Congress Makes It Easier For “Small Business” Owners to Retain Ownership after Bankruptcy

As the following chart demonstrates, the SBRA increases the efficiency of a bankruptcy case, while also decreasing the costs (primarily attorneys’ fees) associated with a bankruptcy proceeding:

CATEGORY	SBRA CASE	“REGULAR” CHAPTER 11
Speed	90-day period in which only a debtor can file a plan of reorganization. No extensions unless the debtor’s failure to file a plan cannot be attributed to the debtor.	120-day period in which only a debtor can file a plan of reorganization 120-day period can be extended for “cause.”
Retention of Equity	Existing ownership may retain its ownership even if no class of creditors vote in favor of the plan, so long as the debtor’s plan is “fair and equitable” to unsecured creditors “Fair and equitable” means that the debtor must make payments to creditors equal to all of its projected disposable income for three to five years. “Disposable income” under the SBRA means all funds not necessary “for the continuation, preservation, or operation of the business of the debtor.”	Very difficult for existing ownership to retain its ownership interest. At least one class of “impaired” creditors must vote to accept the plan and plan must also satisfy other complex Bankruptcy Code provisions to retain ownership.
Official Creditor Committees	No creditor committees are permitted, unless appointed by the bankruptcy court for cause. This saves a company significant time, resources, and expense. Instead, a SBRA trustee will be appointed to monitor the case and facilitate the development of a feasible plan of reorganization.	A committee of creditors will usually be appointed in chapter 11 cases. The committee will hire attorneys and other professionals at the company’s expense and will have the right to conduct due diligence and challenge the company’s plans to emerge from chapter 11.

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