
S.256

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Reported in Senate)

Subtitle B--Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended--

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

`(14A) `domestic support obligation' means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

`(A) owed to or recoverable by--

`(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

`(ii) a governmental unit;

`(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

`(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

`(i) a separation agreement, divorce decree, or property settlement agreement;

`(ii) an order of a court of record; or

`(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

`(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt;'

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended--

- (1) by striking paragraph (7);
- (2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;
- (3) in paragraph (2), as so redesignated, by striking 'First' and inserting 'Second';
- (4) in paragraph (3), as so redesignated, by striking 'Second' and inserting 'Third';
- (5) in paragraph (4), as so redesignated--
 - (A) by striking 'Third' and inserting 'Fourth'; and
 - (B) by striking the semicolon at the end and inserting a period;
- (6) in paragraph (5), as so redesignated, by striking 'Fourth' and inserting 'Fifth';
- (7) in paragraph (6), as so redesignated, by striking 'Fifth' and inserting 'Sixth';
- (8) in paragraph (7), as so redesignated, by striking 'Sixth' and inserting 'Seventh'; and
- (9) by inserting before paragraph (2), as so redesignated, the following:
 - (1) First:
 - (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.
 - (B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.
 - (C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs

(A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.'

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended--

(1) in section 1129(a), by adding at the end the following:

`(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.';

(2) in section 1208(c)--

(A) in paragraph (8), by striking `or' at the end;

(B) in paragraph (9), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.';

(3) in section 1222(a)--

(A) in paragraph (2), by striking `and' at the end;

(B) in paragraph (3), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.';

(4) in section 1222(b)--

(A) in paragraph (10), by striking `and' at the end;

(B) by redesignating paragraph (11) as paragraph (12); and

(C) by inserting after paragraph (10) the following:

`(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and';

(5) in section 1225(a)--

(A) in paragraph (5), by striking `and' at the end;

(B) in paragraph (6), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.';

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting ` , and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid' after `completion by the debtor of all payments under the plan';

(7) in section 1307(c)--

(A) in paragraph (9), by striking `or' at the end;

(B) in paragraph (10), by striking the period at the end and inserting `; or'; and

(C) by adding at the end the following:

`(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.';

(8) in section 1322(a)--

(A) in paragraph (2), by striking `and' at the end;

(B) in paragraph (3), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.';

(9) in section 1322(b)--

(A) in paragraph (9), by striking `; and' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

`(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and';

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:

`(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or

administrative order, or by statute, to pay such domestic support obligation; and';

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting ` , and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid' after `completion by the debtor of all payments under the plan'.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

`(2) under subsection (a)--

`(A) of the commencement or continuation of a civil action or proceeding--

`(i) for the establishment of paternity;

`(ii) for the establishment or modification of an order for domestic support obligations;

`(iii) concerning child custody or visitation;

`(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

`(v) regarding domestic violence;

`(B) of the collection of a domestic support obligation from property that is not property of the estate;

`(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

`(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

`(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

`(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

`(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;'

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended--

(1) in subsection (a)--

(A) by striking paragraph (5) and inserting the following:

`(5) for a domestic support obligation;'; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking `(6), or (15)' each place it appears and inserting `or (6)'; and

(3) in paragraph (15), as added by Public Law 103-394 (108 Stat. 4133)--

(A) by inserting `to a spouse, former spouse, or child of the debtor and' before `not of the kind';

(B) by inserting `or' after `court of record;'; and

(C) by striking `unless--' and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended--

(1) in subsection (c), by striking paragraph (1) and inserting the following:

`(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting `of a kind that is specified in section 523(a)(5); or'; and

(3) in subsection (g)(2), by striking `subsection (f)(2)' and inserting `subsection (f)(1)(B)'.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

`(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;'

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting `or for a domestic support obligation that first becomes payable after the date of the filing of the petition' after `dependent of the debtor'.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7- Section 704 of title 11, United States Code, as amended by section 102, is amended--

(1) in subsection (a)--

(A) in paragraph (8), by striking `and' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

`(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and'; and

(2) by adding at the end the following:

`(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall--

`(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

`(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

`(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

`(B)(i) provide written notice to such State child support enforcement agency of such claim; and

`(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

`(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of--

`(i) the granting of the discharge;

`(ii) the last recent known address of the debtor;

`(iii) the last recent known name and address of the debtor's employer; and

`(iv) the name of each creditor that holds a claim that--

`(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

`(II) was reaffirmed by the debtor under section 524(c).

`(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

`(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.'.

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11- Section 1106 of title 11, United States Code, is amended--

(1) in subsection (a)--

(A) in paragraph (6), by striking `and' at the end;

(B) in paragraph (7), by striking the period and inserting `; and';
and

(C) by adding at the end the following:

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