

contract or agreement, damages shall be measured as of the earlier of—

- (1) the date of such rejection; or
- (2) the date or dates of such liquidation, termination, or acceleration.

(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.

(Added Pub. L. 109–8, title IX, §910(a)(1), Apr. 20, 2005, 119 Stat. 184.)

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.	
701.	Interim trustee.
702.	Election of trustee.
703.	Successor trustee.
704.	Duties of trustee.
705.	Creditors' committee.
706.	Conversion.
707.	Dismissal of a case or conversion to a case under chapter 11 or 13.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

721.	Authorization to operate business.
722.	Redemption.
723.	Rights of partnership trustee against general partners.
724.	Treatment of certain liens.
725.	Disposition of certain property.
726.	Distribution of property of the estate.
727.	Discharge.
[728.]	Repealed.]

SUBCHAPTER III—STOCKBROKER LIQUIDATION

741.	Definitions for this subchapter.
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Sec.	
742.	Effect of section 362 of this title in this subchapter.
743.	Notice.
744.	Executory contracts.
745.	Treatment of accounts.
746.	Extent of customer claims.
747.	Subordination of certain customer claims.
748.	Reduction of securities to money.
749.	Voidable transfers.
750.	Distribution of securities.
751.	Customer name securities.
752.	Customer property.
753.	Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

761.	Definitions for this subchapter.
762.	Notice to the Commission and right to be heard.
763.	Treatment of accounts.
764.	Voidable transfers.
765.	Customer instructions.
766.	Treatment of customer property.
767.	Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.

SUBCHAPTER V—CLEARING BANK LIQUIDATION

781.	Definitions.
782.	Selection of trustee.
783.	Additional powers of trustee.
784.	Right to be heard.

AMENDMENTS

2005—Pub. L. 109–8, title I, §102(k), title VII, §719(b)(2), title IX, §907(p)(2), Apr. 20, 2005, 119 Stat. 35, 133, 182, added items 753 and 767, substituted “Dismissal of a case or conversion to a case under chapter 11 or 13” for “Dismissal” in item 707, and struck out item 728 “Special tax provisions”.

2000—Pub. L. 106–554, §1(a)(5) [title I, §112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–396, added subchapter V heading and items 781 to 784.

1984—Pub. L. 98–353, title III, §471, July 10, 1984, 98 Stat. 380, substituted “Successor” for “Successor” in item 703.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 701. Interim trustee

(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub. L. 99-554, title II, §215, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 701(d) of the Senate amendment. It is anticipated that the Rules of Bankruptcy Procedure will require the appointment of an interim trustee at the earliest practical moment in commodity broker bankruptcies, but no later than noon of the day after the date of the filing of the petition, due to the volatility of such cases.

SENATE REPORT NO. 95-989

This section requires the court to appoint an interim trustee. The appointment must be made from the panel of private trustees established and maintained by the Director of the Administrative Office under proposed 28 U.S.C. 604(e).

Subsection (a) requires the appointment of an interim trustee to be made promptly after the order for relief, unless a trustee is already serving in the case, such as before a conversion from a reorganization to a liquidation case.

Subsection (b) specifies that the appointment of an interim trustee expires when the permanent trustee is elected or designated under section 702.

Subsection (c) makes clear that an interim trustee is a trustee in a case under the bankruptcy code.

Subsection (d) provides that in a commodity broker case where speed is essential the interim trustee must be appointed by noon of the business day immediately following the order for relief.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554 designated existing provisions as par. (1), substituted “the United States trustee shall appoint” for “the court shall appoint”, “586(a)(1)” for “604(f)”, “that is serving” for “that was serving”, and added par. (2).

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.

§ 702. Election of trustee

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub. L. 97-222, §7, July 27, 1982, 96 Stat. 237; Pub. L. 98-353, title III, §472, July 10, 1984, 98 Stat. 380.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts section 702(a)(2) of the Senate amendment. An insubstantial equity interest does not disqualify a creditor from voting for a candidate for trustee.

SENATE REPORT NO. 95-989

Subsection (a) of this section specifies which creditors may vote for a trustee. Only a creditor that holds an allowable, undisputed, fixed, liquidated, unsecured claim that is not entitled to priority, that does not have an interest materially adverse to the interest of general unsecured creditors, and that is not an insider may vote for a trustee. The phrase “materially adverse” is currently used in the Rules of Bankruptcy Procedure, rule 207(d). The application of the standard requires a balancing of various factors, such as the nature of the adversity. A creditor with a very small equity position would not be excluded from voting solely because he holds a small equity in the debtor. The Rules of Bankruptcy Procedure also currently provide for temporary allowance of claims, and will continue to do so for the purposes of determining who is eligible to vote under this provision.

Subsection (b) permits creditors at the meeting of creditors to elect one person to serve as trustee in the case. Creditors holding at least 20 percent in amount of the claims specified in the preceding paragraph must request election before creditors may elect a trustee. Subsection (c) specifies that a candidate for trustee is elected trustee if creditors holding at least 20 percent in amount of those claims actually vote, and if the candidate receives a majority in amount of votes actually cast.

Subsection (d) specifies that if a trustee is not elected, then the interim trustee becomes the permanent trustee and serves in the case permanently.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, §472(a), inserted “held” after “meeting of creditors”.

Subsec. (c)(1). Pub. L. 98-353, §472(b)(1), inserted “of a kind” after “claims”.

Subsec. (c)(2). Pub. L. 98-353, §472(b)(2), substituted “for a trustee” for “for trustee”.

Subsec. (d). Pub. L. 98-353, §472(c), substituted “this section” for “subsection (c) of this section”.

1982—Subsec. (a)(1). Pub. L. 97-222 substituted “726(a)(4), 752(a), 766(h), or 766(i)” for “or 726(a)(4)”.

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.

§ 703. Successor trustee

(a) If a trustee dies or resigns during a case, fails to qualify under section 322 of this title, or

is removed under section 324 of this title, creditors may elect, in the manner specified in section 702 of this title, a person to fill the vacancy in the office of trustee.

(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in section 701(a).

(c) If creditors do not elect a successor trustee under subsection (a) of this section or if a trustee is needed in a case reopened under section 350 of this title, then the United States trustee—

(1) shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve as trustee in the case; or

(2) may, if none of the disinterested members of such panel is willing to serve as trustee, serve as trustee in the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub. L. 98-353, title III, § 473, July 10, 1984, 98 Stat. 381; Pub. L. 99-554, title II, § 216, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

If the office of trustee becomes vacant during the case, this section makes provision for the selection of a successor trustee. The office might become vacant through death, resignation, removal, failure to qualify under section 322 by posting bond, or the reopening of a case. If it does, creditors may elect a successor in the same manner as they may elect a trustee under the previous section. Pending the election of a successor, the court may appoint an interim trustee in the usual manner if necessary to preserve or prevent loss to the estate. If creditors do not elect a successor, or if a trustee is needed in a reopened case, then the court appoints a disinterested member of the panel of private trustees to serve.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-554 amended subsec. (b) generally, substituting “the United States trustee may appoint” for “the court may appoint” and “manner specified in section 701(a)” for “manner and subject to the provisions of section 701 of this title”.

Subsec. (c). Pub. L. 99-554 amended subsec. (c) generally, substituting “this section or” for “this section, or”, “then the United States trustee” for “then the court”, designating part of existing provisions as par. (1), and, as so designated, substituting “586(a)(1)” for “604(f)”, “in the case; or” for “in the case.”, and adding par. (2).

1984—Subsec. (b). Pub. L. 98-353 substituted “and subject to the provisions of section 701 of this title” for “specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee”.

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.

§ 704. Duties of trustee

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate’s administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)(1) With respect to a debtor who is an individual in a case under this chapter—

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor’s case would be presumed to be an abuse under section 707(b); and

(B) not later than 7 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30

days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub. L. 98-353, title III, §§311(a), 474, July 10, 1984, 98 Stat. 355, 381; Pub. L. 99-554, title II, §217, Oct. 27, 1986, 100 Stat. 3100; Pub. L. 109-8, title I, §102(c), title II, §219(a), title IV, §446(b), title XI, §1105(a), Apr. 20, 2005, 119 Stat. 32, 55, 118, 192; Pub. L. 111-16, §2(7), May 7, 2009, 123 Stat. 1607; Pub. L. 111-327, §2(a)(24), Dec. 22, 2010, 124 Stat. 3560.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 704(8) of the Senate amendment is deleted in the House amendment. Trustees should give constructive notice of the commencement of the case in the manner specified under section 549(c) of title 11.

SENATE REPORT NO. 95-989

The essential duties of the trustee are enumerated in this section. Others, or elaborations on these, may be prescribed by the Rules of Bankruptcy Procedure to the extent not inconsistent with those prescribed by this section. The duties are derived from section 47a of the Bankruptcy Act [section 75(a) of former title 11].

The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.

The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. If the business of the debtor is authorized to be operated, then the trustee is required to file with governmental units charged with the responsibility for collection or determination of any tax arising out of the operation of the business periodic reports and summaries of the operation, including a statement of receipts and disbursements, and such other information as the court requires. He is required to give constructive notice of the commencement of the case in the manner specified under section 342(b).

REFERENCES IN TEXT

Section 3 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(11), is classified to section 1002 of Title 29, Labor.

Sections 464 and 466 of the Social Security Act, referred to in subsec. (c)(1)(A)(i), are classified to sections 664 and 666, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-327 substituted “521(a)(2)(B)” for “521(2)(B)”.

2009—Subsec. (b)(1)(B). Pub. L. 111-16 substituted “7 days” for “5 days”.

2005—Pub. L. 109-8, §102(c)(1), designated existing provisions as subsec. (a).

Subsec. (a)(10). Pub. L. 109-8, §219(a)(1), added par. (10).

Subsec. (a)(11). Pub. L. 109-8, §446(b), added par. (11).

Subsec. (a)(12). Pub. L. 109-8, §1105(a), added par. (12).

Subsec. (b). Pub. L. 109-8, §102(c)(2), added subsec. (b).

Subsec. (c). Pub. L. 109-8, §219(a)(2), added subsec. (c).

1986—Par. (8). Pub. L. 99-554, §217(1), inserted “, with the United States trustee,” after “with the court” and “the United States trustee or” after “information as”.

Par. (9). Pub. L. 99-554, §217(2), inserted “with the United States trustee” after “court”.

1984—Par. (1). Pub. L. 98-353, §474, substituted “close such estate” for “close up such estate”.

Pars. (3) to (9). Pub. L. 98-353, §311(a), added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, 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 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.

§ 705. Creditors' committee

(a) At the meeting under section 341(a) of this title, creditors that may vote for a trustee under section 702(a) of this title may elect a committee of not fewer than three, and not more than eleven, creditors, each of whom holds an allowable unsecured claim of a kind entitled to distribution under section 726(a)(2) of this title.

(b) A committee elected under subsection (a) of this section may consult with the trustee or the United States trustee in connection with the administration of the estate, make recommendations to the trustee or the United States trustee respecting the performance of the trustee's duties, and submit to the court or the United States trustee any question affecting the administration of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub. L. 99-554, title II, §218, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 705(a) of the House amendment adopts a provision contained in the Senate amendment that limits a committee of creditors to not more than 11; the House bill contained no maximum limitation.

SENATE REPORT NO. 95-989

This section is derived from section 44b of the Bankruptcy Act [section 72(b) of former title 11] without substantial change. It permits election by general unsecured creditors of a committee of not fewer than 3 members and not more than 11 members to consult with the trustee in connection with the administration of the estate, to make recommendations to the trustee respecting the performance of his duties, and to submit to the court any question affecting the administration of the estate. There is no provision for compensation or reimbursement of its counsel.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-554 inserted “or the United States trustee” in three places.

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.

§ 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub. L. 99-554, title II, §257(q), Oct. 27, 1986, 100 Stat. 3115; Pub. L. 103-394, title V, §501(d)(22), Oct. 22, 1994, 108 Stat. 4146; Pub. L. 109-8, title I, §101, Apr. 20, 2005, 119 Stat. 27.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 706(a) of the House amendment adopts a provision contained in the Senate amendment indicating that a waiver of the right to convert a case under section 706(a) is unenforceable. The explicit reference in title 11 forbidding the waiver of certain rights is not intended to imply that other rights, such as the right to file a voluntary bankruptcy case under section 301, may be waived.

Section 706 of the House amendment adopts a similar provision contained in H.R. 8200 as passed by the House. Competing proposals contained in section 706(c) and section 706(d) of the Senate amendment are rejected.

SENATE REPORT NO. 95-989

Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

Subsection (b) permits the court, on request of a party in interest and after notice and a hearing, to convert the case to chapter 11 at any time. The decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest.

Subsection (c) is part of the prohibition against involuntary chapter 13 cases, and prohibits the court from converting a case to chapter 13 without the debtor's consent.

Subsection (d) reinforces section 109 by prohibiting conversion to a chapter unless the debtor is eligible to be a debtor under that chapter.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109-8 inserted “or consents to” after “requests”.

1994—Subsec. (a). Pub. L. 103-394 substituted “1208, or 1307” for “1307, or 1208”.

1986—Subsec. (a). Pub. L. 99-554, §257(q)(1), inserted references to chapter 12 and section 1208 of this title.

Subsec. (c). Pub. L. 99-554, §257(q)(2), inserted reference to chapter 12.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

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

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.

§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or

(II) \$10,000.

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 302 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the

Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the filing of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims, or \$6,000, whichever is greater; or

(II) \$10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing—

(i) if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

(I) on active duty (as defined in section 101(d)(1) of title 10); or

(II) performing a homeland defense activity (as defined in section 901(1) of title 32); or

(ii) with respect to the debtor, while the debtor is—

(I) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

(II) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days;

if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

(i) the court does not grant the motion; and

(ii) the court finds that—

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than \$1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph—

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that—

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury—

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)(1) In this subsection—

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub. L. 98-353, title III, §§312, 475, July 10, 1984, 98 Stat. 355, 381; Pub. L. 99-554, title II, §219, Oct. 27, 1986,

100 Stat. 3100; Pub. L. 105-183, §4(b), June 19, 1998, 112 Stat. 518; Pub. L. 109-8, title I, §102(a), (f), Apr. 20, 2005, 119 Stat. 27, 33; Pub. L. 110-438, §2, Oct. 20, 2008, 122 Stat. 5000; Pub. L. 111-320, title II, §202(a), Dec. 20, 2010, 124 Stat. 3509; Pub. L. 111-327, §2(a)(25), Dec. 22, 2010, 124 Stat. 3560.)

ADJUSTMENT OF DOLLAR AMOUNTS

For adjustment of certain dollar amounts specified in this section, that is not reflected in text, see Adjustment of Dollar Amounts note below.

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 707 of the House amendment indicates that the court may dismiss a case only after notice and a hearing.

SENATE REPORT NO. 95-989

This section authorizes the court to dismiss a liquidation case only for cause, such as unreasonable delay by the debtor that is prejudicial to creditors or nonpayment of any fees and charges required under chapter 123 [§1911 et seq.] of title 28. These causes are not exhaustive, but merely illustrative. The section does not contemplate, however, that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy.

REFERENCES IN TEXT

Section 302 of the Family Violence Prevention and Services Act, referred to in subsec. (b)(2)(A)(ii)(I), is classified to section 10402 of Title 42, The Public Health and Welfare.

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b)(4)(A), (B), (5)(A), are set out in the Appendix to this title.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-327, §2(a)(25)(A), substituted “521(a)” for “521”.

Subsec. (b)(2)(A)(ii)(I). Pub. L. 111-320 substituted “section 302 of the Family Violence Prevention and Services Act” for “section 309 of the Family Violence Prevention and Services Act”.

Subsec. (b)(2)(A)(iii)(I). Pub. L. 111-327, §2(a)(25)(B)(i), inserted “of the filing” after “date”.

Subsec. (b)(3). Pub. L. 111-327, §2(a)(25)(B)(ii), substituted “paragraph (2)(A)(i)” for “subparagraph (A)(i) of such paragraph” in introductory provisions.

2008—Subsec. (b)(2)(D). Pub. L. 110-438 substituted “testing—” for “testing,” in introductory provisions, inserted cl. (i) designation before “if the debtor”, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added cl. (ii).

2005—Pub. L. 109-8, §102(a)(1), substituted “Dismissal of a case or conversion to a case under chapter 11 or 13” for “Dismissal” in section catchline.

Subsec. (b). Pub. L. 109-8, §102(a)(2), designated existing provisions as par. (1), substituted “trustee (or bankruptcy administrator, if any), or” for “but not at the request or suggestion of” and “an abuse” for “a substantial abuse”, inserted “, or, with the debtor’s consent, convert such a case to a case under chapter 11 or 13 of this title,” after “consumer debts”, struck out “There shall be a presumption in favor of granting the relief requested by the debtor.” before “In making”, and added pars. (2) to (7).

Subsec. (c). Pub. L. 109-8, §102(f), added subsec. (c).

1998—Subsec. (b). Pub. L. 105-183 inserted at end “In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to

make, charitable contributions (that meet the definition of ‘charitable contribution’ under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).”

1986—Subsec. (a)(3). Pub. L. 99-554, §219(a), added par. (3).

Subsec. (b). Pub. L. 99-554, §219(b), substituted “motion or on a motion by the United States trustee, but” for “motion and”.

1984—Pub. L. 98-353 designated existing provisions as subsec. (a) and in pars. (1) and (2) substituted “or” for “and”, and added subsec. (b).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-438, §4, Oct. 20, 2008, 122 Stat. 5002, as amended by Pub. L. 112-64, §2, Dec. 13, 2011, 125 Stat. 766, provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act [amending this section and enacting provisions set out as a note under section 101 of this title] and the amendments made by this Act shall take effect 60 days after the date of enactment of this Act [Oct. 20, 2008].

“(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act [amending this section] shall apply only with respect to cases commenced under title 11 of the United States Code in the 7-year period beginning on the effective date of this Act.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-183 applicable to any case brought under an applicable provision of this title that is pending or commenced on or after June 19, 1998, see section 5 of Pub. L. 105-183, set out as a note under section 544 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 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.

SCHEDULES OF REASONABLE AND NECESSARY EXPENSES

Pub. L. 109-8, title I, §107, Apr. 20, 2005, 119 Stat. 42, provided that: “For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act [Apr. 20, 2005], issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.”

ADJUSTMENT OF DOLLAR AMOUNTS

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of this title as follows:

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (b)(2)(A)(i)(I), dollar amount “6,575” was adjusted to “7,025”; in subsec. (b)(2)(A)(i)(II), dollar amount “10,950” was adjusted to “11,725”; in subsec. (b)(2)(A)(ii)(IV), dollar amount “1,650” was adjusted to “1,775”; in subsec.

(b)(2)(B)(iv)(I), dollar amount “6,575” was adjusted to “7,025”; in subsec. (b)(2)(B)(iv)(II), dollar amount “10,950” was adjusted to “11,725”; in subsec. (b)(5)(B), dollar amount “1,100” was adjusted to “1,175”; in subsec. (b)(6)(C), dollar amount “575” was adjusted to “625”; and, in subsec. (b)(7)(A)(iii), dollar amount “575” was adjusted to “625”. See notice of the Judicial Conference of the United States set out as a note under section 104 of this title.

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in subsec. (b)(2)(A)(i)(I), dollar amount “6,000” was adjusted to “6,575”; in subsec. (b)(2)(A)(i)(II), dollar amount “10,000” was adjusted to “10,950”; in subsec. (b)(2)(A)(ii)(IV), dollar amount “1,500” was adjusted to “1,650”; in subsec. (b)(5)(B), dollar amount “1,000” was adjusted to “1,100”; in subsec. (b)(6)(C), dollar amount “525” was adjusted to “575”; and, in subsec. (b)(7)(A), dollar amount “525” was adjusted to “575”.

RULES PROMULGATED BY SUPREME COURT

United States Supreme Court to prescribe general rules implementing the practice and procedure to be followed under subsec. (b) of this section, with section 2075 of Title 28, Judiciary and Judicial Procedure, to apply with respect to such general rules, see section 320 of Pub. L. 98-353, set out as a note under section 2075 of Title 28.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

§ 721. Authorization to operate business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2606.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

This section is derived from section 2a(5) of the Bankruptcy Act [section 11(a)(5) of former title 11]. It permits the court to authorize the operation of any business of the debtor for a limited period, if the operation is in the best interest of the estate and consistent with orderly liquidation of the estate. An example is the operation of a watch company to convert watch movements and cases into completed watches which will bring much higher prices than the component parts would have brought.

§ 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub. L. 109-8, title III, §304(2), Apr. 20, 2005, 119 Stat. 79.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 722 of the House amendment adopts the position taken in H.R. 8200 as passed by the House and re-

jects the alternative contained in section 722 of the Senate amendment.

SENATE REPORT NO. 95-989

This section is new and is broader than rights of redemption under the Uniform Commercial Code. It authorizes an individual debtor to redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a nonpurchase money dischargeable consumer debt. It applies only if the debtor's interest in the property is exempt or has been abandoned.

This right to redeem is a very substantial change from current law. To prevent abuses such as may occur when the debtor deliberately allows the property to depreciate in value, the debtor will be required to pay the fair market value of the goods or the amount of the claim if the claim is less. The right is personal to the debtor and not assignable.

HOUSE REPORT NO. 95-595

This section is new and is broader than rights of redemption under the Uniform Commercial Code. It authorizes an individual debtor to redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt. It applies only if the debtor's interest in the property is exempt or has been abandoned.

The right to redeem extends to the whole of the property, not just the debtor's exempt interest in it. Thus, for example, if a debtor owned a \$2,000 car, subject to a \$1,200 lien, the debtor could exempt his \$800 interest in the car. The debtor is permitted a \$1,500 exemption in a car, proposed 11 U.S.C. 522(d)(2). This section permits him to pay the holder of the lien \$1,200 and redeem the entire car, not just the remaining \$700 of his exemption. The redemption is accomplished by paying the holder of the lien the amount of the allowed claim secured by the lien. The provision amounts to a right of first refusal for the debtor in consumer goods that might otherwise be repossessed. The right of redemption under this section is not waivable.

AMENDMENTS

2005—Pub. L. 109-8 inserted “in full at the time of redemption” before period at end.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

§ 723. Rights of partnership trustee against general partners

(a) If there is a deficiency of property of the estate to pay in full all claims which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency.

(b) To the extent practicable, the trustee shall first seek recovery of such deficiency from any general partner in such partnership that is not a debtor in a case under this title. Pending determination of such deficiency, the court may order any such partner to provide the estate with indemnity for, or assurance of payment of, any deficiency recoverable from such partner, or not to dispose of property.

(c) The trustee has a claim against the estate of each general partner in such partnership that