

## Recent and Upcoming Changes to Bankruptcy Law That Affect Your Rights as a Creditor

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The Small Business Reorganization Act of 2019 ("[SBRA](#)"), the Honoring American Veterans in Extreme Need ("[HAVEN](#)") Act, and the Family Farmer Relief Act were enacted into law on August 23, 2019. This alert summarizes these changes to the law and when they take effect. For a fuller discussion of the SBRA, please see **Joe Ammar's recent article in the Michigan Bankruptcy Journal**.

### ***New bankruptcy laws for small business debtors***

On February 19, 2020, a new subchapter V to chapter 11 becomes available. It is designed to help small businesses successfully reorganize but, as a result, may provide fewer protections to creditors. Small business debtors (other than single asset real estate debtors) with less than \$2,725,625 in total debt and who generate at least 50% of their income from commercial or business revenue are eligible to use the new subchapter V procedure, or they can use previously existing options (including those that are available for single asset real estate debtors). Unlike those previously existing options, in a subchapter V case, the United States Trustee will appoint a small business trustee and only the debtor can file a plan, generally within 90 days after the case is filed.

The new subchapter is supposed to be simpler and more affordable, but it reduces some creditor protections. An owner of a business does not need to pay creditors in full in order to retain his or her equity interest in the business, as is the rule under the previous law. Also, no impaired accepting class is needed to cram down a plan, which was also a key protection for creditors under the old law. However, cram down in a subchapter V case has not changed in regard to secured claims. Typically, a creditors' committee will not be appointed and there will not be any United States Trustee quarterly fees. And, unlike chapter 13, a subchapter V plan may modify a security interest in an individual debtor's primary residence, as long as the value received for granting the security interest was used primarily in connection with the debtor's business and not primarily to acquire the property.

However, the tradeoff for creditors of these liberalized debtor protections is that a plan under subchapter V requires dedication "of all or such portion of the future earnings or other future income of the debtor" for three to five years as required to execute the plan. Exactly how much income must be dedicated for the plan to be fair and equitable to creditors is unclear. Also, the discharge only takes effect after completion of all plan payments, and even then will not apply to debts for which the last payment is due after the plan completes. It thus is too early to tell how big of an effect this act will have on debtors and creditors.

### ***SBRA changes to defenses regarding preferential transfer cases***

Also effective February 19, 2020, the SBRA changes preference laws. It adds language requiring the trustee to allege that it has exercised reasonable due diligence and has "taken into account" the defendant's "known or reasonably knowable affirmative defenses." Exactly what a preference plaintiff must or will do to comply with this new requirement is unclear.

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Additionally, the SBRA amends a venue statute, purportedly to force plaintiffs to file preference actions that seek to recover less than \$25,000 in liability in the defendant's home district. If that works, it will prevent trustees in cases in far off courts from dragging defendants to those courts (or forcing them to pay a settlement to avoid it). The problem is, the majority of cases interpreting the language of the statute hold that it does not apply to preference actions. Although a minority of older cases has looked past the statutory language and dismissed preference actions as a result, it seems unlikely that the change will yield the full results promised unless the statute is revised to make it clear that it applies to preference actions.

**HAVEN Act**

Effective immediately, the HAVEN Act excludes from the chapter 7 "means test" compensation received in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. This enables more veterans to qualify for relief under chapter 7 of the Bankruptcy Code, rather than chapter 13, which is more expensive.

**Family Farmer Relief Act**

Also effective immediately, the Family Farmer Relief Act increased the debt limit for chapter 12 eligibility to \$10,000,000, bringing the limit in line with the amount of debt family farmers usually hold.

If you have questions about the impact of any of these changes, please contact your Miller Canfield attorney or any of the authors of this alert.