

Under the terms of the agreement with the codebtor who is not in bankruptcy, the creditor has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor. Conversely, a codebtor obtains the benefit of any payments made to the creditor under the plan. If a debtor defaults on scheduled payments under the plan, then the codebtor would be liable for the remaining deficiency; otherwise, payments not made under the plan may never be made by the codebtor. The obligation of the codebtor to make the creditor whole at the time payments are due remains.

The automatic stay under this section pertains only to the collection of a consumer debt, defined by section 101(7) of this title to mean a debt incurred by an individual primarily for a personal, family, or household purpose. Therefore, not all debts owed by a chapter 13 debtor will be subject to the stay of the codebtor, particularly those business debts incurred by an individual with regular income, as defined by section 101(24) of this title, engaged in business, that is permitted by virtue of section 109(b) and section 1304 to obtain chapter 13 relief.

Subsection (b) excepts the giving of notice of dishonor of a negotiable instrument from the reach of the codebtor stay.

Under subsection (c), if the codebtor has property out of which the creditor's claim can be satisfied, the court can grant relief from the stay absent the transfer of a security interest in that property by the codebtor to the creditor. Correspondingly, if there is reasonable cause to believe that property is about to be disposed of by the codebtor which could be used to satisfy his obligation to the creditor, the court should lift the stay to allow the creditor to perfect his rights against such property. Likewise, if property is subject to rapid depreciation or decrease in value the stay should be lifted to allow the creditor to protect his rights to reach such property. Otherwise, the creditor's interest would be irreparably harmed by such stay. Property which could be used to satisfy the claim could be disposed of or encumbered and placed beyond the reach of the creditor. The creditor should be allowed to protect his rights to reach property which could satisfy his claim and prevent its erosion in value, disposal, or encumbrance.

HOUSE REPORT NO. 95-595

This section is new. It is designed to protect a debtor operating under a chapter 13 individual repayment plan case by insulating him from indirect pressures from his creditors exerted through friends or relatives that may have cosigned an obligation of the debtor. The protection is limited, however, to ensure that the creditor involved does not lose the benefit of the bargain he made for a cosigner. He is entitled to full compensation, including any interest, fees, and costs provided for by the agreement under which the debtor obtained his loan. The creditor is simply required to share with other creditors to the extent that the debtor will repay him under the chapter 13 plan. The creditor is delayed, but his substantive rights are not affected.

Subsection (a) is the operative subsection. It stays action by a creditor after an order for relief under chapter 13. The 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 has secured the debt, unless the individual became liable or secured the debt in the ordinary course of his business, or the case is closed, dismissed, or converted to chapter 7 or 11.

Subsection (b) permits the creditor, notwithstanding the stay, to present a negotiable instrument and to give notice of dishonor of the instrument, in order to preserve his substantive rights against the codebtor as required by applicable nonbankruptcy law.

Subsection (c) requires the court to grant relief from the stay in certain circumstances. The court must

grant relief to the extent that the debtor does not propose to pay, under the plan, the amount owed to the creditor. The court must also grant relief to the extent that the debtor was really the codebtor in the transaction, that is, to the extent that the nondebtor party actually received the consideration for the claim held by the creditor. Finally, the court must grant relief to the extent that the creditor's interest would be irreparably harmed by the stay, for example, where the codebtor filed bankruptcy himself, or threatened to leave the locale, or lost his job.

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-353, §524, inserted "continuation of" after "by".

Subsec. (d). Pub. L. 98-353, §313, added subsec. (d).

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.

§ 1302. Trustee

(a) If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. 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 a trustee in the case.

(b) The trustee shall—

(1) perform the duties specified in sections 704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9) of this title;

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

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;

(4) advise, other than on legal matters, and assist the debtor in performance under the plan;

(5) ensure that the debtor commences making timely payments under section 1326 of this title; and

(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) 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; and

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

(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 1328, 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) or (4) 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 (b)(6) 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 that disclosure.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2645; Pub. L. 98-353, title III, §§314, 525, July 10, 1984, 98 Stat. 356, 388; Pub. L. 99-554, title II, §§228, 283(w), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub. L. 103-394, title V, §501(d)(37), Oct. 22, 1994, 108 Stat. 4147; Pub. L. 109-8, title II, §219(d), Apr. 20, 2005, 119 Stat. 58; Pub. L. 111-327, §2(a)(39), Dec. 22, 2010, 124 Stat. 3561.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1302 of the House amendment adopts a provision contained in the Senate amendment instead of the position taken in the House bill. Sections 1302(d) and (e) are modeled on the standing trustee system contained in the House bill with the court assuming supervisory functions in districts not under the pilot program.

SENATE REPORT NO. 95-989

The principal administrator in a chapter 13 case is the chapter 13 trustee. Experience under chapter XIII of the Bankruptcy Act [chapter 13 of former title 11] has shown that the more efficient and effective wage earner programs have been conducted by standing chapter XIII trustees who exercise a broad range of responsibilities in both the design and the effectuation of debtor plans.

Subsection (a) provides administrative flexibility by permitting the bankruptcy judge to appoint an individual from the panel of trustees established pursuant to 28 U.S.C. §604(f) and qualified under section 322 of title 11, either to serve as a standing trustee in all chapter 13 cases filed in the district or a portion thereof, or to serve in a single case.

Subsection (b)(1) makes it clear that the chapter 13 trustee is no mere disbursing agent of the monies paid to him by the debtor under the plan [section 1322(a)(1)], by imposing upon him certain relevant duties of a liquidation trustee prescribed by section 704 of this title.

Subsection (b)(2) requires the chapter 13 trustee to appear before and be heard by the bankruptcy court whenever the value of property secured by a lien or the confirmation or modification of a plan after confirmation as provided by sections 1323-1325 is considered by the court.

Subsection (b)(3) requires the chapter 13 trustee to advise and counsel the debtor while under chapter 13, except on matters more appropriately left to the attorney for the debtor. The chapter 13 trustee must also assist the debtor in performance under the plan by attempting to tailor the requirements of the plan to the changing needs and circumstances of the debtor during the extension period.

Subsection (c) imposes on the trustee in a chapter 13 case filed by a debtor engaged in business the investigative and reporting duties normally required of a chapter 11 debtor or trustee as prescribed by section 1106(a)(3) and (4).

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Subsection (d) gives the trustee an additional duty if the debtor is engaged in business, as defined in section 1304. The trustee must perform the duties specified in sections 1106(a)(3) and 1106(a)(4), relating to investigation of the debtor.

REFERENCES IN TEXT

Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(3), is chapter XIII of act July 1, 1898, ch. 541, as added June 22, 1938, ch. 575, §1, 52 Stat. 930, which was classified to chapter 13 (§1001 et seq.) of former Title 11.

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

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-327 substituted “704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9)” for “704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9)”.

2005—Subsec. (b)(6). Pub. L. 109-8, §219(d)(1), added par. (6).

Subsec. (d). Pub. L. 109-8, §219(d)(2), added subsec. (d). 1994—Subsec. (b)(3). Pub. L. 103-394 struck out “and” at end.

1986—Subsec. (a). Pub. L. 99-554, §228(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “If the court has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the court shall appoint a person to serve as trustee in the case.”

Subsec. (d). Pub. L. 99-554, §228(2), struck out subsec. (d) which read as follows: “If the number of cases under this chapter commenced in a particular judicial district so warrant, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.”

Subsec. (e). Pub. L. 99-554, §283(w), which directed the amendment of par. (1) by substituting “set for such individual” for “fix” could not be executed in view of the repeal of subsec. (e) by section 228(2) of Pub. L. 99-554. See 1984 Amendment note below.

Pub. L. 99-554, §228(2), struck out subsec. (e) which read as follows:

“(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

“(A) a maximum annual compensation, not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

“(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

“(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

“(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

“(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

“(i) such individual’s actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

“(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.”

1984—Subsec. (b)(1). Pub. L. 98-353, §314(1), substituted “704(7), and 704(9) of this title” for “and 704(8) of this title”.

Subsec. (b)(2). Pub. L. 98-353, §314(2), struck out “and” at the end.

Subsec. (b)(3) to (5). Pub. L. 98-353, §525(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Pub. L. 98-353, §314(3), (4), substituted “; and” for the period at end of par. (3) and added par. (4).

Subsec. (e)(1). Pub. L. 98-353, §525(b)(1), which directed the amendment of par. (4) by substituting “set for such individual” for “fix” was executed to par. (1) as the probable intent of Congress.

Subsec. (e)(1)(A). Pub. L. 98-353, §525(b)(2), struck out “for such individual” after “a maximum annual compensation”.

Subsec. (e)(2)(A). Pub. L. 98-353, §525(b)(3), substituted “received by” for “of”, and “of all such payments made” for “upon all payments”.

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

Effective date and applicability of amendment by section 228 of Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

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

EFFECTIVE DATE OF 1984 AMENDMENT

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.

§ 1303. Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of

the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2646.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1303 of the House amendment specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although section 1323 is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued.

SENATE REPORT NO. 95-989

A chapter 13 debtor is vested with the identical rights and powers, and is subject to the same limitations in regard to their exercise, as those given a liquidation trustee by virtue of section 363(b), (d), (e), (f), and (h) of title 11, relating to the sale, use or lease of property.

§ 1304. Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(a)(8) of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2646; Pub. L. 98-353, title III, §§311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389; Pub. L. 111-327, §2(a)(40), Dec. 22, 2010, 124 Stat. 3562.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1304(b) of the House amendment adopts the approach taken in the comparable section of the Senate amendment as preferable to the position taken in the House bill.

SENATE REPORT NO. 95-989

Increased access to the simpler, speedier, and less expensive debtor relief provisions of chapter 13 is accomplished by permitting debtors engaged in business to proceed under chapter 13, provided their income is sufficiently stable and regular to permit compliance with a chapter 13 plan [section 101(24)] and that the debtor (or the debtor and spouse) do not owe liquidated, noncontingent unsecured debts of \$50,000, or liquidated, noncontingent secured debts of \$200,000 (§109(d)).

Section 1304(a) states that a self-employed individual who incurs trade credit in the production of income is a debtor engaged in business.

Subsection (b) empowers a chapter 13 debtor engaged in business to operate his business, subject to the rights, powers and limitations that pertain to a trustee under sections 363(c) and 364 of title 11, and subject to such further limitations and conditions as the court may prescribe.

Subsection (c) requires a chapter 13 debtor engaged in business to file with the court certain financial statements relating to the operation of the business.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-327 substituted “704(a)(8)” for “704(8)”.