



One less lifeboat in a sea of debt

New federal law will soon make it harder for people to file for bankruptcy

By LISA ARSENAULT
Monitor staff

The scenarios that lead people to file for bankruptcy are often emotional and private – like an unexpected medical crisis that isn't covered by insurance or out-of-hand credit card debt compounded by an abrupt job loss.

"One little bump in the road and it all falls apart," said Josh Menard, who was a judge's clerk in the state bankruptcy court in Manchester for two years before becoming a Concord lawyer who handles bankruptcy cases. "That's what a lot of it comes down to."

That's why Menard finds changes in federal law so troubling: Starting next month, it will be harder for people to file for bankruptcy.

The new law says that people who earn more than the state median income cannot file for Chapter 7 bankruptcy, which allows consumers to walk away from large,

unsecured debt like unpaid credit card and medical bills – situations where there is no collateral at stake. Instead, people will be required to file under Chapter 13, forcing them to set a schedule to pay all their debts back within five years.

The legislation was pushed for by the banking and consumer finance industries to prevent people from abusing bankruptcy to escape credit card debts with few consequences. But it will have a lasting backlash for consumers and small-

business owners, according to Menard and several other local experts.

"The average consumer has actually lost," Menard said. "There's just no other way to put it."

When the law goes into effect Oct. 17, filing for bankruptcy is going to be more complicated and more costly. The fees for filing will be higher, and lawyers will charge more because the process is more complex.

“The average consumer has actually lost. There's just no other way to put it.”

– Concord lawyer
Josh Menard

People who file will be required to take financial planning classes before and after, which could cost an additional \$100 on top of the legal wrangling.

"I guess it's kind of a cruel joke," said Manchester lawyer Steven Grill of Devine Millimet. "The people who can least afford it have to pay more."

At the Consumer Credit Counseling Service of New Hampshire & Vermont, advisers only recommend filing for bankruptcy as a last resort.

"Our role is to present the options. In most cases, we will not present that as an option unless there is really no other way out for that person," said executive director Kerry York. "For some people, the emotional aspect of filing for bankruptcy is the worst part."

When people file for Chapter 7, their property is sold, and the proceeds are used to pay off creditors. There are a few exemptions, but they can

■ See **BANKRUPTCY** – Page D-2

A win/lose situation for small businesses

There's some good news and some bad news for small business owners when it comes to the new bankruptcy law.

The good news is small businesses that are owed money are going to have a better chance of seeing some it – even if the people who owe the money declare bankruptcy. The bad news is if a small business owner files for bankruptcy, the option to scale-back the business and keep it running after bankruptcy is harder to carry out.

"It's a mixed bag for small businesses," said Concord lawyer Scott Menard.

Menard said many small businesses who are on the cusp of having to file for bankruptcy have "thrown in the towel" early this summer to beat the new law, which goes into effect Oct. 17.

The new law requires businesses to provide additional paperwork and records when filing. For business without the best bookkeeping – like many small businesses, Menard said – this could be a roadblock.

If you don't have good records, you will be forced to liquidate, said Manchester lawyer Steven Grill.

"This is going to force some businesses to go out of business if they don't have the records to back up what they're saying. That's the real big change," Grill said.

– Lisa Arsenault

lose their house, vehicles and land. They still have to pay back certain debts as well, including child support, alimony, student loans, fines or penalties from breaking the law, and any tax debts.

Filing for bankruptcy stays on a credit history for a decade. The consequences today are not what they once were, however. Consumers will most likely still be able to get credit in the future.

"I hate to say it, but in today's credit environment, there's not a whole heck of a lot of consequences," York said. "If you're out shopping for a mortgage, you will end up paying a higher interest rate. You might require larger down payments in a vehicle or a house. Generally, the days when people are denied credit because they have filed bankruptcy are

pretty much gone."

In New Hampshire, one out of every 122 households filed for bankruptcy in 2004, according to the American Bankruptcy Institute. The state bankruptcy court in Manchester had 4,604 cases.

In the past few months, the number of people filing for bankruptcy in the state has skyrocketed; many are scrambling to file before the new law goes into effect. In August, 451 people filed for bankruptcy, compared to 371 in August 2004, according to court records. The same trend holds nationally; the number of bankruptcy filings hit an all-time high this summer, at 467,028 cases filed during the second quarter of 2005, according to the American Bankruptcy Institute.

Experts say the effects of the new law will be lighter on New

Hampshire, where the median income for a single earner is \$50,411. Anyone earning less than that can still file for Chapter 7 bankruptcy.

"Within New Hampshire, within the client population we see, most people are not in those income brackets," York said.

The only state in New England with a higher median income is Connecticut, at \$52,530. In Vermont, the median income is \$37,298; in Maine, it is \$36,527.

Although the law has not gone into effect yet, Congress is already talking about making changes. Lawmakers may make an exemption to the new median income requirement for victims of Hurricane Katrina.

Grill, of Devine Millimet, said the law could have negative side

effects for the bankers and credit card companies – the very people who wanted the law passed in the first place. Changes will only add to that, he said.

"My concern is that the complexity and ambiguity of some of the new rules will actually make it difficult for both sides and wind up costing more in terms of resolving these issues," said Grill, who has represented banks and creditors. "The amendments themselves are – how can I put this diplomatically – not drafted with great clarity. There are a number of ambiguities and inconsistencies in the language of the new law that remain to be worked out."

(Lisa Arsenault can be reached at 224-5301, ext. 373, or by e-mail at larsenault@concordmonitor.com.)