

Deadline looms for bankruptcy filings

◆ **Chapter 7 protection:** Starting in October, it will be harder for petitioners to walk away from their debts in bankruptcy court.

By PAT HAMMOND
Sunday News Staff

For some folks who've fallen behind and really messed up their credit, Chapter 7 bankruptcy has offered a way to wipe out bad debts and walk away. But that's going to change.

And people are scrambling to beat the fall deadline before a tougher new federal law goes into effect, boosting bankruptcy caseloads nationwide.

Even in New Hampshire — with one of the lowest per-capita bankruptcy rates in the country — the case numbers have been edging up, New Hampshire Bankruptcy Court statistics reveal.

In the Granite State this year, through July, bankruptcies have increased 9.1 percent over the same period last year.

Steven E. Grill, an attorney with a specialty in bankruptcy law with the Devine Millimet & Branch law firm in Manchester, cautioned against ascribing the upswing entirely to the Oct. 17 onset of the U.S. Bankruptcy Abuse Prevention & Consumer Protection Act.

He noted, however: "There is a trend nationwide in increase in Chapter 7 filings, and in New Hampshire, too.

Chapter 7 bankruptcy is known as a "straight bankruptcy." It relieves the petitioners from paying certain debts and exempts them from losing certain property. Businesses may file Chapter 7 but it's most commonly used by individuals, Grill said.

"There is a reaction nationwide," Grill said, "that consum-

ers are concerned about the changes that will make it more difficult for individuals to get Chapter 7 protection. So some have been encouraged to file sooner rather than later."

The means test

Under the new law, petitioners filing under Chapter 7 will have to pass a kind of "means test," Grill said.

"That is shorthand for provisions that require that people earning at or above the median income for their part of the country and who have at least some disposable income will be required to file a Chapter 13, under which their debts will be required to be paid over a period of several years," Grill said.

"Chapter 7 remains for those who do not satisfy the means test for consumers," Grill said. "The reason is — and I'm not saying I agree or not — if people really have the means to pay off their debts the argument by the credit card companies is it is unfair to let them declare bankruptcy and walk away.

"This is the most sweeping revision to the bankruptcy laws since 1978, and the most significant change driving this trend is the means test."

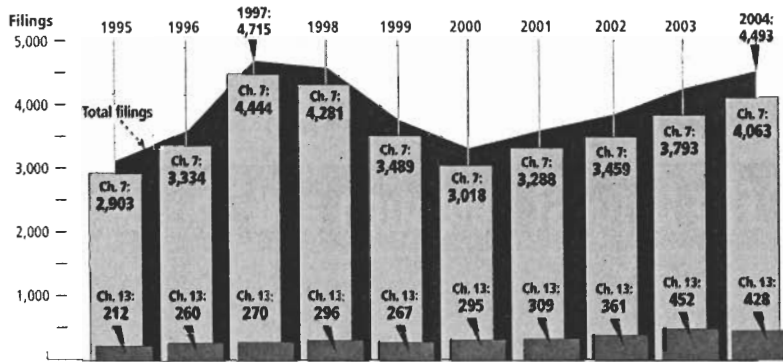
Road to bankruptcy

New Hampshire was ranked 44th out of 51 (50 states and the District of Columbia) in 2004, American Bankruptcy Institute spokesman Natalie Martin said. Utah, at No. 1, had the highest bankruptcy rate; Alaska was the lowest and ranked 51st.

But even though the state stacks up well nationally, there still are thousands of Granite

Personal bankruptcies in New Hampshire

This chart tracks non-business bankruptcies filed each year in New Hampshire. By far, most individual cases are filed under Chapter 7 of the bankruptcy law, which gives the most protection from creditors. Chapter 13 requires the debtor to come up with a repayment plan. A few filings each year are under Chapter 11, which is normally used by businesses.



Source: American Bankruptcy Institute

TOM LYNN/SUNDAY NEWS

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bankruptcy lawyer

Staters getting into fiscal trouble, and the numbers are growing. So what happens in someone's life that he ends up in bankruptcy court?

In addition to bad luck and unexpected expenses such as those arising from divorce perhaps or catastrophic illness, Grill said "there's a lot of money around now for people to borrow at low interest rates and a lot of things — like cars and property — being marketed at low interest rates.

"People are getting in over their heads," Grill said. "They borrow more than they should and maybe they expect to start

earning more money at work and then they don't, or maybe they lose track or are just being irresponsible."

Strong economy

The big factor that keeps those numbers relatively low is the state's strong economy, the bankruptcy specialist says.

"New Hampshire is a relatively prosperous state," Grill said. "We have been growing in terms of high-paying, high-tech jobs and overall we have lower unemployment and a healthy labor force, which go hand in hand.

"That's one of the reasons I

don't see that the new bankruptcy law will have a major impact in New Hampshire," Grill said.

But for those affected, the process will be worse come fall. That's because a side effect of the new law is that bankruptcy court judges will find themselves will less flexibility in providing options for petitioners, Grill said.

"In a way that is analogous to the sentencing guidelines in the federal court, which removed some discretion from federal judges; this discretion is being taken away from the (bankruptcy court) judges and things will become more rigid," Grill said.

But, under another provision of the federal law, consumers who find themselves in a bankruptcy may be required to participate in some government-approved credit counseling.

"That may turn out to go a good thing," Grill said. "It's too early to know."

Bankruptcy chapters at a glance

A total of 2,735 Chapter 7s were filed in New Hampshire through July 31 of this year, court records show. In comparison, just 262 bankruptcies under Chapter 13 were filed during the same period, and 23 Chapter 11 filings rounded out the total of 3,020 for the period.

To appreciate why the deadline racers are so adamant to file before the new law steps in it's important to understand the difference between Chapter 7, which relieves debts, and Chapter 13 filings, which require repayment.

Chapter 13 allows the petitioner to propose a repayment plan over a 3-year period. Once the petitioner files a Chapter 13, creditors can't start or continue collection efforts.

(Chapter 11 provides businesses, corporations, sole proprietorships and partnerships "breathing room" so they can restructure their debt load.)

Bankruptcies in New Hampshire have mounted in the last 15 years, nearly doubling from the 2,174 in 1990 to the 4,126 so far this fiscal year, which ends Sept. 30.

The 1991 numbers (3,653) represented a 68 percent jump, reflecting New Hampshire's troubled economy of the time. Since then the numbers have risen in small percentages each year, but fell in 1993-1995 and 1999-2000.