

2019 LEGISLATION AFFECTING BANKRUPTCY PRACTICE

Lawrence R. Ahern, III

Brown & Ahern
Nashville, Tennessee

Appendix B to Part I

The Small Business Reorganization Act of 2019 (SBRA), H.R. 3311

116TH CONGRESS
1ST SESSION

H. R. 3311

AN ACT

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Reor-
3 ganization Act of 2019”.

4 **SEC. 2. REORGANIZATION OF SMALL BUSINESS DEBTORS.**

5 (a) IN GENERAL.—Chapter 11 of title 11, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “SUBCHAPTER V—SMALL BUSINESS DEBTOR
9 REORGANIZATION

10 **“§ 1181. Inapplicability of other sections**

11 “(a) IN GENERAL.—Sections 105(d), 1101(1), 1104,
12 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8),
13 1123(c), 1127, 1129(a)(15), 1129(b), 1129(e), 1129(e),
14 and 1141(d)(5) of this title do not apply in a case under
15 this subchapter.

16 “(b) COURT AUTHORITY.—Unless the court for cause
17 orders otherwise, paragraphs (1), (2), and (4) of section
18 1102(a) and sections 1102(b), 1103, and 1125 of this title
19 do not apply in a case under this subchapter.

20 “(c) SPECIAL RULE FOR DISCHARGE.—If a plan is
21 confirmed under section 1191(b) of this title, section
22 1141(d) of this title shall not apply, except as provided
23 in section 1192 of this title.

24 **“§ 1182. Definitions**

25 “In this subchapter:

1 “(1) DEBTOR.—The term ‘debtor’ means a
2 small business debtor.

3 “(2) DEBTOR IN POSSESSION.—The term ‘debt-
4 or in possession’ means the debtor, unless removed
5 as debtor in possession under section 1185(a) of this
6 title.

7 **“§ 1183. Trustee**

8 “(a) IN GENERAL.—If the United States trustee has
9 appointed an individual under section 586(b) of title 28
10 to serve as standing trustee in cases under this sub-
11 chapter, and if such individual qualifies as a trustee under
12 section 322 of this title, then that individual shall serve
13 as trustee in any case under this subchapter. Otherwise,
14 the United States trustee shall appoint one disinterested
15 person to serve as trustee in the case or the United States
16 trustee may serve as trustee in the case, as necessary.

17 “(b) DUTIES.—The trustee shall—

18 “(1) perform the duties specified in paragraphs
19 (2), (5), (6), (7), and (9) of section 704(a) of this
20 title;

21 “(2) perform the duties specified in paragraphs
22 (3), (4), and (7) of section 1106(a) of this title, if
23 the court, for cause and on request of a party in in-
24 terest, the trustee, or the United States trustee, so
25 orders;

1 “(3) appear and be heard at the status con-
2 ference under section 1188 of this title and any
3 hearing that concerns—

4 “(A) the value of property subject to a
5 lien;

6 “(B) confirmation of a plan filed under
7 this subchapter;

8 “(C) modification of the plan after con-
9 firmation; or

10 “(D) the sale of property of the estate;

11 “(4) ensure that the debtor commences making
12 timely payments required by a plan confirmed under
13 this subchapter;

14 “(5) if the debtor ceases to be a debtor in pos-
15 session, perform the duties specified in section
16 704(a)(8) and paragraphs (1), (2), and (6) of sec-
17 tion 1106(a) of this title, including operating the
18 business of the debtor;

19 “(6) if there is a claim for a domestic support
20 obligation with respect to the debtor, perform the
21 duties specified in section 704(c) of this title; and

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

24 “(c) TERMINATION OF TRUSTEE SERVICE.—

1 “(1) IN GENERAL.—If the plan of the debtor is
2 confirmed under section 1191(a) of this title, the
3 service of the trustee in the case shall terminate
4 when the plan has been substantially consummated,
5 except that the United States trustee may reappoint
6 a trustee as needed for performance of duties under
7 subsection (b)(3)(C) of this section and section
8 1185(a) of this title.

9 “(2) SERVICE OF NOTICE OF SUBSTANTIAL
10 CONSUMMATION.—Not later than 14 days after the
11 plan of the debtor is substantially consummated, the
12 debtor shall file with the court and serve on the
13 trustee, the United States trustee, and all parties in
14 interest notice of such substantial consummation.

15 **“§ 1184. Rights and powers of a debtor in possession**

16 “Subject to such limitations or conditions as the
17 court may prescribe, a debtor in possession shall have all
18 the rights, other than the right to compensation under sec-
19 tion 330 of this title, and powers, and shall perform all
20 functions and duties, except the duties specified in para-
21 graphs (2), (3), and (4) of section 1106(a) of this title,
22 of a trustee serving in a case under this chapter, including
23 operating the business of the debtor.

1 **“§ 1185. Removal of debtor in possession**

2 “(a) IN GENERAL.—On request of a party in interest,
3 and after notice and a hearing, the court shall order that
4 the debtor shall not be a debtor in possession for cause,
5 including fraud, dishonesty, incompetence, or gross mis-
6 management of the affairs of the debtor, either before or
7 after the date of commencement of the case, or for failure
8 to perform the obligations of the debtor under a plan con-
9 firmed under this subchapter.

10 “(b) REINSTATEMENT.—On request of a party in in-
11 terest, and after notice and a hearing, the court may rein-
12 state the debtor in possession.

13 **“§ 1186. Property of the estate**

14 “(a) INCLUSIONS.—If a plan is confirmed under sec-
15 tion 1191(b) of this title, property of the estate includes,
16 in addition to the property specified in section 541 of this
17 title—

18 “(1) all property of the kind specified in that
19 section that the debtor acquires after the date of
20 commencement of the case but before the case is
21 closed, dismissed, or converted to a case under chap-
22 ter 7, 12, or 13 of this title, whichever occurs first;
23 and

24 “(2) earnings from services performed by the
25 debtor after the date of commencement of the case
26 but before the case is closed, dismissed, or converted

1 to a case under chapter 7, 12, or 13 of this title,
2 whichever occurs first.

3 “(b) DEBTOR REMAINING IN POSSESSION.—Except
4 as provided in section 1185 of this title, a plan confirmed
5 under this subchapter, or an order confirming a plan
6 under this subchapter, the debtor shall remain in posses-
7 sion of all property of the estate.

8 **“§ 1187. Duties and reporting requirements of debt-**
9 **ors**

10 “(a) FILING REQUIREMENTS.—Upon electing to be
11 a debtor under this subchapter, the debtor shall file the
12 documents required by subparagraphs (A) and (B) of sec-
13 tion 1116(1) of this title.

14 “(b) OTHER APPLICABLE PROVISIONS.—A debtor, in
15 addition to the duties provided in this title and as other-
16 wise required by law, shall comply with the requirements
17 of section 308 and paragraphs (2), (3), (4), (5), (6), and
18 (7) of section 1116 of this title.

19 “(c) SEPARATE DISCLOSURE STATEMENT EXEMP-
20 TION.—If the court orders under section 1181(b) of this
21 title that section 1125 of this title applies, section 1125(f)
22 of this title shall apply.

23 **“§ 1188. Status conference**

24 “(a) IN GENERAL.—Except as provided in subsection
25 (b), not later than 60 days after the entry of the order

1 for relief under this chapter, the court shall hold a status
2 conference to further the expeditious and economical reso-
3 lution of a case under this subchapter.

4 “(b) EXCEPTION.—The court may extend the period
5 of time for holding a status conference under subsection
6 (a) if the need for an extension is attributable to cir-
7 cumstances for which the debtor should not justly be held
8 accountable.

9 “(c) REPORT.—Not later than 14 days before the
10 date of the status conference under subsection (a), the
11 debtor shall file with the court and serve on the trustee
12 and all parties in interest a report that details the efforts
13 the debtor has undertaken and will undertake to attain
14 a consensual plan of reorganization.

15 **“§ 1189. Filing of the plan**

16 “(a) WHO MAY FILE A PLAN.—Only the debtor may
17 file a plan under this subchapter.

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

23 **“§ 1190. Contents of plan**

24 “A plan filed under this subchapter—

25 “(1) shall include—

1 “(A) a brief history of the business oper-
2 ations of the debtor;

3 “(B) a liquidation analysis; and

4 “(C) projections with respect to the ability
5 of the debtor to make payments under the pro-
6 posed plan of reorganization;

7 “(2) shall provide for the submission of all or
8 such portion of the future earnings or other future
9 income of the debtor to the supervision and control
10 of the trustee as is necessary for the execution of the
11 plan; and

12 “(3) notwithstanding section 1123(b)(5) of this
13 title, may modify the rights of the holder of a claim
14 secured only by a security interest in real property
15 that is the principal residence of the debtor if the
16 new value received in connection with the granting
17 of the security interest was—

18 “(A) not used primarily to acquire the real
19 property; and

20 “(B) used primarily in connection with the
21 small business of the debtor.

22 **“§ 1191. Confirmation of plan**

23 “(a) TERMS.—The court shall confirm a plan under
24 this subchapter only if all of the requirements of section

1 1129(a), other than paragraph (15) of that section, of this
2 title are met.

3 “(b) EXCEPTION.—Notwithstanding section 510(a)
4 of this title, if all of the applicable requirements of section
5 1129(a) of this title, other than paragraphs (8), (10), and
6 (15) of that section, are met with respect to a plan, the
7 court, on request of the debtor, shall confirm the plan not-
8 withstanding the requirements of such paragraphs if the
9 plan does not discriminate unfairly, and is fair and equi-
10 table, with respect to each class of claims or interests that
11 is impaired under, and has not accepted, the plan.

12 “(c) RULE OF CONSTRUCTION.—For purposes of this
13 section, the condition that a plan be fair and equitable
14 with respect to each class of claims or interests includes
15 the following requirements:

16 “(1) With respect to a class of secured claims,
17 the plan meets the requirements of section
18 1129(b)(2)(A) of this title.

19 “(2) As of the effective date of the plan—

20 “(A) the plan provides that all of the pro-
21 jected disposable income of the debtor to be re-
22 ceived in the 3-year period, or such longer pe-
23 riod not to exceed 5 years as the court may fix,
24 beginning on the date that the first payment is

1 due under the plan will be applied to make pay-
2 ments under the plan; or

3 “(B) the value of the property to be dis-
4 tributed under the plan in the 3-year period, or
5 such longer period not to exceed 5 years as the
6 court may fix, beginning on the date on which
7 the first distribution is due under the plan is
8 not less than the projected disposable income of
9 the debtor.

10 “(3)(A)(i) The debtor will be able to make all
11 payments under the plan; or

12 “(ii) there is a reasonable likelihood that the
13 debtor will be able to make all payments under the
14 plan; and

15 “(B) the plan provides appropriate remedies,
16 which may include the liquidation of nonexempt as-
17 sets, to protect the holders of claims or interests in
18 the event that the payments are not made.

19 “(d) DISPOSABLE INCOME.—For purposes of this
20 section, the term ‘disposable income’ means the income
21 that is received by the debtor and that is not reasonably
22 necessary to be expended—

23 “(1) for—

24 “(A) the maintenance or support of the
25 debtor or a dependent of the debtor; or

1 “(B) a domestic support obligation that
2 first becomes payable after the date of the filing
3 of the petition; or

4 “(2) for the payment of expenditures necessary
5 for the continuation, preservation, or operation of
6 the business of the debtor.

7 “(e) SPECIAL RULE.—Notwithstanding section
8 1129(a)(9)(A) of this title, a plan that provides for the
9 payment through the plan of a claim of a kind specified
10 in paragraph (2) or (3) of section 507(a) of this title may
11 be confirmed under subsection (b) of this section.

12 **“§ 1192. Discharge**

13 “‘If the plan of the debtor is confirmed under section
14 1191(b) of this title, as soon as practicable after comple-
15 tion by the debtor of all payments due within the first
16 3 years of the plan, or such longer period not to exceed
17 5 years as the court may fix, unless the court approves
18 a written waiver of discharge executed by the debtor after
19 the order for relief under this chapter, the court shall
20 grant the debtor a discharge of all debts provided in sec-
21 tion 1141(d)(1)(A) of this title, and all other debts allowed
22 under section 503 of this title and provided for in the plan,
23 except any debt—

1 “(1) on which the last payment is due after the
2 first 3 years of the plan, or such other time not to
3 exceed 5 years fixed by the court; or

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

6 **“§ 1193. Modification of plan**

7 “(a) MODIFICATION BEFORE CONFIRMATION.—The
8 debtor may modify a plan at any time before confirmation,
9 but may not modify the plan so that the plan as modified
10 fails to meet the requirements of sections 1122 and 1123
11 of this title, with the exception of subsection (a)(8) of such
12 section 1123. After the modification is filed with the court,
13 the plan as modified becomes the plan.

14 “(b) MODIFICATION AFTER CONFIRMATION.—If a
15 plan has been confirmed under section 1191(a) of this
16 title, the debtor may modify the plan at any time after
17 confirmation of the plan and before substantial con-
18 summation of the plan, but may not modify the plan so
19 that the plan as modified fails to meet the requirements
20 of sections 1122 and 1123 of this title, with the exception
21 of subsection (a)(8) of such section 1123. The plan, as
22 modified under this subsection, becomes the plan only if
23 circumstances warrant the modification and the court,
24 after notice and a hearing, confirms the plan as modified
25 under section 1191(a) of this title.

1 “(c) CERTAIN OTHER MODIFICATIONS.—If a plan
2 has been confirmed under section 1191(b) of this title, the
3 debtor may modify the plan at any time within 3 years,
4 or such longer time not to exceed 5 years, as fixed by the
5 court, but may not modify the plan so that the plan as
6 modified fails to meet the requirements of section 1191(b)
7 of this title. The plan as modified under this subsection
8 becomes the plan only if circumstances warrant such
9 modification and the court, after notice and a hearing,
10 confirms such plan, as modified, under section 1191(b) of
11 this title.

12 “(d) HOLDERS OF A CLAIM OR INTEREST.—If a plan
13 has been confirmed under section 1191(a) of this title, any
14 holder of a claim or interest that has accepted or rejected
15 the plan is deemed to have accepted or rejected, as the
16 case may be, the plan as modified, unless, within the time
17 fixed by the court, such holder changes the previous ac-
18 ceptance or rejection of the holder.

19 **“§ 1194. Payments**

20 “(a) RETENTION AND DISTRIBUTION BY TRUST-
21 EE.—Payments and funds received by the trustee shall be
22 retained by the trustee until confirmation or denial of con-
23 firmation of a plan. If a plan is confirmed, the trustee
24 shall distribute any such payment in accordance with the

1 plan. If a plan is not confirmed, the trustee shall return
2 any such payments to the debtor after deducting—

3 “(1) any unpaid claim allowed under section
4 503(b) of this title;

5 “(2) any payment made for the purpose of pro-
6 viding adequate protection of an interest in property
7 due to the holder of a secured claim; and

8 “(3) any fee owing to the trustee.

9 “(b) OTHER PLANS.—If a plan is confirmed under
10 section 1191(b) of this title, except as otherwise provided
11 in the plan or in the order confirming the plan, the trustee
12 shall make payments to creditors under the plan.

13 “(c) PAYMENTS PRIOR TO CONFIRMATION.—Prior to
14 confirmation of a plan, the court, after notice and a hear-
15 ing, may authorize the trustee to make payments to the
16 holder of a secured claim for the purpose of providing ade-
17 quate protection of an interest in property.

18 **“§ 1195. Transactions with professionals**

19 “Notwithstanding section 327(a) of this title, a per-
20 son is not disqualified for employment under section 327
21 of this title, by a debtor solely because that person holds
22 a claim of less than \$10,000 that arose prior to com-
23 mencement of the case.”.

24 (b) CLERICAL AMENDMENT.—The table of sub-
25 chapters at the beginning of chapter 11 of title 11, United

1 States Code, is amended by adding at the end the fol-
 2 lowing:

“SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

- “1181. Inapplicability of other sections.
- “1182. Definitions.
- “1183. Trustee.
- “1184. Rights and powers of a debtor in possession.
- “1185. Removal of debtor in possession.
- “1186. Property of the estate.
- “1187. Duties and reporting requirements of debtors.
- “1188. Status conference.
- “1189. Filing of the plan.
- “1190. Contents of plan.
- “1191. Confirmation of plan.
- “1192. Discharge.
- “1193. Modification of plan.
- “1194. Payments.
- “1195. Transactions with professionals.”.

3 **SEC. 3. PREFERENCES; VENUE OF CERTAIN PROCEEDINGS.**

4 (a) PREFERENCES.—Section 547(b) of title 11,
 5 United States Code, is amended by inserting “, based on
 6 reasonable due diligence in the circumstances of the case
 7 and taking into account a party’s known or reasonably
 8 knowable affirmative defenses under subsection (c),” after
 9 “may”.

10 (b) VENUE OF CERTAIN PROCEEDINGS.—Section
 11 1409(b) of title 28, United States Code, is amended by
 12 striking “\$10,000” and inserting “\$25,000”.

13 **SEC. 4. CONFORMING AMENDMENTS.**

14 (a) TITLE 11.—Title 11, United States Code, is
 15 amended—

16 (1) in section 101—

1 (A) in paragraph (51C), by inserting “and
2 has not elected that subchapter V of chapter 11
3 of this title shall apply” after “is a small busi-
4 ness debtor”; and

5 (B) in paragraph (51D)—

6 (i) in subparagraph (A)—

7 (I) by striking “or operating real
8 property or activities incidental there-
9 to” and inserting “single asset real
10 estate”; and

11 (II) by striking “for a case in
12 which” and all that follows and insert-
13 ing “not less than 50 percent of which
14 arose from the commercial or business
15 activities of the debtor; and”; and

16 (ii) in subparagraph (B)—

17 (I) by striking the period at the
18 end and inserting a semicolon;

19 (II) by striking “does not include
20 any member” and inserting the fol-
21 lowing: “does not include—

22 “(i) any member”; and

23 (III) by adding at the end the
24 following:

1 “(ii) any debtor that is a corporation
2 subject to the reporting requirements
3 under section 13 or 15(d) of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78m,
5 78o(d)); or

6 “(iii) any corporation that—
7 “(I) is subject to the reporting
8 requirements under section 13 or
9 15(d) of the Securities Exchange Act
10 of 1934 (15 U.S.C. 78m, 78o(d)); and

11 “(II) is an affiliate of a debtor.”;
12 (2) in section 103—

13 (A) by redesignating subsections (i)
14 through (k) as subsections (j) through (l), re-
15 spectively; and

16 (B) by inserting after subsection (h) the
17 following:

18 “(i) Subchapter V of chapter 11 of this title applies
19 only in a case under chapter 11 in which a small business
20 debtor elects that subchapter V of chapter 11 shall
21 apply.”;

22 (3) in section 322(a), by inserting “1183,”
23 after “1163,”;

24 (4) in section 326—

1 (A) in subsection (a), by inserting “, other
2 than a case under subchapter V of chapter 11”
3 after “7 or 11”; and

4 (B) in subsection (b), by inserting “sub-
5 chapter V of chapter 11 or” after “In a case
6 under”;

7 (5) in section 347—

8 (A) in subsection (a)—

9 (i) by inserting “1194,” after “726,”;

10 and

11 (ii) by inserting “subchapter V of
12 chapter 11,” after “chapter 7,”; and

13 (B) in subsection (b), by inserting “1194,”
14 after “1173,”;

15 (6) in section 363(c)(1), by inserting “1183,
16 1184,” after “1108,”;

17 (7) in section 364(a), by inserting “1183,
18 1184,” after “1108,”;

19 (8) in section 523(a), in the matter preceding
20 paragraph (1), by inserting “1192” after “1141,”;

21 (9) in section 524—

22 (A) in subsection (a)—

23 (i) in paragraph (1), by inserting
24 “1192,” after “1141,”; and

1 (ii) in paragraph (3), by inserting
2 “1192,” after “523,”;

3 (B) in subsection (c)(1), by inserting
4 “1192,” after “1141,”; and

5 (C) in subsection (d), by inserting “1192,”
6 after “1141,”;

7 (10) in section 557(d)(3), by inserting “1183,”
8 after “1104,”;

9 (11) in section 1102(a), by striking paragraph
10 (3) and inserting the following:

11 “(3) Unless the court for cause orders other-
12 wise, a committee of creditors may not be appointed
13 in a small business case or a case under subchapter
14 V of this chapter.”; and

15 (12) in section 1146(a), by inserting “or 1191”
16 after “1129”.

17 (b) TITLE 28.—Title 28 United States Code, is
18 amended—

19 (1) in section 586—

20 (A) in subsection (a)(3), by inserting “(in-
21 cluding subchapter V of chapter 11)” after “7,
22 11”;

23 (B) in subsection (b), by inserting “sub-
24 chapter V of chapter 11 or” after “cases
25 under” the first place it appears;

1 (C) in subsection (d)(1), by inserting “sub-
2 chapter V of chapter 11 or” after “cases
3 under” each place that term appears; and

4 (D) in subsection (e)—

5 (i) in paragraph (1), by inserting
6 “subchapter V of chapter 11 or” after
7 “cases under”;

8 (ii) in paragraph (2), by inserting
9 “subchapter V of chapter 11 or” after
10 “cases under” each place that term ap-
11 pears; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(5) In the event that the services of the trustee in
15 a case under subchapter V of chapter 11 of title 11 are
16 terminated by dismissal or conversion of the case, or upon
17 substantial consummation of a plan under section
18 1183(c)(1) of that title, the court shall award compensa-
19 tion to the trustee consistent with services performed by
20 the trustee and the limits on the compensation of the
21 trustee established pursuant to paragraph (1) of this sub-
22 section.”;

23 (2) in section 589b—

1 (A) in subsection (a)(1), by inserting “sub-
2 chapter V of chapter 11 and” after “cases
3 under”; and

4 (B) in subsection (d)—

5 (i) in the matter preceding paragraph
6 (1), by inserting “subchapter V of chapter
7 11 and” after “trustees under”; and

8 (ii) in the undesignated matter fol-
9 lowing paragraph (8), by inserting “sub-
10 chapter V of chapter 11 and” after “cases
11 under”; and

12 (3) in section 1930(a)(6)(A), by inserting “,
13 other than under subchapter V,” after “chapter 11
14 of title 11”.

15 **SEC. 5. EFFECTIVE DATE.**

16 This Act and the amendments made by this Act shall
17 take effect 180 days after the date of enactment of this
18 Act.

19 **SEC. 6. DETERMINATION OF BUDGETARY EFFECTS.**

20 The budgetary effects of this Act, for the purpose of
21 complying with the Statutory Pay-As-You-Go Act of 2010,
22 shall be determined by reference to the latest statement
23 titled “Budgetary Effects of PAYGO Legislation” for this
24 Act, submitted for printing in the Congressional Record
25 by the Chairman of the House Budget Committee, pro-

- 1 vided that such statement has been submitted prior to the
- 2 vote on passage.

Passed the House of Representatives July 23, 2019.

Attest:

Clerk.

116TH CONGRESS
1ST SESSION

H. R. 3311

AN ACT

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.