

Three Things: Bankruptcy Law

Description

In August, the President signed into law the Small Business Reorganization Act (SBRA) of 2019 (it will become fully effective February 2020), which includes several meaningful changes for both business and consumer bankruptcies. Highlighted below are three of those changes.

1. **SMALL BUSINESSES.** The SBRA creates a new subchapter to Chapter 11, to help small businesses emerge successfully from bankruptcy. The new chapter establishes streamlined procedures and powerful tools to aid small businesses in accessing bankruptcy reorganizational relief. The Act grants small business debtors the exclusive right to propose a plan, in contrast to Chapter 11's customary provisions for a competing plan process. The Act also eliminates the burden that company owners may not retain their interest in the company without committing substantial new value or other assets to the plan. Instead, owners may retain their interest provided the plan otherwise complies with Chapter 11 requirements. Small business debtors may confirm a plan even over objections by unsecured creditors so long as all projected disposable income is committed to the plan payments for a period of three to five years, which is similar to the streamlined Chapter 13 requirements for individual debtor plans. Changes under the SBRA eliminate many of the prohibitive costs and roadblocks for traditional small business debtors.

2. **DISABLED VETERANS.** The Bankruptcy Code has excluded Social Security disability benefits from "disposable income" ever since that calculation was introduced in 2005. Incongruously, veterans' disability payments were required to be included in disposable income. Under the SBRA, disabled veterans' benefits will now be excluded. This long overdue change will provide consistency and, more importantly, afford additional bankruptcy protections to our nation's service members. Unlike the majority of the SBRA, this portion of the Act became effective immediately.

3. **PREFERENTIAL TRANSFER DEFENDANTS.** The only thing more frustrating than receiving incomplete payment from a company is then receiving a demand letter from that company's bankruptcy trustee for the return of that payment. Payments made within 90 days of a debtor's bankruptcy filing are subject to subsequent avoidance and turnover as preferential transfers, or "preferences." Under the SBRA, trustees will now be required to investigate and consider a creditor's defenses *prior* to making demand or filing a complaint, reducing the amount sought in appropriate circumstances. In cases where the trustee does bring a claim, any claim under \$25,000 (double the current amount) will be required to be brought in the creditor's home district, thereby reducing the burden on the creditor to litigate (or be defaulted) in an inconvenient forum. For all those companies facing turnover demands, the Act brings welcome relief in the form of increased protections.

For more information on these or any related topics, feel free to contact the [Commercial Restructuring, Workouts & Asset Recovery Practice Group](#) at Partridge Snow & Hahn.

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