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Union Calendar No. 131

116TH CONGRESS
1ST SESSION

H. R. 3311

[Report No. 116–171]

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2019

Mr. CLINE (for himself, Mr. CICILLINE, Mr. COLLINS of Georgia, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 23, 2019

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Reorganization Act of 2019''.

SEC. 2. REORGANIZATION OF SMALL BUSINESS DEBTORS.

(a) IN GENERAL.—Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

''§ 1181. Inapplicability of other sections

''(a) IN GENERAL.—Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

''(b) COURT AUTHORITY.—Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

''(c) SPECIAL RULE FOR DISCHARGE.—If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

"§ 1182. Definitions

''In this subchapter:

''(1) DEBTOR.—The term 'debtor' means a small business debtor.

''(2) DEBTOR IN POSSESSION.—The term 'debtor in possession' means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

"§ 1183. Trustee

''(a) IN GENERAL.—If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint 1 disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary.

''(b) DUTIES.—The trustee shall—

''(1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

''(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in in-

terest, the trustee, or the United States trustee, so orders;

''(3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—

''(A) the value of property subject to a lien;

''(B) confirmation of a plan filed under this subchapter;

''(C) modification of the plan after confirmation; or

''(D) the sale of property of the estate;

''(4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;

''(5) if the debtor ceases to be a debtor in possession, perform the duties specified in section 704(a)(8) and paragraphs (1), (2), and (6) of section 1106(a) of this title, including operating the business of the debtor;

''(6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and

''(7) facilitate the development of a consensual plan of reorganization.

''(c) TERMINATION OF TRUSTEE SERVICE.—

''(1) IN GENERAL.—If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.

''(2) SERVICE OF NOTICE OF SUBSTANTIAL CONSUMMATION.—Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

''§ 1184. Rights and powers of a debtor in possession

''Subject to such limitations or conditions as the court may prescribe, 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 functions and duties, except the duties specified in paragraphs (2), (3), and (4) of section 1106(a) of this title, of a trustee serving in a case under this chapter, including operating the business of the debtor.

"§ 1185. Removal of debtor in possession

''(a) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

''(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

"§ 1186. Property of the estate

''(a) INCLUSIONS.—If a plan is confirmed under section 1191(b) of this title, 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 that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

''(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted

to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

''(b) DEBTOR REMAINING IN POSSESSION.—Except as provided in section 1185 of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

''§ 1187. Duties and reporting requirements of debtors

''(a) FILING REQUIREMENTS.—Upon electing to be a debtor under this subchapter, the debtor shall file the documents required by subparagraphs (A) and (B) of section 1116(1) of this title.

''(b) OTHER APPLICABLE PROVISIONS.—A debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of section 308 and paragraphs (2), (3), (4), (5), (6), and (7) of section 1116 of this title.

''(c) SEPARATE DISCLOSURE STATEMENT EXEMPTION.—If the court orders under section 1181(b) of this title that section 1125 of this title applies, section 1125(f) of this title shall apply.

''§ 1188. Status conference

''(a) IN GENERAL.—Except as provided in subsection (b), not later than 60 days after the entry of the order

for relief under this chapter, the court shall hold a status conference to further the expeditious and economical resolution of a case under this subchapter.

''(b) EXCEPTION.—The court may extend the period of time for holding a status conference under subsection (a) if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

''(c) REPORT.—Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.

''§ 1189. Filing of the plan

''(a) WHO MAY FILE A PLAN.—Only the debtor may file a plan under this subchapter.

''(b) DEADLINE.—The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

''§ 1190. Contents of plan

''A plan filed under this subchapter—

''(1) shall include—

''(A) a brief history of the business operations of the debtor;

''(B) a liquidation analysis; and

''(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

''(2) shall provide for the submission of all or such portion of the 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; and

''(3) notwithstanding section 1123(b)(5) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was—

''(A) not used primarily to acquire the real property; and

''(B) used primarily in connection with the small business of the debtor.

''§ 1191. Confirmation of plan

''(a) TERMS.—The court shall confirm a plan under this subchapter only if all of the requirements of section

1129(a), other than paragraph (15) of that section, of this title are met.

''(b) EXCEPTION.—Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs 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.

''(c) RULE OF CONSTRUCTION.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

''(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

''(2) As of the effective date of the plan—

''(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is

due under the plan will be applied to make payments under the plan; or

''(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

''(3)(A)(i) The debtor will be able to make all payments under the plan; or

''(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

''(B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

''(d) DISPOSABLE INCOME.—For purposes of this section, the term 'disposable income' means the income that is received by the debtor and that is not reasonably necessary to be expended—

''(1) for—

''(A) the maintenance or support of the debtor or a dependent of the debtor; or

''(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

''(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

''(e) SPECIAL RULE.—Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

''§ 1192. Discharge

''If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, 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 in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

''(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

''(2) of the kind specified in section 523(a) of this title.

''§ 1193. Modification of plan

''(a) MODIFICATION BEFORE CONFIRMATION.—The debtor may modify a plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. After the modification is filed with the court, the plan as modified becomes the plan.

''(b) MODIFICATION AFTER CONFIRMATION.—If a plan has been confirmed under section 1191(a) of this title, the debtor may modify the plan at any time after confirmation of the plan and before substantial consummation of the plan, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. The plan, as modified under this subsection, becomes the plan only if circumstances warrant the modification and the court, after notice and a hearing, confirms the plan as modified under section 1191(a) of this title.

''(c) CERTAIN OTHER MODIFICATIONS.—If a plan has been confirmed under section 1191(b) of this title, the debtor may modify the plan at any time within 3 years, or such longer time not to exceed 5 years, as fixed by the court, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1191(b) of this title. The plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan, as modified, under section 1191(b) of this title.

''(d) HOLDERS OF A CLAIM OR INTEREST.—If a plan has been confirmed under section 1191(a) of this title, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless, within the time fixed by the court, such holder changes the previous acceptance or rejection of the holder.

''§ 1194. Payments

''(a) RETENTION AND DISTRIBUTION BY TRUSTEE.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the

plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor after deducting—

''(1) any unpaid claim allowed under section 503(b) of this title;

''(2) any payment made for the purpose of providing adequate protection of an interest in property due to the holder of a secured claim; and

''(3) any fee owing to the trustee.

''(b) OTHER PLANS.—If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

''(c) PAYMENTS PRIOR TO CONFIRMATION.—Prior to confirmation of a plan, the court, after notice and a hearing, may authorize the trustee to make payments to the holder of a secured claim for the purpose of providing adequate protection of an interest in property.

''§ 1195. Transactions with professionals

''Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title, by a debtor solely because that person holds a claim of less than $10,000 that arose prior to commencement of the case.''.

(b) CLERICAL AMENDMENT.—The table of subchapters at the beginning of chapter 11 of title 11, United

States Code, is amended by adding at the end the following:

''SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

''1181. Inapplicability of other sections.
''1182. Definitions.
''1183. Trustee.
''1184. Rights and powers of a debtor in possession.
''1185. Removal of debtor in possession.
''1186. Property of the estate.
''1187. Duties and reporting requirements of debtors.
''1188. Status conference.
''1189. Filing of the plan.
''1190. Contents of plan.
''1191. Confirmation of plan.
''1192. Discharge.
''1193. Modification of plan.
''1194. Payments.
''1195. Transactions with professionals.''.

SEC. 3. PREFERENCES; VENUE OF CERTAIN PROCEEDINGS.

(a) PREFERENCES.—Section 547(b) of title 11, United States Code, is amended by inserting '', based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c),'' after ''may''.

(b) VENUE OF CERTAIN PROCEEDINGS.—Section 1409(b) of title 28, United States Code, is amended by striking ''$10,000'' and inserting ''$25,000''.

SEC. 4. CONFORMING AMENDMENTS.

(a) TITLE 11.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (51C), by inserting ''and has not elected that subchapter V of chapter 11 of this title shall apply'' after ''is a small business debtor''; and

(B) in paragraph (51D)—

(i) in subparagraph (A)—

(I) by striking ''or operating real property or activities incidental thereto'' and inserting ''single asset real estate''; and

(II) by striking ''for a case in which'' and all that follows and inserting ''not less than 50 percent of which arose from the commercial or business activities of the debtor; and''; and

(ii) in subparagraph (B)—

(I) by striking the period at the end and inserting a semicolon;

(II) by striking ''does not include any member'' and inserting the following: ''does not include—

''(i) any member''; and

(III) by adding at the end the following:

"(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

"(iii) any corporation that—

"(I) is subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); and

"(II) is an affiliate of a debtor.";

(2) in section 103—

(A) by redesignating subsections (i) through (k) as subsections (j) through (l), respectively; and

(B) by inserting after subsection (h) the following:

"(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a small business debtor elects that subchapter V of chapter 11 shall apply.";

(3) in section 322(a), by inserting "1183," after "1163,";

(4) in section 326—

(A) in subsection (a), by inserting ", other than a case under subchapter V of chapter 11," after "7 or 11"; and

(B) in subsection (b), by inserting "subchapter V of chapter 11 or" after "In a case under";

(5) in section 347—

(A) in subsection (a)—

(i) by inserting "1194," after "726,"; and

(ii) by inserting "subchapter V of chapter 11," after "chapter 7,"; and

(B) in subsection (b), by inserting "1194," after "1173,";

(6) in section 363(c)(1), by inserting "1183, 1184," after "1108,";

(7) in section 364(a), by inserting "1183, 1184," after "1108,";

(8) in section 523(a), in the matter preceding paragraph (1), by inserting "1192," after "1141,";

(9) in section 524—

(A) in subsection (a)—

(i) in paragraph (1), by inserting "1192," after "1141,"; and

(ii) in paragraph (3), by inserting ''1192,'' after ''523,'';

(B) in subsection (c)(1), by inserting ''1192,'' after ''1141,''; and

(C) in subsection (d), by inserting ''1192,'' after ''1141,'';

(10) in section 557(d)(3), by inserting ''1183,'' after ''1104,'';

(11) in section 1102(a), by striking paragraph (3) and inserting the following:

''(3) Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under subchapter V of this chapter.''; and

(12) in section 1146(a), by inserting ''or 1191'' after ''1129''.

(b) TITLE 28.—Title 28 United States Code, is amended—

(1) in section 586—

(A) in subsection (a)(3), by inserting ''(including subchapter V of chapter 11)'' after ''7, 11'';

(B) in subsection (b), by inserting ''subchapter V of chapter 11 or'' after ''cases under'';

(C) in subsection (d)(1), by inserting ''subchapter V of chapter 11 or'' after ''cases under'' each place that term appears; and

(D) in subsection (e)—

(i) in paragraph (1), by inserting ''subchapter V of chapter 11 or'' after ''cases under'';

(ii) in paragraph (2), by inserting ''subchapter V of chapter 11 or'' after ''cases under'' each place that term appears; and

(iii) by adding at the end the following:

''(5) In the event that the services of the trustee in a case under subchapter V of chapter 11 of title 11 are terminated by dismissal or conversion of the case, or upon substantial consummation of a plan under section 1183(c)(1) of that title, the court shall award compensation to the trustee consistent with services performed by the trustee and the limits on the compensation of the trustee established pursuant to paragraph (1) of this subsection.'';

(2) in section 589b—

(A) in subsection (a)(1), by inserting ''subchapter V of chapter 11 and'' after ''cases under''; and

(B) in subsection (d)—

(i) in the matter preceding paragraph (1), by inserting ''subchapter V of chapter 11 and'' after ''trustees under''; and

(ii) in the undesignated matter following paragraph (8), by inserting ''subchapter V of chapter 11 and'' after ''cases under''; and

(3) in section 1930(a)(6)(A), by inserting '', other than under subchapter V,'' after ''chapter 11 of title 11''.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

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