruptcy court cannot constitutionally adjudicate a statutorily designated "core" claim, the judge may issue proposed findings and conclusions to be reviewed de novo by the district court. In *Law v. Siegel*, 571 U.S. 415, the Court rules that 11 U.S.C. § 522 precludes a bankruptcy court from using § 105(a) authority to order a debtor's exempt assets be used to pay administrative expenses, even those incurred through misconduct.

2017
In *Czyzewski v. Jevic Holding Corporation*, 137 S. Ct. 973, the Supreme Court holds that a distribution scheme ordered in connection with the dismissal of a Chapter 11 case cannot deviate from the Bankruptcy Code's priority scheme without consent of the affected parties.

2016
The Supreme Court holds in *Puerto Rico v. Franklin California Tax-Free Trust*, 136 U.S. 1938, that Puerto Rico's municipalities and utilities are excluded from filing for Chapter 9 bankruptcy and are also barred by 11 U.S.C. § 903(1) from enacting municipal bankruptcy laws. The ruling leads to the Puerto Rico Oversight, Management, and Economic Stability Act—PROMESA (Pub. L. No. 114-187, 130 Stat. 549)—which includes processes for debt restructuring amid the Puerto Rican government debt crisis.

2015
In *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932, the Supreme Court holds that bankruptcy litigants may waive the right to Article III adjudication by "knowing and voluntary" consent that need not be express but may be implied. Also in 2015, new forms for filing bankruptcy take effect, the culmination of a seven-year Advisory Committee for Bankruptcy Rules project to make forms more user friendly.

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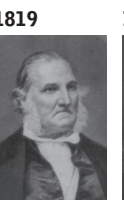
1777
Considered criminals, bankrupt individuals in colonial America were commonly imprisoned. The Articles of Confederation had no provisions for bankruptcy law.



1798
Impoverished by speculation, Revolutionary War financier Robert Morris is sent to debtor's prison. (Congress enacts the first bankruptcy law in part to get him out.)



1801
When a Kentucky business venture fails, John James Audubon is sent to debtor's prison. On release, he will embark on his celebrated bird painting series.



1819
Edgar Allan Poe publishes "The Raven," sealing his fame. Financial woes will dog the author till his death four years later.



1845
"Swedish Nightingale" Jenny Lind to U.S. audiences, promoter P.T. Barnum soon builds a vast fortune. He will file for bankruptcy in 1855.



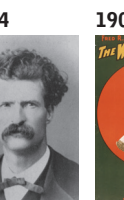
1850
Introducing "The Wizard of Oz" stage version of L. Frank Baum's "The Wonderful Wizard of Oz" opens in Chicago.



1860
Abraham Lincoln (1809–1865) is elected President.



1861
Ulysses S. Grant (1822–1885), retired general and former President, joins an investment banking partnership. Three years later a swindle will ruin him.



1884
Samuel Clemens, aka Mark Twain, publishes "Huckleberry Finn" to wide acclaim. Ten years later, a publishing company formed by the author will fail.



1902
The highly successful (but quite different) stage version of L. Frank Baum's "The Wonderful Wizard of Oz" opens in Chicago.



1908
Ford Motor Co. rolls out the Model T, putting ordinary Americans in the driver's seat. (Founder Henry Ford's first automobile company failed.)



1917
Eddie Cantor stars in Florenz Ziegfeld's famous Follies. By 1930, bad investments and free spending will leave The Great Ziegfeld bankrupt.



1920
Ethel Clayton stars in Paramount's "The 13th Commandment." Meanwhile Walt Disney's Laugh-O-Gram Studio files for bankruptcy (as will Paramount in 1932).



1938
In a rematch, Joe Louis, aka the "Brown Bomber," defeats Max Schmeling in two minutes, four seconds.



1945
Harry S. Truman (1884–1972) assumes the Presidency when Roosevelt dies 82 days into his fourth term.



1950
Lee De Forest, inventor of the Audion vacuum tube, publishes "Father of the Radio," his life story.



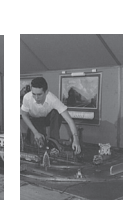
1953
Leontyne Price dazzles crowds in "Porgy and Bess." Oscar nominee Dorothy Dandridge will play Bess in the 1959 film version.



1960
Partly due to the failure of its unreliable Predicta line, radio and TV maker Philco is forced to file for bankruptcy.



1967
With public interest in trains dying, toy maker Lionel Corporation files for bankruptcy. A reconfigured Lionel will file in 1982 and 1991.



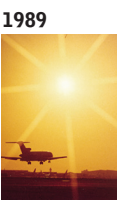
1972
President Richard M. Nixon (1913–1994) wins reelection, beating George McGovern in a landslide.



1979
To avoid bankruptcy, Chrysler Corp. petitions Congress for \$1 billion in loan guarantees.



1989
Unable to compete following industry deregulation, Eastern Air Lines files for bankruptcy protection. Its last flight will be in 1991.



1993
Skating champion Dorothy Hamill buys the Ice Capades at a bankruptcy liquidation sale.



1999
In existence since 1851, The Singer Company files for Chapter 11 bankruptcy protection, partly as a result of global shifts in garment manufacturing.



2001
After revelations of large-scale accounting fraud, Enron files for the largest Chapter 11 bankruptcy in history (since surpassed by Washington Mutual and Lehman Brothers).



2002
As ever more customers flee to big-box discounters, Kmart Corp. files for bankruptcy protection. "Big K" will emerge as Kmart Holdings Corp. the following year.



2004
In the wake of a Boston Globe exposé on clergy sexual abuse, the Archdiocese of Portland, Maine, becomes the first Catholic diocese to file Chapter 11.



2006
Owens-Corning Corp. emerges from Chapter 11 when its reorganization plan becomes effective on October 31.



2009
In business more than 100 years, General Motors Corp. files for Chapter 11 reorganization with government funds to avert liquidation.



2010
Slow to keep up with new mail and internet delivery trends, video rental pioneer Blockbuster Inc. files for bankruptcy.



2011
The Los Angeles Dodgers file for Chapter 11 protection.



2013
The City of Detroit files the largest municipal bankruptcy in U.S. history.