



THE SUFFOLK LAWYER

PUBLICATION OF THE SUFFOLK COUNTY BAR ASSOCIATION

DEDICATED TO LEGAL EXCELLENCE SINCE 1908

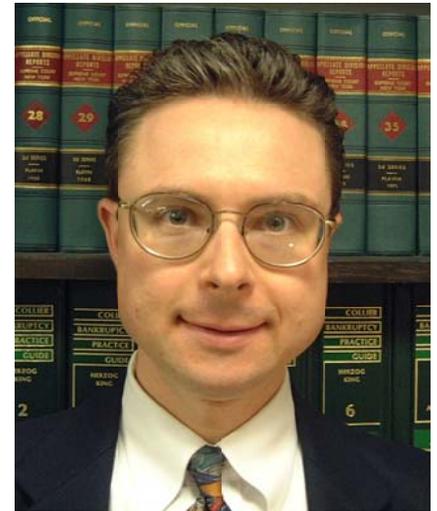
Vol. 21 No. 8

April 2005

CONSUMER BANKRUPTCY

Bankruptcy Reform is Finally Here. Get Your Clients to File Now!

by Craig D. Robins, Esq.



CRAIG D. ROBINS, ESQ.

On March 10, 2005, the Senate approved the most sweeping reform of U.S. bankruptcy law in decades. The legislation will next go to the House of Representatives, which is expected to approve it. President Bush has said he will sign the measure, which could take effect by late summer.

For seven or eight years, I have written numerous columns discussing Congressional attempts to pass bankruptcy reform legislation. Unfortunately, it appears that reform is finally here. The new law is a dream bill for credit card companies, one that will essentially make it much more difficult for consumers to eliminate debts in a Chapter 7 proceeding. Opponents

of the bill complain that the new laws will do nothing to curb corporate excesses or keep rich people who file for bankruptcy from sheltering their assets. In addition, critics say that credit card companies are largely responsible for the high rate of bankruptcies because they heavily promote credit cards and loans that often come with large and largely unseen fees for late payments. The new laws do not contain any provisions to curb credit card company abuse.

There will certainly be a surge of filings as cash-strapped consumers try to get a jump on the new laws that will make filing much tougher for people to erase their debts through existing bankruptcy

proceedings. Middle-income families who comprise the majority of filers, will be affected the most. It will now take much longer for families suffering serious illnesses, unemployment, divorce or other economic calamities to get a handle on their debt situations.

Below are the key provisions and effects of the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," also known as S. 256. Some columnists have nicknamed this legislation "the Debt Slavery Bill."

Chapter 7 Means Test. Debtors will have to meet specific income requirements to be eligible for Chapter 7 bankruptcy status. If a

debtor's income exceeds the state's annual household median and can make payments of at least \$100 a month for a period of five years, they will be forced to seek Chapter 13 status instead, which requires a payment plan.

Higher Attorney's Fees.

The new filing requirements will mean more paperwork and potential court time, which translates to higher fees. In addition, a very controversial provision of the bill provides that debtor's attorneys can be held liable for fraud if their clients withhold information and assets in hopes of qualifying for Chapter 7 status.

Living Standards Requirements. Internal Revenue Service standards for living expenses will determine monthly spending guidelines for food, housing, clothing, personal care and transportation under the new law. Any remaining funds would be considered disposable income which debtors would be required to use to apply to their debts.

Mandatory Credit Counseling. The bill requires debtors to go through credit counseling for at least 6 months before filing for bankruptcy, and further provides that a debtor cannot receive a discharge until they complete a personal financial management course.

Longer Repayment in Chapter 13. The current minimum payment plan under Chapter 13 is three years. The new legislation would stretch the minimum to five years.

As we go to press, the House of Representatives, who had been scheduled to vote on the bill this week, just announced that it will postpone activity on the bill due to Congressional travel to the Pope's funeral. We now expect the House to consider the bill sometime during the middle of April.

Incidentally, according to the latest filing statistics compiled by the Administrative office of the U.S. Courts, bankruptcy filings set a record for the quarter ending June 30. During this time, there were 400,394 filings. The record number can be attributed to the pressure of a shaky economy and the impulse to act soon before new bankruptcy reform laws limit the opportunity. It is also interesting to note that according to a recent investigative article in the L.A. Times last month, the profits at America's big credit card companies have risen along with the number of bankruptcy filings over the past eight years, despite these companies' claims to Congress that they are losing money because of the increased number of bankruptcy filings. The credit card companies were able to remain highly profitable because they charged customers different interest rates depending on how likely there were to repay their debts, and by also adding substantial fees for late payments.

Once the reform bill is signed into law by the President, some provisions will become effective immediately, while other provisions will not become effective for several months. It would prudent for all clients who are contemplating bankruptcy to file as soon as possible, preferably before any law is signed. That means now.

Editor's Note (revised 2008): Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.