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The Small Business Reorganization Act: History and Purpose

The Small Business Reorganization Act (SBRA) was signed into law on August 23, 2019 and became effective on February 19, 2020. The purpose of the legislation is to streamline existing bankruptcy procedures and provide new tools to increase a small business's ability to achieve a successful restructuring. Though February 19th is the effective date, some courts have held that Chapter 11 cases filed prior to that date may be eligible.

Chapter 11 was designed for administering complex business reorganizations involving multimillion-dollar companies. Despite containing several provisions specifically focused on small business debtors, there has been a significant amount research showing that Chapter 11 may still create difficulties for small businesses, including high costs, monitoring deficits, and procedural roadblocks. The SBRA adds a new subchapter V to Chapter 11 to address these issues, leading to more successful restructurings, reducing liquidations, and increasing recoveries to creditors.

The SBRA applies to:

> A person engaged in commercial or business activities; that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,725,625 (
> see below for temporary expanded eligibility); not less than 50% of which arose from the commercial or business activities of the debtor. However, the SBRA does not apply to single-asset real estate debtors or public traded companies.

The CARES Act of 2020 has temporarily increased the debt limit to $7,500,000 for small businesses using subchapter V of Chapter 11. This expanded eligibility is subject to a sunset clause, therefore a business with noncontingent, liquidated debts between $2,725,625 and $7.5 million will only be eligible for SBRA relief until March 27, 2021. Further, a small business already in a pending chapter 11 case as of March 27, 2020 cannot convert to a Subchapter 5 to take advantage of the increased debt limit.

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Key Provisions of the SBRA

Increasing Oversight and Ensuring Quick Reorganization

- A standing trustee would be appointed in every small business debtor case to perform duties similar to those performed by a Chapter 12 or Chapter 13 trustee and help ensure the reorganization stays on track.
- The small business debtor must file a plan within 90 days of commencement, which may be extended under limited circumstances.
- An initial status conference would be required in every case within 60 days of commencement "to further the expeditious and economical resolution" of a SBRA case.

Increasing the Debtors' Ability to Negotiate a Successful Reorganization and Retain Control of the Business

- Only the small business debtor may file a plan under subchapter V of the SBRA.
- The owner of the small business debtor may retain a stake in the company so long as the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests.
- If a trustee or a holder of an unsecured claim objects to the plan, the court cannot approve the plan unless the plan provides that all of the small business debtor's projected disposable income to be received during the plan will be applied to make payments under the plan for a period of 3-5 years.

Reducing Unnecessary Procedural Burdens and Costs

- Unless the court for cause orders otherwise, an official committee of unsecured creditors will not be appointed and a disclosure statement will not be required.

Complied with information from the Office of Senator Grassley