

# Business Bankruptcy Reform Law

President Bush signed a new bankruptcy law into effect on April 20, 2005. This law went into effect on October 17, 2005 and adds or amends over 200 sections in the prior law and is over 400 pages long. This legislation is the most dramatic change in bankruptcy since 1978. The following are some of the highlights that affect business bankruptcies.

**CHAPTER 11.** The new bankruptcy law establishes a small business Chapter 11 reorganization for cases which do not exceed \$2,000,000.00 in debt. It also creates a streamlined process for administration as well as confirmation of the reorganization. The disclosure statement requirement may now be waived by the court. The reorganization plan may be filed within 180 days and extended to 300 days, but confirmation must be made, if at all, within 45 days after the plan is filed.

The grounds for dismissal or conversion of a Chapter 11 reorganization have been expanded to include when the case is not in the best interest of the creditors including mismanagement, failure to maintain insurance, unauthorized use of cash collateral, and failure to meet reporting requirements, among other things. The court has little discretion and must dismiss or convert the case upon proof of any of these allegations. Proof of any of these same issues is grounds for an appointment of an operating trustee.

**CHAPTER 12.** Chapter 12 is now a permanent part of the Bankruptcy Code. Family farmers are those with aggregate debts that do not exceed \$3,237,000.00, with at least 50% of the liabilities and 50% of the gross income coming from farming operations. There is also a new provision for "family fisherman reorganization" but we do not expect many of these in Missouri.

## BUSINESS AMENDMENTS

- **VENUE.** There has been a great deal of publicity about changing the venue restrictions so that Chapter 11 debtors must file at their principal place of business. For example, Enron being filed in New York City instead of Houston. This very common sense proposal was defeated.
- **RECLAMATION OF GOODS.** Vendors who ship goods have expanded rights for reclamation, even greater than allowed under the Uniform Commercial Code.
- **ORDINARY COURSE OF BUSINESS PREFERENCE EXCEPTION.** The trustee may not sue to recover preferential payments if made within the ordinary business terms between the debtor and the target creditor. This new defense is much easier to prove and will greatly favor vendors and shippers.
- **SMALL PREFERENCES.** A trustee cannot recover a pre-bankruptcy payment by a business debtor if the amount in issue is less than \$5,000.00.
- **TIMING OF THE PREFERENCE.** A secured lender now has 30 days rather than 20 to perfect and completely file its security or lien filing.
- **FRAUDULENT CONVEYANCES.** Effective one year after enactment, the trustee look back period to recover fraudulent conveyances is extended from one to two years.
- **UTILITY SERVICE.** In Chapter 11 cases, debtors are often faced with utility shut offs unless they can prove the ability to pay for services. The determination of "adequate assurance" has now changed in favor of the utility and is defined to mean only cash, deposits, letters to creditors, and other readily available cash items. Utility service may be discontinued if there is no "adequate assurance" of payment within 30 days.

- **WAGES.** Unpaid wages have always been a priority claim in bankruptcy. The amount allowed to the former employee has been raised - \$4,125.00 to \$10,000.00, so long as earned within 180 days before the bankruptcy.

Kevin Checkett is board certified in business bankruptcy law by the American Board of Certification. Certification is by the American Board of Certification and is accredited by the American Bar Association. Neither the Missouri Supreme Court nor the Missouri Bar review or approve certifying organizations or specialist designations.