

SUBCHAPTER V -- REORGANIZATION OF A SMALL BUSINESS ENTERPRISE DEBTOR.

§ 1181. Applicability of Subchapter.

This subchapter shall only apply in those chapter 11 cases in which a small business enterprise debtor elects that this subchapter applies.

§ 1182. Inapplicability of Other Sections.

- (a) Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e) and 1141(d)(5) of this title do not apply in a case under this subchapter.
- (b) Unless the court for cause orders otherwise, sections 1102, 1103, 1125 of this title do not apply in a case under this subchapter.
- (c) If a plan is confirmed under section 1193(b), section 1141(d) of this title shall not apply, except as provided in section 1194.

§ 1183. Definitions.

In this subchapter,

- (a) the term “small business enterprise debtor” means a debtor
  - (1) engaged in commercial or business activities; and
  - (2) that has aggregate noncontingent, liquidated, secured, and unsecured debts as of the date of the order for relief
    - (A) in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders); and
    - (B) not less than 50% of which arose from the commercial or business activities of the debtor.
- (b) the term “debtor in possession” means the small business enterprise debtor unless removed as debtor in possession under section 1186(a).

§ 1184. Trustee

- (a) IN GENERAL.—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 subchapter

and if such individual qualifies as a trustee under section 322, then such individual shall serve as trustee in any case under this subchapter. 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) DUTIES.—The trustee shall—

- (1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;
- (2) perform the duties specified in paragraphs (3), (4) and (7) of section 1106(a) 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—
  - (A) the value of property subject to a lien;
  - (B) confirmation of a plan filed under this subchapter;
  - (C) modification of the plan after confirmation; or
  - (D) the sale of property of the estate;
- (4) ensure that the small business enterprise debtor commences making timely payments required by a plan confirmed under this subchapter;
- (5) if the small business enterprise debtor ceases to be a debtor in possession, perform the duties specified in section 704(a)(8), paragraphs (1), (2) and (6) of section 1106(a) of this title, including operating the small business enterprise debtor's business; and
- (6) if there is a claim for a domestic support obligation with respect to the small business enterprise debtor, perform the duties specified in section

704(c).

(7) facilitate the development of a consensual plan of reorganization.

(c) If the small business enterprise debtor's plan is confirmed under section 1193(a), the trustee's service in the case shall terminate when the plan has been substantially consummated.

§ 1185. Rights and powers of a debtor in possession.

Subject to such limitations or conditions as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all functions and duties, except the duties specified in paragraphs (2), (3), (4) and (6) of section 1106(a) of this title, of a trustee serving in a case under chapter 11, including operating the small business enterprise debtor's business.

§ 1186. Removal of debtor in possession.

(a) On request of a party in interest, and after noticed and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, or for failure to perform the debtor's obligations under a confirmed plan.

(b) On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

§ 1187. Property of the Estate.

(a) If a plan is confirmed under section 1193(b) of this title, property of the estate includes, in addition to the property specified in section 541 of this title --

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first.

(b) Except as provided in section 1186 of this title, a confirmed plan, or an order confirming a plan, the small business enterprise debtor shall remain in possession of all property of the estate.

#### § 1188. Duties and Reporting Requirements of Small Business Enterprise Debtor.

- (a) Upon electing to be a debtor under this subchapter, the small business enterprise debtor shall file the documents required by section 1116(1)(A) and (B) of this title whether or not such debtor is a small business debtor.
- (b) A small business enterprise debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of sections 308 and 1116(2), (3), (4), (5), (6), and (7) of this title, whether or not such debtor is a small business debtor.
- (c) If the court orders under section 1182(b) that section 1125 of this title applies, section 1125(f) of this title shall apply whether or not such debtor is a small business debtor.

#### § 1189. Filing of the plan.

(a) WHO MAY FILE A PLAN.—Only the small business enterprise debtor may file a plan under this subchapter.

(b) DEADLINE.—The small business enterprise debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for an extension is attributable to circumstances for which the small business enterprise debtor should not justly be held accountable.

#### § 1190. Contents of Plan

A plan filed under this subchapter —

(a) shall include a brief history of the business operations of the small business enterprise debtor, a liquidation analysis, and projections with respect to the ability of the small business enterprise

debtor to make payments under the proposed plan of reorganization; and

(b) notwithstanding section 1123(b)(5) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was (A) not used primarily to acquire such property, and (B) was used primarily in connection with the small business enterprise.

#### § 1191. Deemed Acceptance of Plan.

For purposes of section 1126(c) or (d) of this title, a holder of a claim or interest shall be deemed to have accepted a plan if the holder fails to file a timely ballot after being notified by the small business enterprise debtor of

(a) the treatment that such holder will receive under the proposed plan, and

(b) the consequence under this section of the failure by the holder to file a timely ballot.

#### § 1192. Status Conference.

The court shall hold a status conference to further the expeditious and economical resolution of the case, and to encourage and facilitate the attainment of a consensual plan of reorganization.

#### § 1193. Confirmation of Plan

(a) The court shall confirm a plan only if all of the requirements of section 1129(a), other than section 1129(a)(15), of this title are met.

(b) Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a), other than paragraphs (8), (10) and (15), of this title are met with respect to a plan, the court, on request of the small business enterprise debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(c) For purposes of this subsection, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A);

(2) As of the effective date of the plan --

(A) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period not to exceed five years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the three-year period, or longer period not to exceed five years as the court may fix, beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income; and

(3) The small business enterprise debtor will be able to make all payments under the plan, or there is a reasonable likelihood that the small business enterprise debtor will be able to make all payments under the plan, and the plan provides appropriate remedies, that may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) For purposes of this subsection, "disposable income" means the income which is received by the small business enterprise debtor and which is not reasonably necessary to be expended --

(1) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

(e) Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title may be confirmed under section 1193(b) of this title.

§ 1194. Discharge.

If the small business enterprise debtor's plan is confirmed under section 1193(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first three years of the plan, or such longer period not to exceed five years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the small business enterprise debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt -

- (1) on which the last payment is due after the first three years of the plan or such other time not to exceed five years fixed by the court; or
- (2) of the kind specified in section 523(a) of this title.

§ 1195. Modification of Plan.

- (a) The small business enterprise debtor may modify a plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and, with the exception of 1123(a)(8), section 1123 of this title. After the modification is filed with the court, the plan as modified becomes the plan.
- (b) If a plan has been confirmed under section 1193(a), the small business enterprise debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and, with the exception of 1123(a)(8), section 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified under section 1193(a) of this title.

- (c) If a plan has been confirmed under section 1193(b), the small business enterprise debtor may modify such plan at any time within three years, or such longer time not to exceed five years fixed by the court, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1193(b) of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified under section 1193(b) of this title.
- (d) If a plan has been confirmed under section 1193(a), any holder of a claim or interest that has accepted or rejected such plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

§ 1196. Payments.

- (a) Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the small business enterprise debtor after deducting --
- (1) any unpaid claim allowed under section 503(b) of this title;
  - (2) any payment made for the purpose of providing adequate protection of an interest in property due to the holder of a secured claim; and
  - (3) any fee owing to the trustee.
- (b) If a plan is confirmed under section 1193(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.
- (c) Prior to confirmation of a plan, the court, after notice and a hearing, may authorize the trustee to make payments to the holder of a secured claim for the purpose of providing adequate protection of an interest in property.

§ 1197. Transactions with Professionals.



Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title, by a small business enterprise debtor solely because such person holds a claim of less than \$5,000 that arose prior to commencement of the case.

## END OF SUBCHAPTER V

There will need to be amendments to other sections of titles 11 and 28

### **Title 11**

103(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning a Small Business Enterprise Debtor in which such debtor elects that Subchapter V shall apply.

322(a) add trustee selected under 1184

326(a) add chapter 11 other than a case under subchapter V.

326(b) add subchapter V of chapter 11

347 (a) and (b) add chapter 11, subchapter V and 1196

363(c)(1) add 1184 and 1185

364(a) add 1184 and 1185

523(a) add 1194

524(a), (c)(1) and (d) add 1194

557(d)(3) add 1184

1146(a) add 1193

### **Title 28**

586(a)(3) add Subchapter V

586(b) add Subchapter V

586(d)(1) add Subchapter V

586(e)(1) and (2) add Subchapter V - also add a provision that “in the event that the trustee’s services are terminated upon substantial consummation under section 1184(c), the court shall award compensation to the trustee consistent with services performed by the trustee and the limits on the trustee’s compensation established pursuant to section 586(e)(1) of title 28.”

589b(a)(1) add Subchapter V

589b(d) and (d)(8) add Subchapter V

1930(a)(6) except Subchapter V from chapter 11 quarterly fees