

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's<sup>1</sup> fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

(Added Pub. L. 103-394, title III, §308(a), Oct. 22, 1994, 108 Stat. 4135.)

#### REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (i)(1), are set out in the Appendix to this title.

#### EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 101 of this title.

### CHAPTER 3—CASE ADMINISTRATION

#### SUBCHAPTER I—COMMENCEMENT OF A CASE

Sec.	
301.	Voluntary cases.
302.	Joint cases.
303.	Involuntary cases.
304.	Cases ancillary to foreign proceedings.
305.	Abstention.
306.	Limited appearance.
307.	United States trustee.

#### SUBCHAPTER II—OFFICERS

321.	Eligibility to serve as trustee.
322.	Qualification of trustee.
323.	Role and capacity of trustee.
324.	Removal of trustee or examiner.
325.	Effect of vacancy.
326.	Limitation on compensation of trustee.
327.	Employment of professional persons.
328.	Limitation on compensation of professional persons.

<sup>1</sup> So in original. Probably should be "attorneys'".

- Sec.  
329. Debtor's transactions with attorneys.  
330. Compensation of officers.  
331. Interim compensation.

SUBCHAPTER III—ADMINISTRATION

341. Meetings of creditors and equity security holders.  
342. Notice.  
343. Examination of the debtor.  
344. Self-incrimination; immunity.  
345. Money of estates.  
346. Special tax provisions.  
347. Unclaimed property.  
348. Effect of conversion.  
349. Effect of dismissal.  
350. Closing and reopening cases.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

361. Adequate protection.  
362. Automatic stay.  
363. Use, sale, or lease of property.  
364. Obtaining credit.  
365. Executory contracts and unexpired leases.  
366. Utility service.

AMENDMENTS

1986—Pub. L. 99-554, title II, § 205(b), Oct. 27, 1986, 100 Stat. 3098, added item 307.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 103 of this title; title 15 section 78ff.

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Sections 301, 302, 303, and 304 are all modified in the House amendment to adopt an idea contained in sections 301 and 303 of the Senate amendment requiring a petition commencing a case to be filed with the bankruptcy court. The exception contained in section 301 of the Senate bill relating to cases filed under chapter 9 is deleted. Chapter 9 cases will be handled by a bankruptcy court as are other title 11 cases.

SENATE REPORT NO. 95-989

Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under this section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter. The section contains no change from current law, except for the use of the phrase "order for relief" instead of "adjudication." The term adjudication is replaced by a less pejorative phrase in light of the clear power of Congress to permit voluntary bankruptcy without the necessity for an adjudication, as under the 1898 act [former title 11], which was adopted when voluntary bankruptcy was a concept not thoroughly tested.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 365, 522, 541, 901, 921 of this title.

§ 302. Joint cases

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

A joint case is a voluntary bankruptcy case concerning a wife and husband. Under current law, there is no explicit provision for joint cases. Very often, however, in the consumer debtor context, a husband and wife are jointly liable on their debts, and jointly hold most of their property. A joint case will facilitate consolidation of their estates, to the benefit of both the debtors and their creditors, because the cost of administration will be reduced, and there will be only one filing fee.

Section 302 specifies that a joint case is commenced by the filing of a petition under an appropriate chapter by an individual and that individual's spouse. Thus, one spouse cannot take the other into bankruptcy without the other's knowledge or consent. The filing of the petition constitutes an order for relief under the chapter selected.

Subsection (b) requires the court to determine the extent, if any, to which the estates of the two debtors will be consolidated; that is, assets and liabilities combined in a single pool to pay creditors. Factors that will be relevant in the court's determination include the extent of jointly held property and the amount of jointly-owned debts. The section, of course, is not license to consolidate in order to avoid other provisions of the title to the detriment of either the debtors or their creditors. It is designed mainly for ease of administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 365, 522, 541 of this title.

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least \$10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is