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Ninety-Fifth Congress, Session II
Public Law 95-598 — 92 Stat. 2549 (H.R. 8200)
November 6, 1978

AN ACT *To establish a uniform Law on the Subject of Bankruptcies.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ENACTMENT OF TITLE 11 OF THE UNITED STATES CODE

SEC. 101. The law relating to bankruptcy is codified and enacted as title 11 of the United States Code, entitled "Bankruptcy", and may be cited as 11 U.S.C. § , as follows:

TITLE 11—BANKRUPTCY

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CHAPTER 1—GENERAL PROVISIONS

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§ 101. Definitions

In this title—

(1) "accountant" means accountant authorized under applicaable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized;

(2) "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with

power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement;

(3) "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law;

(4) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(5) "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or

commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761(9) of this title;

(6) "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

(7) "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose;

(8) "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership:

(9) "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

(10) "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors;

(11) "debt" means liability on a claim;

(12) "debtor" means person or municipality concerning which a case under this title has been commenced;

(13) "disinterested person" means person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for

such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;

(14) "entity" includes person, estate, trust, governmental unit;

(15) "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph;

(16) "equity security holder" means holder of an equity security of the debtor;

(17) "farmer" means person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such

person was commenced from a farming operation owned or operated by such person;

(18) "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;

(19) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(20) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(21) "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(22) "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor;

(23) "indenture trustee" means trustee under an indenture;

(24) "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a

plan under chapter 13 of this title, other than a stock broker or a commodity broker;

(25) "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;

(26) "insolvent" means—

(A) with reference to an entity other than a partnership, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title; and

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in subparagraph (A)(ii) of this paragraph, over such partner's separate debts;

(27) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(28) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

(29) "municipality" means political subdivision or public agency or instrumentality of a State;

(30) "person" includes individual, partnership, and corporation, but does not include governmental unit;

(31) "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title;

(32) "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee;

(33) "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier;

(34) "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;

(35) "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933 (15 U.S.C. 77a et seq.), or is exempt under section 3(b) of such Act (15 U.S.C. 77c(b)) from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a secuity; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761(13) of this title;

(iii) commodity futures contract or forward commodity contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate specified in clause (xii) of subparagraph (A) of this paragraph that is not the subject of such a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(36) "security agreement" means agreement that creates or provides for a security interest;

(37) "security interest" means lien created by an agreement;

(38) "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

(39) "stockbroker" means person with respect to which there is a customer, as defined in section 741(2) of this title, engaged in the business of effecting transactions in securities—

(A) for the accounts of others; or

(B) with members of the general public, from or for such person's own account; and

(40) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest.

§ 102. Rules of construction

In this title—

(1) "after notice and a hearing", or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) "claim against the debtor" includes claim against property of the debtor;

(3) "includes" and "including" are not limiting;

(4) "may not" is prohibitive, and not permissive;

(5) "or" is not exclusive;

(6) "order for relief" means entry of an order for relief;

(7) the singular includes the plural; and

(8) a definition, continued in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section.

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, or 13 of this title.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockholder.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker except with respect to section 746(c) which applies to

margin payments made by any debtor to a commodity broker or forward contract merchant.

(e) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(f) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(g) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(h) Chapter 13 of this title applies only in a case under such chapter.

§ 104. Adjustment of dollar amounts

The Judicial Conference of the United States shall transmit to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in this title and in section 1930 of title 28.

§ 105. Power of court

(a) The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

(b) Notwithstanding subsection (a) of this section, a bankruptcy court may not appoint a receiver in a case under this title.

§ 106. Waiver of sovereign immunity

(a) A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such governmental unit that is property of the estate and that arose

out of the same transaction or occurrence out of which such governmental unit's claim arose.

(b) There shall be offset against an allowed claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(c) Except as provided in subsections (a) and (b) of this section and notwithstanding any assertion of sovereign immunity—

(1) a provision of this title that contains "creditor", "entity", or "governmental unit" applies to governmental units; and

(2) a determination by the court of an issue arising under such a provision binds governmental units.

§ 107. Public access to papers

(a) Except as provided in subsection (b) of this section, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

§ 108. Extension of time

(a) If applicable law, an order entered in a proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; and

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable law, an order entered in a proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; and

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable law, an order entered in a proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; and

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, or 1301 of this title, as the case may be, with respect to such claim.

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides in the United States, or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is generally authorized to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent or unable to meet such entity's debts as such debts mature;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a preference.

(d) Only a person that may be a debtor under chapter 7 of this title, except a stockholder or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000 may be a debtor under chapter 13 of this title.

CHAPTER 3—CASE ADMINISTRATION

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SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

§ 302. Joint cases

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or an indenture trustee representing such a holder, if such claims aggregate at least $5,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $5,000 of such claims;

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due; or

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

(1) against the petitioners and in favor of the debtor for—

(A) costs;

(B) a reasonable attorney's fee; or

(C) any damages proximately caused by the taking of possession of the debtor's property by a trustee appointed under subsection (g) of this section or section 1104 of this title; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing; or

(B) punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtors; or

(3) for want of prosecution.

(k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.

§ 304. Cases ancillary to foreign proceedings

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

(1) enjoin the commencement or continuation of—

(A) any action against—

(i) a debtor with respect to property involved in such foreign proceeding; or

(ii) such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

(1) just treatment of all holders of claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or

(2)(A) there is pending a foreign proceeding; and

(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise.

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303, 304, or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303, 304, or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

SUBCHAPTER II—OFFICERS

§ 321. Eligibility to serve as trustee

(a) A person may serve as trustee in a case under this title only if such person is—

(1) an individual that is competent to perform the duties of trustee and, in a case under chapter 7 or 13 of this title, resides or has an office in the judicial district within which the case is pending, or in any judicial district adjacent to such district; or

(2) a corporation authorized by such corporation's charter or bylaws to act as trustee, and, in a case under chapter 7 or 13 of this title, having an office in at least one of such districts.

(b) A person that has served as an examiner in a case may not serve as trustee in the case.

§ 322. Qualification of trustee

(a) A person selected under section 701, 702, 703, 1104, 1163, or 1302 of this title to serve as trustee in a case under this title qualifies if before five days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(b) The court shall determine—

(1) the amount of a bond filed under subsection (a) of this section; and

(2) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

§ 323. Role and capacity of trustee

(a) The trustee in a case under this title is the representative of the estate.

(b) The trustee in a case under this title has capacity to sue and be sued.

§ 324. Removal of trustee or examiner

The court, after notice and a hearing, may remove a trustee or an examiner, for cause.

§ 325. Effect of vacancy

A vacancy in the office of trustee during a case does not abate any pending action or proceeding, and the successor trustee shall be substituted as a party in such action or proceeding.

§ 326. Limitation on compensation of trustee

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed fifteen percent on the first $1,000 or less, six percent on any amount in excess of $1,000 but not in excess of $3,000, three percent on any amount in excess of $3,000 but not in excess of $20,000, two percent on any amount in excess of $20,000 but not in excess of $50,000, and one percent on any amount in excess of $50,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

(b) In a case under chapter 13 of this title, the court may not allow compensation for services or reimbursement of expenses of a standing trustee appointed under section 1302(d) of this title, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

(c) If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

(d) The court may deny allowance of compensation for services and reimbursement of expenses of the trustee if the trustee—

(1) failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title; or

(2) with knowledge of such facts, employed a professional person under section 327 of this title.

§ 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721 or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, but may not, while employed by the trustee, represent, in connection with the case, a creditor.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does

not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments unanticipatable at the time of the fixing of such terms and conditions.

(b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

(c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an

interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of and in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the trustee, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11 or 13 of this title; or

(2) the entity that made such payment.

§ 330. Compensation of officers

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney—

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

(b) There shall be paid from the filing fee in a case under chapter 7 of this title $20 to the trustee serving in such case, after such trustee's services are rendered.

§ 331. Interim compensation

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

SUBCHAPTER III—ADMINISTRATION

§ 341. Meetings of creditors and equity security holders

(a) Within a reasonable time after the order for relief in a case under this title, there shall be a meeting of creditors.

(b) The court may order a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section.

§ 342. Notice

There shall be given such notice as is appropriate of an order for relief in a case under this title.

§ 343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, or any trustee or examiner in the case may examiner the debtor.

§ 344. Self-incrimination; immunity

Immunity for persons required to submit to examination, to testify, or to provide information in a case under this title may be granted under part V of title 18.

§ 345. Money of estates

(a) A trustee in a case under this title may make such deposit or investment of the money of the estate for which such trustee serves as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.

(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

(1) a bond—

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the court for the district in which the case is pending; and

(C) conditioned on—

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 15 of title 6.

§ 346. Special tax provisions

(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

(b)(1) In a case under chapter 7 or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any State or local tax on or measured by such income, shall be computed in the same manner as the income and the tax of an estate.

(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such operation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

(f) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld was paid.

(g)(1) Neither gain nor loss shall be recognized on a transfer—

(A) by operation of law, of property to the estate;

(B) other than a sale, of property from the estate to the debtor; or

(C) in a case under chapter 11 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1954 (26 U.S.C. 371).

(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (j)(5) of this section, and holding period.

(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such commencement.

(i)(1) In a case under chapter 7 or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including—

(A) any investment credit carryover;

(B) any recovery exclusion;

(C) any loss carryover;

(D) any foreign tax credit carryover;

(E) any capital loss carryover; and

(F) any claim of right.

(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged—

(A) consisted of items of a deductible nature that were not deducted by such debtor; or

(B) resulted in an expired net operating loss carryover or other deduction that—

(i) did not offset income for any taxable period; and

(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after which such indebtedness was discharged.

(5) For the purposes of a State or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of—

(A)(i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owned, or that is forgiven as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title—

(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to

such creditor in an amount equal to the fair market value of such equity security, then to the lesser of—

(i) the extent that such issuance has the same such consequences; and

(ii) the extent of such fair market value.

§ 347. Unclaimed property

(a) Ninety days after the final distribution under section 726 or 1326 of this title in a case under chapter 7 or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

(b) Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9 or 11 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, or 1173 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.

§ 348. Effect of conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b),

1301(a), 1305(a), and 1328(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112 or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

§ 349. Effect of dismissal

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

§ 350. Closing and reopening cases

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

§ 361. Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title;

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(6) under subsection (a)(7) of this section, of the setoff of any mutual debt and claim that are commodity futures contracts, forward commodity contracts, leverage transactions, options, warrants, rights to purchase or sell commodity futures contracts or securities, or options to purchase or sell commodities or securities;

(7) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

(8) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency.

(c) Except as provided in subsections (d), (e), and (f) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; and

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, or 13 of this title, the time a discharge is granted or denied.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. If the hearing under this subsection is a preliminary hearing—

(1) the court shall order such stay so continued if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the final hearing under subsection (d) of this section; and

(2) such final hearing shall be commenced within thirty days after such preliminary hearing.

(f) The court, without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the

interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest.

(b) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. In any hearing under this section, the trustee has the burden of proof on the issue of adequate protection.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of such interest;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, immediately before the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compenation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) The trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11 or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial conditions of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of a taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interests in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such

property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may void a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in voiding such sale or recovering such amount. The court may grant judgment in favor of the estate and against any such party that entered into such agreement in willful disregard of this subsection for punitive damages in addition to any recovery under the preceding sentence.

§ 364. Obtaining credit

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

(e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

(f) Except with respect to an entity that is an underwriter as defined in section 1145(b) of this title, section 5 of the Securities Act of 1933 (15 U.S.C. 77e), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security does not apply to the offer or sale under this section of a security that is not an equity security.

§ 365. Executory contracts and unexpired leases

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(3) For the purposes of paragraph (1) of this section, adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

(A) of the source of rent and other consideration due under such lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease will not breach substantially any provision, such as a radius, location, use, or exclusivity provision, in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt substantially any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of the debtor at any time before the confirmation of a plan, but the court, on request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(A)(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)(1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease—

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, or 13 of this title—

(A) if before such rejection the case has not been converted under section 1112 or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112 or 1307 of this title—

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

(h)(1) If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, the lessee under such lease may treat the lease as terminated by such rejection, or, in the alternative, may remain in possession for the balance of the term of such lease and any renewal or extension of such term that is enforceable by such lessee under applicable nonbankruptcy law.

(2) If such lessee remains in possession, such lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease, and any such renewal or extension, any damages occurring after such date caused by the nonperformance of any obligation of the debtor after such date, but such lessee does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset.

(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property.

(2) If such purchaser remains in possession—

> (A) such purchaser shall continue to make all payments due under such contract, but may, offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and
>
> (B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

§ 366. Utility service

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

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SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

§ 502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor, and unenforceable against property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) such claim may be offset under section 553 of this title against a debt owing to the debtor;

(4) if such claim is for a tax assessed against property of the estate, such claim exceeds value of the interest of the estate in such property;

(5) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(6) the claim is for a debt that is unmatured on the date of the filing of the petition, and that is excepted from discharge under section 523(a)(5) of this title;

(7) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(8) if such claim is for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) the unpaid compensation due under such contract without acceleration, on the earlier of such dates; or

(9) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, fixing or liquidation of which, as the case may be, would unduly delay the closing of the case; or

(2) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a) and (b) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on, or has secured, the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance of such claim for reimbursement or contribution; or

(C) such entity requests subrogation under section 509 of this title to the rights of such creditor.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522(i), 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of

this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(6) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) Before a case is closed, a claim that has been allowed may be reconsidered for cause, and reallowed or disallowed according to the equities of the case.

§ 503. Allowance of administrative expenses

(a) An entity may file a request for payment of an administrative expense.

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

(B) any tax—

(i) incurred by the estate, except a tax of a kind specified in section 507(a)(6) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; and

(C) any fine, penalty, or reduction in credit, relating to a tax of a kind specified in subparagraph (B) of this paragraph;

(2) compensation and reimbursement awarded under section 330 of this title;

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection incurred by—

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case, or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title; or

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; and

(6) the fees and mileage payable under chapter 119 of title 28.

§ 504. Sharing of compensation

(a) Except as provided in subsection (b) of this section, a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share—

(1) any such compensation or reimbursement with another person; or

(2) any compensation or reimbursement received by another person under such sections.

(b)(1) A member, partner, or regular associate in a professional association, corporation, or partnership may share compensation or reimbursement received under section 503(b)(2) or 503(b)(4) of this title with another member, partner, or regular associate in such association, corporation, or partnership, and may share in any compensation or reimbursement received under such sections by another member, partner, or regular associate in such association, corporation, or partnership.

(2) An attorney for a creditor that files a petition under section 303 of this title may share compensation and reimbursement received under section 503(b)(4) of this title with any other attorney contributing to the services rendered or expenses incurred by such creditor's attorney.

§ 505. Determination of tax liability

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; or

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; and

(ii) a determination by such governmental unit of such request.

(b) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax. Unless such return is fraudulent, or contains a material misrepresentation, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—

(1) upon payment of the tax shown on such return, if—

(A) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(B) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(2) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(3) upon payment of the tax determined by such governmental unit to be due.

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

§ 506. Determination of secured status

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on

such claim, and any reasonable fees, costs, or charges provided under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) a party in interest has not requested that the court determine and allow or disallow such claim under section 502 of this title; or

(2) such claim was disallowed only under section 502(e) of this title.

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(2) Second, unsecured claims allowed under section 502(f) of this title.

(3) Third, allowed unsecured claims for wages, salaries, or commissions, including vacation, severance and sick leave pay—

(A) earned by an individual within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) to the extent of $2,000 for each such individual.

(4) Fourth, allowed unsecured claims for contributions to employee benefit plans—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by such plan multiplied by $2,000; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(5) Fifth, allowed unsecured claims of individuals, to the extent of $900 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(6) Sixth, allowed unsecured claims of governmental units, to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(1) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax shall be treated the same as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

§ 508. Effect of distribution other than under this title

(a) If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.

(b) If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

§ 509. Claims of codebtors

(a) Except as provided in subsections (b) and (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of a payment of such creditor's claim is—

(A) allowed under section 502 of this title;

(B) disallowed other than under section 502(e) of this title; or

(C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under section 509 of this title, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

§ 510. Subordination

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

(b) Any claim for recission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be

subordinated for purposes of distribution to all claims and interests that are senior or equal to the claim or interest represented by such security.

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

§ 521. Debtor's duties

The debtor shall—

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, and a statement of the debtor's financial affairs;

(2) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(3) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate; and

(4) appear at the hearing required under section 524(d) of this title.

§ 522. Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or section 523(a)(5) of this title; or

(2) a lien that is—

(A) not avoided under section 544, 545, 547, 548, 549, or 724(a) of this title;

(B) not voided under section 506(d) of this title; or

(C)(i) a tax lien, notice of which is properly filed; and

(ii) avoided under section 545(2) of this title.

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value $400 plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property.

(6) The debtor's aggregate interest, not to exceed $750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of exemptions executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest in any—

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could

have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this tittle; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of

the debtor to the extent that the debtor may exempt such property under subsection (g) of his section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

> (1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and
>
> (2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) This section shall apply separately with respect to each debtor in a joint case.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(6) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for obtaining money, property, services, or an extension, renewal, or refinance of credit, by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; or

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for obtaining such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive;

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless—

(A) such loan first became due before five years before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents; or

(9) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education

Act of 1965 (20 U.S.C. 1087-3), or under section 733(g) of the Public Health Services Act (42 U.S.C. 294f) in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment against such creditor and in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding to determine dischargeability, unless such granting of judgment would be clearly inequitable.

§ 524. Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any

such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523 or 1328(c)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a

determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, or 1328 of this title;

(2) the debtor has not rescinded such agreement within 30 days after such agreement becomes enforceable;

(3) the provisions of subsection (d) of this section have been complied with; and

(4) in a case concerning an individual, to the extent that such debt is a consumer debt that is not secured by real property of the debtor, the court approves such agreement as—

(A)(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor; or

(B)(i) entered into in good faith; and

(ii) in settlement of litigation under section 523 of this title, or providing for redemption under section 722 of this title.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, or 1328 of this title, the

court shall hold a hearing at which the debtor shall appear in person. At such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then at such hearing the court shall—

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement;

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(4) of this subsection, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

§ 525. Protection against discriminatory treatment

Except as provided in Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a–499s), the Packers and Stockyards Act, 1921 (7 U.S.C. 181–229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for

the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) The commencement of a case under under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) An interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, and profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include any power that the debtor may only exercise solely for the benefit of an entity other than the debtor.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) The estate shall have the benefit of any defense available to the debtor as against an entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

§ 542. Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.

(c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

(d) A life insurance company may transfer property of the estate or property of the debtor to such company in good faith, with the same effect with respect to such company as if the case under this title concerning the debtor had not been commenced, if such transfer is to pay a premium or to carry out a nonforfeiture insurance option, and is required to be made automatically, under a life insurance contract with such company that was entered into before the date of the filing of the petition and that is property of the estate.

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to disclose such recorded information to the trustee.

§ 543. Turnover of property by a custodian

(a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the trustee any property of the debtor transferred to such custodian, or proceeds of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and

(2) file an accounting of any property of the debtor, or proceeds of such property, that, at any time, came into the possession, custody, or control of such custodian.

(c) The court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, for any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.

(d) The bankruptcy court may, after notice and a hearing, excuse compliance with subsection (a), (b), or (c) of this section, if the interests of creditors, and, if the debtor is not insolvent, of equity security holders, would be better served by permitting a custodian to continue in possession, custody, or control of such property.

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; and

(3) a bona fide purchaser of real property from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser at the time of the commencement of the case, whether or not such a purchaser exists.

(b) The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) first becomes effective against the debtor—

(A) when a case under this title concerning the debtor is is commenced;

(B) when an insolvency proceeding other than under this title concerning the debtor is commenced;

(C) when a custodian is apponted or takes possession;

(D) when the debtor becomes insolvent;

(E) when the debtor's financial condition fails to meet a specified standard; or

(F) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;

(2) is not perfected or enforceable on the date of the filing of the petition against a bona fide purchaser that purchases such property on the date of the filing of the petition, whether or not such a purchaser exists;

(3) is for rent; or

(4) is a lien of distress for rent.

§ 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

(1) two years after the appointment of a trustee under section 702, 1104, 1163, or 1302 of this title; and

(2) the time the case is closed or dismissed.

(b) The rights and powers of the trustee under section 544, 545, or 549 of this title are subject to any generally applicable law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection. If such law requires seizure of such property or commencement of an action to accomplish such perfection, and such property has not been seized or such action has not been commenced before the date of the filing of the petition, such interest in such property shall be perfected by notice within the time fixed by such law for such seizure or commencement.

(c) The rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory right or common-law right of a seller, in the ordinary course of such seller's business, of goods to the debtor to reclaim such goods if the debtor has received such goods while insolvent, but—

(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods before ten days after receipt of such goods by the debtor; and

(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if court—

(A) grants the claim of such a seller priority as an administrative expense; or

(B) secures such claim by a lien.

§ 547. Preferences

(a) In this section—

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable, including any extension, without penalty.

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of property of the debtor—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between 90 days and one year before the date of the filing of the petition, if such creditor, at the time of such transfer—

(i) was an insider; and

(ii) had reasonable cause to believe the debtor was insolvent at the time of such transfer; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was—

(A) in payment of a debt incurred in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made not later than 45 days after such debt was incurred;

(C) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(D) made according to ordinary business terms;

(3) of a security interest in property acquired by the debtor—

(A) to the extent such security interest secures new value that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected before 10 days after such security interest attaches;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interest for such debt on the later of—

(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; and

(B) the date on which new value was first given under the security agreement creating such security interest; or

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title.

(d) A trustee may avoid a transfer of property of the debtor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged

to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)(1) For the purposes of this section—

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time;

(B) at the time such transfer is perfected, if such transfer is perfected after such 10 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; and

(ii) 10 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

§ 548. Fraudulent transfers and obligations

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor—

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer occurred or such obligation was incurred, indebted; or

(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, to a general

partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on any interest transferred, may retain any lien transferred, or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer becomes so far perfected that a bona fide purchaser from the debtor against whom such transfer could have been perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer occurs immediately before the date of the filing of the petition.

(2) In this section—

(A) "value" means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor; and

(B) a commodity broker or forward contract merchant that receives a margin payment, as defined in section 761(15) of this title, takes for value.

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) and (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

(b) In an involuntary case, a transfer that occurs after the commencement of such case but before the order for relief is valid against the trustee to the extent of any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer, to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value or to a purchaser at a judicial sale, of real property located other than in the county in which the case is commenced, unless a copy of the petition was filed in the office where conveyances of real property in such county are recorded before such transfer was so far perfected that a bona fide purchaser of such property against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of such good faith or judicial sale purchaser. A good faith purchaser, without knowledge of the commencement of the case and for less than present fair equivalent value, of real property located other than in the county in which the case is commenced, under a transfer that the trustee may avoid under this section, has a lien on the property transferred to the extent of any present value given, unless a copy of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of—

(1) two years after the date of the transfer sought to be avoided; and

(2) the time the case is closed or dismissed.

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section (a)(2) of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(d)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by such transferee from such property; and

(B) any increase in value as a result of such improvement, of the property transferred.

(2) In this subsection, "improvement" includes—

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property;

(E) discharge of any lien against such property that is superior or equal to the rights of the trustee; and

(F) preservation of such property.

(e) An action or proceeding under this section may not be commenced after the earlier of—

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; and

(2) the time the case is closed or dismissed.

§ 551. Automatic preservation of avoided transfer

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

§ 552. Postpetition effect of security interest

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Except as provided in sections 363, 506(c), 544, 545, 547, and 548 of this title, if the debtor and a secured party enter into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, product, offspring, rents, or profits of such property, then such security interest extends to such proceeds, product, offspring, rents, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to the extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) the claim of such creditor against the debtor is disallowed other than under section 502(b)(3) of this title;

(2) such claim was transferred, by an entity other than the debtor, to such creditor—

(A) after the commencement of the case; or

(B)(i) after 90 days before the date of the filing of the petition; and

(ii) while the debtor was insolvent; or

(3) the debt owed to the debtor by such creditor was incurred by such creditor—

(A) after 90 days before the date of the filing of the petition;

(B) while the debtor was insolvent; and

(C) for the purpose of obtaining a right of setoff against the debtor.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6) or 365(h)(1) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) 90 days before the date of the filing of the petition; and

(B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.

(2) In this subsection, "insufficiency" means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

(c) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

§ 554. Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

(c) Unless the court orders otherwise, any property that is scheduled under section 521(1) of this title and that is not administered before a case is closed under section 350 of this title is deemed abandoned.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under section (a) or (b) of this section and that is not administered in the case remains property of the estate.

CHAPTER 7—LIQUIDATION

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SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 701. Interim trustee

(a) Promptly after the order for relief under this chapter, the court shall appoint one disinterested person that is a member of the panel of private trustees established

under section 604(f) of title 28 or that was serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

§ 702. Election of trustee

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), or 726(a)(4) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for trustee.

(d) If a trustee is not elected under subsection (c) of this section, then the interim trustee shall serve as trustee in the case.

§ 703. Successor trustee

(a) If a trustee dies or resigns during a case, fails to qualify under section 322 of this title, or is removed under section 324 of this title, creditors may elect, in the manner specified in section 702 of this title, a person to fill the vacancy in the office of trustee.

(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the court may appoint an interim trustee in the manner specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee.

(c) If creditors do not elect a successor trustee under subsection (a) of this section, or if a trustee is needed in a case reopened under section 350 of this title, then the court shall appoint one disinterested person that is a member of the panel of private trustees established under section 604(f) of title 28 to serve as trustee in the case.

§ 704. Duties of trustee

The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close up such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) investigate the financial affairs of the debtor;

(4) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(5) if advisable, oppose the discharge of the debtor;

(6) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(7) if the business of the debtor is authorized to be operated, file with the court and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court requires; and

(8) make a final report and file a final account of the administration of the estate with the court.

§ 705. Creditors' committee

(a) At the meeting under section 341(a) of this title, creditors that may vote for a trustee under section 702(a) of this title may elect a committee of not fewer than three, and not more than eleven, creditors, each of whom holds an allowable unsecured claim of a kind entitled to distribution under section 726(a)(2) of this title.

(b) A committee elected under subsection (a) of this section may consult with the trustee in connection with the administration of the estate, make recommendations to the trustee respecting the performance of the trustee's duties, and submit to the court any question affecting the administration of the estate.

§ 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11 or 13 of this title at any time, if the case has not been converted under section 1112 or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 13 of this title unless the debtor requests such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 707. Dismissal

The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors; and

(2) nonpayment of any fees and charges required under chapter 123 of title 28.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

§ 721. Authorization to operate business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

§ 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

§ 723. Rights of partnership trustee against general partners

(a) If there is a deficiency of property of the estate to pay in full all claims allowed in a case under this title concerning a partnership, then each general partner in such partnership is liable to the trustee for the full amount of such deficiency.

(b) To the extent practicable, the trustee shall first seek recovery of such deficiency from any general partner in such partnership that is not a debtor in a case under this title. Pending determination of such deficiency, the court may order any such partner to provide the estate with indemnity for, or assurance of payment of, any deficiency recoverable from such partner, or not to dispose of property.

(c) Notwithstanding section 728(c) of this title, the trustee has a claim against the estate of each general partner in such partnership that is a debtor in a case under this title for the full amount of all claims of creditors allowed in the case concerning such partnership. Notwithstanding section 502 of this title, there shall not be allowed in such case a claim against such partner on which both such partner and such partnership are liable, except to any extent that such claim is secured only by property of such partner and not be property of such partnership. The claim of the trustee under this subsection is entitled to distribution in such case under section 726(a) of this title the same as any other claim of the kind specified in such section.

(d) If the aggregate that the trustee recovers from the estates of general partners under subsection (c) of this section is greater than any deficiency not recovered under subsection (b) of this section, the court, after notice and a hearing, shall determine an equitable distribution of the surplus so recovered, and the trustee shall distribute such surplus to the estates of the general partners in such partnership according to such determination.

§ 724. Treatment of certain liens

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title and that secures an allowed claim for taxes, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to claims specified in sections 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), and 507(a)(5) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

(3) third, to the holder of such tax lien, to any extent that such holder's allowed claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection;

(4) fourth, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is junior to such tax lien;

(5) fifth, to the holder of such tax lien, to the extent that such holder's allowed claim secured by such tax lien is not paid under paragraph (3) of this subsection; and

(6) sixth, to the estate.

(c) If more than one creditor is entitled to distribution under a particular paragraph of subsection (b) of this section, distribution to such creditors under such paragraph shall be in the same order as distribution to such creditors would have been other than under this section.

(d) A statutory lien whose priority is determined in the same manner as the priority of a tax lien under section 6323 of the Internal Revenue Code of 1954 (26 U.S.C. 6323) shall be treated under subsection (b) of this section the same as a tax lien.

§ 725. Disposition of certain property

After the commencement of a case under this chapter, but before final distribution under section 726 of this title, the trustee, after notice and a hearing, shall dispose of

any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to

the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), or (6) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in a particular paragraph, except that in a case that has been converted to this chapter under section 1112 or 1307 of this title, administrative expenses incurred under this chapter after such conversion have priority over administrative expenses incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Administrative expenses shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Claims other than for administrative expenses shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind

specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the property invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371 or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; or

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)(1) The trustee or a creditor may object to discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee or a creditor, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and

fraudulently failed to report the acquisition of, or entitlement to, such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

(e) The trustee or a creditor may request a revocation of a discharge—

(1) under subsection (d)(1) of this section, within one year after such discharge was granted; or

(2) under subsection (d)(2) or (d)(3) of this section, before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

§ 728. Special tax provisions

(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 1112 of this title.

(b) Notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns of income for the estate of an individual debtor in a case under this chapter or for a debtor that is a corporation in a case under this chapter only if such estate or corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending. If such entity has such income, or if the debtor is a partnership, then the trustee shall make and file a return of income for each taxable period during which the case was pending after the order for relief under this chapter.

(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income, of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

(2) is property of the estate of such partner otherwise.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) "Commission" means Securities and Exchange Commission;

(2) "customer" includes—

(A) entity with whom the debtor deals as principal or agent and that holds a claim against the debtor on account of a security received, acquired, or held by

the debtor in the ordinary course of business as a stockbroker from or for the securities account or accounts of such entity—

(i) for safekeeping;

(ii) with a view to sale;

(iii) to cover a consummated sale;

(iv) pursuant to a purchase;

(v) as collateral under a security agreement; or

(vi) for the purpose of effecting registration of transfer; and

(B) entity that holds a claim against the debtor arising out of—

(i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or

(ii) a deposit of cash, a security, or other property with the debtor for the purpose of purchasing or selling a security;

(3) "customer name security" means security—

(A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;

(B) registered in such customer's name on such date or in the process of being so registered under instructions from the debtor; and

(C) not in a form transferable by delivery on such date;

(4) "customer property" means cash, security, or other property, and proceeds of such cash, security, or property, at any time received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer—

(A) including—

(i) property that was unlawfully converted and that is property of the estate;

(ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;

(iii) resources provided through the use or realization of a customer's debit cash balance or a debit item includible in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including—

(i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or

(ii) property to the extent that a customer does not have a claim against the debtor based on such property;

(5) "net equity" means, with respect to the aggregate of all of a customer's accounts that such customer holds in the same capacity—

(A)(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition of all securities positions in all such accounts, except customer name securities of such customer; minus

(ii) any claim of the debtor against such customer that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer;

(6) "SIPC" means Security Investor Protection Corporation.

§ 742. Effect of section 362 of this title in this subchapter

Notwithstanding section 362 of this title, SIPC may file an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.). The filing of such application stays all proceedings in the case under this chapter unless and until such application is dismissed. If SIPC completes the liquidation of the debtor, then the court shall dismiss the case.

§ 743. Notice

The clerk shall give the notice required by section 342(a) of this title to SIPC and to the Commission.

§ 744. Executory contracts

Notwithstanding section 365(d)(1) of this title, the trustee shall assume or reject, under section 365 of this title, any executory contract of the debtor for the purchase or sale of a security in the ordinary course of the debtor's business, within a reasonable time after the date of the order for relief, not to exceed 30 days. If the trustee does not assume such a contract within such time, such contract is rejected.

§ 745. Treatment of accounts

(a) Accounts held by a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) If a stockbroker or a bank holds a customer net equity claim against the debtor that arose out of a transaction for a customer of such stockbroker or bank, each such customer of such stockbroker or bank shall be treated as a separate customer of the debtor.

(c) A trustee's account specified as such on the debtor's books, and supported by a trust deed filed with, and qualified as such by, the Internal Revenue Service, and under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), shall be treated as a separate customer account for each beneficiary under such trustee account.

§ 746. Extent of customer claim

(a) If, after the date of the filing of the petition, an entity effects, with respect to cash or a security, a transaction with the debtor, in a manner that would have made such entity a customer with respect to such cash or security had such transaction occurred before such date, and such transaction was effected by such entity in good faith and before the qualification under section 322 of this title of a trustee, such entity shall be deemed a customer, and the date of such transaction shall be deemed to be the date

of the filing of the petition for the purpose of determining such entity's net equity with respect to such cash or security.

(b) An entity does not have a claim as a customer to the extent that such entity has a claim for cash or a security that, by contract, agreement, understanding, or operation of law, is—

(1) part of the capital of the debtor; or

(2) is subordinated to the claims of any or all creditors.

§ 747. Subordination of certain customer claims

Except as provided in section 510 of this title, unless all other customer net equity claims have been paid in full, the trustee may not pay in full or pay in part, directly or indirectly, any net equity claim of a customer that was, on the date such claim arose—

(1) an insider;

(2) a beneficial owner of at least five percent of any class of equity securities of the debtor, other than—

(A) nonconvertible stock having fixed preferential dividend and liquidation rights; or

(B) interests of limited partners in a limited partnership;

(3) a limited partner with a participation of at least five percent in the net assets or net profits of the debtor; or

(4) an entity that, directly or indirectly, through agreement or otherwise, exercised or had the power to exercise control over the management or policies of the debtor.

§ 748. Reduction of securities to money

As soon as practicable after the date of the order for relief, the trustee shall reduce to money, consistent with good market practice, all securities held as property of the estate, except for customer name securities delivered or reclaimed under section 751 of this title.

§ 749. Voidable transfers

Any transfer of property that, except for such transfer, would have been customer property, may be avoided by the trustee, and shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

§ 750. Distribution of securities

The trustee may not distribute a security except under section 751 of this title.

§ 751. Customer name securities

The trustee shall deliver any customer name security to or on behalf of the customer entitled to such security, unless such customer has a negative net equity. With the approval of the trustee, a customer may reclaim a customer name security after payment to the trustee, within such period as the trustee allows, of any claim of the debtor against such customer to the extent that such customer will not have a negative net equity after such payment.

§ 752. Customer property

(a) The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers allowed net equity claims and in priority to all other claims, except claims specified in section 507(a)(1) of this title that are attributable to the administration of customer property.

(b)(1) The trustee shall distribute customer property in excess of that distributed under subsection (a) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726(a) of this title.

(c) Subject to section 741(4)(B) of this title, any cash or security remaining after the liquidation of a security interest created under a security agreement made by the debtor shall be apportioned between the general estate and customer property in the proportion that the general property of the debtor and the cash or securities of customers were subject to such security interest.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter—

(1) "Act" means Commodity Exchange Act (7 U.S.C. 1 et seq.);

(2) "clearing organization" means organization that clears commodity contracts on, or subject to the rules of, a contract market or board of trade;

(3) "Commission" means Commodity Futures Trading Commission;

(4) "commodity contract" means—

(A) if the debtor is a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(B) if the debtor is a foreign futures commission merchant, foreign future;

(C) if the debtor is a leverage transaction merchant, leverage transaction;

(D) if the debtor is a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by the debtor; or

(E) if the debtor is a commodity options dealer, commodity option;

(5) "commodity option" means agreement or transaction subject to regulation under section 4c(b) of the Act (7 U.S.C. 6c(b));

(6) "commodity options dealer" means person that extends credit to, or that accepts cash, a security, or other property from, a customer of such person for the purchase or sale of an interest in a commodity option;

(7) "contract market" means board of trade designated as a contract market by the Commission under the Act;

(8) "contract of sale", "commodity", "future delivery", "board of trade", and "futures commission merchant" have the meanings assigned to those terms in the Act;

(9) "customer" means—

(A) if the debtor is a futures commission merchant—

(i) entity for or with whom the debtor deals and that holds a claim against the debtor on account of a commodity contract made, received, acquired, or held by or through the debtor in the ordinary course of the debtor's business as a futures commission merchant from or for the commodity futures account of such entity; or

(ii) entity that holds a claim against the debtor arising out of—

(I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with the debtor for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(B) if the debtor is a foreign futures commission merchant—

(i) entity for or with whom the debtor deals and that holds a claim against the debtor on account of a commodity contract made, received, acquired, or held by or through the debtor in the ordinary course of the debtor's business as a foreign futures commission merchant from or for the foreign futures account of such entity; or

(ii) entity that holds a claim against the debtor arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with the debtor for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(C) if the debtor is a leverage transaction merchant—

(i) entity for or with whom the debtor deals and that holds a claim against the debtor on account of a commodity contract engaged in by or with the debtor in the ordinary course of the debtor's business as a leverage transaction merchant from or for the leverage account of such entity;

(ii) entity that hold a claim against the debtor arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with the debtor for the purpose of entering into or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(D) if the debtor is a clearing organization, clearing member of the debtor with whom the debtor deals and that holds a claim against the debtor on account of cash, a security, or other property received by the debtor to margin, guarantee, or secure a commodity contract in such clearing member's proprietary account or customers' account; or

(E) if the debtor is a commodity options dealer—

(i) entity for or with whom the debtor deals and that holds a claim on account of a commodity contract made, received, acquired, or held by or through the debtor in the ordinary course of the debtor's business as a commodity options dealer from or for the commodity options account of such entity; or

(ii) entity that holds a claim against the debtor arising out of—

(I) the making of, liquidation of, exercise of, or a change in value of, a commodity contract of a kind specified in clause (i) of this subparagraph; or

(II) a deposit or payment of cash, a security, or other property with the debtor for the purpose of making, exercising, or margining such a commodity contract;

(10) "customer property" means cash, a security, or other property, or proceeds of such cash, security, or property, at any time received, acquired, or held by or for the account of the debtor, from or for the account of a customer—

(A) including—

(i) property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract;

(ii) profits or contractual or other rights accruing to a customer as a result of a commodity contract;

(iii) an open commodity contract;

(iv) specifically identifiable customer property;

(v) warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer;

(vi) cash, a security, or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer;

(vii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;

(viii) property that was unlawfully converted and that is property of the estate; and

(ix) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including property to the extent that a customer does not have a claim against the debtor based on such property;

(11) "foreign future" means contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade outside the United States;

(12) "foreign futures commission merchant" means entity engaged in soliciting or accepting orders for the purchase or sale of a foreign future or that, in connection with such a solicitation or acceptance, accepts cash, a security, or other property

or extends credit, to margin, guarantee, or secure any trade or contract that results from such a solicitation or acceptance;

(13) "leverage transaction" means agreement that is subject to regulation under section 217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a), and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(14) "leverage transaction merchant" means person that is engaged in the business of engaging in leverage transactions;

(15) "margin payment" means payment or deposit of cash, a security, or other property, that is commonly known to the commodities trade as original margin, initial margin, maintenance margin, or variation margin, including a daily variation settlement payment;

(16) "member property" means customer property at any time received, acquired, or held by or for the account of a debtor that is a clearing organization, from or for the proprietary account of a customer that is a clearing member of the debtor; and

(17) "net equity" means, subject to such rules and regulations as the Commission promulgates under the Act, with respect to the aggregate of all of a customer's accounts that such customer holds in the same capacity—

(A) balance remaining in such customer's accounts immediately after—

(i) all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery; and

(ii) all obligations of such customer to the debtor have been offset; plus

(B) the value, as of the date of return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus

(C) the value, as of the date of transfer, of—

(i) any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and

(ii) any cash, security, or other property of such customer transferred to such other person under section 766 of this title to margin or secure such transferred commodity contract.

§ 762. Notice to the Commission and right to be heard

(a) The clerk shall give the notice required by section 342 of this title to the Commission.

(b) The Commission may raise and may appear and be heard on any issue in a case under this chapter.

§ 763. Treatment of accounts

(a) Accounts held by a particular customer in separate capacities shall be deemed to be accounts of separate customers.

(b) A member of a clearing organization shall be deemed to hold such member's proprietary account in a separate capacity from such member's customers' account.

(c) The net equity in a customer's account may not be offset against the net equity in the account of any other customer.

§ 764. Voidable transfers

(a) Except as otherwise provided in this section, any transfer of property that, except for such transfer, would have been customer property, may be avoided by the trustee, and shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred is deemed to have been property of the debtor, and, if such transfer was made to a customer or for a customer's benefit, such customer is deemed, for the purposes of this section, to have been a creditor.

(b) Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before five days after the date of the filing of the petition, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

(1) a transfer of a commodity contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, securities, or other property margining or securing such commodity contract; or

(2) the liquidation of a commodity contract entered into or carried by or through the debtor on behalf of a customer.

(c) Notwithstanding sections 544, 545, 547, 548, and 724(a) of this title, the trustee may not avoid a transfer that is a margin payment to or deposit with a commodity broker or forward contract merchant or is a settlement payment made by a clearing organization and that occurs before the commencement of the case, except under section 548(a)(1) of this title.

§ 765. Customer instructions

(a) The notice under section 342 of this title to customers shall instruct each customer—

(1) to file a proof of such customer's claim promptly, and to specify in such claim any specifically identifiable security, property, or commodity contract; and

(2) to instruct the trustee of such customer's desired disposition, including transfer under section 766 of this title or liquidation, of any commodity contract specifically identified to such customer.

(b) The trustee shall comply, to the extent practicable, with any instruction received from a customer regarding such customer's desired disposition of any commodity contract specifically identified to such customer. If the trustee has transferred, under section 766 of this title, such a commitment, the trustee shall transmit any such instruction to the commodity broker to whom such commodity contract was so transferred.

§ 766. Treatment of customer property

(a) The trustee shall answer all margin calls with respect to a specifically identifiable commodity contract of a customer until such time as the trustee returns or transfers such commodity contract, but the trustee may not make a margin payment that has the effect of a distribution of more than that to which such customer is entitled under subsection (h) or (i) of this section.

(b) The trustee shall prevent any open commodity contract that is being actively traded as of the date of the filing of the petition from remaining open after the last day of trading in such commodity contract, or into the first day on which notice of intent to deliver on such commodity contract may be tendered, whichever occurs first. With respect to any commodity contract that has remained open after the last day of

trading in such commodity contract or with respect to which delivery must be made or accepted under the rules of contract market on which such commodity contract was made, the trustee may operate the business of the debtor for the purpose of—

(1) accepting or making tender of notice of intent to deliver the physical commodity underlying such commodity contract;

(2) facilitating delivery of such commodity; or

(3) disposing of such commodity if a party to such commodity contract defaults.

(c) The trustee shall return promptly to a customer any specifically identifiable security, property, or commodity contract to which such customer is entitled, or shall transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations as the Commission may prescribe, to the extent that the value of such security, property, or commodity contract does not exceed the amount to which such customer would be entitled under subsection (h) or (i) of this section if such security, property, or commodity contract were not returned or transferred under this subsection.

(d) If the value of a specifically identifiable security, property, or commodity contract exceeds such amount, then the customer to whom such security, property, or commodity contract is specifically identified may deposit cash with the trustee equal to the difference between the value of such security, property, or commodity contract and such amount, and the trustee shall—

(1) return promptly such security, property, or commodity contract to such customer; or

(2) transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations as the Commission may prescribe.

(e) Subject to subsection (b) of this section, the trustee shall liquidate any commodity contract that—

(1) is identified to a particular customer and with respect to which such customer has not timely instructed the trustee as to the desired disposition of such commodity contract;

(2) cannot be transferred under subsection (c) of this section; or

(3) cannot be identified to a particular customer.

(f) As soon as practicable after the commencement of the case, the trustee shall reduce to money, consistent with good market practice, all securities and other property, other than commodity contracts, held as property of the estate, except for specifically identifiable securities or property distributable under subsection (h) or (i) of this section.

(g) The trustee may not distribute a security or other property except under subsection (h) or (i) of this section.

(h) Except as provided in subsection (b) of this section, the trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of customer property. Such distribution shall be in the form of—

(1) cash;

(2) the return or transfer, under subsection (c) or (d) of this section, of specifically identifiable customer securities, property, or commodity contracts; or

(3) payment of margin calls under subsection (a) of this section.

(i) If the debtor is a clearing organization, the trustee shall distribute—

(1) customer property, other than member property, ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' accounts other than proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property; and

(2) member property ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of member property or customer property.

(j)(1) The trustee shall distribute customer property in excess of that distributed under subsection (h) or (i) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726(a) of this title.

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

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SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 1102, 1103, 1109, 1111(b) 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e) of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

§ 902. Definitions for this chapter

In this chapter—

(1) "property of the estate", when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means property of the debtor;

(2) "special tax payer" means record owner or holder of title, legal or equitable, to real property against which has been levied a special assessment or special tax the proceeds of which are the sole source of payment of an obligation issued by the debtor to defray the cost of an improvement relating to such real property;

(3) "special tax payer affected by the plan" means special tax payer with respect to whose real property the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (2) of this section assessed against such real property; and

(4) "trustee", when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means debtor, except as provided in section 926 of this title.

§ 903. Reservation of State power to control municipalities

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor to that does not consent to such composition.

§ 904. Limitation on jurisdiction and powers of court

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

(1) any of the political or governmental powers of the debtor;

(2) any of the property or revenues of the debtor; or

(3) the debtor's use or enjoyment of any income-producing property.

SUBCHAPER II—ADMINISTRATION

§ 921. Petition and proceedings relating to petition

(a) Notwithstanding sections 109(c) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title

of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

(b) The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced shall designate the bankruptcy judge to conduct the case.

(c) After an objection to the petition, the court, after notice and a hearing, may dismiss the petition, if the debtor did not file the petition in good faith, or if the petition does not meet the requirements of this title.

(e) If the petition is not dismissed under subsection (d) of this section, the court shall order relief under this chapter.

(f) The court may not, on account of an appeal from an order for relief, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

§ 922. Automatic stay of enforcement of claims against the debtor

(a) A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of judicial, administrative, or other proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and

(2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.

(b) Subsections (c), (d), (e), (f), and (g) of section 362 of this title apply to a stay under subsection (a) of this section the same as such subsections apply to a stay under section 362(a) of this title.

§ 923. Notice

There shall be given notice of the commencement of a case under this chapter, notice of an order for relief under this chapter, and notice of the dismissal of a case under this chapter. Such notice shall also be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates.

§ 924. List of creditors

The debtor shall file a list of creditors.

§ 925. Effect of list of claims

A proof of claim is deemed filed under section 501 of this title for any claim that appears in the list filed under section 924 of this title, except a claim that is listed as disputed, contingent, or unliquidated.

§ 926. Avoiding powers

If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

§ 927. Dismissal

(a) After notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1) want of prosecution;

(2) unreasonable delay by the debtor that is prejudicial to creditors;

(3) failure to propose a plan within the time fixed under section 941 of this title;

(4) if a plan is not accepted within any time fixed by the court;

(5) denial of confirmation of a plan under section 943(b) of this title and denial of additional time for filing another plan or a modification of a plan; or

(6) if the court has retained jurisdiction after confirmation of a plan—

(A) material default by the debtor with respect to a term of such plan; or

(B) termination of such plan by reason of the occurrence of a condition specified in such plan.

(b) The court shall dismiss a case under this chapter if confirmation is refused.

SUBCHAPTER III—THE PLAN

§ 941. Filing of plan

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

§ 942. Modification of plan

The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of this chapter. After the debtor files a modification, the plan as modified becomes the plan.

§ 943. Confirmation

(a) A special tax payer may object to confirmation of a plan.

(b) The court shall confirm the plan if—

(1) the plan complies with the provisions of this title made applicable by sections 103(e) and 901 of this title;

(2) the plan complies with the provisions of this chapter;

(3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;

(4) the debtor is not prohibited by law from taking any action necessary to be taken to carry out the plan;

(5) the plan provides that each holder of a claim of the kind specified in section 507(a)(1) of this title will receive, on account of such claim, property of a value, as of the effective date of the plan, equal to the allowed amount of such claim, except to the extent that the holder of a particular claim of such kind has waived such payment on such claim; and

(6) the plan is in the best interests of creditors and is feasible.

§ 944. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and any creditor, whether or not—

(1) a proof of such creditor's claim is filed or deemed filed under section 501 of this title;

(2) such claim is allowed under section 502 of this title; or

(3) such creditor has accepted the plan.

(b) Except as provided in subsection (c) of this section, the debtor is discharged from all debts as of the time when—

(1) the plan is confirmed;

(2) the debtor deposits any consideration to be distributed under the plan with a disbursing agent appointed by the court; and

(3) the court has determined—

(A) that any security so deposited will constitute, after distribution, a valid legal obligation of the debtor; and

(B) that any provision made to pay or secure payment of such obligation is valid.

(c) The debtor is not discharged under subsection (b) of this section from any debt—

(1) excepted from discharge by the plan or order confirming the plan; or

(2) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case.

§ 945. Continuing jurisdiction and closing of the case

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful execution of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

§ 946. Effect of exchange of securities before the date of the filing of the petition

The exchange of a new security under the plan for a claim covered by the plan, whether such exchange occurred before or after the date of the filing of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

CHAPTER 11—REORGANIZATION

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SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 1101. Definitions for this chapter

In this chapter—

(1) "debtor in possession" means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

(2) "substantial consummation" means—

(A) transfer of all or substantially all of the property proposed by the plan to be transferred;

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and

(C) commencement of distribution under the plan.

§ 1102. Creditors' and equity security holders' committees

(a)(1) As soon as practicable after the order for relief under this chapter, the court shall appoint a committee of creditors holding unsecured claims.

(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The court shall appoint any such committee.

(b)(1) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the order for relief under this chapter, if

such committee was fairly chosen and is representative of the different kinds of claims to be represented.

(2) A committee of equity security holders appointed under subsection (a)(2) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest amounts of equity securities of the debtor of the kinds represented on such committee.

(c) On request of a party in interest and after notice and a hearing, the court may change the membership or the size of a committee appointed under subsection (a) of this section if the membership of such committee is not representative of the different kinds of claims or interests to be represented.

§ 1103. Powers and duties of committees

(a) At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

(b) A person employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity in connection with the case.

(c) A committee appointed under section 1102 of this title may—

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's recommendations as to any plan formulated, and collect and file with the court acceptances of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title, if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case; and

(5) perform such other services as are in the interest of those represented.

(d) As soon as practicable after the appointment of a committee under section 1102 of this title, the trustee shall meet with such committee to transact such business as may be necessary and proper.

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

(b) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if—

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000.

(c) If the court orders the appointment of a trustee or an examiner, if a trustee or an examiner dies or resigns during the case or is removed under section 324 of this title, or if a trustee fails to qualify under section 322 of this title, then the court shall appoint one disinterested person to serve as trustee or examiner, as the case may be, in the case.

§ 1105. Termination of trustee's appointment

At any time before confirmation of a plan, on request of a party in interest, and after notice and a hearing, the court may terminate the trustee's appointment and restore the debtor to possession and management of the property of the estate, and operation of the debtor's business.

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of a trustee specified in sections 704(2), 704(4), 704(6), 704(7), and 704(8) of this title;

(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(1) of this title;

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable—

(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and

(B) transmit a copy or a summary of any such statement to any creditors' committee or equity security holders' committee, to any indenture trustee, and to such other entity as the court designates;

(5) as soon as practicable, file a plan under section 1121 of this title, file a report of why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7 or 13 of this title or dismissal of the case;

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and

(7) after confirmation of a plan, file such reports as are necessary or as the court orders.

(b) An examiner appointed under section 1104(c) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and any other duties of the trustee that the court orders the debtor in possession not to perform.

§ 1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.

§ 1108. Authorization to operate business

Unless the court orders otherwise, the trustee may operate the debtor's business.

§ 1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

§ 1110. Aircraft equipment and vessels

(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301), or vessels of the United States, as defined in subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4)), that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, a debtor that is an air carrier operating under a certificate of convenience and necessity issued by the Civil Aeronautics Board, or a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, as the case may be, to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

(1) before 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the

debtor that become due on or after such date under such security agreement, lease, or conditional sale contract, as the case may be; and

(2) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract, as the case may be—

(A) that occurred before such date is cured before the expiration of such 60-day period; and

(B) that occurs after such date is cured before the later of—

(i) 30 days after the date of such default; and

(ii) the expiration of such 60-day period.

(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1) of this section.

§ 1111. Claims and interests

(a) A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

(b)(1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

(i) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (2) of this subsection; or

(ii) such holder does not have such recourse and such property is sold under section 363 of this title or is to be sold under the plan.

(B) A class of claims may not elect application of paragraph (2) of this subsection if—

(i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or

(ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 363 of this title or is to be sold under the plan.

(2) If such an election is made, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case is an involuntary case originally commenced under this chapter; or

(3) the case was converted to a case under this chapter on other than the debtor's request.

(b) Except as provided in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court may convert a case under this

chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

(2) inability to effectuate a plan;

(3) unreasonable delay by the debtor that is prejudicial to creditors;

(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;

(5) denial of confirmation of every proposed plan and denial of additional time for filing another plan or a modification of a plan;

(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;

(7) inability to effectuate substantial consummation of a confirmed plan;

(8) material default by the debtor with respect to a confirmed plan; and

(9) termination of a plan by reason of the occurrence of a condition specified in the plan.

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter to a case under chapter 13 of this title only if—

(1) the debtor requests such conversion; and

(2) the debtor has not been discharged under section 1141(d) of this title.

(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class the claims or interests of which are impaired under the plan.

(d) On request of a party in interest and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

§ 1122. Classification of claims or interests

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

§ 1123. Contents of plan

(a) A plan shall—

(1) designate, subject to section 1122 of this title, classes of claims other than claims of a kind specified in section 507(a)(1), 507(a)(2), or 507(a)(6) of this title and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) shall specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(5) provide adequate means for the plan's execution, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case

of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption or rejection of any executory contract or unexpired lease of the debtor not previously rejected under section 365 of this title;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests; and

(5) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest;

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default, other than a default of a kind specified in section 365(b)(2) of this title, that occurred before or after the commencement of the case under this title;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(3) provides that, on the effective date of the plan, the holder of such claim or interest receives, on account of such claim or interest, cash equal to—

(A) with respect to a claim, the allowed amount of such claim; or

(B) with respect to an interest, if applicable, the greater of—

(i) any fixed liquidation preference to which the terms of any security representing such interest entitle the holder of such interest; and

(ii) any fixed price at which the debtor, under the terms of such security, may redeem such security from such holder.

§ 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan; and

(2) "investor typical of holders of claims or interests of the relevant class" means investor having—

(A) a claim or interest of the relevant class;

(B) such a relationship with debtor as the holders of other claims or interests of such class generally have; and

(C) such ability to obtain such information from sources other than the disclosure required by this section as holders claims or interests in such class generally have.

(b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

(c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

(d) Whether a disclosure statement contains adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation, but an agency or official whose duty is to administer or enforce such a law, rule, or regulation may be heard on the issue of whether a disclosure statement contains adequate information. Such an agency or official may not appeal from an order approving a disclosure statement.

(e) A person that solicits, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any

applicable law, rule, or regulation governing the offer, issuance, sale, or purchase of securities.

§ 1126. Acceptance of plan

(a) The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan. If the United States is a creditor or equity security holder, the Secretary of the Treasury may accept or reject the plan on behalf of the United States.

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a)(1) of this title.

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by

holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan is deemed to have accepted the plan, and solicititation of acceptances with respect to such class from the holders of claims or interest of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to any payment or compensation under the plan on account of such claims or interests.

§ 1127. Modification of plan

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent files a modification with the court, the plan as modified becomes the plan.

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if the court, after notice and a hearing, confirms

such plan, as modified, under section 1129 of this title, and circumstances warrant such modification.

(c) The proponent of a modification shall comply with section 1125 of this title with respect to the plan as modified.

(d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

§ 1128. Confirmation hearing

(a) After notice, the court shall hold a hearing on confirmation of a plan.

(b) A party in interest may object to confirmation of a plan.

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this chapter.

(2) The proponent of the plan complies with the applicable provisions of this chapter.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4)(A) Any payment made or promised by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, has been disclosed to the court; and

(B)(i) any such payment made before confirmation of the plan is reasonable; or

(ii) if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy.

(B) The proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each class—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such creditor's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), or 507(a)(5) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

(C) with respect to a claim of a kind specified in section 507(a)(6) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

(10) At least one class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the lien securing such claims, whether the property subject to such lien is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the lien securing such claims, free and clear of such lien, with such lien to attach to the proceeds of such sale, and the treatment of such lien on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, and the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

SUBCHAPTER III—POSTCONFIRMATION MATTERS

§ 1141. Effect of confirmation

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor or equity security holder of, or general partner in, the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) After confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, of equity security holders, and of general partners in the debtor, except as otherwise provided in the plan or in the order confirming the plan.

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) The confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

§ 1142. Execution of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan, and shall comply with any orders of the court.

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

§ 1143. Distribution

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the plan.

§ 1144. Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

(1) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and

(2) revoke the discharge of the debtor.

§ 1145. Exemption from securities laws

(a) Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security does not apply to—

(1) the offer or sale under a plan of a security of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan—

(A) in exchange for a claim against, an interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate; or

(B) principally in such exchange and partly for cash or property;

(2) the offer of a security through any warrant, option, right to subscribe, or conversion privilege that was sold in the manner specified in paragraph (1) of this subsection, or the sale of a security upon the exercise of such a warrant, option, right, or privilege;

(3) the offer or sale, other than under a plan, of a security of an issuer other than the debtor or an affiliate, if—

(A) such security was owned by the debtor on the date of the filing of the petition;

(B) the issuer of such security is—

(i) required to file reports under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

(ii) in compliance with all applicable requirements for the continuance of trading in such security on the date of such offer or sale; and

(C) such offer or sale is of securities that do not exceed—

(i) during the two-year period immediately following the date of the filing of the petition, four percent of the securities of such class outstanding on such date; and

(ii) during any 180-day period following such two-year period, one percent of the securities outstanding at the beginning of such 180-day period; or

(4) a transaction by a stockholder in a security that is executed after a transaction of a kind specified in paragraph (1) or (2) of this subsection in such security and before the expiration of 40 days after the first date on which such security was bona fide offered to the public by the issuer or by or through an underwriter, if such stockbroker provides, at the time of or before such transaction by such stockholder, a disclosure statement approved under section 1125 of this title, and, if the court orders, information supplementing such disclosure statement.

(b)(1) Except as provided in paragraph (2) of this subsection, an entity is an underwriter under section 2(11) of the Securities Act of 1933 (15 U.S.C. 77b(11)), if such entity—

(A) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such a claim or interest;

(B) offers to sell securities offered or sold under the plan for the holders of such securities;

(C) offers to buy securities offered or sold under the plan for the holders of such securities, if such offer to buy is—

(i) with a view to distribution of such securities; and

(ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or

(D) is an issuer, as used in such section 2(11), with respect to such securities.

(2) An entity is not an underwriter under section 2(11) of the Securities Act of 1933 or under paragraph (1) of this subsection with respect to an agreement that provides only for—

(A)(i) the matching combination of fractional interests in securities offered or sold under the plan into whole interests; or

(ii) the purchase or sale of such fractional interests among entities receiving such fractional interests under the plan; or

(B) the purchase or sale for such entities of such fractional or whole interests as are necessary to adjust for any remaining fractional interests after such matching.

(3) An entity other than an entity of the kind specified in paragraph (1) of this subsection is not an underwriter under section 2(11) of the Securities Act of 1933 with respect to any securities offered or sold to such entity in the manner specified in subsection (a)(1) of this section.

(c) An offer or sale of securities of the kind and in the manner specified under subsection (a)(1) of this section is deemed to be a public offering.

(d) The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) does not apply to a commercial note issued under the plan that matures not later than one year after the effective date of the plan.

§ 1146. Special tax provisions

(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.

(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any State or local law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; and

(2) 270 days after such request.

SUBCHAPTER IV—RAILROAD REORGANIZATION

§ 1161. Inapplicability of other sections

Sections 341, 343, 1102(a)(1), 1104, 1105, 1107, 1129(a)(7), and 1129(c) of this title do not apply in a case concerning a railroad.

§ 1162. Definition

In this subchapter, "Commission" means Interstate Commerce Commission.

§ 1163. Appointment of trustee

As soon as practicable after the order for relief, the Secretary of Transportation shall submit a list of five disinterested persons that are qualified and willing to serve as trustee in the case. The court shall appoint one of such persons to serve as trustee in the case.

§ 1164. Right to be heard

The Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

§ 1165. Protection of the public interest

In applying sections 1166, 1167, 1169, 1170, 1171, 1172, 1173, and 1174 of this title, the court and the trustee shall consider the public interest in addition to the interests of the debtor, creditors, and equity security holders.

§ 1166. Effect of Interstate Commerce Act and of Federal, State, or local regulations

Except with respect to abandonment under section 1170 of this title, or merger, modification of the financial structure of the debtor, or issuance or sale of securities under a plan, the trustee and the debtor are subject to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) that are applicable to railroads, and the trustee is subject to orders of any Federal, State, or local regulatory body to the same extent as the debtor would be if a petition commencing the case under this chapter had not been filed, but—

(1) any such order that would require the expenditure, or the incurring of an obligation for the expenditure, of money from the estate is not effective unless approved by the court; and

(2) the provisions of this chapter are subject to section 601(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(b)).

§ 1167. Collective bargaining agreements

Notwithstanding section 365 of this title, neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act (45 U.S.C. 151 et seq.) except in accordance with section 6 of such Act (45 U.S.C. 156).

§ 1168. Rolling stock equipment

(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, rolling stock equipment or accessories used on such equipment, including superstructures and racks, that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, the debtor to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

(1) before 60 days after the date of the commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract, as the case may be; and

(2) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract, as the case may be—

(A) that occurred before such date and is an event of default therewith is cured before the expiration of such 60-day period; and

(B) that occurs or becomes an event of default after such date is cured before the later of—

(i) 30 days after the date of such default or event of default; and

(ii) the expiration of such 60-day period.

(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section, may agree, subject to the court's approval to extend the 60-day period specified in subsection (a)(1) of this section.

§ 1169. Effect of rejection of lease of railroad line

(a) Except as provided in subsection (b) of this section, if a lease of a line of railroad under which the debtor is the lessee is rejected under section 365 of this title, and if the trustee, within such time as the court fixes, and with the court's approval, elects not to operate the leased line, the lessor under such lease, after such approval, shall operate the line.

(b) If operation of such line by such lessor is impracticable or contrary to the public interest, the court, on request of such lessor, and after notice and a hearing, shall order the trustee to continue operation of such line for the account of such lessor until abandonment is ordered under section 1170 of this title, or until such operation is otherwise lawfully terminated, whichever occurs first.

(c) During any such operation, such lessor is deemed a carrier subject to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) that are applicable to railroads.

§ 1170. Abandonment of railroad line

(a) The court, after notice and a hearing, may authorize the abandonment of a railroad line if such abandonment is—

(1)(A) in the best interest of the estate; or

(B) essential to the formulation of a plan; and

(2) consistent with the public interest.

(b) If, except for the pendency of the case under this chapter, such abandonment would require approval by the Commission under a law of the United States, the trustee shall initiate an appropriate application for such abandonment with the Commission. The court may fix a time within which the Commission shall report to the court on such application.

(c) After the court receives the report of the Commission, or the expiration of the time fixed under subsection (b) of this section, whichever occurs first, the court may authorize such abandonment after notice to the Commission, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing.

(d)(1) Enforcement of an order authorizing such abandonment shall be stayed until the time for taking an appeal has expired, or, if an appeal is timely taken, until such order has become final.

(2) If an order authorizing the abandonment of a railroad line is appealed, the court, on request of a party in interest, may authorize termination of service on a line or a portion of a line pending the determination of such appeal, after notice to the Commission, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed

by the court, and a hearing. An appellant may not obtain a stay of the enforcement of an order authorizing such termination by the giving of a supersedeas bond or otherwise, during the pendency of such appeal.

§ 1171. Priority claims

(a) There shall be paid as an administrative expense any claim of an individual or of the personal representative of a deceased individual against the debtor or the estate, for personal injury to or death of such individual arising out of the operation of the debtor or the estate, whether such claim arose before or after the commencement of the case.

(b) Any unsecured claim against the debtor that would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under this title shall be entitled to such priority in the case under this chapter.

§ 1172. Contents of plan

(a) In addition to the provisions required or permitted under section 1123 of this title, a plan—

(1) shall specify the extent to and the means by which the debtor's rail service is proposed to be continued, and the extent to which any of the debtor's rail service is proposed to be terminated; and

(2) may include a provision for—

(A) the transfer of any or all of the operating railroad lines of the debtor to another operating railroad; or

(B) abandonment of any railroad line in accordance with section 1170 of this title.

(b) If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the Commission under a law of the United States, then a plan may not propose such a transfer or such operation unless the proponent of the plan initiates an appropriate application for such a transfer or such operation with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

§ 1173. Confirmation of plan

(a) The court shall confirm a plan if—

(1) the applicable requirements of section 1129 of this title have been met;

(2) each creditor or equity security holder will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value of property that each such creditor or equity security holder would so receive or retain if all of the operating railroad lines of the debtor were sold, and the proceeds of such sale, and the other property of the estate, were distributed under chapter 7 of this title on such date;

(3) in light of the debtor's past earnings and the probable prospective earnings of the reorganized debtor, there will be adequate coverage by such prospective earnings of any fixed charges, such as interest on debt, amortization of funded debt, and rent for leased railroads, provided for by the plan; and

(4) the plan is compatible with the public interest.

(b) If the requirements of subsection (a) of this section are met with respect to more than one plan, the court shall confirm the plan that is most likely to maintain adequate rail service in the public interest.

§ 1174. Liquidation

On request of a party in interest and after notice and a hearing, the court may, or, if a plan has not been confirmed under section 1173 of this title before five years after the date of the order for relief, the court shall, order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of this title.

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.

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SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by such stay.

§ 1302. Trustee

(a) If the court has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the court shall appoint a person to serve as trustee in the case.

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), and 704(8) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan after confirmation; and

(3) advise, other than on legal matters, and assist the debtor in performance under the plan.

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

(d) If the number of cases under this chapter commenced in a particular judicial district so warrant, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.

(e)(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall fix—

(A) a maximum annual compensation for such individual, not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and

(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

(A) any amount by which the actual compensation of such individual exceeds five percent upon all payments under plans in cases under this chapter for which such individual serves as standing trustee; and

(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.

§ 1303. Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

§ 1304. Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor, and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(7) of this title.

§ 1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

§ 1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

§ 1307. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (e) of this section, on request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1321 of this title;

(4) denial of confirmation of a plan under section 1325 of this title and denial of additional time for filing another plan or a modification of a plan;

(5) material default by the debtor with respect to a term of a confirmed plan;

(6) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title; and

(7) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan.

(d) Except as provided in subsection (e) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title.

(e) The court may not convert a case under this chapter to a case under chapter 7 or 11 of this title if the debtor is a farmer, unless the debtor requests such conversion.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

SUBCHAPTER II—THE PLAN

§ 1321. Filing of plan

The debtor shall file a plan.

§ 1322. Contents of plan

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) provide for the assumption or rejection of any executory contract or unexpired lease of the debtor not previously rejected under section 365 of this title;

(8) provide for the payment of all or any part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

(10) include any other appropriate provision not inconsistent with this title.

(c) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.

§ 1323. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

§ 1324. Confirmation hearing

After notice, the court shall hold a hearing on the confirmation of the plan. A party in interest may object to the confirmation of the plan.

§ 1325. Confirmation of plan

(a) The court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder; and

(6) the debtor will be able to make all payments under the plan and to comply with the plan.

(b) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

§ 1326. Payments

(a) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 1302(d) is serving in the case, the percentage fee fixed for such standing trustee under section 1302(e) of this title.

(b) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

§ 1327. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor

after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

(2) of the kind specified in section 523(a)(5) of this title.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim

filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained through fraud; and

(2) knowledge of such fraud came to the requesting party after such discharge was granted.

§ 1329. Modification of plan after confirmation

(a) At any time after confirmation but before the completion of payments under a plan, the plan may be modified to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan, to the extent necessary to take account of any payment of such claim other than under the plan.

(b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

§ 1330. Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1307 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1329 of this title.

CHAPTER 15—UNITED STATES TRUSTEES

Sec.

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§ 1501. Applicability of chapter

This chapter applies only in cases under this title pending in the following districts:

(1) District of Maine, District of New Hampshire, District of Massachusetts, and District of Rhode Island.

(2) Southern District of New York.

(3) District of Delaware and District of New Jersey.

(4) Eastern District of Virginia and District of District of Columbia.

(5) Northern District of Alabama.

(6) Northern District of Texas.

(7) Northern District of Illinois.

(8) District of Minnesota, District of North Dakota, and District of South Dakota.

(9) Central District of California.

(10) District of Colorado and District of Kansas.

SUBCHAPTER I—GENERAL PROVISIONS

§ 15101. Definitions

In this title—

(1) "entity" includes United States trustee; and

(2) "governmental unit" does not include United States trustee while serving as a trustee in a case under this title.

§ 15102. Rule of construction

In this title, a reference to a section that is made inapplicable under section 15103(f) of this chapter refers to the section of this chapter that replaces such inapplicable section.

§ 15103. Applicability of subchapters and sections

(a) Subchapters I and III of this chapter apply in a case under chapter 7, 11, or 13 of this title, except that section 15343 of this title does not apply in a case concerning a railroad.

(b) Subchapter VII of this chapter applies only in a case under chapter 7 of this title.

(c) Subchapter XI of this chapter applies only in a case under chapter 11 of this title that does not concern a railroad.

(d) Section 151163 of this title applies only in a case concerning a railroad.

(e) Subchapter XIII of this chapter applies only in a case under chapter 13 of this title.

(f) Sections 303(g), 322(b), 324, 326(b), 343, 345(b), 701(a), 703(b), 703(c), 704(8), 727(c), 727(d), 727(e), 1102(a), 1104, 1105, 1163, 1302(a), 1302(d), 1302(e), and 1326(a) of this title do not apply in a case under this title.

SUBCHAPTER III—CASE ADMINISTRATION

§ 15303. Involuntary cases

At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 15701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and

delivering to the trustee if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

§ 15321. Eligibility to serve as trustee

The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case.

§ 15322. Qualification of trustee

(a) A United States trustee qualifies whenever such trustee serves in a case under this title.

(b) The United States trustee shall determine—

(1) the amount of a bond filed under section 322(a)(2); and

(2) the sufficiency of the surety on such bond.

§ 15324. Removal of trustee or examiner

The court, after notice and a hearing, may remove a trustee other than the United States trustee, or an examiner, for cause.

§ 15326. Limitation on compensation of trustee

In a case under chapter 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

§ 15330. Compensation of officers

In a case in which the United States trustee serves as trustee, the compensation of the trustee under section 330 of this title shall be paid to the clerk of the bankruptcy court, and by the clerk, into the Treasury.

§ 15343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor.

§ 15345. Money of estates

(a) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

(1) a bond—

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on—

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 15 of title 6.

(b) The United States trustee may aggregate money of estates for which such United States trustee serves as trustee for deposit or investment under this section, in order to increase the return on such money, taking into account the safety of such deposit or investment. The United States trustee shall maintain complete records identifying separately the money of each estate included in such an aggregation. Any return on any such deposit or investment shall be paid by the United States trustee into the Treasury.

SUBCHAPTER VII—LIQUIDATION

§ 15701. Interim trustee

(a) Promptly after the order for relief under chapter 7 of this title, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustee established under section 586(a)(1) of title 28 or that was serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(b) If none of such persons is willing to serve as interim trustee in the case, then the United States trustee shall serve as interim trustee in the case.

§ 15703. Successor trustee

(a) Pending election of a trustee under section 703(a) of this title, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in section 15701(a) of this title. Section 701(b) and 701(c) of this title apply to such interim trustee.

(b) If creditors do not elect a successor trustee under section 703(a) of this title, or if a trustee is needed in a case reopened under section 350 of this title, then the United States truste shall serve, or shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve, as trustee in the case.

§ 15704. Duties of trustee

The trustee shall make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

§ 15727. Discharge

(a)(1) The trustee, a creditor, or the United States trustee may object to discharge under section 727(a) of this title.

(2) On request of a party in interest, the court may order the United States trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(b) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under section 727(a) of this title if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and

fraudulently failed to report the acquisition of, or entitlement to, such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in section 727(a)(6) of this title.

(c) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under section 727(d)(1) of this title within one year after such discharge was granted; or

(2) under section 727(d)(2) or 727(d)(3) of this title before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

SUBCHAPTER XI—REORGANIZATION

§ 151102. Creditors' and equity security holders' committees

(a) As soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims.

(b) On request of a party in interest of the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

§ 151104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

(b) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if—

(1) such appointment is in the best interest of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000.

(c) If the court orders the appointment of a trustee or an examiner, if a trustee or an examiner dies or resigns during the case or is removed under section 324 of this title,

or if a trustee fails to qualify under section 322 of this title, then the United States trustee, after consultation with parties in interest, shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve as trustee or examiner, as the case may be, in the case.

§ 151105. Termination of trustee's appointment

At any time before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may terminate the trustee's appointment and restore the debtor to possession and management of the property of the estate, and operation of the debtor's business.

§ 151163. Appointment of trustee

As soon as practicable after the order for relief the Secretary of Transportation shall submit a list of five disinterested persons that are qualified and willing to serve as trustee in the case. The United States trustee shall appoint one of such persons to serve as trustee in the case.

SUBCHAPTER XIII—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

§ 151302. Trustee

(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under chapter 13 of this title and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. The United States trustee shall serve as trustee in the case otherwise.

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), and 704(8) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan after confirmation; and

(3) advise, other than on legal matters, and assist the debtor in performance under the plan.

§ 151326. Payments

Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28.

TITLE II—AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE AND TO THE FEDERAL RULES OF EVIDENCE

SEC. 201. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 5 the following:

"CHAPTER 6—BANKRUPTCY COURTS

"Sec.

"151. Creation and composition of bankruptcy courts.
"152. Appointment of bankruptcy judges.
"153. Tenure and residence of bankruptcy judges.
"154. Salaries of bankruptcy judges.
"155. Chief judge; precedence of bankruptcy judges.
"156. Division of business among bankruptcy judges.
"157. Times of holding court.
"158. Accommodations at places for holding court.
"159. Vacant judgeship as affecting proceedings.
"160. Appellate panels.

"§ 151. Creation and composition of bankruptcy courts

"(a) There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district.

"(b) Each bankruptcy court shall consist of the bankruptcy judge or judges for the district in regular active service. Justices or judges designated and assigned shall be competent to sit as judges of the bankruptcy court.

"(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a bankruptcy court with respect to any action, suit or proceeding may be exercised by a single bankruptcy judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other bankruptcy judges.

"§ 152. Appointment of bankruptcy judges

"The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

"§ 153. Tenure and residence of bankruptcy judges

"(a) Each bankruptcy judge shall hold office for a term of 14 years. but may continue to perform the duties of his office until his successor takes office, unless such office has been eliminated.

"(b) Removal of a bankruptcy judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the judicial council of the circuit or circuits in which the bankruptcy judge serves, but removal may not occur unless a majority of all the judges of such circuit council or councils concur in the order of removal. Before any order of removal may be entered, a full specification of the charges shall be furnished to the bankruptcy judge, and he shall be accorded an opportunity to be heard on the charges. Any cause for removal of any bankruptcy judge coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the circuit or circuits in which he serves, and a copy of the report shall at the same time be transmitted to the circuit council or councils and to the bankruptcy judge.

"(c) Each bankruptcy judge shall reside in the district or one of the districts for which he is appointed, or within 20 miles of his official station.

"(d) If the public interest and the nature of the business of a bankruptcy court require that a bankruptcy judge should maintain his abode at or near a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the bankruptcy judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

"§ 154. Salaries of bankruptcy judges

"Each judge of a bankruptcy court shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), and section 461 of this title.

"§ 155. Chief judge; precedence of bankruptcy judges

"(a) In each district having more than one judge the bankruptcy judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the bankruptcy court. If all the bankruptcy judges in regular active service are 70 years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under 70 years of age, but a judge may not act as chief judge until he has served as a bankruptcy judge for one year.

"(b) The chief judge shall have precedence and preside at any session which he attends.

"Other bankruptcy judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

"(c) A judge whose commission extends over more than one district shall be junior to all bankruptcy judges except in the district in which he resided at the time he entered upon the duties of his office.

"(d) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a bankruptcy judge, he may so certify to the chief judge of the court of appeals for the circuit in which the bankruptcy judge serves, and thereafter the bankruptcy judge in active service next in precedence and willing to serve shall be designated by the chief judge of the court of appeals as the chief judge of the bankruptcy court.

"(e) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the bankruptcy judge in active service, present in the district and able and qualified to act, who is next in precedence.

"(f) Service as a referee in bankruptcy or as a bankruptcy judge under the Bankruptcy Act shall be taken into account in the determination of seniority of commission under this section.

"§ 156. Division of business among bankruptcy judges

"The business of a bankruptcy court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

"The chief judge of the bankruptcy court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

"If the bankruptcy judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

"§ 157. Times of holding court

"(a) The bankruptcy court at each designated location shall be deemed to be in continuous session on all business days throughout the year.

"(b) Each bankruptcy court may establish by local rule or order schedules of court sessions at designated places of holding court other than the headquarters office of the court. Such schedules may be pretermitted by order of the court.

"(c) Bankruptcy court may be held at any place within the territory served, in any case, on order of the bankruptcy court, for the convenience of the parties, on such notice as the bankruptcy court orders.

"§ 158. Accommodations at places for holding court

"Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States. The foregoing restrictions shall not, however, preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where court is authorized by law to be held, but only if such court quarters and accommodations have been approved as necessary by the judicial council of the appropriate circuit.

"§ 159. Vacant judgeship as affecting proceedings

"When the office of a bankruptcy judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

"§ 160. Appellate panels

"(a) If the circuit council of a circuit orders application of this section to a district within such circuit, the chief judge of each circuit shall designate panels of three bankruptcy judges to hear appeals from judgments, orders, and decrees of the bankruptcy court of the United States for such district. Except as provided in section 293(e) of this title, a panel shall be composed only of bankruptcy judges for districts located in the circuit in which the appeal arises. The chief judge shall designate a

sufficient number of such panels so that appeals may be heard and disposed of expeditiously.

"(b) A panel designated under subsection (a) of this section may not hear an appeal from a judgment, order, or decree entered by a member of the panel.

"(c) When hearing an appeal, a panel designated under subsection (a) of this section shall sit at a place convenient to the parties to the appeal.".

(b) The table of chapters of part I of title 28 of the United States Code is amended by inserting immediately after the item relating to chapter 5 of such title the following:

"6. Bankruptcy courts 151".

SEC. 202. Section 291(c) of title 28 of the United States Code is amended by inserting "or bankruptcy" immediately after "to hold a district".

SEC. 203. Section 292(b) of title 28 of the United States Code is amended by inserting "or a bankruptcy court" immediately after "to hold a district court".

SEC. 204. Section 292(d) of title 28 of the United States Code is amended—

(1) by striking out "either";

(2) by inserting "bankruptcy court," immediately after "in a"; and

(3) by inserting a comma immediately after "district court".

SEC. 205. Section 293 of title 28 of the United States Code is amended by adding at the end thereof the following:

"(e)(1) The Chief Justice of the United States may designate and assign temporarily a bankruptcy judge of one circuit for service in a bankruptcy court in another circuit

upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

"(2) The chief judge of a circuit may, in the public interest, designate and assign temporarily a bankruptcy judge of the circuit to hold a bankruptcy court in any district within the circuit.".

SEC. 206. Section 294 of title 28 of the United States Code is amended—

(1) in subsection (c), by deleting "or district" and inserting "district or bankruptcy judge"; and

(2) in subsection (d), by striking out "or district judge" and inserting in lieu thereof ", district judge or bankruptcy judge".

SEC. 207. Section 295 of title 28 of the United States Code is amended by striking out "or district" and inserting in lieu thereof "district, or bankruptcy".

SEC. 208. Section 331 of title 28 of the United States Code is amended—

(1) by striking out "and a district judge from each judicial circuit" in the first sentence of the first paragraph thereof and inserting "a district judge from each judicial circuit, and two bankruptcy judges" in lieu thereof;

(2) by inserting "circuit and district" in the second paragraph—

(A) immediately after "amended section the";

(B) immediately after "for one year, the"; and

(C) immediately after "two years and the";

(3) by inserting immediately after the second paragraph the following: "The bankruptcy judges to be summoned shall be chosen at large by all the bankruptcy judges. Each bankruptcy judge chosen shall serve as a member of the conference for three successive years, except that in the year following the effective date of this sentence the bankruptcy judges shall choose one bankruptcy judge to serve for two years.";

(4) by inserting "or a bankruptcy judge chosen by the bankruptcy judges" immediately after "judges of the circuit" in the first sentence in the third paragraph; and

(5) by inserting "or any other bankruptcy judge" immediately before the period in the first sentence in the third paragraph.

SEC. 209. Section 332(d) of title 28 of the United States Code is amended by inserting "and bankruptcy judges" immediately after "The district judges".

SEC. 210. Section 333 of title 28 of the United States Code is amended by striking out "and district" and inserting in lieu thereof ", district, and bankruptcy".

SEC. 211. Section 376(a)(2)(A) of title 28 of the United States Code is amended by inserting ", or (iii) in the case of a bankruptcy judge, after retirement under section 337 of this title" immediately before the semicolon.

SEC. 213. Section 451 of title 28 of the United States Code is amended—

(1) by inserting a comma and "and bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "The term 'court of the United States'"; and

(2) by inserting a comma and "and judge of the bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "The term 'judge of the United States"'.

SEC. 214. (a) Sections 455(a) and 455(e) of title 28 of the United States Code are each amended by striking out "magistrate, or referee in bankruptcy" each place it appears and inserting in lieu thereof "or magistrate".

(b) The heading for section 455 of title 28 of the United States Code is amended by striking out **"magistrate, or referee in bankruptcy"** and inserting in lieu thereof, **"or magistrate"**.

(c) The item relating to section 455 in the table of sections of chapter 21 of title 28 of the United States Code is amended by striking out "magistrate, or referee in bankruptcy" and inserting in lieu thereof "or magistrate".

SEC. 215. Section 456 of title 28 of the United States Code is amended—

(1) by striking out "and the United States District Court for the District of Columbia," and inserting in lieu thereof "the United States District Court for the District of Columbia, and the United States Bankruptcy Court for the District of Columbia,";

(2) by striking out "and district" and inserting in lieu thereof ", district and bankruptcy"; and

(3) by striking out "and each district judge" and inserting in lieu thereof ", each district judge; and each bankruptcy judge".

SEC. 216. Section 457 of title 28 of the United States Code is amended by inserting "of bankruptcy courts," immediately after "The record".

SEC. 217. (a) The heading for section 460 of title 28 of the United States Code is amended by striking out **"Alaska,"**.

(b) The item relating to section 460 in the table of sections of chapter 21 of title 28 of the United States Code is amended by striking out "Alaska,".

SEC. 218. Section 506 of title 28 of the United States Code is amended by striking out "nine" and inserting in lieu thereof "ten".

SEC. 219. (a) Section 526(a)(1) of title 28 of the United States Code is amended by striking out "and marshals" and inserting in lieu thereof ", marshals, and trustees".

(b) The heading for section 526 of title 28 of the United States Code is amended by striking out **"and marshals"** and inserting in lieu thereof **", marshals, and trustee"**.

(c) The item relating to section 526 in the table of sections of chapter 31 of title 28 of the United States Code is amended by striking out "and marshals" and inserting in lieu thereof ", marshals, and trustees".

SEC. 220. Section 526(a)(2) of title 28 of the United States Code is amended—

(1) by striking out "referees,";

(2) by striking out "and receivers in bankruptcy" and inserting in lieu thereof "in cases under title 11"; and

(3) by striking out "commissioners" and inserting "magistrates" in lieu thereof.

SEC. 221. Section 569(a) of title 28 of the United States Code is amended by striking out "of the district court" and inserting in lieu thereof "of the bankruptcy, of the district court,".

SEC. 222. Section 571(a) of title 28 of the United States Code is amended—

(1) by striking out "and of the marshals" and inserting in lieu thereof "of the marshals"; and

(2) by inserting ", and of the United States trustees, their assistants, staff and other employees" immediately after "clerical assistance".

SEC. 223. Section 571(b) of title 28 of the United States Code is amended by striking out "and district" and inserting in lieu thereof ", district, and bankruptcy".

SEC. 224. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following:

"CHAPTER 39—UNITED STATES TRUSTEES

"Sec.

"581. United States trustees.
"582. Assistant United States trustees.
"583. Oath of office.
"584. Official stations.
"585. Vacancies.
"586. Duties; supervision by Attorney General.
"587. Salaries.
"588. Expenses.
"589. Staff and other employees.

"§ 581. United States trustees

"(a) The Attorney General shall appoint one United States trustee for each of the following districts or groups of districts:

"(1) District of Maine, District of New Hampshire, District of Massachusetts, and District of Rhode Island.

"(2) Southern District of New York.

"(3) District of Delaware and District of New Jersey.

"(4) Eastern District of Virginia and District of District of Columbia.

"(5) Northern District of Alabama.

"(6) Northern District of Texas.

"(7) Northern District of Illinois.

"(8) District of Minnesota, District of North Dakota, District of South Dakota.

"(9) Central District of California.

"(10) District of Colorado and District of Kansas.

"(b) Each United States trustee shall be appointed for a term of seven years. On the expiration of his term, a United States trustee shall continue to perform the duties of his Office until his successor is appointed and qualifies.

"(c) Each United States trustee is subject to removal for cause by the Attorney General.

"§ 582. Assistant United States trustees

"(a) The Attorney General may appoint one or more assistant United States trustees in any district when the public interest so requires.

"(b) Each assistant United States trustee is subject to removal for cause by the Attorney General.

"§ 583. Oath of office

"Each United States trustee and assistant United States trustee, before taking office, shall take an oath to execute faithfully his duties.

"§ 584. Official stations

"The Attorney General may determine the official stations of the United States trustees and assistant United States trustees within the districts for which they were appointed.

"§ 585. Vacancies

"The Attorney General may appoint an acting United States trustee for a district in which the office of United States trustee is vacant, or may designate a United States trustee for another judicial district to serve as trustee for the district in which such vacancy exists. The individual so appointed or designated may serve until the earlier of 90 days after such appointment or designation, as the case may be, or the date on which the vacancy is filled by appointment under section 581 of this title.

"§ 586. Duties; supervision by Attorney General

"(a) Each United States trustee, within his district, shall—

> "(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

"(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

"(3) supervise the administration of cases and trustees in cases under chapter 7, 11, or 13 of title 11;

"(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

"(5) perform the duties prescribed for the United States trustee under title 11; and

"(6) make such reports as the Attorney General directs.

"(b) If the number of cases under chapter 13 of title 11 commenced in a particular judicial district so warrant, the United States trustee for such district may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustee, in cases under such chapter. The United States trustee for such district shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

"(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

"(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under subsection (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under

subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11.

"(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11, shall fix—

> "(A) a maximum annual compensation for such individual, not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and
>
> "(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

"(2) Such individual shall collect such percentage fee from all payments under plans in the cases under chapter 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall pay to the Treasury—

> "(A) any amount by which the actual compensation of such individual exceeds five percent upon all payments under plans in cases under chapter 13 of title 11 for which such individual serves as standing trustee; and
>
> "(B) any amount by which the percentage for all such cases exceeds—
>
> > "(i) such individual actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus
> >
> > "(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.

"§ 587. Salaries

"The Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5.

"§ 588. Expenses

"Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General.

"§ 589. Staff and other employees

"The United States trustee may employ staff and other employees on approval of the Attorney General.".

(b) The table of chapters of part II of title 28 of the United States Code is amended by inserting at the end thereof the following:

"39. United States Trustees 581".

SEC. 225. (a) Section 604(a) of title 28 of the United States Code is amended—

(1) by redesignating paragraph (13) as paragraph (14); and

(2) by inserting immediately after paragraph (12) the following:

"(13) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;".

(b) Section 604 of title 28 of the United States Code, is amended by adding at the end thereof the following:

"(f) For each bankruptcy court, the Director shall name qualified persons to membership on the panel of trustees. The number and qualifications of persons named to membership on the panel of trustees shall be determined by rules and regulations to be adopted by the Director. An individual named to membership on the panel of trustees shall have a residency or office in the State served by the court or in any adjacent State. A corporation named to membership on the panel of trustees shall be authorized by its charter or by law to act as trustee and shall have an office in the State served by the court. The Director on his own initiative may at any time remove for cause a person named to a panel of trustees or remove a trustee appointed from the panel.".

SEC. 226. Section 610 of title 28 of the United States Code is amended by striking out "and district courts" and inserting in lieu thereof ", district courts, and bankruptcy courts".

SEC. 227. Section 620(b)(3) of title 28 of the United States Code is amended—

(1) by striking out "referees,"; and

(2) by striking out "commissioners" and inserting "magistrates" in lieu thereof.

SEC. 228. Section 621(a)(2) of title 28 of the United States Code is amended by striking out "and three active judges of the district courts of the United States" and inserting in lieu thereof ", three active judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States".

SEC. 229. Section 621(b) of title 28 of the United States Code is amended by striking out everything after "years" down through "That a" and inserting in lieu thereof ". A".

SEC. 230. Chapter 42 of title 28 of the United States Code is amended—

(1) by striking out section 629; and

(2) by striking out the item relating to section 629 in the table of sections.

SEC. 231. Section 631(c) of title 28 of the United States Code is amended—

(1) by striking out "of the conference, a part-time referee in bankruptcy or" and inserting in lieu thereof "of the conference,"; and

(2) by striking out "magistrate and part-time referee in bankruptcy," and inserting in lieu thereof "magistrate and".

SEC. 232. Section 634(a) of title 28 of the United States Code is amended by striking out "for full-time and part-time United States magistrates not to exceed the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,", and inserting in lieu thereof "not to exceed $48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title,".

SEC. 233. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 49 the following:

"CHAPTER 50—BANKRUPTCY COURTS

"Sec.

"771. Clerks.
"772. Other employees.
"773. Records of proceedings; reporters.
"774. Power to appoint.
"775. Salaries of employees.

"§ 771. Clerks

"(a) Based on need each bankruptcy court may appoint a clerk who shall be subject to removal only by the court.

"(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants, and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants, and employees shall be subject to removal only by the clerk with the approval of the court. If there is no clerk, the Bankruptcy Judge shall perform the duties of this subsection.

"(c) The clerk of each bankruptcy court shall reside in the district for which he is appointed. The bankruptcy court may designate places within the district for the offices of the clerk and his deputies, and their official stations.

"(d) A clerk of a bankruptcy court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

"(e) The clerk of each bankruptcy court shall pay into the Treasury all fees, costs and other moneys collected by him, except uncollected fees not required by Act of Congress to be prepaid.

"He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

"§ 772. Other employees

"Bankruptcy judges may appoint necessary other employees, including law clerks and secretaries, subject to any limitation on the aggregate salaries of such employees which may be imposed by law.

"§ 773. Records of proceedings; reporters

"(a) The bankruptcy court shall require a record to be made, whenever practicable, of all proceedings in cases had in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.

"(b) On the request of a party to a proceeding that has been recorded who has agreed to pay the fee for a transcript, or a judge of the bankruptcy court, a transcript of the original record of the requested parts of such proceeding shall be made and delivered promptly to such party or judge. Any such transcript that is certified shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the bankruptcy court shall be considered as official except those made from certified records.

"(c) Fees for transcripts furnished in proceedings to persons permitted to appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

"§ 774. Power to appoint

"Whenever a majority of the bankruptcy judges of any bankruptcy court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

"§ 775. Salaries of employees

"The salary of an individual appointed or employed under section 771(a), 772, or 773(a) of this title shall be the same as the salary of an individual appointed or employed under section 751(a), 752, or 753(a) of this title, as the case may be. The salaries of individuals appointed under section 771(b) of this title shall be comparable to the salaries of individuals appointed under section 751(b) of this title.".

(b) The table of chapters of part III of title 28 of the United States Code is amended by inserting immediately after the item relating to chapter 49 the following:

"50. Bankruptcy Courts 771".

SEC. 234. Section 957(a) of title 28 of the United States Code is amended by inserting "or bankruptcy court" immediately after "district court".

SEC. 235. Section 959(b) of title 28 of the United States Code is amended by striking out "A" and inserting in lieu thereof "Except as provided in section 1166 of title 11, a".

SEC. 236. (a) Chapter 83 of title 28 of the United States Code is amended by inserting immediately after section 1292 the following:

"§ 1293. Bankruptcy appeals

"(a) The courts of appeals shall have jurisdiction of appeals from all final decisions of panels designated under section 160(a) of this title.

"(b) Notwithstanding section 1482 of this title, a court of appeals shall have jurisdiction of an appeal from a final judgment, order, or decree of an appellate panel created under section 160 or a District court of the United States or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.".

(b) The table of sections of chapter 83 of title 28 of the United States Code is amended by inserting immediately after the item relating to section 1292 the following:

"1293. Bankruptcy appeals.".

SEC. 237. Section 1294 of title 28 of the United States Code is amended—

(1) by striking out "district and territorial" and inserting in lieu thereof "district, bankruptcy, and territorial";

(2) by striking out the period at the end thereof and inserting a semicolon; and

(3) by adding at the end thereof the following:

"(5) From a panel designated under section 160(a) of this title to the court of appeals for the circuit in which the panel was so designated;

"(6) From a bankruptcy court of the United States to the court of appeals for the circuit embracing the district in which the bankruptcy court is located.".

SEC. 238. (a) Section 1334 of title 28 of the United States Code is amended to read as follows:

"§ 1334. Bankruptcy appeals

"(a) The district courts for districts for which panels have not been ordered appointed under section 160 of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) The district courts for such districts shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken.

"(c) A district court may not refer an appeal under that section to a magistrate or to a special master.".

(b) The table of sections of chapter 85 of title 28 of the United States Code is amended by striking out the item relating to section 1334 and inserting in lieu thereof the following:

"1334. Bankruptcy appeals.".

SEC. 239. Section 1360(a) of title 28 of the United States Code is amended by striking out "within the Territory" and inserting in lieu thereof "within the State".

SEC. 240. (a) Chapter 87 of title 28 of the United States Code is amended by adding at the end thereof the following:

"§ 1408. Bankruptcy appeals

"An appeal under section 1334 of this title from a judgment, order, or decree of a bankruptcy court may be brought only in the judicial district in which such bankruptcy court is located.".

(b) The table of sections of chapter 87 of title 28 of the United States Code is amended by adding at the end thereof the following:

"1408. Bankruptcy appeals.".

SEC. 241. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 89 the following:

"CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

"Sec.

"1471. Jurisdiction.
"1472. Venue of cases under title 11.
"1473. Venue of proceedings arising under or related to cases under title 11.
"1474. Venue of cases ancillary to foreign proceedings.
"1475. Change of venue.
"1476. Creation or alteration of district or division.
"1477. Cure or waiver of defects.
"1478. Removal to the bankruptcy courts.
"1479. Provisional remedies; security.
"1480. Jury trials.
"1481. Powers of bankruptcy court.
"1482. Appeals.

"§ 1471. Jurisdiction

"(a) Except as provided in susbection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

"(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

"(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

"(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, whereever located, of the debtor, as of the commencement of such case.

§ 1472. Venue of cases under title 11

"Except as provided in section 1474 of this title, a case under title 11 may be commenced in the bankruptcy court for a district—

> "(1) in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, principal place of business, in the United States, or principle assets, in the United States, of such person were located in any other district; or
>
> "(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

"§ 1473. Venue of proceedings arising under or related to cases under title 11

"(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the bankruptcy court in which such case is pending.

"(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the bankruptcy court for the district in which a defendant resides.

"(c) Except as provided in section (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the bankruptcy court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may

have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

"(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the bankruptcy court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

"(e) A proceeding arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the bankruptcy court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the bankruptcy court in which such case in pending.

"§ 1474. Venue of cases ancillary to foreign proceedings

"(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the bankruptcy court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

"(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against property, or to require turnover of property of an estate, may be commenced only in the bankruptcy court for the district in which such property is found.

"(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the bankruptcy court for the district in which is located the principal assets in the United States, of the estate that is the subject of such case.

"§ 1475. Change of venue

"A bankruptcy court may transfer a case under title 11 or a proceeding arising under or related to such a case to a bankruptcy court for another district, in the interest of justice and for the convenience of the parties.

"§ 1476. Creation or alteration of district or division

"Cases or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the case or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

"§ 1477. Cure or waiver of defects

"(a) The bankruptcy court of a district in which is filed a case or proceeding laying venue in the wrong division or district may, in the interest of justice and for the convenience of the parties, retain such case or proceeding, or may transfer, under section 1475 of this title, such case or proceeding to any other district or division.

"(b) Nothing in this chapter shall impair the jurisdiction of a bankruptcy court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

"§ 1478. Removal to the bankruptcy courts

"(a) A party may remove any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce such governmental unit's police or regulatory power, to the bankruptcy court for the district where such civil action is pending, if the bankruptcy courts have jurisdiction over such claim or cause of action.

"(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision not so remanding, is not reviewable by appeal or otherwise.

"§ 1479. Provisional remedies; security

"(a) Whenever any action is removed to a bankruptcy court under section 1478 of this title, any attachment or sequestration of the goods or estate of the defendant in such action shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law.

"(b) Any bond, undertaking, or security given by either party in an action prior to removal under section 1478 of this title shall remain valid and effectual notwithstanding such removal, unless such bond, undertaking, or other security is invalidated under applicable law.

"(c) All injunctions, orders, or other proceedings in an action prior to removal of such action under section 1478 of this title shall remain in full force and effect until dissolved or modified by the bankruptcy court.

"§ 1480. Jury trials

"(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

"(b) The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury.

"§ 1481. Powers of bankruptcy court

"A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

"§ 1482. Appeals

"(a) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken.".

(b) The table of chapters of part IV of title 28 of the United States Code is amended by inserting immediately after the item relating to chapter 89 the following:

"90. District Courts and Bankruptcy Courts 1471".

SEC. 242. Section 1656 of title 28 of the United States Code is amended by inserting "or in a bankruptcy court" immediately after "a district court".

SEC. 243. Section 1869(f) of title 28 of the United States Code is amended by inserting "chapter 6 of title 28, United States Code," immediately after "chapter 5 of title 28, United States Code,".

SEC. 244. Section 1914(a) of title 28 of the United States Code is amended by striking out "$15" and inserting "$60" in lieu thereof.

SEC. 245. Section 1923(b) of title 28 of the United States Code is amended by inserting "and United States trustees" immediately after "United States attorneys".

SEC. 246. (a) Chapter 123 of title 28 of the United States Code is amended by inserting immediately after section 1929 the following:

"§ 1930. Bankruptcy courts

"(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the bankruptcy court the following filing fees:

"(1) For a case commenced under chapter 7 or 13 of title 11, $60.

"(2) For a case commenced under chapter 9 of title 11, $300.

"(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $200.

"(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $500.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments.

"(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

"(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the bankruptcy court, by the appellant or petitioner.

"(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

"(e) The clerk of the bankruptcy court may collect only the fees prescribed under this section.".

(b) The table of sections of chapter 123 of title 28 of the United States Code is amended by adding at the end thereof the following:

"1930. Bankruptcy courts.".

SEC. 247. Section 2075 of title 28 of the United States Code is amended by—

(1) striking out "under the Bankruptcy Act" and inserting in lieu thereof "in cases under title 11"; and

(2) by striking out the last sentence thereof.

SEC. 248. Section 2107 of title 28 of the United States Code is amended—

(1) by inserting "or the bankruptcy court" immediately after "district court"; and

(2) by striking out the final paragraph.

SEC. 249. Section 2201 of title 28 of the United States Code is amended by inserting "or a proceeding under section 505 or 1146 of title 11" immediately after "the Internal Revenue Code of 1954".

SEC. 250. (a) Chapter 153 of title 28 of the United States Code is amended by adding at the end thereof the following:

"§ 2256. Habeas corpus from bankruptcy courts

"A bankruptcy court may issue a writ of habeas corpus—

"(1) when appropriate to bring a person before the court—

"(A) for examination;

"(B) to testify; or

"(C) to perform a duty imposed on such person under this title; or

"(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

"(A) such debtor was arrested or imprisoned on process in any civil action;

"(B) such process was issued for the collection of a debt—

"(i) dischargeable under title 11; or

"(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

"(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.".

(b) The table of sections for chapter 153 of title 28 of the United States Code is amended by adding at the end thereof the following:

"2256. Habeas corpus from bankruptcy courts.".

SEC. 251. (a) Rule 1101(a) of the Federal Rules of Evidence is amended by striking out ", referees in bankruptcy,".

(b) Rule 1101(b) of the Federal Rules of Evidence is amended by striking out "the Bankruptcy Act" and inserting in lieu thereof "title 11, United States Code".

SEC. 252. Rule 1101(a) of the Federal Rules of Evidence is amended by inserting "the United States bankruptcy courts," immediately after "the United States district courts,".

TITLE III—AMENDMENTS TO OTHER ACTS

SEC. 301. Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356(C)) is amended—

(1) by striking out "sections 402(d) and" and inserting "section" in lieu thereof; and

(2) by inserting "and magistrates" immediately before the semicolon.

SEC. 302. The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end thereof the following:

"SEC. 19. (a) Notwithstanding title 11 of the United States Code, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—

"(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

"(2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

"(3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter;

"(4) any persons to which customer property and commodity contracts may be transferred under section 766 of title 11 of the United States Code; and

"(5) how the net equity of a customer is to be determined.

"(b) As used in this section, the terms 'commodity broker', 'commodity contract', 'customer', 'customer property', 'member property', 'net equity', and 'security' have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.".

SEC. 303. (a) Subsection (a) of section 4 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499d(a)), is amended by inserting ", unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination" immediately after "bankrupt".

(b) Subsection (e) of section 4 of such Act (7 U.S.C. 499d(e)) is amended by inserting "and if he finds that the circumstances of such bankruptcy warrant such a refusal," immediately after "corporation adjudicated or discharged as a bankrupt,".

SEC. 304. Section 21(a) of the Agricultural Adjustment Act (7 U.S.C. 623(a)) is amended—

(1) by striking out "receivership, and bankruptcy" and inserting "and receivership" in lieu thereof; and

(2) by striking out "bankruptcy," in the second sentence.

SEC. 305. The first section of the Act entitled "An Act to authorize the Secretary of Agriculture to compromise, adjust, or cancel certain indebtedness, and for other purposes." approved December 20, 1944 (58 Stat. 836; 12 U.S.C. 1150), is amended by striking out "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States'" and inserting "Bankruptcy Act or under title 11 of the United States Code" in lieu thereof.

SEC. 306. (a) Section 3(a)(7) of the Securities Act of 1933 (15 U.S.C. 77c(a)(7)) is amended by striking out "in bankruptcy" and inserting "or debtor in possession in a case under title 11 of the United States Code" in lieu thereof.

(b) Paragraphs (9) and (10) of section 3(a) of such Act (15 U.S.C. 77c(a)(9) and (10)) are each amended by striking out "Any" and inserting in lieu thereof the following: "Except with respect to a security exchanged in a case under title 11 of the United States Code, any".

SEC. 307. Section 303(18) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(18)) is amended by striking out "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended, whether amended prior to or after the enactment of this title" and inserting "Bankruptcy Act or title 11 of the United States Code" in lieu thereof.

SEC. 308. (a) Section 5(b)(1)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(1)) is amended—

(1) by striking out "the Bankruptcy Act" and inserting "section 101 of title 11 of the United States Code" in lieu thereof;

(2) by striking out subparagraph (B) thereof; and

(3) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(b) Section 5(b)(2)(A)(iii) of such Act (15 U.S.C. 78eee(b)(2)(A)(iii)) is amended by striking out "bankruptcy by the Bankruptcy Act" and inserting "the United States having jurisdiction over cases under title 11 of the United States Code" in lieu thereof.

(c) Section 5(b)(2)(B)(iii) of such Act (15 U.S.C. 78eee(b)(2)(B)(iii)) is amended by striking out ", the right of setoff provided in section 68 of the Bankruptcy Act, and" and inserting in lieu thereof "any right of setoff, except to the extent such right may be affected under section 553 of title 11 of the United States Code, and shall not abrogate".

(d) Section 5(b)(3) of such Act (15 U.S.C. 78eee(b)(3)) is amended by striking out "the applicable provisions of the Bankruptcy Act" and inserting "section 322 of title 11 of the United States Code" in lieu thereof.

(e) Section 5(b) of such Act (15 U.S.C. 78eee(b)) is amended by striking out paragraph (4) thereof and inserting in lieu thereof the following:

"(4) REMOVAL TO BANKRUPTCY COURT.—Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of

the United States in the same judicial district having jurisdiction over cases under title 11 of the United States Code. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this Act upon the court to which application for the issuance of the protective decree was made.".

(f) Section 5(b)(5) of such Act (15 U.S.C. 78eee(b)(5)) is amended—

(1) by striking out subparagraph (B);

(2) by striking out "the Bankruptcy Act governing applications for allowances under such Act" in subparagraph (C) and inserting "title 11 of the United States Code governing applications for allowances under such title";

(3) by striking out "C" in subparagraph (D) and inserting "(B)" in lieu thereof;

(4) by striking out "the Bankruptcy Act" in subparagraph (E) and inserting "section 504 of title 11 of the United States Code" in lieu thereof; and

(5) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

(g) Section 6(b) of such Act (15 U.S.C. 78fff(b)) is amended—

(1) by striking out ", the Bankruptcy Act." and all that follows through the end of subsection (b), and inserting in lieu thereof "chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11 of the United States Code. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this Act."; and

(2) by striking out "Application of Bankruptcy Act" and inserting "Application of Title 11 of the United States Code" in lieu thereof.

(h) Section 6(e) of such Act (15 U.S.C. 78fff(e)) is amended—

(1) by striking out "in the Bankruptcy Act" and inserting "in section 726 of title 11 of the United States Code" in lieu thereof; and

(2) by striking out "as a first priority under the Bankruptcy Act" and inserting "under section 507(a)(1) of title 11 of the United States Code" in lieu thereof.

(i) Section 7(a) of such Act (15 U.S.C. 78fff–1(a)) is amended by striking out "bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt" and inserting "a case under title 11 of the United States Code" in lieu thereof.

(j) Section 7(b) of such Act (15 U.S.C. 78fff–1(b)) is amended by striking out "in bankruptcy" and inserting "in a case under chapter 7 of title 11 of the United States Code, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7," in lieu thereof.

(k) Section 7(c) of such Act (15 U.S.C. 78fff–1(c)) is amended by striking out "by the Bankruptcy Act" and inserting "of a trustee in a case under chapter 7 of title 11 of the United States Code" in lieu thereof.

(l) Section 8(a)(1) of such Act (15 U.S.C. 78fff–2(a)(1)) is amended by striking out "the Bankruptcy Act" and inserting "title 11 of the United States Code" in lieu thereof.

(m) Section 8(c)(3) of such Act (15 U.S.C. 78fff–2(c)(3)) is amended by striking out "the Bankruptcy Act" and inserting "title 11 of the United States Code" in lieu thereof.

(n) Section 10(e) of such Act (15 U.S.C. 78fff–4(e)) is amended—

(1) by striking out "Jurisdiction of District Courts" and inserting "Jurisdiction of Bankruptcy Courts" in lieu thereof;

(2) by striking out "district courts of the United States" and inserting "courts of the United States having jurisdiction over cases under title 11 of the United States Code" in lieu thereof; and

(3) by striking out ", without regard to the citizenship of the parties or the amount in the controversy".

(o) Section 16 of such Act (15 U.S.C. 78lll) is amended—

(1) by striking out paragraph (1) thereof;

(2) by striking out paragraph (8)(A) thereof and inserting in lieu thereof the following:

"(A) if a petition under title 11 of the United States Code concerning the debtor was filed before such date, the term 'filing date' means the date on which such petition was filed;" and

(3) by redesignating paragraphs (2) through (15) thereof as paragraphs (1) through (14), respectively.

SEC. 309. Section 11(f) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79k(f)) is amended by striking out "bankruptcy" and inserting "case under title 11 of the United States Code" in lieu thereof.

SEC. 310. (a) Section 2(a)(8) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(8)) is amended by striking out "bankruptcy" and inserting "a case under title 11 of the Unitde States Code" in lieu thereof.

(b) Section 6(a)(2) of such Act (15 U.S.C. 80a–6(a)(2)) is amended by striking out "bankruptcy" and inserting "a case under title 11 of the United States Code" in lieu thereof.

(c) Section 25(d) of such Act (15 U.S.C. 80a–25(d)) is amended by striking out "the Bankruptcy Act of 1898, as amended" and inserting "title 11 of the United States Code" in lieu thereof.

SEC. 311. Section 202(a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(5)) is amended by striking out "bankruptcy" and inserting "a case under title 11 of the United States Code" in lieu thereof.

SEC. 312. (a) Section 303(b)(1)(B) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)(1)(B)) is amended by striking out "court of bankruptcy under chapter XIII of the Bankruptcy Act" and inserting "court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code" in lieu thereof.

(b) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended to read as follows:

> "(1) cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.".

SEC. 313. Section 201(e) of title 17 of the United States Code is amended by striking out the period at the end thereof and inserting ", except as provided under title 11." in lieu thereof.

SEC. 314. (a) Chapter 9 of title 18 of the United States Code is amended—

(1) by striking out "bankrupt" each place it appears and inserting "debtor" in lieu thereof;

(2) by striking out "bankruptcy proceeding" each place it appears and inserting "case under title 11" in lieu thereof;

(3) by striking out "bankruptcy law" each place it appears and inserting "provisions of title 11" in lieu thereof.

(b)(1) Title 18 of the United States Code is amended by striking out section 151 and inserting in lieu thereof the following:

"§ 151. Definition

"As used in this chapter, the term 'debtor' mean a debtor concerning whom a petition has been filed under title 11.".

(2) The item relating to section 151 in the table of sections for chapter 9 of title 18 of the United States Code is amended by striking out "Definitions" and inserting "Definition" in lieu thereof.

(c) Section 152 of title 18 of the United States Code is amended by—

(1) striking out "the receiver," each place it appears and inserting "a" in lieu thereof; and

(2) striking out "document affecting or relating to the property or affairs of a" and inserting in lieu thereof "recorded information, including books, documents, records, and papers, relating to the property or financial affairs of a".

(d)(1) Section 153 of title 18 of the United States Code is amended by striking out "receiver,".

(2) The heading for section 153 of title 18 of the United States Code is amended by striking out "**, receiver**".

(3) The item relating to section 153 in the table of sections for chapter 9 of title 18 of the United States Code is amended by striking out ", receiver".

(e)(1) Section 154 of title 18 of the United States Code is amended—

(A) by striking out "Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or"; and

(B) by striking out "referee, receiver,".

(2) The heading for section 154 of title 18 of the United States Code is amended by striking out "**referees and other**".

(3) The item relating to section 154 in the table of contents for chapter 9 of title 18 of the United States Code is amended by striking out "referees and other".

(f)(1) Section 155 of title 18 of the United States Code is amended—

(A) by striking out the semicolon at the end of the first paragraph thereof and all that follows down through "Shall" and inserting in lieu thereof ", shall";

(B) by inserting "knowingly and fraudulently" immediately after "supervision,"; and

(C) by striking out ", bankruptcy or reorganization proceeding" and inserting "or case under title 11" in lieu thereof.

(2) The heading for section 155 of title 18 of the United States Code is amended by striking out "**bankruptcy proceedings**" and inserting in lieu thereof "**cases under title 11 and receiverships**".

(3) The item relating to section 155 in the table of sections for chapter 9 of title 18 of the United States Code is amended by striking out "bankruptcy proceedings" and inserting "cases under title 11 and receiverships" in lieu thereof.

(g) Section 1961(1)(D) of title 18 of the United States Code is amended by striking out "bankruptcy fraud" and inserting "fraud connected with a case under title 11" in lieu thereof.

(h) Section 2516(1)(e) of title 18 of the United States Code is amended by striking out "bankruptcy fraud" and inserting "fraud connected with a case under title 11" in lieu thereof.

(i) Section 3057 of title 18 of the United States Code is amended—

(1) by striking out "referee" each place it appears and inserting "judge" in lieu thereof; and

(2) by striking out "violations of the bankruptcy laws" and inserting "violation under chapter 9 of this title" in lieu thereof.

(j)(1) Section 2256 of title 28 of the United States Code is redesignated as section 3244 of title 18 of the United States Code.

(2) The table of sections of chapter 211 of title 18 of the United States Code is amended by adding at the end thereof the following:

"3244. Jurisdiction of proceedings relating to transferred offenders.".

(k) Section 3284 of title 18 of the United States Code is amended by striking out "bankrupt or other debtor" and inserting "debtor in a case under title 11" in lieu thereof.

(l) Section 6001(4) of title 18 of the United States Code is amended by inserting "a United States bankruptcy court established under chapter 6, title 28, United States Code," immediately after "title 28, United States Code,".

SEC. 315. Section 485(f) of the Tariff Act of 1930 (19 U.S.C. 1485(f)) is amended by striking out "receiver or trustee in bankruptcy" and inserting "trustee in a case under title 11 of the United States Code" in lieu thereof.

SEC. 316. Section 302(l)(3) of the Automotive Products Trade Act of 1965 (19 U.S.C. 2022(l)(3)) is amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof.

SEC. 317. Section 439A of part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087–3) is repealed.

SEC. 318. Section 239(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2199(d)) is amended by striking out "the priority" and inserting "any priority" in lieu thereof.

SEC. 319. Section 2(1) of the National Labor Relations Act (29 U.S.C. 152(1)) is amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof.

SEC. 320. Section 3(d) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402(d)) is amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof.

SEC. 321. (a) Section 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342) is amended in subsection (f)—

(1) by striking out "bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act" and inserting "the United States having jurisdiction over cases under chapter 11 of title 11 of the United States Code" in lieu thereof; and

(2) by striking out "bankruptcy,".

(b) Section 4062(c)(2) of such Act (29 U.S.C. 1362(c)(2)) is amended—

(1) by striking out "the Bankruptcy Act" and inserting "title 11 of the United States Code" in lieu thereof; and

(2) by striking out "the subject of a proceeding under that Act" and inserting "a debtor in a case under chapter 7 of such title" in lieu thereof.

(c) Section 4068(c)(2) of such Act (29 U.S.C. 1368(c)(2)) is amended—

(1) by striking out "the case of bankruptcy or" and inserting "a case under title 11 of the United States Code or in" in lieu thereof; and

(2) by striking out "the Bankruptcy Act" and inserting "title 11 of the United States Code" in lieu thereof.

SEC. 322. (a) Section 3466 of the Revised Statutes of the United States (31 U.S.C. 191) is amended by adding at the end the following: "The priority established under this section does not apply, however, in a case under title 11 of the United States Code."

(b) Section 3467 of the Revised Statutes of the United States (31 U.S.C. 192) is amended by striking out "Every" and inserting in lieu thereof the following: "Except with respect to a trustee acting in accordance with the provisions of title 11 of the United States Code, every".

(c) Section 3469 of the Revised Statutes of the United States (31 U.S.C. 194) is repealed.

(d) Section 3473 of the Revised Statutes of the United States (31 U.S.C. 198) is repealed.

(e) Section 3474 of the Revised Statutes of the United States (31 U.S.C. 199) is repealed.

(f) The table of sections for title XXXVI of the Revised Statutes of the United States is amended by striking out the items relating to sections 3469, 3473, and 3474.

(g) Section 5256 of the Revised Statutes of the United States (45 U.S.C. 81) is amended by striking out "The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation.".

SEC. 323. Section 1 of the Act entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes", approved June 21, 1940 (54 Stat. 497; 33 U.S.C. 511), is amended by striking out "bankruptcy" and inserting "a case under title 11 of the United States Code" in lieu thereof.

SEC. 324. Subsection (a) of section 17 of the Act of March 4, 1927 (44 Stat. 1434; 33 U.S.C. 917(a)), is repealed.

SEC. 325. Section 213 of the Transportation Act, 1920 (40 U.S.C. 316), is amended by striking out "bankruptcy" and inserting "case under title 11 of the United States Code" in lieu thereof.

SEC. 326. Section 7 of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2039; 41 U.S.C. 41), is amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof.

SEC. 327 Subsection (g) of section 733 of the Public Health Service Act (42 U.S.C. 294f) is repealed.

SEC. 328. Subsection (b) of section 456 of the Social Security Act (42 U.S.C. 656(b)) is repealed.

SEC. 329. Section 503 (42 U.S.C. 1473) of the Housing Act of 1949 is amended by striking out "This" and inserting "Except as provided in title 11 of the United States Code, this" in lieu thereof.

SEC. 330. Section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)) is amended by striking out "bankruptcy" and inserting "cases under title 11, United States Code" in lieu thereof.

SEC. 331. Section 802(d) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (82 Stat. 81; 42 U.S.C. 3602(d)), is amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof.

SEC. 332. Section 17 of the Boulder Canyon Project Act (43 U.S.C. 617p) is amended by striking out "Claims" and inserting "Except as provided in title 11 of the United States Code, claims" in lieu thereof.

SEC. 333. Subsection (c) of section 3 of the Emergency Rail Services Act of 1970 (54 U.S.C. 662) is repealed.

SEC. 334. Title IX of the Merchant Marine Act, 1936 (46 U.S.C. 1241 et seq.), is amended by adding at the end thereof the following:

"SEC. 908. (a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this Act, may constitute and appoint the Secretary of Commerce as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

"(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this Act, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered

to be a vessel of the United States within the meaning of the Suits in Admiralty Act. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.".

SEC. 335. (a) Section 22(a) of the Organic Act of Guam (48 U.S.C. 1424(a)) is amended by inserting "and a bankruptcy court" immediately after "jurisdiction of a district court".

(b) Section 22(b) of such Act (48 U.S.C. 1424(b)) is amended by striking out "30 of the Bankruptcy Act of July 1, 1898, as amended (title 11, U.S.C., sec. 53), in bankruptcy cases;" and inserting "2075 of title 28, United States Code, in cases under title 11, United States Code," in lieu thereof.

SEC. 336. (a) Section 22 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1612) is amended by inserting "and a bankruptcy court" immediately after "jurisdiction of a district court".

(b) Section 25 of such Act (48 U.S.C. 1615) is amended by striking out "30 of the Bankruptcy Act in bankruptcy cases" and inserting "2075 of title 28, United States Code, in cases under title 11, United States Code" in lieu thereof.

SEC. 337. (a) Section 20c of the Interstate Commerce Act (49 U.S.C. 20c) is amended by striking out "bankruptcy" and inserting "a case under title 11 of the United States Code" in lieu thereof.

(b) Section 213(a)(3) of such Act (49 U.S.C. 313(a)(3)) is amended—

(1) by striking out "bankruptcy from" and inserting "a case under title 11 of the United States Code from" in lieu thereof; and

(2) by striking out "bankruptcy" and inserting "such case" in lieu thereof.

(c) Section 323 of such Act (49 U.S.C. 922a) is amended by striking out "bankruptcy" and inserting "a case under title 11 of the United States Code" in lieu thereof.

SEC. 338. (a) Section 8339 of title 5 of the United States Code is amended—

(1) by inserting in subsection (f), immediately after "subsections (a)–(e)", the following: "and (o)";

(2) by inserting in subsection (i), immediately after "subsections (a)–(h)", the following "and (o)";

(3) by inserting in subsections (j) and (k)(1), immediately after "subsections (a)–(i)" each time it appears, the following: "and (o)";

(4) by inserting in subsection (l), immediately after "subsections (a)–(k)," the following: "and (o)";

(5) by inserting in subsection (m), immediately after "subsections (a)–(e)", the following: "and (o)";

(6) by adding at the end thereof the following:

"(o) The annuity of an employee who is a bankruptcy judge is computed with respect to service after March 31, 1979 and before April 1, 1984, as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.".

(b) The first sentence of section 8334(c) of title 5, United States Code, is amended by adding at the end thereof the following new schedule:

"Bankruptcy judge	2½	August 1, 1920, to June 30, 1926.
	3½	July 3, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After January 1, 1970.".

(c) Section 8341 of title 5, United States Code is amended—

(1) by inserting in subsection (b)(1), immediately after "section 8339(a)–(i)", the following: "and (o)"; and

(2) by striking out of subsection (d) "section 8339(a)–(f) and (i)" and insert in lieu thereof the following: "section 8339(a)–(f), (i), and (o)".

(d) Section 8344(a)(A) of title 5, United States Code, is amended by striking out "and (i)" and inserting in lieu thereof "(i), and (o)".

(e) Section 8331 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(22) 'bankruptcy judge' means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act adding this paragraph—

"(A) who is serving as a United States bankruptcy judge on March 31, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or

"(B) whose service as a United States bankruptcy judge during the transition period is terminated by reason of death or disability.".

TITLE IV—TRANSITION

REPEALER

SEC. 401. (a) The Bankruptcy Act is repealed.

(b) Section 3 of the Act entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved March 3, 1933 (47 Stat. 1482; 11 U.S.C. 101a), is repealed.

(c) Sections 3, 6, and 7 of the Act entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved June 7, 1934 (48 Stat. 923, 924; 11 U.S.C. 76a, 203a, 205a), are repealed.

(d) The sentence beginning "Said section 74" in section 2 of the Act entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved June 7, 1934 (48 Stat. 924; 11 U.S.C. 103a), is repealed.

(e) Subsection (b) of section 4 of the Act entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved June 7, 1934 (48 Stat. 924; 11 U.S.C. 103a), is repealed.

(f) Section 2 of the Act entitled "An Act to amend the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended and supplemented", approved June 5, 1936 (49 Stat. 1476; 11 U.S.C. 93a), is repealed.

(g) Section 3 of the Act entitled "An Act to amend the Interstate Commerce Act, as amended, and for other purposes", approved April 9, 1948 (62 Stat. 167; 11 U.S.C. 208), is repealed.

EFFECTIVE DATES

SEC. 402. (a) Except as otherwise provided in this title, this Act shall take effect on October 1, 1979.

(b) Except as provided in subsections (c) and (d) of this section, the amendments made by title II of this Act shall take effect on April 1, 1984.

(c) The amendments made by sections 210, 214, 219, 220, 222, 224, 225, 228, 229, 235, 244, 245, 246, 249, and 251 of this Act shall take effect on October 1, 1979.

(d) The amendments made by sections 217, 218, 230, 247, 302, 314(j), 317, 327, 328, 338, and 411 of this Act shall take effect on the date of enactment of this Act.

(e) The amendments made by sections 335(a) and 336(a) of this Act shall take effect on April 1, 1984.

SAVINGS PROVISIONS

SEC. 403. (a) A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if the Act had not been enacted.

(b) Notwithstanding subsection (a) of this section, sections 1165, 1167, 1168, 1169, and 1171 of title 11 of the United States Code, as enacted by section 101 of this Act, apply to cases pending under section 77 of the Bankruptcy Act (11 U.S.C. 205) on the date of enactment of this Act in which the trustee has not filed a plan of reorganization.

(c) The repeal made by section 401(a) of this Act does not affect any right of a referee in bankruptcy, United States bankruptcy judge, or survivor of a referee in bankruptcy or United States bankruptcy judge to receive any annuity or other payment under the civil service retirement laws.

(d) The amendments made by section 314 of this Act do not affect the application of chapter 9, chapter 96, section 2516, section 3057, or section 3284 of title 18 of the United States Code to any act of any person—

(1) committed before October 1, 1979; or

(2) committed after October 1, 1979, in connection with a case commenced before such date.

(e) Notwithstanding subsection (a) of this section, a fee may not be charged under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1978, to the extent that such fee exceeds $100,000.

COURTS DURING TRANSITION

SEC. 404. (a) The courts of bankruptcy, as defined under section 1(10) of the Bankruptcy Act, created under section 2a of the Bankruptcy Act, and existing on September 30, 1979, shall continue through March 31, 1984, to be the courts of bankruptcy for the purposes of this Act and the amendments made by this Act. Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

(b) The term of a referee in bankruptcy who is serving on the date of enactment of this Act is extended to and expires on March 31, 1984 or when his successor takes office. During the period commencing on October 1, 1979, and ending on March 31, 1984 (hereinafter in this title referred to as "the transition period"), unless such referee is found to be not qualified by the Chief Judge of the Circuit Court after consultation with a merit screening committee established as provided in subsection (c) of this section, such a referee in bankruptcy upon the expiration of his appointed term as referee shall have the title of United States bankruptcy judge, and shall serve in the court of bankruptcy continued under subsection (a) of this section that appointed such United States bankruptcy judge, in the manner prescribed by this title. Section 8335(a) of title 5 of the United States Code shall not apply in respect of United States bankruptcy judges during the transition period.

(c) There shall be established for each State a merit screening committee composed of the president or the designee of the president of the State bar association, the dean or the designee of the dean of a law school located within the State, and the president or designee of the president of a local bar association for the area wherein a referee in bankruptcy maintains his official headquarters within the State. Each such merit screening committee shall be organized and summoned to meetings by the circuit executive for the circuit embracing the State, who shall serve as secretary of each such

screening committee established within the circuit. Before the expiration of the term of a referee in bankruptcy in office on the date of enactment of this Act, or if his successor has not been appointed before the date of enactment of this Act, a merit screening committee shall be organized by the circuit executive to pass on the qualifications of such referee for the purpose of determining whether the term of such referee shall be extended as provided under subsection (b) of this section.

(d) Except as otherwise provided in this section or in section 407 of this Act, matters relating to the office of United States bankruptcy judges and to United States bankruptcy judges shall continue to be governed during the transition period by the rules set forth in sections 34, 35, 36, 40a, 40b, 40d, 41, and 43 of the Bankruptcy Act as such Act existed on September 30, 1979. A court of bankruptcy may not appoint an individual under such section 34 if the merit screening committee established under subsection (c) of this section for the district of such court finds such individual to be not qualified.

(e) During the transition period, the United States bankruptcy judges of each district may appoint a clerk, necessary other employees, including law clerks and secretaries, and court reporters the same as the judges of a United States bankruptcy court established under section 201 of this Act may appoint such officers and employees under the amendment made by section 233 of this Act. Such clerk, other employees, and reporters shall have the same rights and powers, shall perform the same functions and duties and shall be subject to the same provisions of title 28 of the United States Code, as a clerk, other employee, or reporter, as the case may be, appointed under the amendment made by section 233 of this Act by a United States bankruptcy court established under section 201 of this Act. The United States bankruptcy judges of each district shall have the same rights and powers as a United States bankruptcy

court established under section 201 of this Act with respect to such clerk, other employees, and reporters.

(f) During the transition period, the provisions of sections 455, 456, 569(a), 571(b), 620(b)(3), and 957(a) of title 28 of the United States Code shall apply to United States bankruptcy judges and to any court officers or employees appointed or employed under subsection (e) of this section the same as such sections apply to the bankruptcy judges, and to any court officers or employees, of a United States bankruptcy court established under section 201 of this Act. During the transition period, the position of United States bankruptcy judge shall be deemed to be a position within the purview of subparagraph (C) of section 225(f) of the Federal Salary Act of 1967 (2 U.S.C. 356(C)).

(g) During the transition period, the Judicial Conference of the United States may from time to time in the light of the recommendations of the judicial councils of each circuit, made after advising with the district judges and the United States bankruptcy judges of the respective circuit, and of the Director of the Administrative Office of the United States Courts, increase the number of full-time United States bankruptcy judges, or provide that a part-time United States bankruptcy judge for a particular district may serve in the capacity and receive the salary of a full-time United States bankruptcy judge, as the expeditious transaction of the business of the several courts of bankruptcy may require.

JURISDICTION AND PROCEDURE DURING TRANSITION

SEC. 405. (a)(1) All cases commenced under title 11 of the United States Code during the transition period shall be referred to the United States bankruptcy judges. The United States bankruptcy judges may exercise in such cases the jurisdiction and powers conferred by subsection (b) of this section on the courts of bankruptcy

continued by section 404(a) of this Act, and all proceedings in such cases shall be before the United States bankruptcy judges, except—

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt—

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment; or

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge.

(2) Except as provided in subsection (c) of this section, any proceeding in a court of bankruptcy in a case under title 11 of the United States Code that is not before the United States bankruptcy judge shall be before the judge of the court of bankruptcy for the district in which such case is pending.

(b) During the transition period, the amendments made by sections 241, 243, 250, and 252 of this Act shall apply to the courts of bankruptcy continued by section 404(a) of this Act the same as such amendments apply to the United States bankruptcy courts established under section 201 of this Act.

(c)(1) During the transition period, an appeal from a judgment, order, or decree of a United States bankruptcy judge shall be—

(A) if the circuit council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, then to a panel of three bankruptcy judges appointed in the manner prescribed by section 160 of title 28 of the United States Code, as added by section 201 of this Act;

(B) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, then to such court of appeals; or

(C) to the district court for the district in which the bankruptcy judge sits.

(2) During the transition period, the jurisdiction of the district courts, the courts of appeals, and panels of bankruptcy judges to hear appeals shall be the same as the jurisdiction of such courts and panels granted under the amendments made by sections 236, 237, 238, and 241 of this Act to hear appeals from the judgments, orders, and decrees of the bankruptcy courts established under section 201 of this Act.

(d) The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act, until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act.

TRANSITION STUDY

Sec. 406. (a)(1) During the transition period, the Director of the Administrative Office of the United States Courts shall make continuing studies and surveys of conditions in the judicial districts to determine—

(A) the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act that will be needed after March 31, 1984, to provide for the expeditious and effective administration of justice; and

(B) the regular places of offices and the places at which courts shall be held.

(2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the population to be served, the transportation and communications facilities available, the average number and types of bankruptcy cases filed and closed during the transition period, the number of cases pending and judicial matters heard, and any other material factors. The Director shall give consideration to suggestions from any interested parties.

(b) Upon completion of the studies and surveys required by subsection (a) of this section, the Director shall report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations concerning the number of bankruptcy judges, their principal places of offices, and the places where court shall be held. The judicial councils shall advise the Conference, stating their recommendations and the reasons therefor. The Conference shall recommend to the Congress and to the President, before January 3, 1983, in light of the recommendations of the Director and the judicial councils, the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act that will be needed after March 31, 1984, and the locations at which they shall serve.

JUDICIAL ADMINISTRATION

Sec. 407. (a) The Director of the Administrative Office of the United States Courts shall appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters that arise during the transition period or that are relevant to the purposes of the transition period.

(b) During the transition period, the Congress strongly recommends at least one-third of the members of any committee of the Judicial Conference of the United States that is concerned with the administration of the bankruptcy system shall be chosen from

among the United States bankruptcy judges, and at least one member of any committee of the Judicial Conference that is concerned with court administration, supporting personnel, or bankruptcy court rules shall be chosen from among the United States bankruptcy judges.

(c) During the transition period, the chief judge of each circuit shall summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such circuit called and held under section 332 of title 28 of the United States Code.

UNITED STATES TRUSTEE PILOT

SEC. 408. (a) The Attorney General shall conduct such studies and surveys as necessary to evaluate the needs, feasibility, and effectiveness of the United States trustee system, and shall report the result of such studies and surveys to the Congress, the President, and the Judicial Conference of the United States, beginning on or before January 3, 1980, and annually thereafter during the transition period.

(b) Not later than January 3, 1984, the Attorney General shall report to the Congress, to the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effectiveness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operation of the United States trustee system in the districts, together with recommendations as to the desirability and method of proceeding with implementation of the United States trustee system in all judicial districts of the United States.

(c) Chapter 15 of title 11 of the United States Code and chapter 39 of title 28 of the United States Code are repealed, and all references to the United States trustee contained in title 28 of the United States Code are deleted, as of April 1, 1984. The service of any United States trustee, of any assistant United States trustee, and of any

employee employed or appointed under the authority of such chapter 39 is terminated on such date.

TRANSFER TO NEW COURT SYSTEM

SEC. 409. (a) On April 1, 1984, there shall be transferred to the appropriate United States bankruptcy court established under section 201 of this Act—

(1) cases, and matters and proceedings in cases, under the Bankruptcy Act that are pending, at the end of September 30, 1983, in the courts of bankruptcy continued under section 404(a) of this Act, other than cases, and matters and proceedings in cases, under—

(A) section 77 or chapter IX of the Bankruptcy Act; or

(B) chapter X of the Bankruptcy Act in which a general reference under section 117 of the Bankruptcy Act is not in effect; and

(2) cases, and proceedings arising under or related to cases, under title 11 of the United States Code that are pending, at the end of March 31, 1984, in the courts of bankruptcy continued under section 404(a) of this Act.

(b) Civil actions pending on March 31, 1984, over which a United States bankrupcty court established under section 201 of this Act has jurisdiction on April 1, 1984, shall not abate, but continuation of any such action that has not been finally determined before April 1, 1985, may be enjoined, and any claims or causes of actions not resolved may be removed to a bankruptcy court under chapter 90 of title 28 of the United States Code.

(c) All Government publications, law books, recording equipment, and other property furnished to bankruptcy judges' offices as of March 31, 1984, and of particular use to

the offices of the judges of the United States bankruptcy courts, shall be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts.

ADDITIONAL RULEMAKING POWER

SEC. 410. The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act.

SEC. 411. Section 40a of the Bankruptcy Act (11 U.S.C. 68(a)) is amended by striking out "$37,800" and inserting "$50,000" in lieu thereof, and by striking out "$18,900" and inserting "$25,000" in lieu thereof.

APPROVED November 6, 1978.