

Consumer Bankruptcy Reform Law

President Bush signed a bankruptcy law into effect on April 20, 2005. This law went into effect on October 17, 2005 and added over 200 sections in the prior law. This legislation is the most dramatic change in bankruptcy since 1978. The following are some of the highlights in consumer bankruptcies.

- **MEANS TEST.** Households with income above the state's median (in Missouri, \$62,000.00 for a family of four) that have the ability to re-pay at least \$6,000.00 over five years must file for repayment under Chapter 13 and not a Chapter 7. The debtors' expenses are governed largely through standards set by the Internal Revenue Service. This allows the court little discretion.
- **CAR LOANS.** Any person filing bankruptcy who wishes to keep their financed car must reaffirm the loan entirely or redeem the vehicle through a single lump sum payment to the lender equal to the car's replacement value.
- **CREDIT COUNSELING.** Individual debtors must obtain credit counseling within 180 days before filing any bankruptcy case.
- **DISCHARGE.** No Chapter 7 debtor will receive a discharge until they complete a financial management course.
- **AUTOMOBILE LIEN.** Chapter 13 debtors cannot pay the actual value of the vehicle through the plan if it was purchased within 910 days of the bankruptcy. Even when able to pay to value over the five year Chapter 13 plan, the amount must be based on the car's retail and no longer wholesale price.
- **TIME BETWEEN DISCHARGE.** A Chapter 7 debtor cannot receive a discharge if a prior case was filed within eight years, and not six years as under the prior law.
- **HOMESTEAD EXEMPTION.** Missouri has a relatively small homestead exemption of \$15,000.00 in equity. However, it is well known in the financial community that some individuals with big debts can flee to states such as Kansas, Texas, and Florida which have an unlimited exemption for their homestead. Under the new law, the debtors may still elect the unlimited homestead in their new residence, but only after they have lived there for 730 days.
- **DISCHARGEABILITY OF CREDIT CARD DEBT.** Credit card fraud and non-dischargeability is presumed for luxury goods of \$500.00 purchased within 90 days or cash advances of \$750.00 within 70 days of the bankruptcy.
- **STUDENT LOANS.** Student loans are not dischargeable except for hardship no matter if the lender is a government agency or a for-profit lenders.
- **DOMESTIC RELATIONS.** Support obligations of the debtor are given first priority for payment in a bankruptcy. Property settlement obligations may not be wiped out. The automatic stay issued by the bankruptcy court will not apply to halt actions in a dissolution of marriage.
- **DISMISSAL OF BANKRUPTCY.** A bankruptcy will now be automatically dismissed if the debtor fails to provide a certificate of credit counseling, evidence of two months payment from employers, a statement of monthly net income, anticipated pay increases, tax returns for the recent tax year, and a valid ID.
- **ASSET PROTECTION TRUSTS.** Although unusual in Missouri, states such as Alaska and Delaware have created special trusts to protect property from creditors. Missouri just enacted a new law which also authorizes such trusts. The funds held in such trusts for ten years will be immune from bankruptcy claims. In other words, debtors with the 10 year foresight to establish this specialized type of trust can completely avoid their creditors.

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.