



Recently Created Bankruptcy Option for Small Businesses Gets Restricted After Sunset Period Ends

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After its inception in 2019, the Subchapter V bankruptcy filing option exploded in popularity, particularly in Florida, but it just got harder for small businesses to qualify for it.

The Subchapter V option was created to help small businesses file for bankruptcy more easily and with lower fees. After COVID-19 brought urgency to help those same small businesses, the limit of total debt to qualify for the option went from \$2.7 million to \$7.5 million, expanding the scope of who qualified. On Friday, that limit went back down to \$2.7 million after the U.S. Senate failed to move legislation forward that would have kept the higher limit intact for two more years.

“It’s kind of a tragedy to a huge segment of small businesses who could benefit from the Subchapter V legislation,” Soneet Kapila, the former president of the American Bankruptcy Institute, said.

During his term as president of the ABI, Kapila put a large focus on researching the effectiveness of the bankruptcy option. Kapila, a founding partner of KapilaMukamal, set up a task force for that purpose, and it found that keeping the debt eligibility limit at \$7.5 million was key to continuing to help small businesses in distress.

With the sunset now officially in effect, a lot of businesses and their lawyers now have one less tool available to get through a bankruptcy process.

The proposal to keep the \$7.5 million limit came from Sen. Dick Durbin, D-Illinois. But Sen. Rand Paul, R-Kentucky, reportedly put it on hold, according to reporting



from Inc. In recent years, the bankruptcy option has skyrocketed in popularity, especially in Florida.

In 2021, the first full year of the option being available, more than 1,400 Subchapter V cases were filed. Last year that number reached more than 2,000 cases, according to data from the ABI.

There's been some criticism from the creditors' side, given the ease of entry, but even some lawyers who have worked on that side of these cases admit to the swiftness of the option.

"When I do creditor work, I'm frustrated by Subchapter V because it literally has made it much easier for these cases to get confirmed," Nason, Yeager, Gerson, Harris & Fumero counsel Ivan Reich said. "The bankruptcy judges like it. Very rarely, in my practice, have I seen a judge not confirm one of these cases."

The hope from some who see the benefit of the option is for lawmakers to take action and revert the debt limit back to \$7.5 million, which would allow for more businesses to qualify. Now that the sunset period has come and gone, the only way to get there is for a new bill to pass.

"The difference between \$7.5 million and \$2.7 million is really drastic, and it has a huge effect on who can be eligible for small business bankruptcies," Meland Budwick partner [Meaghan Murphy](#), who focuses on bankruptcy work, said. "Bankruptcy is supposed to be a tool to help give people a fresh start, and I think everybody's really hoping that this tool, with a higher debt threshold can continue the way that it's gone the last few years."

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