Public Law 87-681

September 25, 1962
[H. R. 5393]

AN ACT

To amend the Bankruptcy Act, as amended.

Bankruptcy Act, amendment.

66 Stat. 420.

Bankruptcy courts. Jurisdiction.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (1) of subsection a of section 2 of the Bankruptcy Act approved July 1, 1898, as amended (11 U.S.C. 11(a)(1)), is amended to read as follows:

"(1) Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdiction, or in any cases transferred to them pursuant to this Act;".

52 Stat. 844; 66 Stat. 421.

SEC. 2. Subsection a of section 2 of the Bankruptcy Act (11 U.S.C. 11(a)) is amended (1) by deleting the word "and" at the end of clause (20); (2) by striking out the period at the end of clause (21) and inserting "; and"; and (3) by adding the following new paragraph:

"(22) Exercise, withhold, or suspend the exercise of jurisdiction, having regard to the rights or convenience of local creditors and to all other relevant circumstances, where a bankrupt has been adjudged bankrupt by a court of competent jurisdiction without the United States."

52 Stat. 853.

Evidence. Certified copies of proceedings, etc.

SEC. 3. Subsection d of section 21 of the Bankruptcy Act (11 U.S.C. 44d) is amended to read as follows:

"d. Certified copies of proceedings before a referee, or of papers, when issued by the clerk, referee, or an employee of the referee designated by his order, which shall be filed in the office of the clerk, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence."

74 Stat. 198.

Trustees, compensation.

SEC. 4. The first paragraph of subsection c of section 48 of the Bankruptcy Act (11 U.S.C. 76c) is amended to read as follows:

"c. Trustees. The compensation of trustees for their services, payable after they are rendered, shall be a fee of $10 for each estate, deposited with the clerk at the time the petition is filed in each case, except where installment payments may be authorized pursuant to section 40 of this Act, and such further sum as the court may allow, as follows:"

11 USC 68.

52 Stat. 866.

Secured claims, settlement provisions.

SEC. 5. Subsection i of section 57 of the Bankruptcy Act (11 U.S.C. 93(i)) is amended to read as follows:

"i. Whenever a creditor whose claim against a bankrupt estate is secured, in whole or in part, by the individual undertaking of a person, fails to prove and file that claim, that person may do so in the creditor's name, and he shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by him in the creditor's name, to the extent that he discharges the undertaking except that in absence of an agreement to the contrary, he shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid to the creditor from the bankrupt estate on the claim equal the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such person."

SEC. 6. Clause (6) of subsection a of section 58 of the Bankruptcy Act (11 U.S.C. 94(a)(6)) is amended to read as follows:

"(6) the proposed compromise of a controversy unless the court, for cause shown, directs that notice be not sent;".

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SEC. 7. Subsection b of section 59 of the Bankruptcy Act (11 U.S.C. 95(b)) is amended to read as follows:

66 Stat. 425.
Petitions.
Requirements.

"b. Three or more creditors who have provable claims not contingent as to liability against a person, amounting in the aggregate to $500 in excess of the value of any securities held by them, or, if all of the creditors of the person are less than twelve in number, then one or more of the creditors whose claim or claims equal that amount, may file a petition to have him adjudged a bankrupt; but the claim or claims, if unliquidated, shall not be counted in computing the number and the aggregate amount of the claims of the creditors joining in the petition, if the court determines that the claim or claims cannot be readily determined or estimated to be sufficient, together with the claims of the other creditors, to aggregate $500, without unduly delaying the decision upon the adjudication."

SEC. 8. Clause (1) of subsection a of section 64 of the Bankruptcy Act (11 U.S.C. 104(a)(1)) is amended to read as follows:

66 Stat. 426.
Order of payment.

"(1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary and expense fund; the filing fees paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, is recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of the recovery; the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of title 18 of the United States Code, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State; the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the bankrupt in voluntary and involuntary cases, and to the petitioning creditors in involuntary cases, and if the court adjudges the debtor bankrupt over the debtor's objection or pursuant to a voluntary petition filed by the debtor during the pendency of an involuntary proceeding, for the reasonable costs and expenses incurred, or the reasonable disbursements made, by them, including but not limited to compensation of accountants and appraisers employed by them, in such amount as the court may allow. Where an order is entered in a proceeding under any chapter of this Act directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding shall have priority in advance of payment of the unpaid costs and expenses of administration, including the allowances provided for in such chapter, incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any;".

18 USC 151-155.

SEC. 9. Subsection b of section 70 of the Bankruptcy Act (11 U.S.C. 110(b)) is amended to read as follows:

52 Stat. 880.
Executory contracts.

"b. The trustee shall assume or reject an executory contract, including an unexpired lease of real property, within sixty days after the adjudication or within thirty days after the qualification of the trustee, whichever is later, but the court may for cause shown extend or reduce the time. Any such contract or lease not assumed or rejected within that time shall be deemed to be rejected. If a trustee is not appointed, any such contract or lease shall be deemed to be rejected within thirty days after the date of the order directing that a trustee be not

appointed. A trustee shall file, within sixty days after adjudication or within thirty days after he has qualified, whichever is later, unless the court for cause shown extends or reduces the time, a statement under oath showing which, if any, of the contracts of the bankrupt are executory in whole or in part, including unexpired leases of real property, and which, if any, have been rejected by the trustee. Unless a lease of real property expressly otherwise provides, a rejection of the lease or of any covenant therein by the trustee of the lessor does not deprive the lessee of his estate. A general covenant or condition in a lease that it shall not be assigned shall not be construed to prevent the trustee from assuming the same at his election and subsequently assigning the same; but an express covenant that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same is enforcible. A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns the contract or lease to a third person, is not liable for breaches occurring after the assignment."

52 Stat. 882.

SEC. 10. Subsection f of section 70 of the Bankruptcy Act (11 U.S.C. 110(f)) is amended to read as follows:

Appraisers.

"f. The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value. Whenever a sale of real or personal property of a bankrupt is made by or through an auctioneer employed by the court, receiver, or trustee, the auctioneer must be a duly licensed or authorized auctioneer in the place where the sale is to be conducted."

49 Stat. 911.

SEC. 11. Subsection a of section 77 of the Bankruptcy Act (11 U.S.C. 205(a)) is amended to read as follows:

Railroads. Petition for reorganization.

"(a) Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the 'Commission'). When any railroad, although engaged in interstate commerce, lies wholly within one State, the proceedings shall be brought in the United States district court for the district in which its principal operating office has been located during the preceding six months or the greater portion thereof. The petition shall be accompanied by payment to the clerk of a filing fee of $150. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a court of the United States would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court

shall extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a 'debtor'. Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which the other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of the other debtor; and upon the filing of the petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon the court, if it approves the petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to the other debtor. Creditors of any railroad corporation, having claims aggregating not less than 5 per centum of all the indebtedness of the corporation as shown in the latest annual report which it has filed with the Commission at the time when the petition is filed, may, if the corporation has not filed a petition under this section, file with the court in which the corporation might file a petition under this section, a petition stating that the corporation is insolvent or unable to meet its debts as they mature and that the creditors have claims aggregating not less than 5 per centum of all such indebtedness of the corporation and propose that it shall effect a reorganization; copies of the petition shall be filed at the same time with the Commission and served upon the corporation. The corporation shall, within ten days after such service, answer the petition. If the answer admits the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If the answer denies either the jurisdiction of the court or any material allegation of the petition, the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury, and if he finds that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise, he shall dismiss the petition. If such a petition is so approved, the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section. If a petition is dismissed, neither the petition nor the answer of a debtor constitute an act of bankruptcy or an admission of insolvency or of inability to meet maturing obligations or be admissible in evidence, without the debtor's consent, in any proceedings then or thereafter pending or commenced under this Act or in any State or United States court. If, in any case in which the issues have not already been tried under the provisions of this subdivision, any of the creditors, prior to the hearing provided for in paragraph (1) of subsection (c) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and, unless the material allegations of the petition are sustained by the proofs, shall dismiss the petition."

"Debtor."

52 Stat. 888.

SEC. 12. Section 160 of the Bankruptcy Act (11 U.S.C. 560) is amended to read as follows:

Trustees.

"SEC. 160. In any case, the judge at any time, without or upon cause shown, may appoint additional trustees and cotrustees, or remove trustees and appoint substitute trustees; and upon each such appointment the judge shall fix a hearing to be held within thirty days to consider objections to the retention in office of the trustee. At least ten days' notice of the hearing shall be given to the persons designated in section 161 of this Act."

52 Stat. 901.

SEC. 13. Section 247 of the Bankruptcy Act (11 U.S.C. 647) is amended to read as follows:

Hearings.

"SEC. 247. The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, except that notice need not be given to any class of creditors or stockholders which does not participate under the plan as confirmed by the court from which no appeal is pending and the time allowed for appeal has expired. In the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that bankruptcy be proceeded with, notice of the hearing to consider allowances need not be given to stockholders."

52 Stat. 903.

SEC. 14. Clause (6) of subsection a of section 265 of the Bankruptcy Act (11 U.S.C. 665(a)(6)) is amended to read as follows:

"(6) copies of plans, alterations or modifications in plans, and any notices of hearings on the plans, alterations, or modifications;"

SEC. 15. Clause (7) of subsection a of section 265 of the Bankruptcy Act (11 U.S.C. 665(a)(7)) is amended to read as follows:

"(7) the orders approving any plan or plans or alterations or modifications in plans;"

52 Stat. 914.

Unregistered securities.

SEC. 16. Clause (2) of subsection a of section 393 of the Bankruptcy Act (11 U.S.C. 793(a)(2)) is amended to read as follows:

"(2) any transaction in any security issued pursuant to an arrangement in exchange for claims against the debtor or partly in exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (A) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (B) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by the dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement."

Approved September 25, 1962.