

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2644.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1174 of the House amendment represents a compromise between the House bill and Senate amendment on the issue of liquidation of a railroad. The provision permits a party in interest at any time to request liquidation. In addition, if a plan has not been confirmed under section 1173 of the House amendment before 5 years after the date of order for relief, the court must order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of title 11. The approach differs from the conversion to chapter 7 under section 1174 of the Senate bill in order to make special provisions contained in subchapter IV of chapter 11 applicable to liquidation. However, maintaining liquidation in the context of chapter 11 is not intended to delay liquidation of the railroad to a different extent than if the case were converted to chapter 7.

Although the House amendment does not adopt provisions contained in sections 1170(1), (2), (3), or (5), of the Senate amendment such provisions are contained explicitly or implicitly in section 1123 of the House amendment.

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Section 1174 permits the court to convert the case to a liquidation under chapter 7 if the court finds that the debtor cannot be reorganized, or if various time limits specified in the subchapter are not met. Section 77 [section 205 of former title 11] does not authorize a liquidation of a railroad under the Bankruptcy Act [former title 11]. If the railroad is not reorganizable, the only action open to the court is to dismiss the petition, which would in all likelihood be followed by a State court receivership, with all of its attendant disadvantages. If reorganization is impossible, the debtor should be liquidated under the Bankruptcy Act.

**CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER OR FISHERMAN WITH REGULAR ANNUAL INCOME**

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CODIFICATION

Chapter repealed effective Oct. 1, 1998, by Pub. L. 99-554, title III, §302(f), Oct. 27, 1986, 100 Stat. 3124, as amended by Pub. L. 103-65, §1, Aug. 6, 1993, 107 Stat. 311. Chapter, as in effect on Sept. 30, 1998, reenacted for the period beginning on Oct. 1, 1998, and ending on Apr. 1, 1999, by Pub. L. 105-277, div. C, title I, §149(a), Oct. 21,

1998, 112 Stat. 2681-610. Chapter reenacted for successive periods running from Mar. 31, 1999, to July 1, 2005, by Pub. L. 105-277, div. C, title I, §149(a), Oct. 21, 1998, 112 Stat. 2681-610, as successively amended by Pub. L. 106-5, Mar. 30, 1999, 113 Stat. 9; Pub. L. 106-70, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107-8, May 11, 2001, 115 Stat. 10; Pub. L. 107-17, June 26, 2001, 115 Stat. 151; Pub. L. 107-170, May 7, 2002, 116 Stat. 133; Pub. L. 107-171, title X, §10814, May 13, 2002, 116 Stat. 532; Pub. L. 107-377, §2, Dec. 19, 2002, 116 Stat. 3115; Pub. L. 108-73, §2, Aug. 15, 2003, 117 Stat. 891; Pub. L. 108-369, §2, Oct. 25, 2004, 118 Stat. 1749. Chapter, as in effect on June 30, 2005, permanently reenacted effective July 1, 2005, by Pub. L. 109-8, title X, §1001(a), Apr. 20, 2005, 119 Stat. 185. See Repeal, Reenactment, and Termination of Chapter notes and Effective Date notes set out under section 1201 of this title.

AMENDMENTS

2005—Pub. L. 109-8, title X, §1007(c)(1), Apr. 20, 2005, 119 Stat. 188, inserted “OR FISHERMAN” after “FAMILY FARMER” in chapter heading.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

**§ 1201. Stay of action against codebtor**

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(Added and amended Pub. L. 99-554, title II, §255, title III, §302(f), Oct. 27, 1986, 100 Stat. 3105, 3124; Pub. L. 103-65, §1, Aug. 6, 1993, 107 Stat. 311; Pub. L. 105-277, div. C, title I, §149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub. L. 106-5, §1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106-70, §1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107-8, §1, May 11, 2001, 115 Stat. 10; Pub. L. 107-17, §1, June 26, 2001, 115

Stat. 151; Pub. L. 107-170, §1, May 7, 2002, 116 Stat. 133; Pub. L. 107-171, title X, §10814(a), May 13, 2002, 116 Stat. 532; Pub. L. 107-377, §2(a), Dec. 19, 2002, 116 Stat. 3115; Pub. L. 108-73, §2(a), Aug. 15, 2003, 117 Stat. 891; Pub. L. 108-369, §2(a), Oct. 25, 2004, 118 Stat. 1749; Pub. L. 109-8, title X, §1001(a)(1), (c), Apr. 20, 2005, 119 Stat. 185, 186.)

#### CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section, see note set out preceding this section.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-369, §2(b), Oct. 25, 2004, 118 Stat. 1749, provided that: “The amendments made by subsection (a) [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] are deemed to have taken effect on January 1, 2004.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-73, §2(b), Aug. 15, 2003, 117 Stat. 891, provided that: “The amendments made by subsection (a) [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] take effect on July 1, 2003.”

#### EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-377, §2(b), Dec. 19, 2002, 116 Stat. 3115, provided that: “The amendments made by subsection (a) [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on January 1, 2003.”

Pub. L. 107-171, title X, §10814(b), May 13, 2002, 116 Stat. 532, provided that: “The amendments made by subsection (a) [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on June 1, 2002.”

Pub. L. 107-170, §2, May 7, 2002, 116 Stat. 133, provided that: “The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on October 1, 2001.”

#### EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107-17, §2, June 26, 2001, 115 Stat. 151, provided that: “The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on June 1, 2001.”

Pub. L. 107-8, §2, May 11, 2001, 115 Stat. 10, provided that: “The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on July 1, 2000.”

#### EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106-70, §2, Oct. 9, 1999, 113 Stat. 1031, provided that: “The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on October 1, 1999.”

Pub. L. 106-5, §2, Mar. 30, 1999, 113 Stat. 9, provided that: “The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on April 1, 1999.”

#### EFFECTIVE DATE

Chapter 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.

#### REPEAL, REENACTMENT, AND TERMINATION OF CHAPTER

Pub. L. 109-8, title X, §1001(a), (b), Apr. 20, 2005, 119 Stat. 185, 186, provided that:

“(a) REENACTMENT.—

“(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) [set out as a note below], and as in effect on June 30, 2005, is hereby reenacted.

“(2) EFFECTIVE DATE OF REENACTMENT.—Paragraph (1) shall take effect on July 1, 2005.

“(b) AMENDMENTS—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act [see Tables for classification].”

Pub. L. 105-277, div. C, title I, §149, Oct. 21, 1998, 112 Stat. 2681-610, as amended by Pub. L. 106-5, §1, Mar. 30, 1999, 113 Stat. 9; Pub. L. 106-70, §1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107-8, §1, May 11, 2001, 115 Stat. 10; Pub. L. 107-17, §1, June 26, 2001, 115 Stat. 151; Pub. L. 107-170, §1, May 7, 2002, 116 Stat. 133; Pub. L. 107-171, title X, §10814(a), May 13, 2002, 116 Stat. 532; Pub. L. 107-377, §2(a), Dec. 19, 2002, 116 Stat. 3115; Pub. L. 108-73, §2(a), Aug. 15, 2003, 117 Stat. 891; Pub. L. 108-369, §2(a), Oct. 25, 2004, 118 Stat. 1749, provided that:

“(a) Chapter 12 of title 11 of the United States Code, as in effect on December 31, 2003, is hereby reenacted for the period beginning on January 1, 2004, and ending on July 1, 2005.

“(b) All cases commenced or pending under chapter 12 of title 11, United States Code, as reenacted under subsection (a), and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2005. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2005.”

Chapter was repealed Oct. 1, 1998, except that cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, were to be conducted and determined as if this chapter had not been repealed, and substantive rights of parties in connection with such cases, matters, and proceedings were to continue to be governed under the laws applicable to such cases, matters, and proceedings as if this chapter had not been repealed, see section 302(f) of Pub. L. 99-554, as amended, formerly set out in an Effective Date of 1986 Amendment note under section 581 of Title 28, Judiciary and Judicial Procedure.

#### § 1202. Trustee

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

(b) The trustee shall—

(1) perform the duties specified in sections 704(a)(2), 704(a)(3), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9) of this title;

(2) perform the duties specified in section 1106(a)(3) and 1106(a)(4) of this title if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

(3) appear and be heard at any hearing that concerns—