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SELECTED ARTICLES ON THE BANKRUPTCY REFORM ACT OF 1978

INTRODUCTION

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Late in 1978 Congress enacted a new Bankruptcy Act that will govern all bankruptcy proceedings filed on or after October 1, 1979. This new act has been referred to as H.R. 8200, Public Law 95-598, the Bankruptcy Reform Act of 1978, BRA, the Bankruptcy Code, the Edwards Act,¹ and "the full employment for lawyers bill."² Throughout this selection of articles, "Bankruptcy Reform Act," "Bankruptcy Code," and "Code" will be used interchangeably in references to the Bankruptcy Reform Act of 1978. Similarly, references to the Bankruptcy Act of 1898 as amended by the Chandler Act of 1938 will include "Bankruptcy Act," "Former Act," "Repealed Act," and "Act."

The Bankruptcy Code has four titles. Title I contains the substantive law of bankruptcy. It is Title 11 of the former act in the United States Code, and is divided into the following Chapters:

- Chapter 1. General Provisions, Definitions, and Rules of Construction.
- Chapter 3. Case Administration.
- Chapter 5. Creditors, the Debtor, and the Estate.
- Chapter 7. Liquidation.
- Chapter 9. Adjustment of the Debts of a Municipality.
- Chapter 11. Reorganization.

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1. See Klee, *The New Bankruptcy Act of 1978*, 64 A.B.A. J. 1865, 1865 (1978). According to Mr. Klee, it is "commonly known as the Edwards Act." *Id.* at 1865. It should be noted that Mr. Klee worked for Congressman Edwards.

2. Aaron, *The Bankruptcy Reform Act of 1978: The Full-Employment-for-Lawyers Bill*, 1979 UTAH L. REV. 1. The new act has probably been called worse things by lawyers who have read it and tried to work with it.

Chapter 13. Adjustment of the Debts of an Individual with Regular Income.

Chapter 15. United States Trustees.

Thus there are four kinds of bankruptcy proceedings: Chapter 7 liquidations; Chapter 9 municipality³ cases; Chapter 11 reorganizations; and Chapter 13 cases. The provisions in Chapters 1, 3, and 5 apply to Chapter 7, 11, and 13 cases unless otherwise specified.

Title II establishes a new bankruptcy court and sets out the jurisdiction of this court and amendments to Title 28 of the United States Code. Title III contains amendments to a number of federal non-bankruptcy statutes that affect bankruptcy proceedings. Title IV provides for the transition from the Bankruptcy Act of 1898 to the new Code. The date of filing the petition is the crucial factor. The Bankruptcy Act of 1898 will continue to apply to cases filed before October 1, 1979.

The Bankruptcy Code changes the language of bankruptcy practice. Instead of a "bankrupt"⁴ being "adjudicated,"⁵ there will be an "order for relief"⁶ for a "debtor."⁷ A liquidation proceeding is a Chapter 7 case, not straight bankruptcy. In a Chapter 7 case, the "property of the estate"⁸ will be liquidated and the proceeds used to pay holders of allowed "claims,"⁹ not "debts" or "creditors." The terms "provable claims"¹⁰ and "summary jurisdiction" will disappear from the bankruptcy attorney's working vocabulary.

The new Code changes the numbering system for bankruptcy law by eliminating Roman numerals. Chapter X, XI, or XII cases are no more; instead, business reorganization will be handled under Chapters 11 and 13.¹¹ No section number in the Code has less than three digits. Payments to creditors for or on account of an antecedent debt within 90 days of bankruptcy are preferences under section 547, not section 60.

3. Section 101(29) of the Bankruptcy Reform Act of 1978 defines "municipality" as "political subdivision or public agency or instrumentality of state." 11 U.S.C.A. § 101 (29) (West Supp. 1979).

4. Bankruptcy Act § 1(4) (repealed 1978, previously codified as 11 U.S.C. § 1(4)).

5. *Id.* § 1(2) (repealed 1978, previously codified as 11 U.S.C. § 1(2)).

6. Bankruptcy Reform Act, 11 U.S.C.A. §§ 102(6), 301, 303(h) (West Supp. 1979).

7. *Id.* § 101(12).

8. *See id.* § 541.

9. *See id.* § 101(4), (11).

10. *See* Bankruptcy Act § 63 (repealed 1978, previously codified as 11 U.S.C. § 103).

11. *See generally* Biery, *Debt Adjustment Under Chapter 13 of the Bankruptcy Reform Act of 1978*, 11 ST. MARY'S L.J. 473 (1979); Moller, *Chapter 11 of the 1978 Bankruptcy Code, or Whatever Happened to Good Old Chapter XI?*, 11 ST. MARY'S L.J. 437 (1979).

The Bankruptcy Code significantly changes the jurisdiction of bankruptcy courts. Under the Bankruptcy Act of 1898, bankruptcy courts had limited jurisdiction. This jurisdiction, commonly referred to as "summary jurisdiction," extended to (1) all matters concerned with the administration of the bankrupt estate, and (2) *some* disputes between the bankruptcy trustee and third parties involving right to money or property in which the bankrupt estate claimed an interest. There has been considerable litigation concerning the scope of summary jurisdiction.

The Bankruptcy Reform Act should eliminate such litigation in bankruptcy proceedings filed on or after October 1, 1979. The Code gives the bankruptcy court jurisdiction over all cases arising under Title 11 and "all civil proceedings arising in . . . or related to cases under Title 11."¹² This jurisdiction has been described by both Senator DeConcini and Congressman Butler as "pervasive."¹³ Professor Frank Kennedy of the University of Michigan Law School describes this new jurisdiction in more detail in his article, *The Bankruptcy Court Under the New Bankruptcy Law: Its Structure, Jurisdiction, Venue, and Procedure*, on pages 251-309.

The new Code also significantly changes the substantive law of bankruptcy in both liquidation and rehabilitation cases. This issue contains five articles by prominent bankruptcy practitioners that deal with these substantive changes. Three of the articles deal with rehabilitation proceedings. Arthur Moller of the Houston bar surveys the new Chapter 11 on pages 437-472. The article by Robin Phelan and Bruce Cheatham of the Dallas bar, *Issuing Securities Under the New Bankruptcy Code: More Magic for the Cryptic Kingdom*, explores disclosure problems and other securities law considerations in a Chapter 11 proceeding. On pages 473-501, Evelyn Biery of the San Antonio bar reviews the use of new Chapter 13 in both business and consumer cases.

The remaining two articles concern issues arising in both liquidation and rehabilitation cases. Vern Teofan and L.E. Creel, III of the Dallas bar explain the new avoidance provisions on pages 311-347, and, Alan Pedlar of the Los Angeles bar discusses community property considerations of bankruptcy in his article, *Community Property and the Bankruptcy Reform Act of 1978*.

12. See 28 U.S.C.A. § 1471(b) (West Supp. 1979).

13. 124 CONG. REC. S17432, S17434 (daily ed. Oct. 6, 1978).