

respectively that such Act and such title [amending sections 523 and 1328 of this title and enacting provisions set out as a note under section 523 of this title] may be cited as the “Criminal Victims Protection Act of 1990”.

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-334, §1, June 16, 1988, 102 Stat. 610, provided that: “This Act [enacting section 1114 of this title, amending section 1129 of this title, enacting provisions set out as a note under section 1114 of this title, and amending and repealing provisions set out as notes under section 1106 of this title] may be cited as the ‘Retiree Benefits Bankruptcy Protection Act of 1988.’”

#### SHORT TITLE OF 1984 AMENDMENT

Section 361 of subtitle C (§§361-363) of title III of Pub. L. 98-353 provided that: “This subtitle [amending sections 362, 365, and 541 of this title] may be cited as the ‘Leasehold Management Bankruptcy Amendments Act of 1983.’”

#### SAVINGS PROVISION

Pub. L. 109-8, title IX, §912, as added Pub. L. 109-390, §5(d), Dec. 12, 2006, 120 Stat. 2698, provided that: “The meanings of terms used in this title [see Tables for classification] are applicable for the purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act [Pub. L. 106-102, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking], the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]), and the Commodity Exchange Act [7 U.S.C. 1 et seq.]”

#### SEPARABILITY

Section 701 of Pub. L. 103-394 provided that: “If any provision of this Act [see Tables for classification] or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.”

Section 551 of title III (§§301-553) of Pub. L. 98-353 provided that: “If any provision of this title or any amendment made by this title [see Tables for classification], or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby.”

#### CONSTRUCTION

Pub. L. 109-8, title X, §1007(e), Apr. 20, 2005, 119 Stat. 188, provided that: “Nothing in this section [amending this section and sections 109, 1203, and 1206 of this title] shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.)”

Pub. L. 109-8, title XI, §1101(c), Apr. 20, 2005, 119 Stat. 189, provided that: “The amendments made by subsection (a) of this section [amending this section] shall not affect the interpretation of section 109(b) of title 11, United States Code.”

#### NONLIMITATION OF INFORMATION

Pub. L. 109-8, title I, §102(e), Apr. 20, 2005, 119 Stat. 33, provided that: “Nothing in this title [see Tables for classification] shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee (or bankruptcy administrator, if any), or trustee.”

#### JUDICIAL EDUCATION

Pub. L. 109-8, title XII, §1226, Apr. 20, 2005, 119 Stat. 199, provided that: “The Director of the Federal Judi-

cial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act [see Short Title of 2005 Amendment note above] and the amendments made by this Act, including the requirements relating to the means test under section 707(b), and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.”

#### ADJUSTMENT OF DOLLAR AMOUNTS

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of this title as follows:

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in par. (3), dollar amount “164,250” was adjusted to “175,750”; in par. (18)(A), (B)(ii), dollar amount “3,544,525” was adjusted to “3,792,650” each time it appeared; in par. (19A)(A)(i), (B)(ii)(II), dollar amount “1,642,500” was adjusted to “1,757,475” each time it appeared; and, in par. (51D)(A), (B), dollar amount “2,190,000” was adjusted to “2,343,300” each time it appeared. See notice of the Judicial Conference of the United States set out as a note under section 104 of this title.

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in par. (3), dollar amount “150,000” was adjusted to “164,250”; in par. (18), dollar amount “3,237,000” was adjusted to “3,544,525” each time it appeared; in par. (19A), dollar amount “1,500,000” was adjusted to “1,642,500” each time it appeared; and, in par. (51D), dollar amount “2,000,000” was adjusted to “2,190,000” each time it appeared.

## § 102. Rules of construction

In this title—

(1) “after notice and a hearing”, or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) “claim against the debtor” includes claim against property of the debtor;

(3) “includes” and “including” are not limiting;

(4) “may not” is prohibitive, and not permissive;

(5) “or” is not exclusive;

(6) “order for relief” means entry of an order for relief;

(7) the singular includes the plural;

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and

(9) “United States trustee” includes a designee of the United States trustee.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2554; Pub. L. 98-353, title III, §422, July 10, 1984, 98 Stat. 369; Pub. L. 99-554, title II, §202, Oct. 27, 1986, 100 Stat. 3097.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code. For example, the phrase "on request of a party in interest" or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting *sua sponte*. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

Although "property" is not construed in this section, it is used consistently throughout the code in its broadest sense, including cash, all interests in property, such as liens, and every kind of consideration including promises to act or forbear to act as in section 548(d).

Section 102(1) expands on a rule of construction contained in H.R. 8200 as passed by the House and in the Senate amendment. The phrase "after notice and a hearing", or a similar phrase, is intended to be construed according to the particular proceeding to mean after such notice as is appropriate in the particular circumstances, and such opportunity, if any, for a hearing as is appropriate in the particular circumstances. If a provision of title 11 authorizes an act to be taken "after notice and a hearing" this means that if appropriate notice is given and no party to whom such notice is sent timely requests a hearing, then the act sought to be taken may be taken without an actual hearing.

In very limited emergency circumstances, there will be insufficient time for a hearing to be commenced before an action must be taken. The action sought to be taken may be taken if authorized by the court at an *ex parte* hearing of which a record is made in open court. A full hearing after the fact will be available in such an instance.

In some circumstances, such as under section 1128, the bill requires a hearing and the court may act only after a hearing is held. In those circumstances the judge will receive evidence before ruling. In other circumstances, the court may take action "after notice and a hearing," if no party in interest requests a hearing. In that event a court order authorizing the action to be taken is not necessary as the ultimate action taken by the court implies such an authorization.

Section 102(8) is new. It contains a rule of construction indicating that a definition contained in a section in title 11 that refers to another section of title 11 does not, for the purposes of such reference, take the meaning of a term used in the other section. For example, section 522(a)(2) defines "value" for the purposes of section 522. Section 548(d)(2) defines "value" for purposes of section 548. When section 548 is incorporated by reference in section 522, this rule of construction makes clear that the definition of "value" in section 548 governs its meaning in section 522 notwithstanding a different definition of "value" in section 522(a)(2).

## SENATE REPORT NO. 95-989

Section 102 provides seven rules of construction. Some are derived from current law; others are derived from 1 U.S.C. 1; a few are new. They apply generally throughout proposed title 11. These are terms that are not appropriate for definition, but that require an explanation.

Paragraph (1) defines the concept of "after notice and a hearing." The concept is central to the bill and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after such notice as is appropriate in the particular circumstances (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceed-

ings), and such opportunity for a hearing as is appropriate in the particular circumstances. Thus, a hearing will not be necessary in every instance. If there is no objection to the proposed action, the action may go ahead without court action. This is a significant change from present law, which requires the affirmative approval of the bankruptcy judge for almost every action. The change will permit the bankruptcy judge to stay removed from the administration of the bankruptcy or reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection. The phrase "such opportunity for a hearing as is appropriate in the particular circumstances" is designed to permit the Rules and the courts to expedite or dispense with hearings when speed is essential. The language "or similar phrase" is intended to cover the few instances in the bill where "after notice and a hearing" is interrupted by another phrase, such as "after notice to the debtor and a hearing."

Paragraph (2) specifies that "claim against the debtor" includes claim against property of the debtor. This paragraph is intended to cover nonrecourse loan agreements where the creditor's only rights are against property of the debtor, and not against the debtor personally. Thus, such an agreement would give rise to a claim that would be treated as a claim against the debtor personally, for the purposes of the bankruptcy code.

Paragraph (3) is a codification of *American Surety Co. v. Marotta*, 287 U.S. 513 (1933). It specifies that "including" and "including" are not limiting.

Paragraph (4) specifies that "may not" is prohibitive and not permissive (such as in "might not").

Paragraph (5) specifies that "or" is not exclusive. Thus, if a party "may do (a) or (b)", then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

Paragraph (6) makes clear that "order for relief" means entry of an order for relief. If the court orally orders relief, but the order is not entered until a later time, then any time measurements in the bill are from entry, not from the oral order. In a voluntary case, the entry of the order for relief is the filing of the petition commencing the voluntary case.

Paragraph (7) specifies that the singular includes the plural. The plural, however, generally does not include the singular. The bill uses only the singular, even when the item in question most often is found in plural quantities, in order to avoid the confusion possible if both rules of construction applied. When an item is specified in the plural, the plural is intended.

## AMENDMENTS

1986—Par. (9). Pub. L. 99-554 added par. (9).

1984—Par. (8). Pub. L. 98-353 substituted "contained" for "continued".

## EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by 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.

## 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.

## § 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(o), 555 through 557, and 559 through 562 apply in a case under chapter 15.