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Is Bankruptcy As We Know It Almost Dead?

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For the last six years, there have been vigorous efforts to drastically alter the Bankruptcy Code to make it more difficult for consumers to discharge their debts. Up until now, these efforts have not succeeded. There wasn't even much legislative activity regarding bankruptcy last year. That is, until November 2, 2004. Election Day. On that day, this Country re-elected George W. Bush.

During President Bush's first four years of office, he made it abundantly clear that he would sign any bankruptcy overhaul legislation that was placed on his desk. One can assume that he wouldn't even bother to read a bankruptcy reform bill before signing it into law.

However, Mr. Bush did not make any mention during his numerous campaign speeches of his proclivity to sign a new, much tougher bankruptcy statute. Why? The notion of bankruptcy reform would not sit well with many of his supporting constituents. The hard-working, middle-class, middle-aged, middle-Americans who are struggling from lay-offs or exorbitant health care costs would not find Mr. Bush's position on bankruptcy reform too appealing. Ironically, large numbers of Americans who will eventually need bankruptcy protection actually voted for Mr. Bush, unaware that in his next four years of office he will likely sign into law a much stricter Bankruptcy Code that may prevent them from being able to discharge their debts and easily get a fresh new financial start.

To make matters worse, the Senate Democrats lost five seats including that of Senate party leader Tom Daschle. One of the reasons that bankruptcy legislation was not previously enacted was because of the relative balance of Republicans and Democrats in the Senate. Although bankruptcy reform does share some bipartisan support, it is overwhelmingly supported by Republicans, big business, and the banking and credit card industries. It will now be easier for the Republican-majority of legislators to pass a bankruptcy reform bill.

For years, the banking industry has pumped tens of millions of dollars into lobbying and election efforts, seeking to persuade legislators to enact new bankruptcy reform. Lobbyists for these groups have been toasting the success of Mr. Bush's re-election and the election of Republican congressional candidates. Now they plan to collect on that investment.

According to recent news reports, the consensus in Washington is that the bankruptcy reform legislation will be re-introduced in Congress soon where the bill is expected to move quickly through the House, barring other legislative issues taking priority, most likely before April. Then the fight will shift to the Senate. However, according to Senate rules, the majority cannot force issues as easily or as quickly, as 50 votes are needed to break a filibuster. Sources suggest that there is a 60/40 chance that bankruptcy reform will be eventually signed by the President and become law this session.

Therefore, expect to see a new round of proposed bankruptcy reform legislation in the very near future. Expect a high possibility that this legislation may be quickly signed into law by our President. And then expect to see a number of down-and-out financially-troubled middle-Americans wondering why they can't get a fresh new financial start.

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.