

Bankruptcy rules full of loopholes, some contend

Lawyers foresee minimal impact from new law that takes effect Monday

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Credit card companies that pushed for bankruptcy changes that take effect Monday may not have gotten all they lobbied for, some local attorneys say.

The new regulations sought to make it harder for individuals to wipe out consumer debt. Toward that end, the measure creates a means test intended to prevent some individuals from filing for Chapter 7 liquidation.

Fear of the new law has sent such filings in the Charlotte area to record highs.

But bankruptcy attorneys Rick Mitchell and Wayne Sigmon find the law so full of holes that the only effect for most people who file will be increased legal costs.

"It was written by lobbyists who don't really know much about bankruptcy law," says Sigmon of Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith in Gastonia. "I would say about 98% of the cases we look at will still be able to file" under Chapter 7.

Mitchell, senior partner at Mitchell Rallings & Tissue, says an unintended anomaly may encourage people going into bankruptcy to run up their credit bills.

To pass the means test, an individual generally would have to have less than \$100 left in monthly income after allowable expenses. But a person can also qualify with more than \$100 left over if they can't pay off at least 25% of their consumer debt in 60 months.

Mitchell notes an individual who has just \$100 remaining after allowable expenses and \$24,000 in credit card debt can't file for Chapter 7. "But what if that same person owed \$24,001? Then he qualifies.

"Now I can't tell my client to go out and run up his credit card," Mitchell says. "The law says I can't. But it is my ethical and legal duty to explain the law thoroughly to them, and they can act accordingly."

Many lawyers have complained that the new rules will make it harder for individuals to start over relatively debt free after a bankruptcy filing. The law,

they say, is intended to force more people into Chapter 13 bankruptcy, which requires higher repayments.

But Sigmon and Mitchell dispute whether the law will work as intended.

"Secured creditors will make out very well," Mitchell says, adding the new, stringent requirements on the repayment of secured debt appear sound. "But that is not true for unsecured creditors, and they are the people who bought and paid for it."

He and Sigmon have encouraged clients to file before the new rules take effect. But they taken that approach largely because of the increased time and expense the new law will impose on filings.

Other attorneys have encouraged clients to file, fearing the new law could cause more difficulties than Miller and Sigmon anticipate.

Those factors and increased attention on the regulation have driven up area filings since April, when President Bush signed the measure into law.

From April through the end of September, Chapter 7 filings in U.S. District Courts for North Carolina that cover the Charlotte region totaled 4,284.

That's more than were filed in all of 2004. September alone saw a monthly record 828 filings in the region.

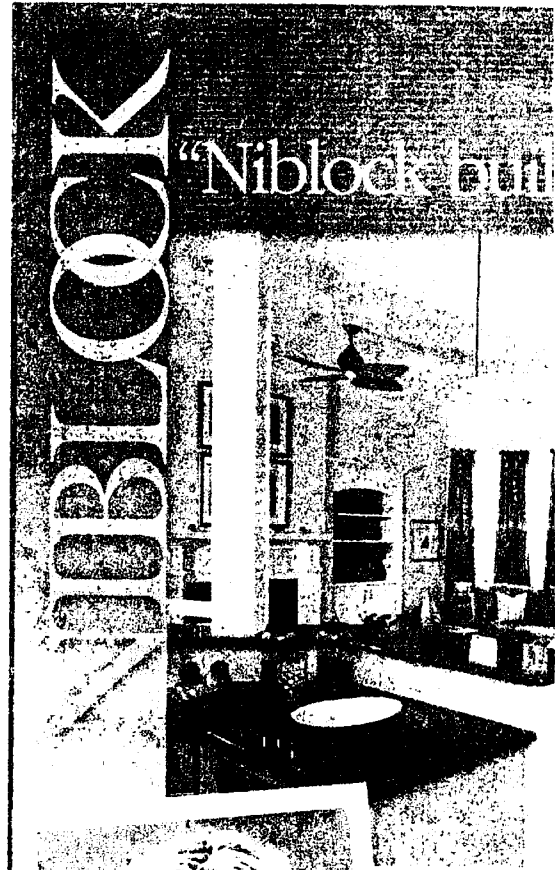
That record was broken during the first 12 days of October. As of late Wednesday afternoon, 850 Chapter 7 cases had been filed here this month.

And Sigmon expects Chapter 7 filings won't decline after the law goes in effect.

"I am not taking new cases now, and I am taking next week off," he says. "But my assistant tells me that I am already booked when I come back."

Mitchell agrees. Individuals will keep filing for bankruptcy, he predicts, citing the weak economy, high fuel prices and a coming change in credit-card law that will effectively double minimum-payment requirements.

"And even though I am not filing any more cases now before the law changes, I am talking to everyone who calls to find out if I think they need to worry about the new law," he says. "I have talked to about 25 people, and I think only two of them have anything to worry about."



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