

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 923 of the House amendment represents a compromise with respect to the notice provisions contained in comparable provisions of the House bill and Senate amendment. As a general matter, title 11 leaves most procedural issues to be determined by the Rules of Bankruptcy Procedure. Section 923 of the House amendment contains certain important aspects of procedure that have been retained from present law. It is anticipated that the Rules of Bankruptcy Procedure will adopt rules similar to the present rules for chapter IX of the Bankruptcy Act [chapter 9 of former title 11].

HOUSE REPORT NO. 95-595

The notice provisions in section 923 are significantly more sparse than those provided under section 85(d) of chapter IX [section 405(d) of former title 11]. The exact contours of the notice to be given under chapter 9 are left to the Rules. Because the Rules deal with notice in a municipal case (Rule 9-14), and because section 405(d) of title IV of the bill continues those Rules in effect to the extent not inconsistent with the bill, the notice provisions of current law and Rules would continue to apply.

§ 924. List of creditors

The debtor shall file a list of creditors.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623.)

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Section 924 of the House amendment is derived from section 924 of the House bill with the location of the filing of the list of creditors to be determined by the rules of bankruptcy procedure. The detailed requirements of section 724 [probably should be "924"] of the Senate bill are anticipated to be incorporated in the rules of bankruptcy procedure.

SENATE REPORT NO. 95-989

This section adopts the provision presently contained in section 85(b) of Chapter IX [section 405(b) of former title 11]. A list of creditors, as complete and accurate as practicable, must be filed with the court.

HOUSE REPORT NO. 95-595

This section directs the debtor to file a list of creditors with the court. A comparable provision is presently contained in section 85(b) of chapter IX [section 405(b) of former title 11]. The Rules, in Rule 9-7, copy the provisions of section 85(b), with additional matter. As noted above, section 405(d) of title IV will continue those Rules in effect. Because the form, time of filing, and nature of the list, are procedural matters that may call for some flexibility, those details have been left to the Rules.

§ 925. Effect of list of claims

A proof of claim is deemed filed under section 501 of this title for any claim that appears in the list filed under section 924 of this title, except a claim that is listed as disputed, contingent, or unliquidated.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623.)

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Section 925 of the Senate amendment regarding venue and fees has been deleted.

SENATE REPORT NO. 95-989

Section 926 [enacted as section 925] follows the policy contained in section 88(a) of the present Act [section

408(a) of former title 11], though certain details are left to the Rules. The language of section 926 is the same as that of proposed 11 U.S.C. 1111, which applies in chapter 11 cases. The list of creditors filed under section 924 is given weight as prima facie evidence of the claims listed (except claims that are listed as disputed, contingent, or unliquidated), which are deemed filed under section 501, obviating the need for listed creditors to file proofs of claim.

§ 926. Avoiding powers

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623; Pub. L. 100-597, § 6, Nov. 3, 1988, 102 Stat. 3029.)

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Section 926 of the House amendment is derived from section 928 of the Senate bill. The provision enables creditors to request the court to appoint a trustee to pursue avoiding powers if the debtor refuses to exercise those powers. Section 901 of the House amendment makes a corresponding change to incorporate avoiding powers included in the Senate amendment, but excluded from the House bill.

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This section [928 (enacted as section 926)] adopts current section 85(h) [section 405(h) of former title 11] which provides for a trustee to be appointed for the purpose of pursuing an action under an avoiding power, if the debtor refuses to do so. This section is necessary because a municipality might, by reason of political pressure or desire for future good relations with a particular creditor or class of creditors, make payments to such creditors in the days preceding the petition to the detriment of all other creditors. No change in the elected officials of such a city would automatically occur upon filing of the petition, and it might be very awkward for those same officials to turn around and demand the return of the payments following the filing of the petition. Hence, the need for a trustee for such purpose.

The general avoiding powers are incorporated by reference in section 901 and are broader than under current law. Preference, fraudulent conveyances, and other kinds of transfers will thus be voidable.

Incorporated by reference also is the power to accept or reject executory contracts and leases (section 365). Within the definition of executory contracts are collective bargaining agreements between the city and its employees. Such contracts may be rejected despite contrary State laws. Courts should readily allow the rejection of such contracts where they are burdensome, the rejection will aid in the municipality's reorganization and in consideration of the equities of each case. On the last point, "[e]quities in favor of the city in chapter 9 will be far more compelling than the equities in favor of the employer in chapter 11. Onerous employment obligations may prevent a city from balancing its budget for some time. The prospect of an unbalanced budget may preclude judicial confirmation of the plan. Unless a city can reject its labor contracts, lack of funds may force cutbacks in police, fire, sanitation, and welfare services, imposing hardships on many citizens. In addition, because cities in the past have often seemed immune to the constraint of "profitability" faced by private businesses, their wage contracts may be relatively