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Ninetieth Congress, Session I
Public Law 90-157 — 81 Stat. 511 (H.R. 2517)
November 28, 1967

AN ACT *To amend sections 64a, 238, 378, and 483 of the Bankruptcy Act and to repeal sections 354 and 459 of the Act.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 64a of the Bankruptcy Act (11 U.S.C. 104(a)) is amended to read as follows:

"SEC. 64. DEBTS WHICH HAVE PRIORITY.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (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 such 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, including expenses necessarily incurred by a debtor in possession, receiver, or trustee in preparing the schedule and statement required to be filed by section 238, 378, or 483, 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; (2) wages and commissions, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling, or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; and for the purposes of this clause, the term 'traveling or city salesman' shall include all such salesmen, whether or not they are independent contractors selling the products or services of the bankrupt on a commission basis, with or without a drawing account or formal contract; (3) where the confirmation of an arrangement or wage earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under chapter 9 of title 18 of the United States Code, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in

adducing such evidence; (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy: *Provided, however,* That no priority over general unsecured claims shall pertain to taxes not included in the foregoing priority: *And provided further,* That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court; and (5) debts other than for taxes owing to any person, including the United States, who by the laws of the United States is entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law or who is entitled to priority by paragraph (2) of subdivision c of section 67 of this Act: *Provided, however,* That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy."

SEC. 2. Section 238 of the Bankruptcy Act (11 U.S.C. 638) is amended to read as follows:

"SEC. 238. a. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) where the petition was filed under section 127 of this Act, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 128 of this Act, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved;

"(2) a trustee shall be elected or appointed pursuant to section 44 of this Act and shall supersede any trustee previously appointed;

"(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by it while continued in possession and before the qualification of a receiver or trustee, if any, under this chapter, and if a receiver or trustee has qualified, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

"(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of filing of the original petition under this Act and such claims as are provable under section 63 of this Act shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 127 of this Act and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision n of section 57 of this Act, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision n of section 57 of this Act, shall not be allowed in the reinstated bankruptcy proceeding.

"b. Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

"c. Upon the filing of the schedule and statement required by subdivision a of this section, the court shall make an order directing the claims against the debtor in possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision a of this section and claims arising from rejection of executory contracts under subdivision b of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 57 of this Act.

"d. Claims directed to be filed under subdivision c of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision c and claims not allowable under paragraph (4) of subdivision a of this section because not filed within the time prescribed therein may nevertheless be filed

within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case."

SEC. 3. Section 378 of the Bankruptcy Act (11 U.S.C. 778) is amended to read as follows:

"SEC. 378. a. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) in the case of a petition filed under section 321 of this Act, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

"(2) in the case of a petition filed under section 322 of this Act, the proceeding shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed; and the trustee nominated by creditors under this chapter shall be appointed by the court, or, if not so nominated or if the trustee so nominated fails to qualify within five days after notice to him of the entry of such order, a trustee shall be appointed by the court;

"(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a receiver, if any, under this

Act, and if a receiver has qualified or a trustee has been continued in possession, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

"(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this Act and such claims as are provable under section 63 of this Act shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 321 of this Act and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision n of section 57 of this Act, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision n of section 57 of this Act shall not be allowed in the reinstated bankruptcy proceeding.

"b. Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

"c. Upon the filing of the schedule and statement required by subdivision a of this section, the court shall make an order directing the claims against the debtor in

possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision a of this section and claims arising from rejection of executory contracts under subdivision b of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 57 of this Act.

"d. Claims directed to be filed under subdivision c of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision c and claims not allowable under paragraph (4) of subdivision a of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case."

SEC. 4. Section 483 of the Bankruptcy Act (11 U.S.C. 883) is amended to read as follows:

"SEC. 483. a. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) in the case of a petition filed under section 421 of this Act, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

"(2) in the case of a petition filed under section 422 of this Act, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when such original petition under this chapter was filed;

"(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a trustee, if any, under this chapter, and if a trustee has qualified, the schedule and statement shall be filed by such trustee for any obligations incurred and contracts assumed or entered into by him; and

"(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this Act and such claims as are provable under section 63 of this Act shall be allowed, and claims not already filed may be filed in accordance with the provisions of subdivision n of section 57 of this Act.

"b. Any contract which is entered into or assumed by a debtor in possession or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered

into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

"c. Upon the filing of the schedule and statement required by subdivision a of this section, the court shall make an order directing the claims against the debtor in possession or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision a of this section and claims arising from rejection of executory contracts under subdivision b of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession or trustee shall be proved and filed in the manner provided in section 57 of this Act.

"d. Claims directed to be filed under subdivision c of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision c and claims not allowable under paragraph (4) of subdivision a of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case."

SEC. 5. Sections 354 and 459 of the Bankruptcy Act (11 U.S.C. 754 and 859) are hereby repealed.

APPROVED November 28, 1967.