

New Bankruptcy Law

By Reg P. Wydeven
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I'm dreaming of a black Christmas, just like the ones I used to know.
Where my checking account isn't overdrawn, and there aren't debt collectors on my lawn,
following me wherever I might go.

I'm dreaming of a black Christmas, one where all my credit cards won't be bled.
May I please be out of debt before I'm dead,
And hopefully one of these Christmases I won't be in the red.

If this is your holiday theme song, you may be interested in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. When this Act went into effect on October 17, 2005, it gave the existing bankruptcy code its biggest overhaul in more than 25 years.

The Act was passed in response to the rapidly increasing number of people filing for bankruptcy. Experts perceived that bankruptcy was used as a first, rather than a last resort for debt management. As a result, businesses that were owed funds by debtors that filed for bankruptcy have no alternative than to pass those economic losses on to their paying customers.

Some of the major changes include the following:

Mandatory Credit and Financial Management Counseling. Before applicants can file for bankruptcy, the Act requires that they now undergo credit counseling. In addition, before any debt can be discharged, debtors must also participate in a financial management education program.

Stricter Eligibility for Chapter 7 Filing. Under the Act, bankruptcy applicants seeking to file under Chapter 7 must pass a "means test." Under Chapter 7, the debtor requests the bankruptcy court to discharge most of the debts owed. In exchange, the bankruptcy trustee can take any of the debtor's non-exempt property, sell it, and distribute the proceeds to the debtor's creditors. Property that is typically exempt includes a limited interest in a residence or vehicle, clothing, household furniture and appliances, and pensions.

Under the "means test," if the debtor's monthly income is less than the median income in the debtor's home state, the Chapter 7 filing is allowed. If the debtor's monthly income exceeds the state's median, and the debtor can afford to pay \$100 per month toward paying off debt, the debtor cannot file under Chapter 7 and must proceed under Chapter 13. Chapter 13 bankruptcies require the debtor to enter into a five-year repayment plan to pay a certain amount of money to creditors, based on an expenses-to-income formula.

Tax Returns and Proof of Income Required. The Act requires applicants to show proof of their income by furnishing federal tax returns from the previous year. If an applicant failed to pay taxes for the previous year, he or she must do so before proceeding with the bankruptcy.

Fewer "Automatic Stay" Protections for Filers. Bankruptcy filers have traditionally been entitled to certain immediate protections from creditors. 'Automatic stay' provisions immediately halt any legal actions against the filer, which in legalese is called a 'stay'. Under the Act, some of these protections have been eliminated, including those for eviction actions, driver's license suspensions, legal actions for child support, or divorce proceedings.

New Priority for Unpaid Child Support and Alimony. Creditors of a bankruptcy filer are prioritized for repayment. Under the Act, family members of the debtor that are owed unpaid child support or alimony are given priority over any other creditor.

By the way, there are three other bankruptcy chapters: Chapter 9 for municipalities and governmental

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units; Chapter 11 for businesses; and Chapter 12 for family farmers. I have no clue what happened to Chapters 1-6, 8 and 10, but at least the bankruptcy book is a much shorter read now.