Three New Bankruptcy Amendments Become Law

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On August 23, 2019, the President of the United States of America signed three new bankruptcy amendments into law. The first bill, H.R. 3311, ratifies The Small Business Reorganization Act of 2019, creating a new option for relief for small businesses to take effect in February 2020, as well as amending the current requirements to commence a preference action under section 547. The Honoring American Veterans in Extreme Need Act of 2019, or HAVEN Act, revises the definition of exempt income for the nation’s veterans facing financial hardship. The Family Farmer Relief Act of 2019 amends section 101(18) of the Bankruptcy Code (11 U.S.C. §§ 101, et seq. and as amended) by increasing the debt limit for farmers eligible to file for relief under chapter 12.

The Small Business Reorganization Act of 2019 (H.R. 3311):

The Small Business Reorganization Act of 2019 (“SBRA”) is probably the most extensive reform to the Bankruptcy Code since the adoption of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The SBRA will add a new subchapter 5 to the Bankruptcy Code, codified in new sections 1181 through 1195, and will become effective on February 19, 2020. The purpose of the SBRA is to create a mechanism that is more attractive and beneficial to small businesses, removing some of the main hindrances in a regular chapter 11 that prevent the small business from reorganizing. This process will be akin to the current chapter 12 or 13 bankruptcy options available to family farmers and individuals.

The major differences for small businesses under the new subchapter 5 compared to the regular chapter 11 procedures include the appointment of a standing trustee, no requirement to pay United States Trustee (“UST”) quarterly fees, no appointment of a committee of unsecured creditors, and no requirement for a disclosure statement to accompany the debtor’s plan of reorganization. The lack of committee and UST fees will save on administrative fees for the debtor, thus meeting the objective of lowering the cost of bankruptcy for the small business. The standing trustee will be similar to the trustee’s role in a chapter 12 case by overseeing the claims distribution process, but will not be an operating trustee; the small business will remain a debtor-in-possession. Within 60 days of filing, the court will schedule a substantive status conference to help chart the course for the debtor. The debtor’s plan is due within 90 days of the date of filing. The goal of the SBRA is to simplify the bankruptcy process for small businesses by increasing efficiency, lowering costs, and easing the plan confirmation process.

Preference Actions, Section 547 of the Bankruptcy Code:

The third section of H.R. 3311 also creates one new and immediate revision to the Bankruptcy Code, universally applicable to all chapters and not just the new subchapter 5. Section 547(b) of the Bankruptcy Code shall be amended to include a due diligence requirement upon the filing party of a preference action. The added language is in bold below:

(b) Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was insolvent;
(4) made—
(A) on or within 90 days before the date of the filing of the petition; or
(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;
(B) the transfer had not been made; and
(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

The SBRA also amends the venue provision of 28 U.S.C. § 1409(b) to increase the minimum limit for a trustee to bring a case against a non-insider in a district other than where the defendant resides from $12,850 to $25,000. This venue provision is also effective immediately and directly applicable to preference and avoidance actions.

The HAVEN Act of 2019 (H.R. 2938):
The HAVEN Act revises section 101(10A) of the Bankruptcy Code to delineate the exceptions to the definition of “current monthly income” to include:

(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

The HAVEN Act is effective immediately, and may be applicable to currently pending chapter 13 cases that have yet to confirm a plan. The HAVEN Act is enacted to correct an oversight in the original bill defining “current monthly income” and broaden access to a fresh start to American veterans, 25% of whom receive disability benefits.

Family Farmer Relief Act of 2019 (H.R. 2336):
The Family Farmer Relief Act revises section 101(18) of the Bankruptcy Code to define the term “family farmer” as an individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $10,000,000. This revision doubles the debt limit for debtors eligible to file for protection under chapter 12, and allows chapter 12 to remain relevant by accounting for the technological advancements made in the farming industry and farming equipment since chapter 12 was originally enacted in 1986.

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