

H.R. 4777 Full Text

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117TH CONGRESS

1ST SESSION

H. R. 4777

To amend title 11, United States Code, to prohibit nonconsensual release of a nondebtor entity's liability to an entity other than the debtor, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2021

Mr. NADLER (for himself, Mrs. CAROLYN B. MALONEY of New York, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11, United States Code, to prohibit nonconsensual release of a nondebtor entity's liability to an entity other than the debtor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nondebtor Release Prohibition Act of 2021”.

SEC. 2. PROHIBITION OF NONDEBTOR RELEASES.

(a) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“SEC. 113. PROHIBITION OF NONDEBTOR RELEASES.

“(a) Except as provided in subsection (b) of this section, subsection (a)(3), (g), (h), or (i) of section 524, section 1201, and section 1301, the court may not—

“(1) with respect to the liability of an entity other than the debtor or the estate on, or the liability of property of an entity other than the debtor or the estate for, a claim or cause of action of an entity other than the debtor or the estate—

“(A) approve any provision, in a plan of reorganization or otherwise, for the discharge, release, termination, or modification of such liability; or

“(B) order the discharge, release, termination, or modification of such liability; or

“(2) with respect to a claim or cause of action of an entity other than the debtor or the estate against an entity other than the debtor or the estate, or against property of an entity other than the debtor or the estate, enjoin—

“(A) the commencement or continuation (including the issuance or employment of process) of a judicial, administrative, or other action or proceeding to assert, assess, collect, recover, offset, recoup, or otherwise enforce such claim or cause of action; or

“(B) any act to assert, assess, collect, recover, offset, recoup, or otherwise enforce such claim or cause of action.

“(b) Nothing in subsection (a) of this section shall affect any power the court may have—

“(1) to authorize a sale, transfer, or other disposition of property free and clear of claims or interests;

“(2) to prevent an entity other than the debtor or the estate from exercising control over or otherwise interfering with a right or interest (including a claim or cause of action) that is property of the estate;

“(3) to bar a claim or cause of action for indemnity, reimbursement, contribution, or subrogation against an entity that the estate has released from a claim or cause of action for which the holder of the barred claim or cause of action also is or may be liable or has or may have secured;

“(4) under applicable nonbankruptcy law, title 28, or the Federal Rules of Bankruptcy Procedure, with respect to any claim or cause of action the court is hearing under section 157(a) or 1334(b) of title 28;

“(5) to approve any disposition of a claim or cause of action of an entity other than the debtor or the estate to which such entity expressly consents in a signed writing provided that—

“(A) such consent is given only after clear and conspicuous notice to such entity of the proposed disposition in language appropriate for the typical holder of such claim or cause of action;

“(B) such consent cannot be given by—

“(i) accepting a proposed plan; or

“(ii) failing to accept or reject a proposed plan, failing to object to a proposed plan, or any other silence or inaction; and

“(C) treatment of such entity, and any claims or interests of such entity, under a plan cannot be more or less favorable by reason of such entity’s consent or failure to consent; or

“(6) to enjoin the commencement or continuation (including the issuance or employment of process) of a judicial, administrative, or other action or proceeding against an entity appointed or employed (or whose appointment or employment was approved) by or under the auspices of the court, in another court and without leave of the court, with respect to acts or omissions for which the entity was so appointed or employed.

“(c) In a case under chapter 11 of this title, no order or decree temporarily staying or enjoining, pursuant to this title, the commencement or continuation (including the issuance or employment of process) of a judicial, administrative, or other action or proceeding to assert, assess, collect, recover, offset, recoup, or otherwise enforce a claim or cause of action against an entity other than the debtor or the estate against an entity other than the debtor or the estate, or against property of an entity other than the debtor or the estate, shall extend (or be extended) beyond 90 days after the date of the order for relief without the express consent of the entity whose claim or cause of action is stayed or enjoined.

“(d) Nothing in subsection (b) or (c) shall be construed to authorize relief within the scope of subsection (b) or (c).”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“113. Prohibition of nondebtor releases.”.

SEC. 3. APPEAL OF NONDEBTOR STAYS.

Section 158 of title 28, United States Code, is amended—

(1) in subsection (a), by striking “The” and inserting “Except as provided in subsection (d)(3), the”; and

(2) by inserting after subsection (d)(2) the following:

“(3)(A) The appropriate court of appeals shall have jurisdiction of appeals from all orders and decrees (whether interlocutory or final) temporarily staying or enjoining (or increasing the duration of any temporary stay or injunction of) the commencement or continuation (including the issuance or employment of process) of a judicial, administrative, or other action or proceeding to assert, assess, collect, recover, offset, recoup, or otherwise enforce a claim or cause of action of an entity other than the debtor or the estate against an entity other than the debtor or the estate, or against property of an entity other than the debtor or the estate, entered in a case under chapter 11 of title 11 by—

“(i) a bankruptcy judge under section 157 of this title; or

“(ii) a district court under section 1334 of this title.

“(B) If an appeal is taken under subparagraph (A), the stay order or decree shall immediately terminate and dissolve and be of no further force or effect 90 days after its issuance by the bankruptcy judge or district court, unless the appeal is dismissed or the court of appeals affirms the stay order or decree before that date.”.

SEC. 4. DIVISIONAL MERGERS.

Section 1112 of title 11, United States Code, is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

“(f) On a request of a party in interest, and after notice and a hearing, the court shall dismiss a case under this chapter if the debtor or a predecessor of the debtor was the subject of, or was formed or organized in connection with a divisional merger or equivalent transaction or restructuring that—

“(1) had the intent or foreseeable effect of—

“(A) separating material assets from material liabilities of an entity eligible to be a debtor under this title; and

“(B) assigning or allocating all or a substantial portion of those liabilities to the debtor, or the debtor assuming or retaining all or a substantial portion of those liabilities; and

“(2) occurred during the 10-year period preceding the date of the filing of the petition.”.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, shall be construed to independently grant the court authority to issue nondebtor releases, injunctions, or stays in connection with an order for relief under chapter 11 of title 11, United States Code, or in connection with an order confirming a plan of reorganization, nor shall anything in this Act or such amendments be construed to imply that any other provision of title 11 of such Code or of nonbankruptcy law grants such authority.

SEC. 6. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to any case under title 11, United States Code, that is—

(1) pending in bankruptcy as of the date of the enactment of this Act; or

(2) filed or reopened on or after the date of the enactment of this Act.

(b) **VALIDITY OF FINAL ORDERS.**—Nothing in this Act, or the amendments made by this Act, shall affect the validity of any final judgment, order, or decree as applied under section 158 of title 28, United States Code, entered before the date of the enactment of this Act.
