Senate amendment such provisions are contained explicitly or implicitly in section 1123 of the House amendment.

SENATE REPORT NO. 95–989

Section 1174 permits the court to convert the case to a liquidation under chapter 7 if the court finds that the debtor cannot be reorganized, or if various time limits specified in the subchapter are not met. Section 77 [section 205 of former title 11] does not authorize a liquidation of a railroad under the Bankruptcy Act [former title 11]. If the railroad is not reorganizable, the only action open to the court is to dismiss the petition, which would in all likelihood be followed by a State court receivership, with all of its attendant disadvantages. If reorganization is impossible, the debtor should be liquidated under the Bankruptcy Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1165 of this title.

## CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

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TERMINATION OF CHAPTER

*For termination of reenactment of this chapter by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

Chapter repealed effective Oct. 1, 1998, by Pub. L. 99–554, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended by Pub. L. 103–65, § 1, Aug. 6, 1993, 107 Stat. 311. Chapter, as in effect on Sept. 30, 1998, reenacted by Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610, for the period beginning on Oct. 1, 1998, and ending on Apr. 1, 1999. Pub. L. 105–277, § 149(a), as subsequently amended by Pub. L. 106–5, Pub. L. 106–70, Pub. L. 107–8, and Pub. L. 107–17, provided that this chapter, as in effect on May 31, 2001, is reenacted for the period beginning on June 1, 2001, and ending on Oct. 1, 2001. See Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 103, 109, 321, 326, 327, 329, 330, 346, 347, 362, 363, 365, 502, 706, 1106, 1112, 1306, 1307 of this title; title 7 sections 2005, 2008h; title 20 section 1087; title 28 sections 157, 586, 1930.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

### § 1201. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a 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 secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3105, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note below.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107–17, § 2, June 26, 2001, 115 Stat. 151, provided that: "The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on June 1, 2001."

Pub. L. 107–8, § 2, May 11, 2001, 115 Stat. 10, provided that: "The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of

this title and amending provisions set out as a note under this section] shall take effect on July 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–70, § 2, Oct. 9, 1999, 113 Stat. 1031, provided that: ''The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on October 1, 1999.''

Pub. L. 106–5, § 2, Mar. 30, 1999, 113 Stat. 9, provided that: ''The amendments made by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title and amending provisions set out as a note under this section] shall take effect on April 1, 1999.''

EFFECTIVE DATE

Chapter 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.

REPEAL, REENACTMENT, AND TERMINATION OF CHAPTER

Pub. L. 105–277, div. C, title I, § 149, Oct. 21, 1998, 112 Stat. 2681–610, as amended by Pub. L. 106–5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151, provided that:

''(a) Chapter 12 of title 11 of the United States Code, as in effect on May 31, 2001, is hereby reenacted for the period beginning on June 1, 2001, and ending on October 1, 2001.

''(b) All cases commenced or pending under chapter 12 of title 11, United States Code, as reenacted under subsection (a), and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after October 1, 2001. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter were continued in effect after October 1, 2001.''

Chapter repealed Oct. 1, 1998, except that cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, are to be conducted and determined as if this chapter had not been repealed, and substantive rights of parties in connection with such cases, matters, and proceedings are to continue to be governed under the laws applicable to such cases, matters, and proceedings as if this chapter had not been repealed, see section 302(f) of Pub. L. 99–554, as amended, set out in an Effective Date of 1986 Amendment note under section 581 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 108, 348 of this title.

## § 1202. Trustee

(a) 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 chapter and if such individual qualifies as a trustee under section 322 of this title, then such individual shall serve as trustee in any case filed under this chapter. 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) The trustee shall—

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

(2) perform the duties specified in section 1106(a)(3) and 1106(a)(4) of this title 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;

(C) modification of the plan after confirmation; or

(D) the sale of property of the estate;

(4) ensure that the debtor commences making timely payments required by a confirmed plan; and

(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203.

(Added and amended Pub. L. 99–554, title II, §§ 227, 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3103, 3106, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99–554, § 227, struck out subsecs. (c) and (d) which read as follows:

''(c) If the number of cases under this chapter commenced in a particular judicial district so warrants, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.

''(d)(1) A court that has appointed an individual under subsection (a) 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 the sum of—

''(i) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

''(ii) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000;

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.''

See section 586(b) and (e) of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective 30 days after Oct. 27, 1986, and before the amendment by section 227 of Pub. L. 99–554, see section 302(c)(2) of Pub. L. 99–554, set out as an Effective Date of 1986 Amendment note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective date and applicability of amendment by section 227 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554.

REFERENCES IN SUBSECTION (a) TEMPORARILY DEEMED TO BE REFERENCES TO OTHER PROVISIONS

Until the amendments made by subtitle A (§§ 201 to 231) of title II of Pub. L. 99–554 become effective in a district and apply to a case, in subsec. (a) of this section—

(1) the first two references to the United States trustee are deemed to be references to the court, and

(2) any reference to section 586(b) of Title 28, Judiciary and Judicial Procedure, is deemed to be a reference to subsec. (c) of this section,

see section 302(c)(3)(B), (d), (e) of Pub. L. 99–554, set out as an Effective Date note under section 581 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 326, 327, 546, 557, 1226 of this title.

## § 1203. Rights and powers of debtor

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

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 363, 364, 1202 of this title.

## § 1204. Removal of debtor as debtor in possession

(a) On request of a party in interest, and after notice 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.

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

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 364, 1207 of this title.

## § 1205. Adequate protection

(a) Section 361 does not apply in a case under this chapter.

(b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or

(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 1206. Sales free of interests

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland or farm equipment, except that the proceeds of such sale shall be subject to such interest.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 1207. Property of the estate

(a) 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 1204, a confirmed plan, or an order confirming a plan, the debtor shall remain in possession of all property of the estate.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1230 of this title.

### § 1208. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1221 of this title;

(4) failure to commence making timely payments required by a confirmed plan;

(5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; or

(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a

case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 348, 365, 706, 726, 728, 1307 of this title.

## SUBCHAPTER II—THE PLAN

### § 1221. Filing of plan

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

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3109, 3124; Pub. L. 103–65, § 2, Aug. 6, 1993, 107 Stat. 311; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

AMENDMENTS

1993—Pub. L. 103–65 substituted ''the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable'' for ''an extension is substantially justified''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3 of Pub. L. 103–65 provided that:

''(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act [amending this section and provisions set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Aug. 6, 1993].

''(b) APPLICATION OF AMENDMENT MADE BY SECTION 2.—The amendment made by section 2 [amending this section] shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 348, 1208 of this title.

### § 1222. Contents of plan

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(7) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

(9) provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c);

(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

(11) include any other appropriate provision not inconsistent with this title.

(c) Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than three years unless the court for cause approves a longer period, but the court may not approve a period that is longer than five years.

(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3109, 3124; Pub. L. 103–394, title III, § 305(b), Oct. 22, 1994, 108 Stat. 4134; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–394 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and applicable only to agreements entered into after Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1223, 1225, 1228, 1229 of this title.

## § 1223. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1229 of this title.

## § 1224. Confirmation hearing

After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 586.

## § 1225. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder; and

(6) the debtor will be able to make all payments under the plan and to comply with the plan.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, ''disposable income'' means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor; or

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

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347, 1208, 1222, 1229, 1230, 1231 of this title.

## § 1226. 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 debtor, after deducting—

(1) any unpaid claim allowed under section 503(b) of this title; and

(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 1202(c)[1] of this title is serving in the case, the percentage fee fixed for such standing trustee under section 1202(d)[1] of this title.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3111, 3124; Pub. L. 103–394, title V, § 501(d)(36), Oct. 22, 1994, 108 Stat. 4147; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

REFERENCES IN TEXT

Section 1202(c) and (d) of this title, referred to in subsec. (b)(2), was repealed by section 227 of Pub. L. 99–554, and provisions relating to appointment of and fixing percentage fees for standing trustees are contained in section 586(b) and (e) of Title 28, Judiciary and Judicial Procedure, as amended by section 113(b), (c) of Pub. L. 99–554.

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–394 substituted ''1202(c)'' for ''1202(d)'' and ''1202(d)'' for ''1202(e)''.

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

[1] See References in Text note below.

Pub. L. 103–394, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 347 of this title.

### § 1227. Effect of confirmation

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3112, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, 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 debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3112, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 106–518, title II, § 208, Nov. 13, 2000, 114 Stat. 2415; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

AMENDMENTS

2000—Subsecs. (a), (c)(1). Pub. L. 106–518 substituted ''1222(b)(9)'' for ''1222(b)(10)'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 348, 523, 524, 727, 1227 of this title.

### § 1229. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

(b)(1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1208, 1228, 1230 of this title; title 28 section 586.

### § 1230. Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1225 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1207 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1229 of this title.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1208 of this title.

### § 1231. Special tax provisions

(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.

(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

(Added and amended Pub. L. 99–554, title II, § 255, title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub. L. 105–277, div. C, title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681–610; Pub. L. 106–5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub. L. 106–70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub. L. 107–8, § 1, May 11, 2001, 115 Stat. 10; Pub. L. 107–17, § 1, June 26, 2001, 115 Stat. 151.)

TERMINATION OF SECTION

*For termination of reenactment of this section by section 149(a) of Pub. L. 105–277, as amended, see Repeal, Reenactment, and Termination of Chapter note set out under section 1201 of this title.*

CODIFICATION

For repeal of section effective Oct. 1, 1998, and subsequent reenactment of section for specific periods, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

## CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.
1301. Stay of action against codebtor.
1302. Trustee.
1303. Rights and powers of debtor.
1304. Debtor engaged in business.
1305. Filing and allowance of postpetition claims.
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SUBCHAPTER II—THE PLAN

1321. Filing of plan.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 103, 109, 321, 326, 329, 330, 346, 347, 348, 362, 363, 365, 502, 706, 1106, 1112 of this title; title 7 section 2008h; title 15 section 1673; title 20 section 1087; title 28 sections 157, 586, 1930.

### SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

### § 1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a 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 secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2645; Pub. L. 98–353, title III, §§ 313, 524, July 10, 1984, 98 Stat. 355, 388.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1301 of the House amendment is identical with the provision contained in section 1301 of the House bill and adopted by the Senate amendment. Section 1301(c)(1) indicates that a basis for lifting the stay is that the debtor did not receive consideration for the claim by the creditor, or in other words, the debtor is really the ''codebtor.'' As with other sections in title 11, the standard of receiving consideration is a general rule, but where two co-debtors have agreed to share liabilities in a different manner than profits it is the individual who does not ultimately bear the liability that is protected by the stay under section 1301.

SENATE REPORT NO. 95–989

Subsection (a) automatically stays the holder of a claim based on a consumer debt of the chapter 13 debtor from acting or proceeding in any way, except as authorized pursuant to subsections (b) and (c), against an individual or the property of an individual liable with the chapter 13 debtor, unless such codebtor became liable in the ordinary course of his business, or unless the case is closed, dismissed, or converted to another chapter.

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.