

## New law makes Ch. 11 bankruptcy easier for small businesses

By: MAURA MAZUROWSKI

Chapter 11 bankruptcies will be easier for businesses with smaller debt loads under a new law that takes effect in February.

In August, President Donald Trump signed the Small Business Reorganization Act of 2019. Sponsored by Rep. Ben Cline, R-Va., the act will add a new subchapter to Chapter 11 that will allow small businesses to “streamline the bankruptcy” and allow debtors to reorganize and rehabilitate their financial affairs, according to the law summary.

This change marks the first time Congress has amended the Bankruptcy Code since 2005.

“Chapter 11’s terms have been poorly suited to allow small businesses and their creditors to take full advantage of the relief it promises,” Cline said in a press release. “This bill promises to finally make our laws work better for the entrepreneurs whose small businesses are critical to life in communities across our nation.”

To solve this problem, Cline said the new law will adopt the provisions of Chapter 12, which is designed for family farmers and fishermen with regular annual income to propose and carry out a plan to repay all or part of their debts, according to the United States Courts.

Chapter 11 is best suited for corporations that need time to restructure their debts. “Right now, Chapter 11 is great if you’re a sizeable company and have a lot of resources,” said Roanoke bankruptcy attorney Tracy Giles, noting corporations

such as United Airlines and General Motors have stayed afloat using Chapter 11. Chapter 11 is also the most expensive form of bankruptcy under which small businesses cannot always bounce back. As such, Giles said small businesses are better off filing for Chapter 13, which is preferable for individuals who make a livable income but cannot pay off all their bills.

“Many small businesses and small business owners can end up having little to gain under the current small business Chapter 11 provisions because of the high costs associated with such a filing,” said Richmond bankruptcy attorney Michael Condyles.

To be eligible to file for Chapter 13, an individual must have no more than \$394,725 in unsecured debt. Small businesses often exceed that limit; therefore, filing for Chapter 11 is their only option. “Now on the business side you’re thinking, ‘Really? My small plumbing business to going to file the same thing an airline filed?’” Giles said. “How are you going to pay for that?”

Under Cline’s new law, businesses with less than approximately \$2.7 million in debt will be eligible to file for Chapter 11. While this amount is an increase in the current debt limit, Condyles said this is the “primary limitation” of the new Chapter 11 requirements.

“When the statute was being proposed, it was hoped that the debt limit would be greater in order to provide even greater access to more companies,” Condyles said.

Several other provisions have been added that will ease the expense and complexity

of bankruptcy for small businesses. First, the act now allows a debtor to modify a mortgage secured by a residence if the underlying loan was used to finance the small business.

It also provides for the automatic appointment of a trustee. Similarly to Chapter 13 cases, the trustees do not run the business; however, they will ensure the debtor complies with bankruptcy laws, object to claims and opine on the proposed plan.

“A trustee will provide more oversight of the Chapter 11 small business cases and prevent them from lingering to the detriment of creditors,” Condyles said. “[A trustee] could also have the potential to increase the likelihood of effective reorganization.”

The statute also provides that only the debtor can file a reorganization plan, whereas under current law, creditors are able to submit their own.

“That’s a big plus, that the business or the business owner gets to come up with their own idea and run it past everyone else in a ‘speak now or forever hold your peace’ kind of way,” Giles said.

Overall, the provisions of Cline’s new law will ensure a more debtor-friendly experience when filing for Chapter 11.

“As attorneys, we always want to present as many options as possible to our clients and assist them in reaching informed decisions that will strengthen their businesses,” Condyles said. “By making a filing more affordable, it will be of significant benefit by hopefully making the new subchapter accessible to a greater number of businesses.”