

“If such lessee remains in possession, such lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease, and any such renewal or extension, any damages occurring after such date caused by the non-performance of any obligation of the debtor after such date, but such lessee does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset.”

Subsec. (i)(1). Pub. L. 98-353, §404, amended par. (1) generally, inserting provisions relating to timeshare interests under timeshare plans.

Subsecs. (l), (m). Pub. L. 98-353, §362(b), added subsecs. (l) and (m).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. FF, title X, §1001(f)(2)(A), Dec. 27, 2020, 134 Stat. 3219, provided that the amendment made by section 1001(f)(2)(A) is effective on the date that is 2 years after Dec. 27, 2020.

Pub. L. 116-260, div. FF, title X, §1001(f)(2)(B), Dec. 27, 2020, 134 Stat. 3219, provided that: “Notwithstanding the amendments made by subparagraph (A) [amending this section], the amendments made by paragraph (1) [amending this section] shall apply in any case commenced under subchapter V of chapter 11 of title 11, United States Code, before the date that is 2 years after the date of enactment of this Act [Dec. 27, 2020].”

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 1992 AMENDMENT

Pub. L. 102-365, §19(f), Sept. 2, 1992, 106 Stat. 984, provided that: “The amendments made by this section [amending this section] shall be in effect for the 12-month period that begins on the date of enactment of this Act [Sept. 3, 1992] and shall apply in all proceedings involving an affected air carrier (as defined in section 365(p) of title 11, United States Code, as amended by this section) that are pending during such 12-month period. Not later than 9 months after the date of enactment, the Administrator of the Federal Aviation Administration shall report to the Committee on Commerce, Science, and Transportation and Committee on the Judiciary of the Senate and the Committee on the Judiciary and Committee on Public Works and Transportation of the House of Representatives on whether this section shall apply to proceedings that are commenced after such 12-month period.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-506 effective Oct. 18, 1988, but not applicable to any case commenced under this title before such date, see section 2 of Pub. L. 100-506, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 257 of 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.

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.

AIRPORT LEASES

Pub. L. 102-365, §19(a), Sept. 2, 1992, 106 Stat. 982, provided that: “Congress finds that—

“(1) there are major airports served by an air carrier that has leased a substantial majority of the airport’s gates;

“(2) the commerce in the region served by such a major airport can be disrupted if the air carrier that leases most of its gates enters bankruptcy and either discontinues or materially reduces service; and

“(3) it is important that such airports be empowered to continue service in the event of such a disruption.”

§ 366. Utility service

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

(c)(1)(A) For purposes of this subsection, the term “assurance of payment” means—

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

- (i) the absence of security before the date of the filing of the petition;
- (ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

(iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.

(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor—

(1) is an individual;

(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and

(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2578; Pub. L. 98-353, title III, §443, July 10, 1984, 98 Stat. 373; Pub. L. 109-8, title IV, §417, Apr. 20, 2005, 119 Stat. 108; Pub. L. 116-260, div. FF, title X, §1001(h), Dec. 27, 2020, 134 Stat. 3221.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 116-260, div. FF, title X, §1001(h)(2), Dec. 27, 2020, 134 Stat. 3221, provided that, effective on the date that is 1 year after Dec. 27, 2020, this section is amended by striking subsection (d). See 2020 Amendment note below.

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 366 of the House amendment represents a compromise between comparable provisions contained in H.R. 8200 as passed by the House and the Senate amendment. Subsection (a) is modified so that the applicable date is the date of the order for relief rather than the date of the filing of the petition. Subsection (b) contains a similar change but is otherwise derived from section 366(b) of the Senate amendment, with the exception that a time period for continued service of 20 days rather than 10 days is adopted.

SENATE REPORT NO. 95-989

This section gives debtors protection from a cut-off of service by a utility because of the filing of a bankruptcy case. This section is intended to cover utilities that have some special position with respect to the debtor, such as an electric company, gas supplier, or telephone company that is a monopoly in the area so that the debtor cannot easily obtain comparable service from another utility. The utility may not alter, refuse, or discontinue service because of the non-payment of a bill that would be discharged in the bankruptcy case. Subsection (b) protects the utility company by requiring the trustee or the debtor to provide, within ten days, adequate assurance of payment for service provided after the date of the petition.

Editorial Notes

AMENDMENTS

2020—Subsec. (d). Pub. L. 116-260, §1001(h)(2), struck out subsec. (d) which read as follows: “Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor—

“(1) is an individual;

“(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and

“(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.”

Pub. L. 116-260, §1001(h)(1), added subsec. (d).

2005—Subsec. (a). Pub. L. 109-8, §417(1), substituted “subsections (b) and (c)” for “subsection (b)”.

Subsec. (c). Pub. L. 109-8, §417(2), added subsec. (c).

1984—Subsec. (a). Pub. L. 98-353 inserted “of the commencement of a case under this title or” after “basis”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. FF, title X, §1001(h)(2), Dec. 27, 2020, 134 Stat. 3221, provided that the amendment made by section 1001(h)(2) is effective on the date that is 1 year after Dec. 27, 2020.

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 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.

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

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