

115TH CONGRESS
2D SESSION

S. 3689

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Mr. GRASSLEY (for himself and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Reor-
5 ganization Act of 2018”.

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

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

1 “SUBCHAPTER V—SMALL BUSINESS DEBTOR
2 REORGANIZATION

3 **“§ 1181. Inapplicability of other sections**

4 “(a) IN GENERAL.—Sections 105(d), 1101(1), 1104,
5 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8),
6 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e)
7 and 1141(d)(5) of this title do not apply in a case under
8 this subchapter.

9 “(b) COURT AUTHORITY.—Unless the court for cause
10 orders otherwise, paragraphs (1), (2), and (4) of section
11 1102(a) and sections 1102(b), 1103, and 1125 of this title
12 do not apply in a case under this subchapter.

13 “(c) SPECIAL RULE FOR DISCHARGE.—If a plan is
14 confirmed under section 1191(b) of this title, section
15 1141(d) of this title shall not apply, except as provided
16 in section 1192 of this title.

17 **“§ 1182. Definitions**

18 “In this subchapter:

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

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

1 **“§ 1183. Trustee**

2 “(a) IN GENERAL.—If the United States trustee has
3 appointed an individual under section 586(b) of title 28
4 to serve as standing trustee in cases under this sub-
5 chapter, and if such individual qualifies as a trustee under
6 section 322 of this title, then that individual shall serve
7 as trustee in any case under this subchapter. Otherwise,
8 the United States trustee shall appoint 1 disinterested
9 person to serve as trustee in the case or the United States
10 trustee may serve as trustee in the case, as necessary.

11 “(b) DUTIES.—The trustee shall—

12 “(1) perform the duties specified in paragraphs
13 (2), (5), (6), (7), and (9) of section 704(a) of this
14 title;

15 “(2) perform the duties specified in paragraphs
16 (3), (4), and (7) of section 1106(a) of this title, if
17 the court, for cause and on request of a party in in-
18 terest, the trustee, or the United States trustee, so
19 orders;

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

23 “(A) the value of property subject to a
24 lien;

25 “(B) confirmation of a plan filed under
26 this subchapter;

1 “(C) modification of the plan after con-
2 firmation; or

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

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

7 “(5) if the debtor ceases to be a debtor in pos-
8 session, perform the duties specified in section
9 704(a)(8) and paragraphs (1), (2), and (6) of sec-
10 tion 1106(a) of this title, including operating the
11 business of the debtor;

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

15 “(7) facilitate the development of a consensual
16 plan of reorganization.

17 “(c) TERMINATION OF TRUSTEE SERVICE.—

18 “(1) IN GENERAL.—If the plan of the debtor is
19 confirmed under section 1191(a) of this title, the
20 service of the trustee in the case shall terminate
21 when the plan has been substantially consummated,
22 except that the United States trustee may reappoint
23 a trustee as needed for performance of duties under
24 subsection (b)(3)(C) of this section and section
25 1185(a) of this title.

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

7 **“§ 1184. Rights and powers of a debtor in possession**

8 “Subject to such limitations or conditions as the
9 court may prescribe, a debtor in possession shall have all
10 the rights, other than the right to compensation under sec-
11 tion 330 of this title, and powers, and shall perform all
12 functions and duties, except the duties specified in para-
13 graphs (2), (3), and (4) of section 1106(a) of this title,
14 of a trustee serving in a case under this chapter, including
15 operating the business of the debtor.

16 **“§ 1185. Removal of debtor in possession**

17 “(a) IN GENERAL.—On request of a party in interest,
18 and after notice and a hearing, the court shall order that
19 the debtor shall not be a debtor in possession for cause,
20 including fraud, dishonesty, incompetence, or gross mis-
21 management of the affairs of the debtor, either before or
22 after the date of commencement of the case, or for failure
23 to perform the obligations of the debtor under a plan con-
24 firmed under this subchapter.

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

4 **“§ 1186. Property of the estate**

5 “(a) INCLUSIONS.—If a plan is confirmed under sec-
6 tion 1191(b) of this title, property of the estate includes,
7 in addition to the property specified in section 541 of this
8 title—

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

15 “(2) earnings from services performed by the
16 debtor after the date of commencement of the case
17 but before the case is closed, dismissed, or converted
18 to a case under chapter 7, 12, or 13 of this title,
19 whichever occurs first.

20 “(b) DEBTOR REMAINING IN POSSESSION.—Except
21 as provided in section 1185 of this title, a plan confirmed
22 under this subchapter, or an order confirming a plan
23 under this subchapter, the debtor shall remain in posses-
24 sion of all property of the estate.

1 **“§ 1187. Duties and reporting requirements of debt-**
2 **ors**

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

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

12 “(c) SEPARATE DISCLOSURE STATEMENT EXEMP-
13 TION.—If the court orders under section 1181(b) of this
14 title that section 1125 of this title applies, section 1125(f)
15 of this title shall apply.

16 **“§ 1188. Status conference**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (b), not later than 60 days after the entry of the order
19 for relief under this chapter, the court shall hold a status
20 conference to further the expeditious and economical reso-
21 lution of a case under this subchapter.

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

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

7 **“§ 1189. Filing of the plan**

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

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

15 **“§ 1190. Contents of plan**

16 “A plan filed under this subchapter—

17 “(1) shall include—

18 “(A) a brief history of the business oper-
19 ations of the debtor;

20 “(B) a liquidation analysis; and

21 “(C) projections with respect to the ability
22 of the debtor to make payments under the pro-
23 posed plan of reorganization;

24 “(2) shall provide for the submission of all or
25 such portion of the future earnings or other future

1 income of the debtor to the supervision and control
2 of the trustee as is necessary for the execution of the
3 plan; and

4 “(3) notwithstanding section 1123(b)(5) of this
5 title, may modify the rights of the holder of a se-
6 cured claim if—

7 “(A) the claim is secured only by a secu-
8 rity interest in real property that is the prin-
9 cipal residence of the debtor; and

10 “(B) the new value received in connection
11 with the granting of the security interest—

12 “(i) was not used primarily to acquire
13 the real property; and

14 “(ii) was used primarily in connection
15 with the small business of the debtor.

16 **“§ 1191. Confirmation of plan**

17 “(a) TERMS.—The court shall confirm a plan under
18 this subchapter only if all of the requirements of section
19 1129(a), other than paragraph (15) of that section, of this
20 title are met.

21 “(b) EXCEPTION.—Notwithstanding section 510(a)
22 of this title, if all of the applicable requirements of section
23 1129(a) of this title, other than paragraphs (8), (10), and
24 (15) of that section, are met with respect to a plan, the
25 court, on request of the debtor, shall confirm the plan not-

1 withstanding the requirements of such paragraphs if the
2 plan does not discriminate unfairly, and is fair and equi-
3 table, with respect to each class of claims or interests that
4 is impaired under, and has not accepted, the plan.

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

9 “(1) With respect to a class of secured claims,
10 the plan meets the requirements of section
11 1129(b)(2)(A) of this title.

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

13 “(A) the plan provides that all of the pro-
14 jected disposable income of the debtor to be re-
15 ceived in the 3-year period, or such longer pe-
16 riod not to exceed 5 years as the court may fix,
17 beginning on the date that the first payment is
18 due under the plan will be applied to make pay-
19 ments under the plan; or

20 “(B) the value of the property to be dis-
21 tributed under the plan in the 3-year period, or
22 such longer period not to exceed 5 years as the
23 court may fix, beginning on the date on which
24 the first distribution is due under the plan is

1 not less than the projected disposable income of
2 the debtor.

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

5 “(ii) there is a reasonable likelihood that the
6 debtor will be able to make all payments under the
7 plan; and

8 “(B) the plan provides appropriate remedies, which
9 may include the liquidation of nonexempt assets, to pro-
10 tect the holders of claims or interests in the event that
11 the payments are not made.

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

16 “(1) for—

17 “(A) the maintenance or support of the
18 debtor or a dependent of the debtor; or

19 “(B) a domestic support obligation that
20 first becomes payable after the date of the filing
21 of the petition; or

22 “(2) for the payment of expenditures necessary
23 for the continuation, preservation, or operation of
24 the business of the debtor.

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

6 **“§ 1192. Discharge**

7 “If the plan of the debtor is confirmed under section
8 1191(b) of this title, as soon as practicable after comple-
9 tion by the debtor of all payments due within the first
10 3 years of the plan, or such longer period not to exceed
11 5 years as the court may fix, unless the court approves
12 a written waiver of discharge executed by the debtor after
13 the order for relief under this chapter, the court shall
14 grant the debtor a discharge of all debts provided in sec-
15 tion 1141(d)(1)(A) of this title, and all other debts allowed
16 under section 503 of this title and provided for in the plan,
17 except any debt—

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

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

23 **“§ 1193. Modification of plan**

24 “(a) MODIFICATION BEFORE CONFIRMATION.—The
25 debtor may modify a plan at any time before confirmation,

1 but may not modify the plan so that the plan as modified
2 fails to meet the requirements of sections 1122 and 1123
3 of this title, with the exception of subsection (a)(8) of such
4 section 1123. After the modification is filed with the court,
5 the plan as modified becomes the plan.

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

18 “(c) CERTAIN OTHER MODIFICATIONS.—If a plan
19 has been confirmed under section 1191(b) of this title, the
20 debtor may modify the plan at any time within 3 years,
21 or such longer time not to exceed 5 years, as fixed by the
22 court, but may not modify the plan so that the plan as
23 modified fails to meet the requirements of section 1191(b)
24 of this title. The plan as modified under this subsection
25 becomes the plan only if circumstances warrant such

1 modification and the court, after notice and a hearing,
2 confirms such plan, as modified, under section 1191(b) of
3 this title.

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

11 **“§ 1194. Payments**

12 “(a) RETENTION AND DISTRIBUTION BY TRUST-
13 EE.—Payments and funds received by the trustee shall be
14 retained by the trustee until confirmation or denial of con-
15 firmation of a plan. If a plan is confirmed, the trustee
16 shall distribute any such payment in accordance with the
17 plan. If a plan is not confirmed, the trustee shall return
18 any such payments to the debtor after deducting—

19 “(1) any unpaid claim allowed under section
20 503(b) of this title;

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

24 “(3) any fee owing to the trustee.

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

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

10 **“§ 1195. Transactions with professionals**

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

16 (b) CLERICAL AMENDMENT.—The table of sub-
 17 chapters at the beginning of chapter 11 of title 11, United
 18 States Code, is amended by adding at the end the fol-
 19 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.”.

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

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

8 (b) VENUE OF CERTAIN PROCEEDINGS.—Section
9 1409(b) of title 28, United States Code, is amended by
10 striking “\$10,000” and inserting “\$25,000”.

11 **SEC. 4. CONFORMING AMENDMENTS.**

12 (a) TITLE 11.—Title 11, United States Code, is
13 amended—

14 (1) in section 101—

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

19 (B) in paragraph (51D)—

20 (i) in subparagraph (A)—

21 (I) by striking “or operating real
22 property or activities incidental there-
23 to” and inserting “single asset real
24 estate”; and

1 (II) by striking “for a case in
2 which” and all that follows and insert-
3 ing “not less than 50 percent of which
4 arose from the commercial or business
5 activities of the debtor; and”; and
6 (ii) in subparagraph (B)—

7 (I) by striking the period at the
8 end and inserting a semicolon;

9 (II) by striking “does not include
10 any member” and inserting the fol-
11 lowing: “does not include—
12 “(i) any member”; and

13 (III) by adding at the end the
14 following:

15 “(ii) any debtor that is a corporation
16 subject to the reporting requirements
17 under section 13 or 15(d) of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78m,
19 78o(d)); or

20 “(iii) any corporation that—

21 “(I) is subject to the reporting
22 requirements under section 13 or
23 15(d) of the Securities Exchange Act
24 of 1934 (15 U.S.C. 78m, 78o(d)); and

25 “(II) is an affiliate of a debtor.”;

1 (2) in section 103—

2 (A) by redesignating subsections (i)
3 through (k) as subsections (j) through (l), re-
4 spectively; and

5 (B) by inserting after subsection (h) the
6 following:

7 “(i) Subchapter V of chapter 11 of this title applies
8 only in a case under chapter 11 in which a small business
9 debtor elects that subchapter V of chapter 11 shall
10 apply.”;

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

13 (4) in section 326—

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

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

20 (5) in section 347—

21 (A) in subsection (a)—

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

23 and

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

1 (B) in subsection (b), by inserting “1194,”
2 after “1173,”;

3 (6) in section 363(c)(1), by inserting “1183,
4 1184,” after “1108,”;

5 (7) in section 364(a), by inserting “1183,
6 1184,” after “1108,”;

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

9 (9) in section 524—

10 (A) in subsection (a)—

11 (i) in paragraph (1), by inserting
12 “1192,” after “1141,”; and

13 (ii) in paragraph (3), by inserting
14 “1192,” after “523,”;

15 (B) in subsection (c)(1), by inserting
16 “1192,” after “1141,”; and

17 (C) in subsection (d), by inserting “1192,”
18 after “1141,”;

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

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

23 “(3) Unless the court for cause orders other-
24 wise, a committee of creditors may not be appointed

1 in a small business case or a case under subchapter
2 V of this chapter.”; and

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

5 (b) TITLE 28.—Title 28 United States Code, is
6 amended—

7 (1) in section 586—

8 (A) in subsection (a)(3), by inserting “(in-
9 cluding subchapter V of chapter 11)” after “7,
10 11”;

11 (B) in subsection (b), by inserting “sub-
12 chapter V of chapter 11 or” after “cases
13 under”;

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

17 (D) in subsection (e)—

18 (i) in paragraph (1), by inserting
19 “subchapter V of chapter 11 or” after
20 “cases under”;

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

1 (iii) by adding at the end the fol-
2 lowing:

3 “(5) In the event that the services of the trustee in
4 a case under subchapter V of chapter 11 of title 11 are
5 terminated by dismissal or conversion of the case, or upon
6 substantial consummation of a plan under section
7 1183(c)(1) of that title, the court shall award compensa-
8 tion to the trustee consistent with services performed by
9 the trustee and the limits on the compensation of the
10 trustee established pursuant to paragraph (1) of this sub-
11 section.”;

12 (2) in section 589b—

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

16 (B) in subsection (d)—

17 (i) in the matter preceding paragraph
18 (1), by inserting “subchapter V of chapter
19 11 and” after “trustees under”; and

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

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

4 **SEC. 5. EFFECTIVE DATE.**

5 This Act and the amendments made by this Act shall
6 take effect 180 days after the date of enactment of this
7 Act.

○