

(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

(2) merge the clearing bank with a depository institution;

(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) transfer assets or liabilities to a depository institution; and

(5) transfer assets and liabilities to a bridge depository institution as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

(A) the bridge depository institution to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(c) CERTAIN TRANSFERS INCLUDED.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395; amended Pub. L. 110-289, div. A, title VI, §1604(b)(3), July 30, 2008, 122 Stat. 2829.)

#### REFERENCES IN TEXT

Section 11 of the Federal Deposit Insurance Act, referred to in subsec. (b)(3), (5), is classified to section 1821 of Title 12, Banks and Banking.

#### AMENDMENTS

2008—Subsec. (b)(5). Pub. L. 110-289, which directed amendment of this section by substituting “bridge depository institution” for “bridge bank”, was executed by making the substitution in introductory provisions and subpar. (A) of subsec. (b)(5), to reflect the probable intent of Congress.

### § 784. Right to be heard

The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395.)

## CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

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#### AMENDMENTS

1988—Pub. L. 100-597, §11, Nov. 3, 1988, 102 Stat. 3030, added items 927 to 929 and redesignated former item 927 as 930.

### SUBCHAPTER I—GENERAL PROVISIONS

#### § 901. Applicability of other sections of this title

(a) Sections 301, 333, 344, 347(b), 349, 350(b) 351,,<sup>1</sup> 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(2), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 555, 556, 557, 559, 560, 561, 562, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e)<sup>2</sup> of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2621; Pub. L. 98-353, title III, §§353, 490, July 10, 1984, 98 Stat. 361, 383; Pub. L. 100-597, §3, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 109-8, title V, §502, title XII, §1216, title XV, §1502(a)(5), Apr. 20, 2005, 119 Stat. 118, 195, 216; Pub. L. 111-327, §2(a)(29), Dec. 22, 2010, 124 Stat. 3560.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Chapter 9 of the House amendment represents a compromise between chapter 9 of the House bill and 9 of the

<sup>1</sup>So in original. The second comma probably should follow “350(b)”.

<sup>2</sup>See References in Text note below.

Senate amendment. In most respects this chapter follows current law with respect to the adjustment of debts of a municipality. Stylistic changes and minor substantive revisions have been made in order to conform this chapter with other new chapters of the bankruptcy code. There are few major differences between the House bill and the Senate amendment on this issue. Section 901 indicates the applicability of other sections of title 11 in cases under chapter 9. Included are sections providing for creditors' committees under sections 1102 and 1103.

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Section 901 makes applicable appropriate provisions of other chapters of proposed title 11. The general rule set out in section 103(e) is that only the provisions of chapters 1 and 9 apply in a chapter 9 case. Section 901 is the exception, and specifies other provisions that do apply. They are as follows:

§ 301. *Voluntary cases.* Application of this section makes clear, as under current chapter IX [chapter 9 of former title 11], that a municipal case can be commenced only by the municipality itself. There are no involuntary chapter 9 cases.

§ 344. *Self-incrimination; immunity.* Application of this section is of no substantive effect for the administration of the case, but merely provides that the general rules in part V [§ 6001 et seq.] of title 18 govern immunity.

§ 347(b). *Unclaimed property.* This provision currently appears in section 96(d) of chapter IX [section 416(d) of former title 11].

§ 349. *Effect of dismissal.* This section governs the effect of a dismissal of a chapter 9 case. It provides in substance that rights that existed before the case that were disturbed by the commencement of the case are reinstated. This section does not concern grounds for dismissal, which are found in section 926.

§ 361. *Adequate protection.* Section 361 provides the general standard for the protection of secured creditors whose property is used in a case under title 11. Its importance lies in its application to sections 362 and 364.

§ 362. *Automatic stay.* The automatic stay provisions of the general portions of the title are incorporated into chapter 9. There is an automatic stay provided in current Bankruptcy Act § 85(e) [section 405(e) of former title 11]. The thrust of section 362 is the same as that of section 85(e), but, of course, its application in chapter 9 is modernized and drafted to conform with the stay generally applicable under the bankruptcy code. An additional part of the automatic stay applicable only to municipal cases is included in section 922.

§ 364(c), 364(d), 364(e). *Obtaining credit.* This section governs the borrowing of money by a municipality in reorganization. It is narrower than a comparable provision in current law, section 82(b)(2) [section 402(b)(2) of former title 11]. The difference lies mainly in the removal under the bill of the authority of the court to supervise borrowing by the municipality in instances in which none of the special bankruptcy powers are involved. That is, if a municipality could borrow money outside of the bankruptcy court, then it should have the same authority in bankruptcy court, under the doctrine of *Ashton v. Cameron Water District No. 1*, 298 U.S. 513 (1936) [Tex.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 *National League of Cities v. Usery*, 426 U.S. 833 (1976) [Dist.Col.1976, 96 S.Ct. 2465, 49 L.Ed.2d 245, on remand 429 F. Supp. 703]. Only when the municipality needs special authority, such as subordination of existing liens, or special priority for the borrowed funds, will the court become involved in the authorization.

§ 365. *Executory contracts and unexpired leases.* The applicability of section 365 incorporates the general power of a bankruptcy court to authorize the assumption or rejection of executory contracts or unexpired leases found in other chapters of the title. This section is comparable to section 82(b)(1) of current law [section 402(b)(1) of former title 11].

§ 366. *Utility service.* This section gives a municipality the same authority as any other debtor with respect to continuation of utility service during the proceeding, provided adequate assurance of future payment is provided. No comparable explicit provision is found in current law, although the case law seems to support the same result.

§ 501. *Filing of proofs of claims.* This section permits filing of proofs of claims in a chapter 9 case. Note, however, that section 924 permits listing of creditors' claims, as under chapter 11 and under section 85(b) of chapter IX [section 405(b) of former title 11].

§ 502. *Allowance of claims.* This section applies the general allowance rules to chapter 9 cases. This is no change from current law.

§ 503. *Administrative expenses.* Administrative expenses as defined in section 503 will be paid in a chapter 9 case, as provided under section 89(1) of current law [section 409(1) of former title 11].

§ 504. *Sharing of compensation.* There is no comparable provision in current law. However, this provision applies generally throughout the proposed law, and will not affect the progress of the case, only the interrelations between attorneys and other professionals that participate in the case.

§ 506. *Determination of secured status.* Section 506 specifies that claims secured by a lien should be separated, to the extent provided, into secured and unsecured claims. It applies generally. Current law follows this result, though there is no explicit provision.

§ 507(1). *Priorities.* Paragraph (1) of section 507 requires that administrative expenses be paid first. This rule will apply in chapter 9 cases. It is presently found in section 89(1) [section 409(1) of former title 11]. The two other priorities presently found in section 89 have been deleted. The second for claims arising within 3 months before the case is commenced, is deleted from the statute, but may be within the court's equitable power to award, under the case of *Fosdick v. Schall*, 99 U.S. 235 (1878) [25 L.Ed. 339]. Leaving the provision to the courts permits greater flexibility, as under railroad cases, than an absolute three-month rule. The third priority under current law, for claims which are entitled to priority under the laws of the United States, is deleted because of the proposed amendment to section 3466 of the Revised Statutes [former 31 U.S.C. 191, see 31 U.S.C. 3713(a)] contained in section 321(a) of title III of the bill, which previously has given the United States an absolute first priority in chapter X [chapter 10 of former title 11] and section 77 [section 205 of former title 11] cases. Because the priority rules are regularized and brought together in the bankruptcy laws by this bill, the need for incorporation of priorities elsewhere specified is eliminated.

§ 509. *Claims of codebtors.* This section provides for the treatment of sureties, guarantors, and codebtors. The general rule of postponement found in the other chapters will apply in chapter 9. This section adopts current law.

§ 510. *Subordination of claims.* This section permits the court to subordinate, on equitable grounds, any claim, and requires enforcement of contractual subordination agreements, and subordination of securities rescission claims. The section recognizes the inherent equitable power of the court under current law, and the practice followed with respect to contractual provisions.

§ 547. *Preferences.* Incorporation of section 547 will permit the debtor to recover preferences. This power will be used primarily when those who gave the preferences have been replaced by new municipal officers or when creditors coerced preferential payments. Unlike Bankruptcy Act § 85(h) [section 405(h) of former title 11], the section does not permit the appointment of a trustee for the purpose of pursuing preferences. Moreover, this bill does not incorporate the other avoiding powers of a trustee for chapter 9, found in current section 85(h).

§ 550. *Liability of transfers.* Incorporation of this section is made necessary by the incorporation of the preference section, and permits recovery by the debtor from a transferee of an avoided preference.

§ 551. *Automatic preservation of avoided transfer.* Application of section 551 requires preservation of any avoided preference for the benefit of the estate.

§ 552. *Postpetition effect of security interest.* This section will govern the applicability after the commencement of the case of security interests granted by the debtor before the commencement of the case.

§ 553. *Setoff.* Under current law, certain setoff is stayed. Application of this section preserves that result, though the setoffs that are permitted under section 553 are better defined than under present law. Application of this section is necessary to stay the setoff and to provide the offsetting creditor with the protection to which he is entitled under present law.

§ 1122. *Classification of claims.* This section is derived from current section 88(b) [section 408(b) of former title 11], and is substantially similar.

§ 1123(a)(1)–(4), (b). *Contents of plan.* The general provisions governing contents of a chapter 11 plan are made applicable here, with two exceptions relating to the rights of stockholders, which are not applicable in chapter 9 cases. This section expands current law by specifying the contents of a plan in some detail. Section 91 of current law [section 411 of former title 11] speaks only in general terms. The substance of the two sections is substantially the same, however.

§ 1124. *Impairment of claims.* The confirmation standards adopted in chapter 9 are the same as those of chapter 11. This changes current chapter IX [chapter 9 of former title 11], which requires compliance with the fair and equitable rule. The greater flexibility of proposed chapter 11 is carried over into chapter 9, for there appears to be no reason why the confirmation standards for the two chapters should be different, or why the elimination of the fair and equitable rule from corporate reorganizations should not be followed in municipal debt adjustments. The current chapter IX rule is based on the confirmation rules of current chapter X [chapter 10 of former title 11]. The change in the latter suggests a corresponding change in the former. Section 1124 is one part of the new confirmation standard. It defines impairment, for use in section 1129.

§ 1125. *Postpetition disclosure and solicitation.* The change in the confirmation standard necessitates a corresponding change in the disclosure requirements for solicitation of acceptances of a plan. Under current chapter IX [chapter 9 of former title 11] there is no disclosure requirement. Incorporation of section 1125 will insure that creditors receive adequate information before they are required to vote on a plan.

§ 1126(a), (b), (c), (e), (f), (g). *Acceptance of plan.* Section 1126 incorporates the current chapter IX [chapter 9 of former title 11] acceptance requirement: two-thirds in amount and a majority in number, Bankruptcy Act § 92 [section 412 of former title 11]. Section 1125 permits exclusion of certain acceptances from the computation if the acceptances were obtained in bad faith or, unlike current law, if there is a conflict of interest motivating the acceptance.

§ 1127(d). *Modification of plan.* This section governs the change of a creditor's vote on the plan after a modification is proposed. It is derived from current section 92(e) [section 412(e) of former title 11].

§ 1128. *Hearing on confirmation.* This section requires a hearing on the confirmation of the plan, and permits parties in interest to object. It is the same as Bankruptcy Act §§ 93 and 94(a) [sections 413 and 414(a) of former title 11], though the provision, comparable to section 206 of current chapter X [section 606 of former title 11], permitting a labor organization to appear and be heard on the economic soundness of the plan, has been deleted as more appropriate for the Rules.

§ 1129(a)(2), (3), (8), (b)(1), (2). *Confirmation of plan.* This section provides the boiler-plate language that the plan be proposed in good faith and that it comply with the provisions of the chapter, and also provides the financial standard for confirmation, which replaces the fair and equitable rule. See § 1124, *supra*.

§ 1142(b). *Execution of plan.* Derived from Bankruptcy Act § 96(b) [section 416(b) of former title 11], this section

permits the court to order execution and delivery of instruments in order to execute the plan.

§ 1143. *Distribution.* This section is the same in substance as section 96(d) [section 416(d) of former title 11], which requires presentment or delivery of securities within five years, and bars creditors that do not act within that time.

§ 1144. *Revocation of order of confirmation.* This section permits the court to revoke the order of confirmation and the discharge if the confirmation of the plan was procured by fraud. There is no comparable provision in current chapter IX [chapter 9 of former title 11].

#### REFERENCES IN TEXT

Section 103(e) of this title, referred to in subsec. (b), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106-554, § 1(a)(5) [title I, § 112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-327 inserted “333,” after “301,” and “351,” after “350(b)”.

2005—Subsec. (a). Pub. L. 109-8, § 1502(a)(5), substituted “507(a)(2)” for “507(a)(1)”.

Pub. L. 109-8, § 1216, inserted “1123(d),” after “1123(b),”.

Pub. L. 109-8, § 502, inserted “555, 556,” after “553,” and “559, 560, 561, 562,” after “557,”.

1988—Subsec. (a). Pub. L. 100-597 inserted “1129(a)(6),” after “1129(a)(3),”.

1984—Subsec. (a). Pub. L. 98-353 inserted “557,” after “553,” and substituted “1111(b),” for “1111(b)”.

#### 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 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 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.

### § 902. Definitions for this chapter

In this chapter—

(1) “property of the estate”, when used in a section that is made applicable in a case under this chapter by section 103(e)<sup>1</sup> or 901 of this title, means property of the debtor;

(2) “special revenues” means—

(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

(B) special excise taxes imposed on particular activities or transactions;

(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

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