

Reconsidering New Federal Bankruptcy Laws



■ GUEST
COMMENTARY
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On April 20, President Bush signed into law the most sweeping changes to our country's bankruptcy laws since 1978. These changes have a general effective date 180 days hence.

He did so to curb abuses he felt had compromised the integrity of our financial system.

While I applaud his intention, I believe that he's in danger of throwing the baby out with the bathwater.

Adopting a "one size fits all" straightjacket for all consumer debtors, the new legislation begins with the basic presumption that every filer is irresponsible at best or dishonest at worst.

The new law requires bankruptcy filers above a median income level who would normally file for Chapter 7 protection to file for Chapter 13 protection and submit to financial counseling and a repayment plan. The logic is that if you earn above a median level, then you can manage to make your payments.

First of all, we cannot even agree upon the effectiveness of the change. Depending on whom you listen to, it's either a grave problem that deserves draconian remedy or it isn't.

The American Bankruptcy Institute (ABI) reports that only 3 percent of those who file for Chapter 7 protection could manage the repayment schedule required under a Chapter 13 filing. Lobbyists for credit card companies say the number's closer to 10 percent. Who do you think would be more inclined to be more partial, less hindered by political and economic bias?

One of the cornerstones of America's bankruptcy laws is that its citizens should not become indentured servants to their creditors.

The new bankruptcy law does just that. For example, under the new law, the debtor pays the full amount owed on the car if it were purchased within 2.5 years of the bankruptcy filing. Before it was less, based on depreciated value.

At the same time, debtors must also pay a bankruptcy trustee the combined debt of such items as medical costs and credit card debt.

This encumbers the already strapped debtor in two ways. First, the amount of the debt to be repaid is larger. Second, the onus of repayment would extend from six to eight years.

Moreover, under the new law the period between which the debtor can seek bankruptcy relief has been extended from three to five years to six to eight years.

The second cornerstone of America's bankruptcy laws is the idea of a fresh start. What kind of fresh start is it for those with legitimate crises — medical or family emergencies, chronic un- or under employment — who would otherwise repay their debts?

Let me throw out some wishful thinking. With all the recent talk about steroids in the national and sports press, why not apply baseball's proposed remedy to the bankruptcy laws as well?

That is, wouldn't it be fairer to apply the new laws to those who file for a second or third time and let the present laws remain in effect for first-time filers?

Indeed, since we're known throughout the world as the Land of Second Chances, why not let our bankruptcy laws reflect that as well?

I don't mean the Land of Third or Fourth Chances. But think about it, wouldn't awareness of the bureaucratic quagmire that awaits a second or third filer offer perhaps not a little deterrent value?

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