

116TH CONGRESS  
2D SESSION

# S. 4479

To amend title 11, United States Code, to change the treatment of certain rental obligations during bankruptcy.

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IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2020

Mr. TILLIS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, to change the treatment of certain rental obligations during bankruptcy.

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. BANKRUPTCY AMENDMENTS.**

4 (a) EXECUTORY CONTRACTS AND UNEXPIRED  
5 LEASES.—

6 (1) IN GENERAL.—Section 365(d) of title 11,  
7 United States Code, is amended—

8 (A) in paragraph (3)—

9 (i) by inserting “(A)” after “(3)”;

1                   (ii) by inserting “, except as provided  
2                   in subparagraph (B)” after “such 60-day  
3                   period”; and

4                   (iii) by adding at the end the fol-  
5                   lowing:

6           “(B) In a case under subchapter V of chapter 11,  
7 the time for performance of an obligation described in sub-  
8 paragraph (A) arising under any unexpired lease of non-  
9 residential real property may be extended by the court if  
10 the debtor is experiencing or has experienced a material  
11 financial hardship due, directly or indirectly, to the  
12 coronavirus disease 2019 (COVID–19) pandemic until the  
13 earlier of—

14                   “(i) the date that is 60 days after the date of  
15                   the order for relief, which may be extended by the  
16                   court for an additional period of 60 days if the court  
17                   determines that the debtor is continuing to experi-  
18                   ence a material financial hardship due, directly or  
19                   indirectly, to the coronavirus disease 2019 (COVID–  
20                   19) pandemic; or

21                   “(ii) the date on which the lease is assumed or  
22                   rejected under this section.

23           “(C) An obligation described in subparagraph (A) for  
24 which an extension is granted under subparagraph (B)  
25 shall be treated as an administrative expense described in

1 section 507(a)(2) in accordance with section 1191(e).”;  
 2 and

3 (B) in paragraph (4), by striking “120”  
 4 each place it appears and inserting “210”.

5 (2) SUNSET.—

6 (A) IN GENERAL.—Effective on the date  
 7 that is 2 years after the date of enactment of  
 8 this Act, section 365(d) of title 11, United  
 9 States Code, is amended—

10 (i) in paragraph (3)—

11 (I) by striking “(A)” after “(3)”;

12 (II) by striking “, except as pro-  
 13 vided in subparagraph (B)” after  
 14 “such 60-day period”; and

15 (III) by striking subparagraphs  
 16 (B) and (C); and

17 (ii) in paragraph (4), by striking  
 18 “210” each place it appears and inserting  
 19 “120”.

20 (B) SUBCHAPTER V CASES FILED BEFORE  
 21 SUNSET.—Notwithstanding the amendments  
 22 made by subparagraph (A), the amendments  
 23 made by paragraph (1) shall apply in any case  
 24 commenced under subchapter V of chapter 11  
 25 of title 11, United States Code, before the date

1           that is 2 years after the date of enactment of  
2           this Act.

3           (b) PREFERENCES.—

4           (1) IN GENERAL.—Section 547 of title 11,  
5           United States Code, is amended—

6                   (A) in subsection (b), in the matter pre-  
7                   ceding paragraph (1), by striking “and (i)” and  
8                   inserting “, (i), and (j)”; and

9                   (B) by adding at the end the following:

10           “(j)(1) In this subsection:

11                   “(A) The term ‘covered payment of rental ar-  
12                   rearages’ means a payment of arrearages that—

13                           “(i) is made in connection with an agree-  
14                           ment or arrangement—

15                                   “(I) between the debtor and a lessor  
16                                   to defer or postpone the payment of rent  
17                                   and other periodic charges under a lease of  
18                                   nonresidential real property; and

19   “(II) made or entered into on or after  
20   March 13, 2020;

21   “(ii) does not exceed the amount of rental  
22   and other periodic charges agreed to under the  
23   lease of nonresidential real property described  
24   in clause (i)(I) before March 13, 2020; and

1 “(iii) does not include fees, penalties, or in-  
2 terest in an amount greater than the amount of  
3 fees, penalties, or interest—

4 “(I) scheduled to be paid under the  
5 lease of nonresidential real property de-  
6 scribed in clause (i)(I); or

7 “(II) that the debtor would owe if the  
8 debtor had made every payment due under  
9 the lease of nonresidential real property  
10 described in clause (i)(I) on time and in  
11 full before March 13, 2020.

12 “(B) The term ‘covered payment of supplier ar-  
13 rearages’ means a payment of arrearages that—

14 “(i) is made in connection with an agree-  
15 ment or arrangement—

16 “(I) between the debtor and a supplier  
17 of goods or services to defer or postpone  
18 the payment of amounts due under an ex-  
19 ecutory contract for goods or services; and

20 “(II) made or entered into on or after  
21 March 13, 2020;

22 “(ii) does not exceed the amount due  
23 under the executory contract described in clause  
24 (i)(I) before March 13, 2020; and

1           “(iii) does not include fees, penalties, or in-  
2           terest in an amount greater than the amount of  
3           fees, penalties, or interest—

4                   “(I) scheduled to be paid under the  
5           executory contract described in clause  
6           (i)(I); or

7                   “(II) that the debtor would owe if the  
8           debtor had made every payment due under  
9           the executory contract described in clause  
10           (i)(I) on time and in full before March 13,  
11           2020.

12           “(2) The trustee may not avoid a transfer under this  
13           section for—

14                   “(A) a covered payment of rental arrearages; or

15                   “(B) a covered payment of supplier arrear-  
16           ages.”.

17           (2) SUNSET.—

18                   (A) IN GENERAL.—Effective on the date  
19           that is 2 years after the date of enactment of  
20           this Act, section 547 of title 11, United States  
21           Code, is amended—

22                   (i) in subsection (b), in the matter  
23           preceding paragraph (1), by striking “, (i),  
24           and (j)” and inserting “and (i)”; and

25                   (ii) by striking subsection (j).

1           (B) CASES FILED BEFORE SUNSET.—Not-  
2           withstanding the amendments made by sub-  
3           paragraph (A), the amendments made by para-  
4           graph (1) shall apply in any case commenced  
5           under title 11, United States Code, before the  
6           date that is 2 years after the date of enactment  
7           of this Act.

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