

9602, 9608; title 43 sections 617p, 1606, 1636; title 45 sections 701, 791, 912, 1007; title 48 sections 1424-4, 1614, 1821; title 49 section 14301.

## CHAPTER 1—GENERAL PROVISIONS

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### AMENDMENTS

1994—Pub. L. 103-394, title III, §308(b), Oct. 22, 1994, 108 Stat. 4137, added item 110.

### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 103 of this title; title 15 section 78ff.

## § 101. Definitions

In this title—

(1) “accountant” means accountant authorized under applicable 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 substantially all of the property of the debtor under a lease or operating agreement;

(4)<sup>1</sup> “attorney” means attorney, professional law association, corporation, or partnership,

authorized under applicable law to practice law;

(5) “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

(6) “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 of this title;

(7) “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;

(8) “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose;

(9) “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;

(10) “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 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

(11) “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;

(12) “debt” means liability on a claim;

(12A) “debt for child support” means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;

(13) “debtor” means person or municipality concerning which a case under this title has been commenced;

<sup>1</sup> So in original. There is no par. (3).

(14) “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;

(15) “entity” includes person, estate, trust, governmental unit, and United States trustee;

(16) “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;

(17) “equity security holder” means holder of an equity security of the debtor;

(18) “family farmer” means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded;

(19) “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title;

(20) “farmer” means (except when such term appears in the term “family farmer”) 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;

(21) “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;

(21A) “farmout agreement” means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property;

(21B) “Federal depository institutions regulatory agency” means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation;

(22) the term “financial institution”—

(A) means—

(i) a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator, or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, the customer; or

(ii) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940; and

(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;

(23) “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;

(24) “foreign representative” means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(25) “forward contract” means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any combination thereof or option thereon;

(26) “forward contract merchant” means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;

(27) “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(28) “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;

(29) “indenture trustee” means trustee under an indenture;

(30) “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 stockbroker or a commodity broker;

(31) “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;

(32) “insolvent” means—

(A) with reference to an entity other than a partnership and a municipality, 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;

(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 nonpartnership

property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due;

(33) "institution-affiliated party"—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act;

(34) "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act;

(35) "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection);

(35A) "intellectual property" means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable non-bankruptcy law; and

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

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

(38) "margin payment" means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments; and<sup>2</sup>

(39) "mask work" has the meaning given it in section 901(a)(2) of title 17.

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

(41) "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;

(42) "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;

(42A) "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs;

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

(44) "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;

(45) "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;

(46) "repo participant" means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor;

(47) "repurchase agreement" (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;

(48) "securities clearing agency" means person that is registered as a clearing agency

<sup>2</sup> So in original. The word "and" probably should not appear.

under section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A;

(49) “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 required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act 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 security; 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 of this title;
- (iii) commodity futures contract or forward 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 of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or
- (vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(50) “security agreement” means agreement that creates or provides for a security interest;

(51) “security interest” means lien created by an agreement;

(51A) “settlement payment” means, for purposes of the forward contract provisions of

this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade;

(51B) “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;

(51C) “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000;

(52) “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title;

(53) “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;

(53A) “stockbroker” means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

- (i) for the account of others; or
- (ii) with members of the general public, from or for such person’s own account;

(53B) “swap agreement” means—

(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(B) any combination of the foregoing; or

(C) a master agreement for any of the foregoing together with all supplements;

(53C) “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor;

(56A)<sup>3</sup> “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in

<sup>3</sup> So in original.

place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized;

(53D) “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;

(54) “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 and foreclosure of the debtor’s equity of redemption;

(54A) the term “uninsured State member bank” means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation; and

(55) “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States;

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2549; Pub. L. 97-222, §1, July 27, 1982, 96 Stat. 235; Pub. L. 98-353, title III, §§391, 401, 421, July 10, 1984, 98 Stat. 364, 366, 367; Pub. L. 99-554, title II, §§201, 251, 283(a), Oct. 27, 1986, 100 Stat. 3097, 3104, 3116; Pub. L. 100-506, §1(a), Oct. 18, 1988, 102 Stat. 2538; Pub. L. 100-597, §1, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 101-311, title I, §101, title II, §201, June 25, 1990, 104 Stat. 267, 268; Pub. L. 101-647, title XXV, §2522(e), Nov. 29, 1990, 104 Stat. 4867; Pub. L. 102-486, title XXX, §3017(a), Oct. 24, 1992, 106 Stat. 3130; Pub. L. 103-394, title I, §106, title II, §§208(a), 215, 217(a), 218(a), title III, §304(a), title V, §501(a), (b)(1), (d)(1), Oct. 22, 1994, 108 Stat. 4111, 4124, 4126-4128, 4132, 4141-4143; Pub. L. 106-554, §1(a)(5) [title I, §112(c)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-393, 2763A-394.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 101(2) defines “affiliate.” The House amendment contains a provision that is a compromise between the definition in the House-passed version of H.R. 8200 and the Senate amendment in the nature of a substitute to H.R. 8200. Subparagraphs (A) and (B) are derived from the Senate amendment and subparagraph (D) is taken from the House bill, while subparagraph (C) represents a compromise, taking the House position

with respect to a person whose business is operated under a lease or an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and the Senate position on leased property. Thus, the definition of “affiliate” excludes persons substantially all of whose property is operated under a lease agreement by a debtor, such as a small company which owns equipment all of which is leased to a larger nonrelated company.

Section 101(4)(B) represents a modification of the House-passed bill to include the definition of “claim” a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. This is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment, in the event performance is refused; in that event, the creditor entitled to specific performance would have a “claim” for purposes of a proceeding under title 11.

On the other hand, rights to an equitable remedy for a breach of performance with respect to which such breach does not give rise to a right to payment are not “claims” and would therefore not be susceptible to discharge in bankruptcy.

In a case under chapter 9 to title 11, “claim” does not include a right to payment under an industrial development bond issued by a municipality as a matter of convenience for a third party.

Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended [title 26], to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan.

Section 101(6) defines “community claim” as provided by the Senate amendment in order to indicate that a community claim exists whether or not there is community property in the estate as of the commencement of the case.

Section 101(7) of the House amendment contains a definition of consumer debt identical to the definition in the House bill and Senate amendment. A consumer debt does not include a debt to any extent the debt is secured by real property.

Section 101(9) of the Senate amendment contained a definition of “court.” The House amendment deletes the provision as unnecessary in light of the pervasive jurisdiction of a bankruptcy court under all chapters of title 11 as indicated in title II of the House amendment to H.R. 8200.

Section 101(11) defines “debt” to mean liability on a claim, as was contained in the House-passed version of H.R. 8200. The Senate amendment contained language indicating that “debt” does not include a policy loan made by a life insurance company to the debtor. That language is deleted in the House amendment as unnecessary since a life insurance company clearly has no right to have a policy loan repaid by the debtor, although such company does have a right of offset with respect to such policy loan. Clearly, then, a “debt” does not include a policy loan made by a life insurance

company. Inclusion of the language contained in the Senate amendment would have required elaboration of other legal relationships not arising by a liability on a claim. Further the language would have required clarification that interest on a policy loan made by a life insurance company is a debt, and that the insurance company does have right to payment to that interest.

Section 101(14) adopts the definition of "entity" contained in the Senate-passed version of H.R. 8200. Since the Senate amendment to H.R. 8200 deleted the U.S. trustee, a corresponding definitional change is made in chapter 15 of the House amendment for U.S. trustees under the pilot program. Adoption by the House amendment of a pilot program for U.S. trustees under chapter 15 requires insertion of "United States trustee" in many sections. Several provisions in chapter 15 of the House amendment that relate to the U.S. trustee were not contained in the Senate amendment in the nature of a substitute.

Section 101(17) defines "farmer," as in the Senate amendment with an income limitation percentage of 80 percent instead of 75 percent.

Section 101(18) contains a new definition of "farming operation" derived from present law and the definition of "farmer" in the Senate amendment. This definition gives a broad construction to the term "farming operation".

Section 101(20) contains a definition of "foreign representative". It clarifies the House bill and Senate amendment by indicating that a foreign representative must be duly selected in a foreign proceeding.

Section 101(35) defines "security" as contained in the Senate amendment. H.R. 8200 as adopted by the House excluded certain commercial notes from the definition of "security", and that exclusion is deleted.

Section 101(40) defines "transfer" as in the Senate amendment. The definition contained in H.R. 8200 as passed by the House included "setoff" in the definition of "transfer". Inclusion of "setoff" is deleted. The effect is that a "setoff" is not subject to being set aside as a preferential "transfer" but will be subject to special rules.

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Section 101 of title 11 contains 40 definitions:

Paragraph (1) defines "accountant" as an accountant authorized under applicable law to practice accounting. The term includes a professional accounting association, corporation, or partnership if applicable law authorizes such a unit to practice accounting.

Paragraph (2) defines "affiliate." An affiliate is an entity with a close relationship to the debtor. It includes a 20 percent parent or subsidiary of the debtor, whether a corporate, partnership, individual, or estate parent.

The use of "directly or indirectly" in subparagraphs (A) and (B) is intended to cover situations in which there is an opportunity to control, and where the existence of that opportunity operates as indirect control.

"Affiliate" is defined primarily for use in the definition of insider, *infra*, and for use in the chapter 11 reorganization cases. The definition of "affiliate" does not include an entity acting in a fiduciary or agency capacity if the entity does not have the sole discretionary power to vote 20 percent of the voting securities but hold them solely as security and have not exercised the power to vote. This restriction applies to a corporate affiliate under subparagraph (B) of paragraph (2).

Subsections (C) and (D) of paragraph (2) define affiliate also as those persons and entities whose business or substantially all of whose property is operated under a lease or operating agreement by a debtor and whose business or property is more than 50 percent under the control of the debtor.

The definition of "attorney" in paragraph (3) is similar to the definition of accountant.

Paragraph (4) defines "claim." The effect of the definition is a significant departure from present law. Under present law, "claim" is not defined in straight bankruptcy. Instead it is simply used, along with the

concept of provability in section 63 of the Bankruptcy Act [section 103 of former title 11], to limit the kinds of obligations that are payable in a bankruptcy case. The term is defined in the debtor rehabilitation chapters of present law far more broadly. The definition in paragraph (4) adopts an even broader definition of claim than is found in the present debtor rehabilitation chapters. The definition is any right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. The definition also includes as a claim an equitable right to performance that does not give rise to a right to payment. By this broadest possible definition and by the use of the term throughout the title 11, especially in subchapter I of chapter 5, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court.

Paragraph (5) defines "commodity broker" by reference to various terms used and defined in subchapter IV of chapter 7, Commodity Broker Liquidation. The terms are described in connection with section 761, *infra*.

Paragraph (6) defines "community claim" for those eight States that have community property laws. The definition is keyed to the liability of the debtor's property for a claim against either the debtor or the debtor's spouse. If the debtor's property is liable for a claim against either, that claim is a community claim.

Paragraph (7) defines "consumer debt". The definition is adapted from the definition used in various consumer protection laws. It encompasses only a debt incurred by an individual primarily for a personal, family, or household purpose.

The definition of "corporation" in paragraph (8) is similar to the definition in current law, section 1(8) [section 1(8) of former title 11]. The term encompasses any association having the power or privilege that a private corporation, but not an individual or partnership, has; partnership associations organized under a law that makes only the capital subscribed responsible for the debts of the partnership; joint-stock company; unincorporated company or association; and business trust. "Unincorporated association" is intended specifically to include a labor union, as well as other bodies that come under that phrase as used under current law. The exclusion of limited partnerships is explicit, and not left to the case law.

Paragraph (9) defines "court" as the bankruptcy judge in the district in which the case is pending except in municipal adjustment and railroad reorganization cases, where "court" means the Federal district judge.

Paragraph (10) [enacted as (9)] defines "creditor" to include holders of prepetition claims against the debtor. However, it also encompasses certain holders of claims that are deemed to arise before the date of the filing of the petition, such as those injured by the rejection of an executory contract or unexpired lease, certain investment tax credit recapture claim holders, "involuntary gap" creditors, and certain holders of the right of setoff. The term also includes the holder of a prepetition community claim. A guarantor of or surety for a claim against the debtor is also a creditor, because he holds a contingent claim against the debtor that becomes fixed when he pays the creditor whose claim he has guaranteed or insured.

Paragraph (11) [enacted as (10)] defines "custodian." There is no similar definition in current law. It is defined to facilitate drafting, and means a prepetition liquidator of the debtor's property, such as an assignee for the benefit of creditors, a receiver of the debtor's property, or administrator of the debtor's property. The definition of custodian to include a receiver or trustee is descriptive, and not meant to be limited to court officers with those titles. The definition is intended to include other officers of the court if their functions are substantially similar to those of a receiver or trustee.

"Debt" is defined in paragraph (12) [enacted as (11)] as a liability on a claim. The terms "debt" and "claim"

are coextensive: a creditor has a "claim" against the debtor; the debtor owes a "debt" to the creditor. This definition of "debt" and the definition of "claim" on which it is based, proposed 11 U.S.C. 101(4), does not include a transaction such as a policy loan on an insurance policy. Under that kind of transaction, the debtor is not liable to the insurance company for repayment; the amount owed is merely available to the company for setoff against any benefits that become payable under the policy. As such, the loan is not a claim (it is not a right to payment) that the company can assert against the estate; nor is the debtor's obligation a debt (a liability on a claim) that will be discharged under proposed 11 U.S.C. 523 or 524.

Paragraph (13) [enacted as (12)] defines "debtor." Debtor means person or municipality concerning which a case under title II has been commenced. This is a change in terminology from present law, which identifies the person by or against whom a petition is filed in a straight bankruptcy liquidation case as the "bankrupt", and a person or municipality that is proceeding under a debtor rehabilitation chapter (chapters VIII through XIII of the Bankruptcy Act) [chapters 8 through 13 of former title 11] as a "debtor." The term "debtor" is used for both kinds of cases in this bill, for ease of reference in chapters 1, 3, and 5 (which apply to straight bankruptcy and reorganization cases).

Paragraph (14) [enacted as (13)] defines "disinterested person." The definition is adapted from section 158 of chapter X of current law [section 558 of former title 11], though it is expanded and modified in some respects. A person is a disinterested person if the person is not a creditor, equity security holder, or insider; is not and was not an investment banker of the debtor for any outstanding security of the debtor (the change from underwriter in current law to investment banker is to make the term more descriptive and to avoid conflict with the definition of underwriter in section 2(11) of the Securities Act of 1933 [15 U.S.C. 77b(11)]); has not been an investment banker for a security of the debtor within 3 years before the date of the filing of the petition (the change from five years to three years here conforms the definition with the statute of limitations in the Securities Act of 1933) [15 U.S.C. 77m], or an attorney for such an investment banker; is not an insider of the debtor or of such an investment banker; and does not have an interest materially adverse to the estate.

"Entity" is defined, for convenience, in paragraph (15) [enacted as (14)], to include person, estate, trust, and governmental unit. It is the most inclusive of the various defined terms relating to bodies or units.

Paragraph (16) defines "equity security." The term includes a share or stock in a corporation, a limited partner's interest in a limited partnership, and a warrant or right to subscribe to an equity security. The term does not include a security, such as a convertible debenture, that is convertible into equity security, but has not been converted.

Paragraph (17) [enacted as (15)] defines "equity security holder" for convenience as the holder of an equity securing of the debtor.

Paragraph (18) [enacted as (17)] defines "farmer." It encompasses only those persons for whom farming operations contribute 75 percent or more of their total income.

Paragraphs (19) and (20) define "foreign proceeding" and "foreign representative". A foreign proceeding is a proceeding in another country in which the debtor has some substantial connection for the purpose of liquidating the estate of the debtor or the purpose of financial rehabilitation of the debtor. A foreign representative is the representative of the estate in a foreign proceeding, such as a trustee or administrator.

Paragraph (21) defines "governmental unit" in the broadest sense. The definition encompasses the United States, a State, Commonwealth, District, Territory, municipality, or foreign state, and a department, agency, or instrumentality of any of those entities. "Department, agency, or instrumentality" does not include an entity that owes its existence to State action, such

as the granting of a charter or a license but that has no other connection with a State or local government or the Federal Government. The relationship must be an active one in which the department, agency, or instrumentality is actually carrying out some governmental function.

Paragraph (22) defines "indenture." It is similar to the definition of indenture in the Trust Indenture Act of 1939 [15 U.S.C. 77ccc(7)]. An indenture is the instrument under which securities, either debt or equity, of the debtor are outstanding.

Paragraph (23) defines "indenture trustee" as the trustee under an indenture.

Paragraph (24) defines "individual with regular income." The effect of this definition, and of its use in section 109(e), is to expand substantially the kinds of individuals that are eligible for relief under chapter 13, Adjustment of Debts of an Individual with Regular Income. Chapter XIII [chapter 13 of former title 11] is now available only for wage earners. The definition encompasses all individuals with incomes that are sufficiently stable and regular to enable them to make payments under a chapter 13 plan. Thus, individuals on welfare, social security, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their creditors rather than being forced into straight bankruptcy. Also, self-employed individuals will be eligible to use chapter 13 if they have regular incomes.

However, the definition excludes certain stockbrokers and commodity brokers, in order to prohibit them from proceeding under chapter 13 and avoiding the customer protection provisions of chapter 7.

"Insider", defined in paragraph (25), is a new term. An insider is one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor. If the debtor is an individual, then a relative of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, and a corporation controlled by the debtor are all insiders. If the debtor is a corporation, then a controlling person, a relative of a controlling person, a partnership in which the debtor is a general partner, and a general partner of the debtor are all insiders. If the debtor is a partnership, then a general partner of or in the debtor, a relative of a general partner in the debtor, and a person in control are all insiders. If the debtor is a municipality, then an elected official of the debtor is an insider. In addition, affiliates of the debtor and managing agents are insiders.

The definition of "insolvent" in paragraph (26) is adopted from section 1(19) of current law [section 1(19) of former title 11]. An entity is insolvent if its debts are greater than its assets, at a fair valuation, exclusive of property exempted or fraudulently transferred. It is the traditional bankruptcy balance sheet test of insolvency. For a partnership, the definition is modified to account for the liability of a general partner for the partnership's debts. The difference in this definition from that in current law is in the exclusion of exempt property for all purposes in the definition of insolvent.

Paragraph (27) defines "judicial lien." It is one of three kinds of liens defined in this section. A judicial lien is a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

Paragraph (28) defines "lien." The definition is new and is very broad. A lien is defined as a charge against or interest in property to secure payment of a debt or performance of an obligation. It includes inchoate liens. In general, the concept of lien is divided into three kinds of liens: judicial liens, security interests, and statutory liens. Those three categories are mutually exclusive and are exhaustive except for certain common law liens.

Paragraph (29) defines "municipality." The definition is adapted from the terms used in the chapter IX (municipal bankruptcy) [chapter 9 of former title 11] amendment to the Bankruptcy Act enacted in 1976 (Pub. L. 94-260). That amendment spoke in terms of

“political subdivision or public agency or instrumentality of a State”. Bankruptcy Act Sec. 84 [section 404 of former title 11]. The term municipality is defined by those three terms for convenience. It does not include the District of Columbia or any territories of the United States.

“Person” is defined in paragraph (30). The definition is a change in wording, but not in substance, from the definition in section 1(23) of the Bankruptcy Act [section 1(23) of former title 11]. The definition is also similar to the one contained in 1 U.S.C. sec. 1, but is repeated here for convenience and ease of reference. Person includes individual partnership, and corporation. The exclusion of governmental units is made explicit in order to avoid any confusion that may arise if, for example, a municipality is incorporated and thus is legally a corporation as well as governmental unit. The definition does not include an estate or a trust, which are included only in the definition of “entity” in proposed 11 U.S.C. 101(14).

“Petition” is defined for convenience in paragraph (31). Petition is a petition under section 301, 302, 303, or 304 of the bankruptcy code—that is, a petition that commences a case under title 11.

Paragraph (32) defines purchaser as a transferee of a voluntary transfer, such as a sale or gift, and includes an immediate or mediate transferee of a purchaser.

The definition of “railroad” in paragraph (33) is derived from section 77 of the Bankruptcy Act [section 205 of former title 11]. A railroad is a common carrier by railroad engaged in the transportation of individuals or property, or an owner of trackage facilities leased by such a common carrier. The effect of the definition and the use of the term in section 109(d) is to eliminate the limitation now found in section 77 of the Bankruptcy Act that only railroads engaged in interstate commerce may proceed under the railroad reorganization provisions. The limitation may have been inserted because of a doubt that the commerce power could not reach intrastate railroads. Be that as it may, this bill is enacted under the bankruptcy power.

Paragraph (34) defines “relative” as an individual related by affinity or consanguinity within the third degree as determined by the common law, and includes individuals in a step or adoptive relationship. The definition is similar to current law, but adds the latter phrase. This definition should be applied as of the time when the transaction that it concerns took place. Thus, a former spouse is not a relative, but if, for example, for purposes of the preference section, proposed 11 U.S.C. 547(b)(4)(B), the transferee was a spouse of the debtor at the time of the transfer sought to be avoided, then the transferee would be relative and subject to the insider rules, even if the transferee was no longer married to the debtor at the time of the commencement of the case or at the time of the commencement of the preference recovery proceeding.

Paragraph (35) defines “security.” The definition is new and is modeled on the most recent draft of the American Law Institute’s proposed securities code, with some exceptions. The interest of a limited partner in a limited partnership is included in order to make sure that everything that is defined as an equity security is also a “security.” The definition, as with the definition of “entity”, “insider”, and “person”, is opened because the term is not susceptible of precise specification. Thus the courts will be able to use the characterization provided in this definition to treat with new kinds of documents on a flexible basis.

Paragraphs (36) and (37) defined “security agreement” and “security interest.” A security interest is one of the kinds of liens. It is a lien created by an agreement. Security agreement is defined as the agreement creating the security interest. Though these terms are similar to the same terms in the Uniform Commercial Code, article IX, they are broader. For example, the U.C.C. does not cover real property mortgages. Under this definition, such a mortgage is included, as are all other liens created by agreement, even though not covered by the U.C.C. All U.C.C. security interests and security

agreements are, however, security interests and security agreements under this definition. Whether a consignment or a lease constitutes a security interest under the bankruptcy code will depend on whether it constitutes a security interest under applicable State or local law.

Paragraph (38) defines another kind of lien, “statutory lien.” The definition, derived from current law, states that a statutory lien is a lien arising solely by force of statute on specified circumstances or conditions and includes a lien of distress for rent (whether statutory, common law, or otherwise). The definition excludes judicial liens and security interests, whether or not they are provided for or are dependent on a statute, and whether or not they are made fully effective by statute. A statutory lien is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action. Mechanics’, materialmen’s, and warehousemen’s liens are examples. Tax liens are also included in the definition of statutory lien.

“Stockbroker” is defined in paragraph (39) as a person engaged in the business of effecting transactions in securities for the account of others or with members of the general public from or for such person’s own account, if the person has a customer, as defined. Thus, the definition, derived from a combination of the definitions of “broker” and “dealer” in the Securities Exchange Act of 1934 [15 U.S.C. 78c], encompasses both brokers and dealers. The definition is used in section 109 and in subchapter III of chapter 7, Stockholder Liquidation. The term does not encompass an employee who acts for a principal that “effects” transaction or deals with the public, because such an employee will not have a “customer”.

Paragraph (40) defines “transfer.” It is derived and adapted, with stylistic changes, from section 1(30) of the Bankruptcy Act [section 1(30) of former title 11]. A transfer is a disposition of an interest in property. The definition of transfer is as broad as possible. Many of the potentially limiting words in current law are deleted, and the language is simplified. Under this definition, any transfer of an interest in property is a transfer, including a transfer of possession, custody, or control even if there is no transfer of title, because possession, custody, and control are interests in property. A deposit in a bank account or similar account is a transfer.

#### REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in pars. (21B)(A), (33)(A), (35)(A), and (54A), is classified to section 1813 of Title 12, Banks and Banking.

The Investment Company Act of 1940, referred to in par. (22)(A)(ii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in par. (22)(B), is classified to section 4422 of Title 12, Banks and Banking.

Sections 101(7) and 206(r) of the Federal Credit Union Act, referred to in pars. (33)(B) and (34), are classified to sections 1752(7) and 1786(r), respectively, of Title 12.

Sections 414(d) and 457(b) of the Internal Revenue Code of 1986, referred to in par. (41)(C), are classified to sections 414(d) and 457(b), respectively, of Title 26, Internal Revenue Code.

Sections 3(a)(12) and 17A of the Securities Exchange Act of 1934, referred to in par. (48), are classified to sections 78c(a)(12) and 78q–1, respectively, of Title 15, Commerce and Trade.

The Securities Act of 1933, referred to in par. (49)(A)(xii), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15. Section

3(b) of the Act is classified to section 77c(b) of Title 15. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

## AMENDMENTS

2000—Par. (22). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(3)], amended par. (22) generally. Prior to amendment par. (22) read as follows: “‘financial institution’ means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;”

Par. (54A). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(4)], added par. (54A).

1994—Par. (3). Pub. L. 103-394, §501(a)(1), redesignated par. (3) as (21B) and inserted it after par. (21A).

Par. (6). Pub. L. 103-394, §501(b)(1)(A), substituted “section 761” for “section 761(9)” after “customer, as defined in”.

Par. (12A). Pub. L. 103-394, §304(a), added par. (12A).

Par. (21B). Pub. L. 103-394, §501(a)(1), redesignated par. (3) as (21B).

Par. (22). Pub. L. 103-394, §501(b)(1)(B), substituted “section 741” for “section 741(7)”.

Par. (33)(A). Pub. L. 103-394, §501(d)(1)(A)(i), struck out “(12 U.S.C. 1813(u))” after “section 3(u) of the Federal Deposit Insurance Act”.

Par. (33)(B). Pub. L. 103-394, §501(d)(1)(A)(ii), struck out “(12 U.S.C. 1786(r))” after “Act”.

Par. (34). Pub. L. 103-394, §501(d)(1)(B), struck out “(12 U.S.C. 1752(7))” after “Act”.

Par. (35). Pub. L. 103-394, §501(b)(1)(C), (d)(1)(C), struck out “(12 U.S.C. 1813(c)(2))” after “Act” in subpar. (A) and substituted “paragraphs (21B)” for “paragraphs (3)” in subpar. (B).

Par. (35A). Pub. L. 103-394, §501(a)(4), redesignated par. (56) defining “intellectual property” as (35A) and inserted it after par. (35).

Par. (39). Pub. L. 103-394, §501(a)(5), redesignated par. (57) defining “mask work” as (39) and inserted it after par. (38). Former par. (39) redesignated (51A).

Par. (41). Pub. L. 103-394, §106, amended par. (41) generally. Prior to amendment, par. (41) read as follows: “‘person’ includes individual, partnership, and corporation, but does not include governmental unit, *Provided, however,* That any governmental unit that acquires an asset from a person as a result of operation of a loan guarantee agreement, or as receiver or liquidating agent of a person, will be considered a person for purposes of section 1102 of this title.”

Par. (42A). Pub. L. 103-394, §208(a)(1), added par. (42A).

Par. (48). Pub. L. 103-394, §501(d)(1)(D), struck out “(15 U.S.C. 78q-1)” after “Act of 1934” and “(15 U.S.C. 78c(12))” after “such Act”.

Par. (49)(A)(xii). Pub. L. 103-394, §501(d)(1)(E)(i), struck out “(15 U.S.C. 77a et seq.)” after “Act of 1933” and “(15 U.S.C. 77c(b))” after “such Act”.

Par. (49)(B). Pub. L. 103-394, §501(b)(1)(D), (d)(1)(E)(ii), substituted “section 761” for “section 761(13)” in cl. (ii) and struck out “(15 U.S.C. 77c(b))” after “Act of 1933” in cl. (vi).

Par. (51A). Pub. L. 103-394, §501(a)(2), redesignated par. (39) as (51A) and inserted it after par. (51).

Par. (51B). Pub. L. 103-394, §218(a), added par. (51B).

Par. (51C). Pub. L. 103-394, §217(a), added par. (51C).

Par. (53A). Pub. L. 103-394, §501(a)(3), (b)(1)(E), redesignated par. (54) defining “stockbroker” as (53A) and substituted “section 741” for “section 741(2)” in subpar. (A).

Par. (53B). Pub. L. 103-394, §501(a)(3), redesignated par. (55) defining “swap agreement” as (53B).

Par. (53C). Pub. L. 103-394, §501(a)(3), redesignated par. (56) defining “swap participant” as (53C).

Par. (53D). Pub. L. 103-394, §501(a)(3), (d)(1)(F), redesignated par. (57) defining “timeshare plan” as (53D) and substituted semicolon for period at end.

Par. (54). Pub. L. 103-394, §501(a)(3), redesignated par. (54) defining “stockbroker” as (53A).

Par. (55). Pub. L. 103-394, §501(a)(3), redesignated par. (55) defining “swap agreement” as (53B).

Pub. L. 103-394, §215, inserted “spot foreign exchange agreement,” after “forward foreign exchange agreement.”

Par. (56). Pub. L. 103-394, §501(a)(3), redesignated par. (56) defining “swap participant” as (53C).

Pub. L. 103-394, §501(a)(4), redesignated par. (56) defining “intellectual property” as (35A) and inserted it after par. (35).

Par. (56A). Pub. L. 103-394, §208(a)(2), added par. (56A) and inserted it after par. defining “swap participant”.

Par. (57). Pub. L. 103-394, §501(a)(3), redesignated par. (57) defining “timeshare plan” as (53D).

Pub. L. 103-394, §501(a)(5), redesignated par. (57) defining “mask work” as (39) and inserted it after par. (38).

1992—Par. (21A). Pub. L. 102-486 added par. (21A).

1990—Par. (3). Pub. L. 101-647, §2522(e)(4), added par. (3). Former par. (3) redesignated (4).

Pars. (4) to (23). Pub. L. 101-647, §2522(e)(3), redesignated pars. (3) to (22) as (4) to (23), respectively. Former par. (23) redesignated (24).

Par. (24). Pub. L. 101-647, §2522(e)(3), redesignated par. (23) as (24). Former par. (24) redesignated (25).

Pub. L. 101-311, §201(1), inserted “as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade,” after “transfer of commodity,” and “, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any combination thereof or option thereon” after “entered into”.

Par. (25). Pub. L. 101-647, §2522(e)(3), redesignated par. (24) as (25). Former par. (25) redesignated (26).

Pub. L. 101-311, §201(2), substituted “a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade” for “commodities”.

Pars. (26) to (32). Pub. L. 101-647, §2522(e)(3), redesignated pars. (25) to (31) as (26) to (32), respectively. Former par. (32) redesignated (36).

Par. (33). Pub. L. 101-647, §2522(e)(2), added par. (33). Former par. (33) redesignated (37).

Par. (34). Pub. L. 101-647, §2522(e)(2), added par. (34). Former par. (34) redesignated (38).

Pub. L. 101-311, §201(4), added par. (34). Former par. (34) redesignated (36).

Par. (35). Pub. L. 101-647, §2522(e)(2), added par. (35). Former par. (35) redesignated (39).

Pub. L. 101-311, §201(4), added par. (35). Former par. (35) redesignated (37).

Par. (36). Pub. L. 101-647, §2522(e)(1), redesignated par. (32) as (36). Former par. (36) redesignated (40).

Pub. L. 101-311, §201(3), redesignated par. (34) as (36). Former par. (36) redesignated (38).

Pars. (37) to (48). Pub. L. 101-647, §2522(e)(1), redesignated pars. (33) to (44) as (37) to (48), respectively. Former pars. (45) to (48) redesignated (49) to (52), respectively.

Pub. L. 101-311, §201(3), redesignated pars. (35) to (46) as (37) to (48), respectively. Former pars. (47) and (48) redesignated (49) and (50), respectively.

Pars. (49), (50). Pub. L. 101-647, §2522(e)(1), redesignated pars. (45) and (46) as (49) and (50), respectively. Former pars. (49) and (50) redesignated (53) and (54) defining “stockbroker”, respectively.

Pub. L. 101-311, §201(3), redesignated pars. (47) and (48) as (49) and (50), respectively. Former pars. (49) and (50) redesignated (51) and (52), respectively.

Pub. L. 101-311, §101(2), added pars. (49) and (50). Former pars. (49) and (50) redesignated (51) and (52), respectively.

Par. (51). Pub. L. 101-647, §2522(e)(1), redesignated par. (47) as (51). Former par. (51) redesignated (55) defining “swap agreement”.

Pub. L. 101-311, §201(3), redesignated par. (49) as (51). Former par. (51) redesignated (53).

Pub. L. 101-311, §101(1), redesignated par. (49) as (51). Former par. (51) redesignated (53).

Par. (52). Pub. L. 101-647, §2522(e)(1), redesignated par. (48) as (52). Former par. (52) redesignated (56) defining “swap participant”.

Pub. L. 101-311, §201(3), redesignated par. (50) as (52). Former par. (52) redesignated (54) defining “transfer”.

Pub. L. 101-311, §101(1), redesignated par. (50) as (52). Former par. (52) redesignated (54).

Par. (53). Pub. L. 101-647, §2522(e)(1), redesignated par. (49) as (53). Former par. (53) redesignated (57) defining “timeshare plan”.

Pub. L. 101-311, §201(3), redesignated par. (51) as (53). Former par. (53) redesignated (55) defining “United States”.

Pub. L. 101-311, §101(1), redesignated par. (51) as (53). Former par. (53) redesignated (55).

Par. (54). Pub. L. 101-647, §2522(e)(1), redesignated par. (50) as (54) defining “stockbroker”.

Pub. L. 101-311, §201(3), redesignated par. (52) as (54) defining “transfer”. Former par. (54) redesignated (56) defining “intellectual property”.

Pub. L. 101-311, §101(1), redesignated par. (52) as (54).

Par. (55). Pub. L. 101-647, §2522(e)(1), redesignated par. (51) as (55) defining “swap agreement”.

Pub. L. 101-311, §201(3), redesignated par. (53) as (55) defining “United States”. Former par. (55) redesignated (57) defining “mask work”.

Pub. L. 101-311, §101(1), redesignated par. (53) as (55).

Par. (56). Pub. L. 101-647, §2522(e)(1), redesignated par. (52) as (56) defining “swap participant”.

Pub. L. 101-311, §201(3), redesignated par. (54) as (56) defining “intellectual property”.

Par. (57). Pub. L. 101-647, §2522(e)(1), redesignated par. (53) as (57) defining “timeshare plan”.

Pub. L. 101-311, §201(3), redesignated par. (55) as (57) defining “mask work”.

1988—Par. (31). Pub. L. 100-597 inserted “and a municipality” after “partnership” in subpar. (A) and added subpar. (C).

Pars. (52), (53). Pub. L. 100-506 added pars. (52) and (53).

1986—Par. (14). Pub. L. 99-554, §201(1), substituted “governmental unit, and United States trustee” for “and governmental unit”.

Pars. (17), (18). Pub. L. 99-554, §251(2), (3), added pars. (17) and (18) and redesignated former pars. (17) and (18) as (19) and (20), respectively.

Par. (19). Pub. L. 99-554, §251(1), (2), redesignated former par. (17) as (19) and inserted “(except when such term appears in the term ‘family farmer’)”. Former par. (19) redesignated (21).

Pars. (20) to (25). Pub. L. 99-554, §251(2), redesignated former pars. (18) to (23) as (20) to (25), respectively. Former pars. (24) and (25) redesignated (26) and (27), respectively.

Par. (26). Pub. L. 99-554, §201(2), inserted “(but not a United States trustee while serving as a trustee in a case under this title)”.

Pub. L. 99-554, §251(2), redesignated former par. (24) as (26). Former par. (26) redesignated (28).

Pars. (27) to (42). Pub. L. 99-554, §251(2), redesignated former pars. (25) to (40) as (27) to (42), respectively. Former pars. (41) and (42) redesignated (43) and (44), respectively.

Par. (43). Pub. L. 99-554, §251(2), redesignated former par. (41) as (43). Former par. (43) redesignated (45).

Par. (43)(A)(xv). Pub. L. 99-554, §283(a)(1), substituted “security” for “securities”.

Pars. (44) to (50). Pub. L. 99-554, §251(2), redesignated former pars. (42) to (48) as (44) to (50), respectively. Former par. (49) redesignated (51).

Par. (51). Pub. L. 99-554, §283(a)(2), substituted a period for the semicolon at the end thereof.

Pub. L. 99-554, §251(2), redesignated former par. (49) as (51).

1984—Par. (2)(D). Pub. L. 98-353, §421(a), struck out “or all” after “business”.

Par. (8)(B). Pub. L. 98-353, §421(b), substituted a semicolon for the colon at end of subpar. (B).

Par. (9)(B). Pub. L. 98-353, §421(c), inserted reference to section 348(d).

Par. (14). Pub. L. 98-353, §421(d), inserted “and” after “trust,”.

Pars. (19) to (21). Pub. L. 98-353, §421(j)(3), (4), added par. (19) and redesignated former pars. (19), (20), and (21) as (20), (21), and (24), respectively.

Pars. (22), (23). Pub. L. 98-353, §421(j)(2), (5), added pars. (22) and (23) and redesignated former pars. (22) and (23) as (25) and (26), respectively.

Pars. (24) to (26). Pub. L. 98-353, §421(j)(2), redesignated former pars. (21) to (23) as (24) to (26), respectively. Former pars. (24) to (26) redesignated (27) to (29), respectively.

Par. (27). Pub. L. 98-353, §421(e), (j)(2), redesignated former par. (24) as (27) and substituted “stockbroker” for “stock broker”. Former par. (27) redesignated (30).

Par. (28). Pub. L. 98-353, §421(j)(2), redesignated former par. (25) as (28). Former par. (28) redesignated (31).

Par. (29). Pub. L. 98-353, §421(f), (j)(2), redesignated former par. (26) as (29) and, in subpar. (B)(ii), substituted “nonpartnership” and “(A)” for “separate” and “(A)(ii)”, respectively, wherever appearing. Former par. (29) redesignated (32).

Pars. (30) to (32). Pub. L. 98-353, §421(j)(2), redesignated former pars. (27) to (29) as (30) to (32), respectively. Former pars. (30) to (32) redesignated (33) to (35), respectively.

Par. (33). Pub. L. 98-353, §421(g), (j)(2), redesignated former par. (30) as (33) and amended definition of “person” generally, thereby inserting proviso relating to consideration of certain governmental units as persons for purposes of section 1102 of this title. Former par. (33) redesignated (36).

Par. (34). Pub. L. 98-353, §421(j)(2), redesignated former par. (31) as (34). Former par. (34) redesignated (37).

Pars. (35), (36). Pub. L. 98-353, §421(j)(2), redesignated former pars. (32) and (33) as (35) and (36), respectively. Former pars. (35) and (36), as added by Pub. L. 98-353, §391(2), redesignated (38) and (39), respectively.

Pub. L. 98-353, §391, added pars. (35) and (36), and redesignated former pars. (35) and (36) as (37) and (38) which were again redesignated as (40) and (41), respectively.

Par. (37). Pub. L. 98-353, §421(j)(2), redesignated former par. (34) as (37). Former par. (37) redesignated successively as (39) and again as (42).

Par. (38). Pub. L. 98-353, §§391(2), 421(j)(2), added par. (35) and redesignated such par. (35) as (38). Former par. (38) redesignated successively as (40) and again as (43).

Par. (39). Pub. L. 98-353, §§391(2), 421(j)(2), added par. (36) and redesignated such par. (36) as (39). Former par. (39) redesignated successively as (41) and again as (45).

Par. (40). Pub. L. 98-353, §§391(1), 421(j)(2), redesignated successively former par. (35) as (37) and again as (40). Former par. (40) redesignated successively as (42) and again as (46).

Par. (41). Pub. L. 98-353, §§391(1), 401(1), 421(h), (j)(2), redesignated successively former par. (36) as (38) and again as (41), and, in subpar. (B)(vi), substituted “certificate of a kind specified in subparagraph (A)(xii)” for “certificate specified in clause (xii) of subparagraph (A)” and substituted “required to be the subject of a registration statement” for “the subject of such registration statement”. Former par. (41) redesignated successively as (43), again as (44), and again as (48).

Par. (42). Pub. L. 98-353, §§391(1), 421(j)(2), redesignated successively former par. (37) as (39) and again as (42).

Par. (43). Pub. L. 98-353, §§391(1), 421(j)(2), redesignated successively former par. (38) as (40) and again as (43).

Pub. L. 98-353, §401, redesignated former par. (43), originally par. (41), as (44), and added another par. (43) which was redesignated (47).

Par. (44). Pub. L. 98-353, §421(j)(6), added par. (44). Former par. (44) originally was par. (41) and was redesignated successively as (43), again as (44), and again as (48).

Pars. (45), (46). Pub. L. 98-353, §§ 391(1), 421(j)(1), redesignated successively former pars. (39) and (40) as (41) and (42), and again as (45) and (46), respectively.

Par. (47). Pub. L. 98-353, §§ 401(2), 421(j)(1), added par. (43) and redesignated such par. (43) as (47).

Par. (48). Pub. L. 98-353, §§ 391(1), 401(1), 421(i), (j)(1), redesignated successively former par. (41) as (43), again as (44), and again as (48), and substituted “and foreclosure of the debtor’s equity of redemption; and” for the period at the end.

Par. (49). Pub. L. 98-353, § 421(j)(7), added par. (49).

1982—Par. (35). Pub. L. 97-222, § 1(a)(2), added par. (35). Former par. (35) redesignated (36).

Par. (36). Pub. L. 97-222, § 1(a)(1), (b), (c), redesignated par. (35) as (36) and substituted “is required to be the subject of a registration statement” for “is the subject of a registration statement” in subpar. (A)(xii) and substituted “forward contract” for “forward commodity contract” in subpar. (B)(iii). Former par. (36) redesignated (37).

Pars. (37) to (39). Pub. L. 97-222, § 1(a)(1), redesignated pars. (36) to (38) as (37) to (39), respectively. Former par. (39) redesignated (40).

Pars. (40), (41). Pub. L. 97-222, § 1(a)(1), (d), redesignated former par. (39) as (40) and restructured its provisions by dividing the former introductory provisions into subpars. (A) and (B) and by redesignating former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (B). Former par. (40) redesignated (41).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 702 of Pub. L. 103-394 provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act [see Tables for classification] shall take effect on the date of the enactment of this Act [Oct. 22, 1994].

“(b) APPLICATION OF AMENDMENTS.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

“(2)(A) Paragraph (1) shall not apply with respect to the amendment made by section 111 [amending section 524 of this title].

“(B) The amendments made by sections 113 and 117 [amending sections 106 and 330 of this title] shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after the date of the enactment of this Act.

“(C) Section 1110 of title 11, United States Code, as amended by section 201 of this Act, shall apply with respect to any lease, as defined in such section 1110(c) as so amended, entered into in connection with a settlement of any proceeding in any case pending under title 11 of the United States Code on the date of the enactment of this Act.

“(D) The amendments made by section 305 [amending sections 1123, 1222, and 1322 of this title] shall apply only to agreements entered into after the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 3017(c) of Pub. L. 102-486 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 541 of this title] shall take effect on the date of the enactment of this Act [Oct. 24, 1992].

“(2) The amendments made by this section shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Section 12 of Pub. L. 100-597 provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 927 to 929 of this title, amending this section and sections 109, 901, 902, 922, 926, and 943 of this title, and renumbering section 927 of this title as

930] shall take effect on the date of the enactment of this Act [Nov. 3, 1988].

“(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [Nov. 3, 1988].”

Section 2 of Pub. L. 100-506 provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [amending this section and section 365 of this title] shall take effect on the date of the enactment of this Act [Oct. 18, 1988].

“(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act [Oct. 18, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by section 201 of Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 251 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554.

Amendment by section 283 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 552, formerly § 553, of title III (§§ 301-553) of Pub. L. 98-353, as renumbered by Pub. L. 98-531, § 1(2), Oct. 19, 1984, 98 Stat. 2704, provided that:

“(a) Except as otherwise provided in this section the amendments made by this title [see Tables for classification] shall become effective to cases filed 90 days after the date of enactment of this Act [July 10, 1984].

“(b) The amendments made by section 426(b) [amending section 303 of this title] shall become effective upon the date of enactment of this Act.

“(c) The amendments made by subtitle J [enacting section 1113 of this title], shall become effective as provided in section 541(c) [set out as an Effective Date note under section 1113 of this title].”

#### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-183, § 1, June 19, 1998, 112 Stat. 517, provided that: “This Act [amending sections 544, 546, 548, 707, and 1325 of this title and enacting provisions set out as notes under section 544 of this title] may be cited as the ‘Religious Liberty and Charitable Donation Protection Act of 1998.’”

#### SHORT TITLE OF 1994 AMENDMENT

Section 1(a) of Pub. L. 103-394 provided that: “This Act [see Tables for classification] may be cited as the ‘Bankruptcy Reform Act of 1994.’”

#### SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101-581, § 1, Nov. 15, 1990, 104 Stat. 2865, and section 3101 of title XXXI of Pub. L. 101-647, provided respectively that such Act and such title [amending sections 523 and 1328 of this title and enacting provisions set out as a note under section 523 of this title] may be cited as the “Criminal Victims Protection Act of 1990”.

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-334, § 1, June 16, 1988, 102 Stat. 610, provided that: “This Act [enacting section 1114 of this title, amending section 1129 of this title, enacting provisions set out as a note under section 1114 of this title, and amending and repealing provisions set out as notes under section 1106 of this title] may be cited as the ‘Retiree Benefits Bankruptcy Protection Act of 1988.’”

## SHORT TITLE OF 1984 AMENDMENT

Section 361 of subtitle C (§§ 361-363) of title III of Pub. L. 98-353 provided that: "This subtitle [amending sections 362, 365, and 541 of this title] may be cited as the 'Leasehold Management Bankruptcy Amendments Act of 1983'."

## SEPARABILITY

Section 701 of Pub. L. 103-394 provided that: "If any provision of this Act [see Tables for classification] or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby."

Section 551 of title III (§§ 301-553) of Pub. L. 98-353 provided that: "If any provision of this title or any amendment made by this title [see Tables for classification], or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby."

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 362, 546 of this title; title 7 section 6; title 12 sections 1787, 1821; title 15 sections 78eee, 78fff-1; title 28 section 1930; title 33 section 2716; title 42 section 656.

**§ 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;

(8) a definition, contained 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; and

(9) "United States trustee" includes a designee of the United States trustee.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2554; Pub. L. 98-353, title III, § 422, July 10, 1984, 98 Stat. 369; Pub. L. 99-554, title II, § 202, Oct. 27, 1986, 100 Stat. 3097.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are

not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code. For example, the phrase "on request of a party in interest" or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting sua sponte. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

Although "property" is not construed in this section, it is used consistently throughout the code in its broadest sense, including cash, all interests in property, such as liens, and every kind of consideration including promises to act or forbear to act as in section 548(d).

Section 102(1) expands on a rule of construction contained in H.R. 8200 as passed by the House and in the Senate amendment. The phrase "after notice and a hearing", or a similar phrase, is intended to be construed according to the particular proceeding to mean after such notice as is appropriate in the particular circumstances, and such opportunity, if any, for a hearing as is appropriate in the particular circumstances. If a provision of title 11 authorizes an act to be taken "after notice and a hearing" this means that if appropriate notice is given and no party to whom such notice is sent timely requests a hearing, then the act sought to be taken may be taken without an actual hearing.

In very limited emergency circumstances, there will be insufficient time for a hearing to be commenced before an action must be taken. The action sought to be taken may be taken if authorized by the court at an ex parte hearing of which a record is made in open court. A full hearing after the fact will be available in such an instance.

In some circumstances, such as under section 1128, the bill requires a hearing and the court may act only after a hearing is held. In those circumstances the judge will receive evidence before ruling. In other circumstances, the court may take action "after notice and a hearing," if no party in interest requests a hearing. In that event a court order authorizing the action to be taken is not necessary as the ultimate action taken by the court implies such an authorization.

Section 102(8) is new. It contains a rule of construction indicating that a definition contained in a section in title 11 that refers to another section of title 11 does not, for the purposes of such reference, take the meaning of a term used in the other section. For example, section 522(a)(2) defines "value" for the purposes of section 522. Section 548(d)(2) defines "value" for purposes of section 548. When section 548 is incorporated by reference in section 522, this rule of construction makes clear that the definition of "value" in section 548 governs its meaning in section 522 notwithstanding a different definition of "value" in section 522(a)(2).

## SENATE REPORT NO. 95-989

Section 102 provides seven rules of construction. Some are derived from current law; others are derived from 1 U.S.C. 1; a few are new. They apply generally throughout proposed title 11. These are terms that are not appropriate for definition, but that require an explanation.

Paragraph (1) defines the concept of "after notice and a hearing." The concept is central to the bill and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after such notice as is appropriate in the particular circumstances (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceedings), and such opportunity for a hearing as is appropriate in the particular circumstances. Thus, a hearing will not be necessary in every instance. If there is no objection to the proposed action, the action may go ahead without court action. This is a significant change from present law, which requires the affirma-

tive approval of the bankruptcy judge for almost every action. The change will permit the bankruptcy judge to stay removed from the administration of the bankruptcy or reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection. The phrase “such opportunity for a hearing as is appropriate in the particular circumstances” is designed to permit the Rules and the courts to expedite or dispense with hearings when speed is essential. The language “or similar phrase” is intended to cover the few instances in the bill where “after notice and a hearing” is interrupted by another phrase, such as “after notice to the debtor and a hearing.”

Paragraph (2) specifies that “claim against the debtor” includes claim against property of the debtor. This paragraph is intended to cover nonrecourse loan agreements where the creditor’s only rights are against property of the debtor, and not against the debtor personally. Thus, such an agreement would give rise to a claim that would be treated as a claim against the debtor personally, for the purposes of the bankruptcy code.

Paragraph (3) is a codification of *American Surety Co. v. Marotta*, 287 U.S. 513 (1933). It specifies that “includes” and “including” are not limiting.

Paragraph (4) specifies that “may not” is prohibitive and not permissive (such as in “might not”).

Paragraph (5) specifies that “or” is not exclusive. Thus, if a party “may do (a) or (b)”, then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

Paragraph (6) makes clear that “order for relief” means entry of an order for relief. If the court orally orders relief, but the order is not entered until a later time, then any time measurements in the bill are from entry, not from the oral order. In a voluntary case, the entry of the order for relief is the filing of the petition commencing the voluntary case.

Paragraph (7) specifies that the singular includes the plural. The plural, however, generally does not include the singular. The bill uses only the singular, even when the item in question most often is found in plural quantities, in order to avoid the confusion possible if both rules of construction applied. When an item is specified in the plural, the plural is intended.

#### AMENDMENTS

1986—Par. (9). Pub. L. 99-554 added par. (9).

1984—Par. (8). Pub. L. 98-353 substituted “contained” for “continued”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

### § 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, 12, 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 stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) SCOPE OF APPLICATION.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) 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.

(g) 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.

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

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

(j) Chapter 12 of this title applies only in a case under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 97-222, §2, July 27, 1982, 96 Stat. 235; Pub. L. 98-353, title III, §423, July 10, 1984, 98 Stat. 369; Pub. L. 99-554, title II, §252, Oct. 27, 1986, 100 Stat. 3104; Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.)

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

Section 103 prescribes which chapters of the proposed bankruptcy code apply in various cases. All cases, other than cases ancillary to foreign proceedings, are filed under chapter 7, 9, 11, or 13, the operative chapters of the proposed bankruptcy code. The general provisions that apply no matter which chapter a case is filed under are found in chapters 1, 3, and 5. Subsection (a) makes this explicit, with an exception for chapter 9. The other provisions, which are self-explanatory, provide the special rules for Stockbroker Liquidations, Commodity Broker Liquidations, Municipal Debt Adjustments, and Railroad Reorganizations.

#### REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (e), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (e), is classified to section 4422 of Title 12, Banks and Banking.

#### AMENDMENTS

2000—Subsecs. (e) to (j). Pub. L. 106-554 added subsec. (e) and redesignated former subsecs. (e) to (i) as (f) to (j), respectively.

1986—Subsec. (a). Pub. L. 99-554, §252(1), inserted reference to chapter 12.

Subsec. (i). Pub. L. 99-554, §252(2), added subsec. (i).

1984—Subsec. (c). Pub. L. 98-353 substituted “stockbroker” for “stockholder”.

1982—Subsec. (d). Pub. L. 97-222 struck out “except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant” after “concerning a commodity broker”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced

under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 902, 943 of this title.

§ 104. Adjustment of dollar amounts

(a) 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.

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) of this title.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 103-394, title I, §108(e), Oct. 22, 1994, 108 Stat. 4112.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 104 represents a compromise between the House bill and the Senate amendment with respect to the adjustment of dollar amounts in title 11. The House amendment authorizes the Judicial Conference of the United States to transmit a recommendation for the uniform percentage of adjustment for each dollar amount in title 11 and in 28 U.S.C. 1930 to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year thereafter. The requirement in the House bill that each such recommendation be based only on any change in the cost-of-living increase during the period immediately preceding the recommendation is deleted.

SENATE REPORT NO. 95-989

This section requires that the Director of the Administrative Office of the U. S. Courts report to Congress and the President before Oct. 1, 1985, and before May 1 every 6 years thereafter a recommendation for adjustment in dollar amounts found in this title. The Committee feels that regular adjustment of the dollar

amounts by the Director will conserve congressional time and yet assure that the relative dollar amounts used in the bill are maintained. Changes in the cost of living should be a significant, but not necessarily the only, factor considered by the Director. The fact that there has been an increase in the cost of living does not necessarily mean that an adjustment of dollar amounts would be needed or warranted.

HOUSE REPORT NO. 95-595

This section requires the Judicial Conference to report to the Congress every four years after the effective date of the bankruptcy code any changes that have occurred in the cost of living during the preceding four years, and the appropriate adjustments to the dollar amounts in the bill. The dollar amounts are found primarily in the exemption section (11 U.S.C. 522), the wage priority (11 U.S.C. 507), and the eligibility for chapter 13 (11 U.S.C. 109). This section requires that the Conference recommend uniform percentage changes in these amounts based solely on cost of living changes. The dollar amounts in the bill would not change on that recommendation, absent Congressional veto. Instead, Congress is required to take affirmative action, by passing a law amending the appropriate section, if it wishes to accomplish the change.

If the Judicial Conference has policy recommendations concerning the appropriate dollar amounts in the bankruptcy code based other than on cost of living considerations there are adequate channels through which it may communicate its views. This section is solely for the housekeeping function of maintaining the dollar amounts in the code at fairly constant real dollar levels.

AMENDMENTS

1994—Pub. L. 103-394 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (a) of this section is listed on page 12), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

ADJUSTMENT OF DOLLAR AMOUNTS

By notice dated Feb. 3, 1998, 63 F.R. 7179, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 1998, as follows:

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
Section 109(e)—allowable debt limits for filing bankruptcy under Chapter 13.	\$250,000 (each time it appears). 750,000 (each time it appears).	\$269,250 (each time it appears). 807,750 (each time it appears).
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary bankruptcy:		
(1)—in paragraph (1) .....	10,000 .....	10,775.
(2)—in paragraph (2) .....	10,000 .....	10,775.
Section 507(a)—priority claims:		
(1)—in paragraph (3) .....	4,000 .....	4,300.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
(2)—in paragraph (4)(B)(i) .....	4,000 .....	4,300.
(3)—in paragraph (5) .....	4,000 .....	4,300.
(4)—in paragraph (6) .....	1,800 .....	1,950.
Section 522(d)—value of property exemptions allowed to the debtor:		
(1)—in paragraph (1) .....	15,000 .....	16,150.
(2)—in paragraph (2) .....	2,400 .....	2,575.
(3)—in paragraph (3) .....	400 .....	425.
	8,000 .....	8,625.
(4)—in paragraph (4) .....	1,000 .....	1,075.
(5)—in paragraph (5) .....	800 .....	850.
	7,500 .....	8,075.
(6)—in paragraph (6) .....	1,500 .....	1,625.
(7)—in paragraph (8) .....	8,000 .....	8,625.
(8)—in paragraph (11)(D) .....	15,000 .....	16,150.
Section 523(a)(2)(C)—“luxury goods and services” or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable.	1,000 (each time it appears).	1,075 (each time it appears).

**§ 105. Power of court**

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

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

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, may—

(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 98-353, title I, §118, July 10, 1984, 98 Stat. 344; Pub. L. 99-554, title II, §203, Oct. 27, 1986, 100 Stat. 3097; Pub. L. 103-394, title I, §104(a), Oct. 22, 1994, 108 Stat. 4108.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

Section 105 is derived from section 2a (15) of present law [section 11(a)(15) of former title 11], with two changes. First, the limitation on the power of a bankruptcy judge (the power to enjoin a court being reserved to the district judge) is removed as inconsistent with the increased powers and jurisdiction of the new bankruptcy court. Second, the bankruptcy judge is prohibited from appointing a receiver in a case under title 11 under any circumstances. The bankruptcy code has ample provision for the appointment of a trustee when needed. Appointment of a receiver would simply circumvent the established procedures.

This section is also an authorization, as required under 28 U.S.C. 2283, for a court of the United States to stay the action of a State court. As such, *Toucey v. New York Life Insurance Company*, 314 U.S. 118 (1941), is overruled.

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (d)(2), are set out in the Appendix to this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103-394 added subsec. (d).

1986—Subsec. (a). Pub. L. 99-554 inserted at end “No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

1984—Subsecs. (a), (b). Pub. L. 98-353, §118(1), struck out “bankruptcy” before “court”.

Subsec. (c). Pub. L. 98-353, §118(2), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title; title 26 section 7433.

### § 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate non-bankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 103-394, title I, § 113, Oct. 22, 1994, 108 Stat. 4117.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 106(c) relating to sovereign immunity is new. The provision indicates that the use of the term "creditor," "entity," or "governmental unit" in title 11 applies to governmental units notwithstanding any assertion of sovereign immunity and that an order of the court binds governmental units. The provision is included to comply with the requirement in case law that an express waiver of sovereign immunity is required in order to be effective. Section 106(c) codifies *In re Gwilliam*, 519 F.2d 407 (9th Cir., 1975), and *In re Dolard*, 519 F.2d 282 (9th Cir., 1975), permitting the bankruptcy court to determine the amount and dischargeability of tax liabilities owing by the debtor or the estate prior to or during a bankruptcy case whether or not the governmental unit to which such taxes are owed files a

proof of claim. Except as provided in sections 106(a) and (b), subsection (c) is not limited to those issues, but permits the bankruptcy court to bind governmental units on other matters as well. For example, section 106(c) permits a trustee or debtor in possession to assert avoiding powers under title 11 against a governmental unit; contrary language in the House report to H.R. 8200 is thereby overruled.

#### SENATE REPORT NO. 95-989

Section 106 provides for a limited waiver of sovereign immunity in bankruptcy cases. Though Congress has the power to waive sovereign immunity for the Federal government completely in bankruptcy cases, the policy followed here is designed to achieve approximately the same result that would prevail outside of bankruptcy. Congress does not, however, have the power to waive sovereign immunity completely with respect to claims of a bankrupt estate against a State, though it may exercise its bankruptcy power through the supremacy clause to prevent or prohibit State action that is contrary to bankruptcy policy.

There is, however, a limited change from the result that would prevail in the absence of bankruptcy; the change is two-fold and is within Congress' power vis-à-vis both the Federal Government and the States. First, the filing of a proof of claim against the estate by a governmental unit is a waiver by that governmental unit of sovereign immunity with respect to compulsory counterclaims, as defined in the Federal Rules of Civil Procedure [title 28, appendix], that is, counterclaims arising out of the same transaction or occurrence. The governmental unit cannot receive a distribution from the estate without subjecting itself to any liability it has to the estate within the confines of a compulsory counterclaim rule. Any other result would be one-sided. The counterclaim by the estate against the governmental unit is without limit.

Second, the estate may offset against the allowed claim of a governmental unit, up to the amount of the governmental unit's claim, any claim that the debtor, and thus the estate, has against the governmental unit, without regard to whether the estate's claim arose out of the same transaction or occurrence as the governmental unit's claim. Under this provision, the setoff permitted is only to the extent of the governmental unit's claim. No affirmative recovery is permitted. Subsection (a) governs affirmative recovery.

Though this subsection creates a partial waiver of immunity when the governmental unit files a proof of claim, it does not waive immunity if the debtor or trustee, and not the governmental unit, files proof of a governmental unit's claim under proposed 11 U.S.C. 501(c).

This section does not confer sovereign immunity on any governmental unit that does not already have immunity. It simply recognizes any immunity that exists and prescribes the proper treatment of claims by and against that sovereign.

#### REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (a)(3), (5), are set out in the Appendix to this title.

#### AMENDMENTS

1994—Pub. L. 103-394 amended section generally. Prior to amendment, section read as follows:

"(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.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and applicable with respect to cases commenced under this title before, on, and after Oct. 22, 1994, see section 702(a), (b)(2)(B) of Pub. L. 103-394, set out as a note under section 101 of this title.

### § 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.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2556.)

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

Subsection (a) of this section makes all papers filed in a bankruptcy case and the dockets of the bankruptcy court public and open to examination at reasonable times without charge. “Docket” includes the claims docket, the proceedings docket, and all papers filed in a case.

Subsection (b) permits the court, on its own motion, and requires the court, on the request of a party in interest, to protect trade secrets, confidential research, development, or commercial information, and to protect persons against scandalous or defamatory matter.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy 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; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 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; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy 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 1201 or 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; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2556; Pub. L. 98-353, title III, §424, July 10, 1984, 98 Stat. 369; Pub. L. 99-554, title II, §257(b), Oct. 27, 1986, 100 Stat. 3114.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Extension of time: The House amendment adopts section 108(c)(1) of the Senate amendment which expressly includes any special suspensions of statutes of limitation periods on collection outside bankruptcy when assets are under the authority of a court. For example, section 6503(b) of the Internal Revenue Code [title 26] suspends collection of tax liabilities while the debtor's assets are in the control or custody of a court, and for 6 months thereafter. By adopting the language of the Senate amendment, the House amendment insures not only that the period for collection of the taxes outside bankruptcy will not expire during the title 11 proceedings, but also that such period will not expire until at least 6 months thereafter, which is the minimum suspension period provided by the Internal Revenue Code [title 26].

##### SENATE REPORT NO. 95-989

Subsections (a) and (b), derived from Bankruptcy Act section 11 [section 29 of former title 11], permit the trustee, when he steps into the shoes of the debtor, an extension of time for filing an action or doing some other act that is required to preserve the debtor's rights. Subsection (a) extends any statute of limitation for commencing or continuing an action by the debtor for two years after the date of the order for relief, unless it would expire later. Subsection (b) gives the trustee 60 days to take other actions not covered under subsection (a), such as filing a pleading, demand, notice, or proof of claim or loss (such as an insurance claim), unless the period for doing the relevant act expires later than 60 days after the date of the order for relief.

Subsection (c) extends the statute of limitations for creditors. Thus, if a creditor is stayed from commencing or continuing an action against the debtor because of the bankruptcy case, then the creditor is permitted an additional 30 days after notice of the event by which the stay is terminated, whether that event be relief from the automatic stay under proposed 11 U.S.C. 362 or 1301, the closing of the bankruptcy case (which terminates the stay), or the exception from discharge of the debts on which the creditor claims.

In the case of Federal tax liabilities, the Internal Revenue Code [title 26] suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec. 6503(b) of the Code [title 26]). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings.

#### AMENDMENTS

1986—Subsec. (b). Pub. L. 99-554, §257(b)(1), inserted reference to section 1201 of this title.

Subsec. (c). Pub. L. 99-554, §257(b)(2)(A), inserted reference to section 1201 of this title in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 99-554, §257(b)(2)(B), which directed the amendment of subsec. (c) by inserting "1201," after "722," was executed to par. (2) by inserting "1201," after "922," as the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98-353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-353, §424(a), substituted "or" for "and" after the semicolon.

Subsec. (b). Pub. L. 98-353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-353, §424(a), substituted "or" for "and" after the semicolon.

Subsec. (c). Pub. L. 98-353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (c)(1). Pub. L. 98-353, §424(a), substituted "or" for "and" after the semicolon.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides 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, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under subsection (c) or (d)<sup>1</sup> of section 301 of

the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; 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 specifically authorized, in its capacity as a municipality or by name, 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;

(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 transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 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 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000, 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 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title.

<sup>1</sup> See References in Text note below.

(f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2557; Pub. L. 97-320, title VII, §703(d), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 98-353, title III, §§301, 425, July 10, 1984, 98 Stat. 352, 369; Pub. L. 99-554, title II, §253, Oct. 27, 1986, 100 Stat. 3105; Pub. L. 100-597, §2, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 103-394, title I, §108(a), title II, §220, title IV, §402, title V, §501(d)(2), Oct. 22, 1994, 108 Stat. 4111, 4129, 4141, 4143; Pub. L. 106-554, §1(a)(5) [title I, §112(c)(1), (2)], §1(a)(8) [§1(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-393, 2763A-665.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 109(b) of the House amendment adopts a provision contained in H.R. 8200 as passed by the House. Railroad liquidations will occur under chapter 11, not chapter 7.

Section 109(c) contains a provision which tracks the Senate amendment as to when a municipality may be a debtor under chapter 11 of title 11. As under the Bankruptcy Act [former title 11], State law authorization and prepetition negotiation efforts are required.

Section 109(e) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment relating to the dollar amounts restricting eligibility to be a debtor under chapter 13 of title 11. The House amendment adheres to the limit of \$100,000 placed on unsecured debts in H.R. 8200 as passed by the House. It adopts a midpoint of \$350,000 as a limit on secured claims, a compromise between the level of \$500,000 in H.R. 8200 as passed by the House and \$200,000 as contained in the Senate amendment.

##### SENATE REPORT NO. 95-989

This section specifies eligibility to be a debtor under the bankruptcy laws. The first criterion, found in the current Bankruptcy Act section 2a(1) [section 11(a)(1) of former title 11] requires that the debtor reside or have a domicile, a place of business, or property in the United States.

Subsection (b) defines eligibility for liquidation under chapter 7. All persons are eligible except insurance companies, and certain banking institutions. These exclusions are contained in current law. However, the banking institution exception is expanded in light of changes in various banking laws since the current law was last amended on this point. A change is also made to clarify that the bankruptcy laws cover foreign banks and insurance companies not engaged in the banking or insurance business in the United States but having assets in the United States. Banking institutions and insurance companies engaged in business in this country are excluded from liquidation under the bankruptcy laws because they are bodies for which alternate provision is made for their liquidation under various State or Federal regulatory laws. Conversely, when a foreign bank or insurance company is not engaged in the banking or insurance business in the

United States, then those regulatory laws do not apply, and the bankruptcy laws are the only ones available for administration of any assets found in United States.

The first clause of subsection (b) provides that a railroad is not a debtor except where the requirements of section 1174 are met.

Subsection (c) [enacted as (d)] provides that only a person who may be a debtor under chapter 7 and a railroad may also be a debtor under chapter 11, but a stockbroker or commodity broker is eligible for relief only under chapter 7. Subsection (d) [enacted as (e)] establishes dollar limitations on the amount of indebtedness that an individual with regular income can incur and yet file under chapter 13.

##### HOUSE REPORT NO. 95-595

Subsection (c) defines eligibility for chapter 9. Only a municipality that is unable to pay its debts as they mature, and that is not prohibited by State law from proceeding under chapter 9, is permitted to be a chapter 9 debtor. The subsection is derived from Bankruptcy Act §84 [section 404 of former title 11], with two changes. First, section 84 requires that the municipality be "generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition." The "generally authorized" language is unclear, and has generated a problem for a Colorado Metropolitan District that attempted to use chapter IX [chapter 9 of former title 11] in 1976. The "not prohibited" language provides flexibility for both the States and the municipalities involved, while protecting State sovereignty as required by *Ashton v. Cameron County Water District No. 1*, 298 U.S. 513 (1936) [56 S.Ct. 892, 80 L.Ed. 1309, 31 Am.Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *Bekins v. United States*, 304 U.S. 27 (1938) [58 S.Ct. 811, 82 L.Ed. 1137, 36 Am.Bankr.Rep.N.S. 187, rehearing denied 58 S.Ct. 1043, 1044, 304 U.S. 589, 82 L.Ed. 1549].

The second change deletes the four prerequisites to filing found in section 84 [section 404 of former title 11]. The prerequisites require the municipality to have worked out a plan in advance, to have attempted to work out a plan without success, to fear that a creditor will attempt to obtain a preference, or to allege that prior negotiation is impracticable. The loopholes in those prerequisites are larger than the requirement itself. It was a compromise from pre-1976 chapter IX [chapter 9 of former title 11] under which a municipality could file only if it had worked out an adjustment plan in advance. In the meantime, chapter IX protection was unavailable. There was some controversy at the time of the enactment of current chapter IX concerning deletion of the pre-negotiation requirement. It was argued that deletion would lead to a rash of municipal bankruptcies. The prerequisites now contained in section 84 were inserted to assuage that fear. They are largely cosmetic and precatory, however, and do not offer any significant deterrent to use of chapter IX. Instead, other factors, such as a general reluctance on the part of any debtor, especially a municipality, to use the bankruptcy laws, operates as a much more effective deterrent against capricious use.

Subsection (d) permits a person that may proceed under chapter 7 to be a debtor under chapter 11, Reorganization, with two exceptions. Railroads, which are excluded from chapter 7, are permitted to proceed under chapter 11. Stockbrokers and commodity brokers, which are permitted to be debtors under chapter 7, are excluded from chapter 11. The special rules for treatment of customer accounts that are the essence of stockbroker and commodity broker liquidations are available only in chapter 7. Customers would be unprotected under chapter 11. The special protective rules are unavailable in chapter 11 because their complexity would make reorganization very difficult at best, and unintelligible at worst. The variety of options available in reorganization cases make it extremely difficult to reorganize and continue to provide the special customer protection necessary in these cases.

Subsection (e) specifies eligibility for chapter 13, Adjustment of Debts of an Individual with Regular Income. An individual with regular income, or an individual with regular income and the individual's spouse, may proceed under chapter 13. As noted in connection with the definition of the term "individual with regular income", this represents a significant departure from current law. The change might have been too great, however, without some limitation. Thus, the debtor (or the debtor and spouse) must have unsecured debts that aggregate less than \$100,000, and secured debts that aggregate less than \$500,000. These figures will permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13. It does not create a presumption that any sole proprietor within that range is better off in chapter 13 than chapter 11. The conversion rules found in section 1307 will govern the appropriateness of the two chapters for any particular individual. The figures merely set maximum limits.

Whether a small business operated by a husband and wife, the so-called "mom and pop grocery store," will be a partnership and thus excluded from chapter 13, or a business owned by an individual, will have to be determined on the facts of each case. Even if partnership papers have not been filed, for example, the issue will be whether the assets of the grocery store are for the benefit of all creditors of the debtor or only for business creditors, and whether such assets may be the subject of a chapter 13 proceeding. The intent of the section is to follow current law that a partnership by estoppel may be adjudicated in bankruptcy and therefore would not prevent a chapter 13 debtor from subjecting assets in such a partnership to the reach of all creditors in a chapter 13 case. However, if the partnership is found to be a partnership by agreement, even informal agreement, than a separate entity exists and the assets of that entity would be exempt from a case under chapter 13.

#### REFERENCES IN TEXT

Section 351 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is classified to section 689 of Title 15, Commerce and Trade.

Section 301 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is classified to section 681 of Title 15, Commerce and Trade. Subsec. (d) of section 301 was repealed by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

Section 3(h) of the Federal Deposit Insurance Act, referred to in subsec. (b)(2), is classified to section 1813(h) of Title 12, Banks and Banking.

Section 25A of the Federal Reserve Act, referred to in subsecs. (b)(2) and (d), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsecs. (b)(2) and (d), is classified to section 4422 of Title 12, Banks and Banking.

#### AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106-554, §1(a)(8) [§1(e)], inserted "a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958," after "homestead association,".

Pub. L. 106-554, §1(a)(5) [title I, §112(c)(1)], substituted " , except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or" for " ; or".

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(2)], amended subsec. (d) generally. Prior to amendment,

subsec. (d) read as follows: "Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title."

1994—Subsec. (b)(2). Pub. L. 103-394, §§220, 501(d)(2), inserted "a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958," after "homestead association," and struck out "(12 U.S.C. 1813(h))" after "Insurance Act".

Subsec. (c)(2). Pub. L. 103-394, §402, substituted "specifically authorized, in its capacity as a municipality or by name," for "generally authorized".

Subsec. (e). Pub. L. 103-394, §108(a), substituted "\$250,000" and "\$750,000" for "\$100,000" and "\$350,000", respectively, in two places.

1988—Subsec. (c)(3). Pub. L. 100-597 struck out "or unable to meet such entity's debts as such debts mature" after "insolvent".

1986—Subsec. (f). Pub. L. 99-554, §253(1)(B), (2), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 99-554, §253(1), redesignated former subsec. (f) as (g) and inserted reference to family farmer.

1984—Subsec. (a). Pub. L. 98-353, §425(a), struck out "in the United States," after "only a person that resides".

Subsec. (c)(5)(D). Pub. L. 98-353, §425(b), substituted "transfer that is avoidable under section 547 of this title" for "preference".

Subsec. (d). Pub. L. 98-353, §425(c), substituted "stockbroker" for "stockholder".

Subsec. (f). Pub. L. 98-353, §301, added subsec. (f).

1982—Subsec. (b)(2). Pub. L. 97-320 inserted reference to industrial banks or similar institutions which are insured banks as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### ADJUSTMENT OF DOLLAR AMOUNTS

For adjustment of dollar amounts specified in subsec. (e) of this section by the Judicial Conference of the United States, effective Apr. 1, 1998, see note set out under section 104 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 349, 921 of this title.

### § 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

(2) “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer’s signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor’s signature, furnish to the debtor a copy of the document.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).

(f)(1) A bankruptcy petition preparer shall not use the word “legal” or any similar term in any advertisements, or advertise under any category that includes the word “legal” or any similar term.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor

may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor’s actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer’s services; and

(C) reasonable attorneys’ fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys’ fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer’s experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent

such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's<sup>1</sup> fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

(Added Pub. L. 103-394, title III, § 308(a), Oct. 22, 1994, 108 Stat. 4135.)

#### REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (i)(1), are set out in the Appendix to this title.

#### EFFECTIVE DATE

Section effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as an Effective Date of 1994 Amendment note under section 101 of this title.

### CHAPTER 3—CASE ADMINISTRATION

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303.	Involuntary cases.
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<sup>1</sup> So in original. Probably should be "attorneys".

Sec.	
366.	Utility service.

#### AMENDMENTS

1986—Pub. L. 99-554, title II, § 205(b), Oct. 27, 1986, 100 Stat. 3098, added item 307.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 782 of this title; title 15 section 78ff.

#### 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.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Sections 301, 302, 303, and 304 are all modified in the House amendment to adopt an idea contained in sections 301 and 303 of the Senate amendment requiring a petition commencing a case to be filed with the bankruptcy court. The exception contained in section 301 of the Senate bill relating to cases filed under chapter 9 is deleted. Chapter 9 cases will be handled by a bankruptcy court as are other title 11 cases.

##### SENATE REPORT NO. 95-989

Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under this section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter. The section contains no change from current law, except for the use of the phrase "order for relief" instead of "adjudication." The term adjudication is replaced by a less pejorative phrase in light of the clear power of Congress to permit voluntary bankruptcy without the necessity for an adjudication, as under the 1898 act [former title 11], which was adopted when voluntary bankruptcy was a concept not thoroughly tested.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 365, 522, 541, 901, 921 of this title.

##### § 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.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

A joint case is a voluntary bankruptcy case concerning a wife and husband. Under current law, there is no