

# Union Calendar No. 131

116TH CONGRESS  
1ST SESSION

# H. R. 3311

[Report No. 116–171]

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2019

Mr. CLINE (for himself, Mr. CICILLINE, Mr. COLLINS of Georgia, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 23, 2019

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

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

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

(a) IN GENERAL.—Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

12   **“§ 1181. Inapplicability of other sections**

18       “(b) COURT AUTHORITY.—Unless the court for cause  
19 orders otherwise, paragraphs (1), (2), and (4) of section  
20 1102(a) and sections 1102(b), 1103, and 1125 of this title  
21 do not apply in a case under this subchapter.

22 “(c) SPECIAL RULE FOR DISCHARGE.—If a plan is  
23 confirmed under section 1191(b) of this title, section  
24 1141(d) of this title shall not apply, except as provided  
25 in section 1192 of this title.

1 **“§ 1182. Definitions**

2 “In this subchapter:

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

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

9 **“§ 1183. Trustee**

10 “(a) IN GENERAL.—If the United States trustee has  
11 appointed an individual under section 586(b) of title 28  
12 to serve as standing trustee in cases under this sub-  
13 chapter, and if such individual qualifies as a trustee under  
14 section 322 of this title, then that individual shall serve  
15 as trustee in any case under this subchapter. Otherwise,  
16 the United States trustee shall appoint 1 disinterested  
17 person to serve as trustee in the case or the United States  
18 trustee may serve as trustee in the case, as necessary.

19 “(b) DUTIES.—The trustee shall—

20 “(1) perform the duties specified in paragraphs  
21 (2), (5), (6), (7), and (9) of section 704(a) of this  
22 title;

23 “(2) perform the duties specified in paragraphs  
24 (3), (4), and (7) of section 1106(a) of this title, if  
25 the court, for cause and on request of a party in in-

1       terest, the trustee, or the United States trustee, so  
2       orders;

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

6           “(A) the value of property subject to a  
7       lien;

8           “(B) confirmation of a plan filed under  
9       this subchapter;

10          “(C) modification of the plan after con-  
11       firmation; or

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

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

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

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

24          “(7) facilitate the development of a consensual  
25       plan of reorganization.

1 “(c) TERMINATION OF TRUSTEE SERVICE.—

2 “(1) IN GENERAL.—If the plan of the debtor is  
3 confirmed under section 1191(a) of this title, the  
4 service of the trustee in the case shall terminate  
5 when the plan has been substantially consummated,  
6 except that the United States trustee may reappoint  
7 a trustee as needed for performance of duties under  
8 subsection (b)(3)(C) of this section and section  
9 1185(a) of this title.

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

16 **“§ 1184. Rights and powers of a debtor in possession**

17 “Subject to such limitations or conditions as the  
18 court may prescribe, a debtor in possession shall have all  
19 the rights, other than the right to compensation under sec-  
20 tion 330 of this title, and powers, and shall perform all  
21 functions and duties, except the duties specified in para-  
22 graphs (2), (3), and (4) of section 1106(a) of this title,  
23 of a trustee serving in a case under this chapter, including  
24 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”;

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.

**Union Calendar No. 131**

116<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 3311**

[Report No. 116-171]

**A BILL**

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JULY 23, 2019

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed