



## Shelter from the Storm - Bankruptcy Relief Comes in Three's

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A trio of bankruptcy bills are sitting on President Trump's desk awaiting his signature. The three bankruptcy bills are the "Small Business Reorganization Act of 2019" (H.R. 3311), the "Honoring American Veterans in Extreme Need Act of 2019" or the "HAVEN Act" (H.R. 2938), and the "Family Farmer Relief Act of 2019" (H.R. 2336). Propitious timing given the storm clouds darkening the economy. President Trump has until August 23 to sign the bills into law. Govtrack's prognosis for the enactment of each bill is 94%, 98%, and 98%, respectively.

### **H.R. 3311, THE "SMALL BUSINESS REORGANIZATION ACT OF 2019"**

The Small Business Reorganization Act of 2019 ("SBRA") adds a new Subchapter V to Chapter 11 of the Bankruptcy Code. SBRA provides an elective framework intended to streamline and expedite the reorganization of "small business debtors" (generally, a small business with aggregate noncontingent liquidated secured and unsecured debts in an amount not more than \$2,725,625).

SBRA highlights include --

- The appointment of a Chapter 12-style trustee to assist the debtor-in-possession's reorganization efforts.
- Unless the court for cause orders otherwise, no committee of unsecured creditors (or, equity holders) will be appointed.
- The setting of an initial status conference not later than 60 days after entry of the order for relief, subject to court extension based on circumstances "for which the debtor should not justly be held accountable."
- The debtor's sole right to file a plan under SBRA, which plan shall be filed not later than 90 days after entry of the order for relief, subject to court extension based on circumstances "for which the debtor should not justly be held accountable."
- The application of existing Chapter 11 plan protections to secured lenders.
- The debtor must devote his "projected disposable income" (i.e., disposable income minus operating expenses, living expenses, and any domestic support obligations) to the payment of unsecured claims over a 3-5 year period.
- The debtor can retain his business without paying unsecured claims in full or contributing new value under the plan.
- The debtor will be eligible for a discharge upon the debtor's completion of all plan payments, except for non-dischargeable debts or debts on which the last payment is due after the plan period (3-5 years, as applicable).
- A person will not be disqualified from serving as the debtor's professional solely because the person holds a prepetition claim less than \$10,000.

Also, SBRA provides additional relief to preference defendants in *all bankruptcy cases*, not just Subchapter V small business bankruptcy cases, in two important ways:

- First, the trustee must consider a preference recipient's potential Section 547(c) affirmative defenses before filing a preference action ("based on reasonable due diligence in the circumstances and taking into account a party's known or reasonably knowable affirmative defenses under sub-section (c)").
- Second, the "home court" dollar limitation in Section 1409(b) is raised from \$13,650 to \$25,000.

The preference amendments were likely inserted at the last minute in true Congress fashion. It remains to be seen what pleading standards will be required for a trustee to meet this new "reasonable due diligence" and "taking into account" threshold. Will the trustee be required to file an affidavit describing his or her due diligence efforts and consideration of the defendant's potential defenses? Stay tuned to see how bankruptcy judges interpret this new requirement.

SBRA, and the amendments made by SBRA (i.e., the preference amendments), will become effective 180 days after the date of enactment.

### **H.R. 2938, THE "HONORING AMERICAN VETERANS IN EXTREME NEED ACT OF 2019" OR THE "HAVEN ACT"**

The HAVEN Act provides much needed relief for veterans and their dependent survivors by excluding VA and DoD disability payments from the definition of "current monthly income" for purposes of bankruptcy means testing. The HAVEN Act provides much needed relief to our servicemen and servicewomen through the equitable treatment of veterans' disability benefits in consumer bankruptcy cases.

The HAVEN Act will become effective upon enactment.

### **H.R. 2336, THE "FAMILY FARMER RELIEF ACT OF 2019"**

The Family Farmer Relief Act increases the debt threshold for a "family farmer" from \$4,411,400 to \$10,000,000. A timely increase in the Chapter 12 eligibility threshold as China recently announced that Chinese companies would stop buying all U.S. agricultural products. A dire situation for family farmers.

The Family Farmer Relief will become effective upon enactment.

**To discuss further, please contact:**

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