

13 LAW

A Publication of the Chapter 13 Trustee District of Nebraska

H.R. 5116 AWAITS PRESIDENT'S SIGNATURE

**By Kathleen A. Laughlin,
Chapter 13 Trustee**

The Bankruptcy Reform Act of 1994 has been approved by the Congress. President Clinton is expected to sign the bill into law, probably by the end of the month. (The ten day window in which to sign or veto a bill begins to run only when an enrolled bill is actually presented to the President for signature.

The legislation makes extensive changes to the Bankruptcy Code and creates a Bankruptcy Commission to study the bankruptcy laws and their application and to recommend any further changes to improve the Code and the bankruptcy system. H.R. 5116, Title VI. Most of the features of the Act of particular concern to Chapter 13 practitioners will apply only to cases commenced on or after the date of enactment.

Notable provisions of the Act include:

Chapter 13 Cases. The eligibility limits in Chapter 13 cases have been raised to \$250,000 of unsecured debt and \$750,000 of secured debt. H.R. 5116, section 108 (amending 11 U.S.C. section 109).

Hausladen and Tardy Claims.

H.R. 5116 section 213 overrules the decision in **In Re Hausladen**, 146 B.R. 557 (Bankr. D. Minn. 1992) and its progeny by amending 11 U.S.C. section 502 to provide that a late filed proof of claim is not an allowed claim, except as provided in 11 U.S.C. section 726(a). New 11 U.S.C. section 502(b)(9) further provides that government units will have at least 180 days after the date of the order for relief in which to file a proof of claim.

Section 213 of the Act also amends 11 U.S.C. section 726(a)(1) expressly to provide that tardy priority claims are still entitled to priority if

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filed prior to the date on which the Trustee commenced distribution.

Other Monetary Adjustments.

H.R. 5116 doubles most other dollar amounts or limits specified in the Bankruptcy Code, including the amount of prepetition wages and pension claims entitled to priority, as well as the amount of grain and fish warehouse claims and consumer deposit claims entitled to priority. See H.R. 5116, sections 108 and 207. Also increased are the exemption amounts specified in 11 U.S.C. section 522(d). Monetary adjustments will be made automatically every three (3) years based on increased in the Consumer Price Index beginning on April 1, 1998.

Automatic Stay on Assessment.

H.R. 5116 section 116 amends 11 U.S.C. section 362(b)(9) to provide that the commencement of bankruptcy does not stay an audit to determine tax liability, a demand for tax returns, or the making of an assessment and the issuance of a notice and demand for payment of a tax (but a tax lien arising by reason of such an assessment will take effect against property of the estate only if the tax is not dischargeable and the property is transferred back to the debtor.)

Abrogation of Sovereign Immunity of United States. Section 113 of H.R. 5116 is an important provision of the Act inasmuch as it broadly waives sovereign immunity by rewriting 11 U.S.C. section 106 to overturn the decisions of the Supreme Court in **Hoffman v. Connecticut Dept. of Income Maintenance**, 492 U.S. 96 (1989) and **United States v. Nordic Village, Inc.**, 112 S.Ct. 1011

(1992). Moreover, the extensive revisions to 11 U.S.C. section 106 take effect on the date the legislation is signed into law and apply to pending cases. **See** H.R. 5116 section 702.

Powers of the Court. H.R. 5116 section 104 essentially requires the creation of Bankruptcy Appellate Panels in each circuit. An appeal from a bankruptcy court decision will be heard by the BAP unless a litigant elects to have the appeal heard by the district court. Section 105 of Title 11, U.S.C. is also amended to authorize status conferences in bankruptcy cases and issuance by the court of an order to facilitate expeditious handling of the case, including an order that the hearing on a disclosure statement may be combined with a confirmation hearing.

Jury Trials. H.R. 5116 section 112 amends 28 U.S.C. section 157 to authorize bankruptcy judges to conduct jury trials with the consent of the parties.

Priority Claims. Prepetition claims for alimony and child support are elevated from general claims to seventh priority with tax claims slipping to eighth priority. H.R. 5116 section 304. Also, claims for sales commissions are treated in the same manner as priority wage claims under amended 11 U.S.C. section 507(a)(3), if the "independent contractor" earned at least 75 percent of his or her commissions from the debtor in the prior 12 months. H.R. 5116 section 207.

Bankruptcy Fraud. H.R. 5116 section 312 rewrites the bankruptcy crime provisions, 18 U.S.C. section 152, 153, and

154, and creates new crimes for disregard of the bankruptcy laws by a bankruptcy petition preparer and for bankruptcy fraud, 18 U.S.C. section 157 and 158.

Expedited Hearing on Automatic Stay. H.R. 5116 section 101 amends 11 U.S.C. section 362(e) to provide that the final hearing on a motion to lift the stay must conclude within 30 days of the preliminary hearing unless extended by consent or for a specific time upon a finding by the Court that the extension is required by compelling circumstances.

Continuing Perfection. H.R. 5116 section 204 amends 11 U.S.C. section 362 and 546 to confirm that actions are not violative of the stay and do not improve the position of the creditor.

Professional Fees. H.R. 5116 section 224 requires the United States Trustee to review applications for compensation or reimbursement filed by professionals and to file objections in appropriate cases. It also amends 11 U.S.C. section 330 to list factors that the Court should consider in awarding reasonable compensation and grounds for reducing requests for compensation. The law now also recognizes that the Court may allow compensation to a Chapter 12 or 13 debtor's attorney for representing the interests of the debtor "in connection with the bankruptcy case."

Notice to Creditors. Any time that a notice must be given "by the debtor" to a creditor, the notice must contain the debtor's name, the debtor's address and the debtor's

taxpayer identification number, which, for most debtors, will be their social security number. The provision does not apply to notices given by the trustee, and the Senate's view that notice should include account numbers was modified.

Nondischargeability of Fines in Chapter 13. Pursuant to section 302, criminal fines become non-dischargeable under Chapter 13.

Conversion from Chapter 13. H.R. 5116 section 311 amends 11 U.S.C. section 348 to clarify that when a Chapter 13 case is converted to another chapter, the property of the estate in the converted case will consist of what remains at the time of filing the Chapter 13 case. If the Court determines that the conversion is in bad faith, however, the property of the estate in the converted case will consist of the property of the estate at the time of the conversion.

Keep in mind that all of the provisions outlined above apply only in cases brought on or after the legislation is signed, except that the revisions of 11 U.S.C. section 106 will apply to pending cases.

STALE CHECK PROCEDURES

By Eileen Cutler, C.P.A.

Checks are mailed the fourth Friday of each month unless a holiday occurs. All checks are VOID 60 days from the date the check was written. The check is then considered stale. Do not try to deposit a stale check as our bank will refuse to honor it. If you have a stale check, return the check to our office (attention: Eileen Cutler) for the check to be reissued.

If you receive a check without your account number printed on the check, make a copy of the check listing the account number and mail it to our office. We will update our records and the account number will be printed above your company name on future checks.

If you were issued a check according to the Trustee's records but have not received it, the check can only be reissued after 60 days unless you are willing to pay the required "stop payment" fee.

All address changes or corrections must be sent to our office in writing. Sometimes creditors do not receive payments until two or more years into the plan and need to keep the Trustee informed about any mailing address changes. For security reasons, all name changes or corrections must be filed with the Clerk of the Bankruptcy Court pursuant to assignment of claim procedures. Many checks are returned by our bank due to improper endorsement by the creditor. In most cases, the name of the payee on the claim has

changed, and no assignment of claim was filed.

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EDITOR'S COMMENTS

This newsletter is being published in order to facilitate communication between the Chapter 13 Trustee's Office and the various publics we serve. It is also hoped that this may serve as a kind of "forum" where Chapter 13 participants may discuss bankruptcy and administrative topics of concern to their mutual gain.

If

you would like to submit for publication in this newsletter an article, conference or program information, law review articles or book reviews, or editorial comments; or pose a practice question to get other practitioner's ideas on how to handle a situation, please call or mail your item to:

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UPCOMING HOLIDAYS

The Chapter 13 Trustee Office will be closed in observance of the following holidays:

Veterans' Day, Friday, November 11, 1994
Thanksgiving, Thursday, November 24, 1994,
and Friday, November 25, 1994
Christmas, Monday, December 26, 1994
New Year's Day, Monday, January 2, 1995

DID YOU KNOW?

Processing Cutoff is: 3rd Friday of Month;
next date is Friday, November 18, 1994

Checks Go Out in Nov.: Wed., Nov. 23, 1994

In the District of Nebraska **60%** of Ch. 13 debtors **complete** their plans and **70%** of them do so without having the Trustee file a motion to dismiss.