

BANKRUPTCY AMENDMENTS OF 1997

OCTOBER 21, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEKAS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 764]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 764) to make technical corrections to title 11, United States Code, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	<i>Page</i>
The Amendment	2
Explanation of Amendment	5
Purpose and Summary	5
Background and Need for Legislation	6
Hearings	7
Committee Consideration	8
Vote of the Committee	8
Committee Oversight Findings	8
Committee on Government Reform and Oversight Findings	8
New Budget Authority and Tax Expenditures	8
Congressional Budget Office Estimate	8
Constitutional Authority Statement	9
Section-by-Section Analysis and Discussion	9
Agency Views	18
Changes in Existing Law Made by the Bill, as Reported	18

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bankruptcy Amendments of 1997”.

SEC. 2. DEFINITIONS.

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

- (1) by striking “In this title—” and inserting “In this title.”;
- (2) in each paragraph by inserting “The term” after the paragraph designation,
- (3) in paragraph (35)(B) by striking “paragraphs (21B) and (33)(A)” and inserting “paragraphs (23) and (35)”;
- (4) in paragraphs (35A) and (38) by striking “; and” at the end and inserting a period,
- (5) in paragraph (51B)—
 - (A) by inserting “who is not a family farmer” after “debtor” the first place it appears, and
 - (B) by striking “\$4,000,000” and inserting “\$15,000,000 as of the date of the filing of the petition”;
- (6) by amending paragraph (54) to read as follows:

“(54) The term ‘transfer’ means—

 - “(A) creation of a lien;
 - “(B) retention of title as a security interest;
 - “(C) foreclosure of the debtor’s equity of redemption; or
 - “(D) every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property;”;
- (7) in paragraphs (1) through (35), in paragraphs (36) and (37), and in paragraphs (40) through (55), including paragraph (54) as added by this section, by striking the semicolon at the end and inserting a period, and
- (8) by redesignating paragraphs (4) through (55), including paragraph (54) as added by this section, in entirely numerical sequence.

SEC. 3. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting “522(f)(3),” after “522(d),” each place it appears.

SEC. 4. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking “922” and all that follows through “or”, and inserting “922, 1201, or”.

SEC. 5. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(3) of title 11, United States Code, is amended by striking “attorneys” and inserting “attorneys”.

SEC. 6. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting “on a fixed or percentage fee basis,” after “hourly basis,”.

SEC. 7. COMPENSATION TO OFFICERS.

Section 330(a) of title 11, United States Code, is amended—

- (1) in paragraph (1) by inserting “, or the debtor’s attorney” after “1103”, and
- (2) in paragraph (3) by striking “(3)(A) In” and inserting “(3) In”.

SEC. 8. SPECIAL TAX PROVISIONS.

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking “, except” and all that follows through “1986”.

SEC. 9. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting “of the estate” after “property” the first place it appears.

SEC. 10. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended—

- (1) in paragraph (17) by striking “or” at the end,
- (2) in paragraph (18) by striking the period at the end and inserting “; or”, and
- (3) by adding at the end the following:

“(19) under subsection (a) of this section, of any transfer that is not avoidable under section 544 and not avoidable under section 549.”.

SEC. 11. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (C) by striking “or” at the end, and

(B) by striking subparagraph (D) and inserting the following:

“(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract or under an unexpired lease of real or personal property;

“(E) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

“(F) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that paragraph (1) should not apply with respect to such default.”.

(2) in subsection (c)—

(A) in paragraph (2) by adding “or” at the end,

(B) in paragraph (3) by striking “; or” at the end and inserting a period, and

(C) by striking paragraph (4),

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9), and

(B) by redesignating paragraph (10) as paragraph (5).

(4) in subsection (f)(1) by striking “; except that” and all that follows through the end of the paragraph and inserting a period.

SEC. 12. AMENDMENT TO TABLE OF SECTIONS.

The table of sections for chapter 5 of title 11, United States Code, is amended by striking the item relating to section 556 and inserting the following:

“556. Contractual right to liquidate a commodities contract or forward contract.”.

SEC. 13. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting “subparagraph (A), (B), (C), (D), or (E) of” before “paragraph (3)”.

SEC. 14. PRIORITIES.

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

(1) in paragraph (3)(B) by striking the semicolon at the end and inserting a period, and

(2) in paragraph (7) by inserting “unsecured” after “allowed”.

SEC. 15. EXEMPTIONS.

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

(1) in subsection (f)(1)(A)(ii)(II)—

(A) by striking “includes a liability designated as” and inserting “is for a liability that is designated as, and is actually in the nature of,” and

(B) by striking “, unless” and all that follows through “support.”, and

(2) in subsection (g)(2) by striking “subsection (f)(2)” and inserting “subsection (f)(1)(B)”.

SEC. 16. EXCEPTIONS TO DISCHARGE.

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

(1) in subsection (a)(3) by striking “or (6)” each place it appears and inserting “(6), or (15)”,

(2) as amended by section 304(e) of Public Law 103-394 (108 Stat. 4133), in paragraph (15) by transferring such paragraph so as to insert it after paragraph (14) of subsection (a),

(3) in paragraph (9) by inserting “, watercraft, or aircraft” after “motor vehicle”,

- (4) in subsection (a)(15), as so redesignated by operation of paragraph (2), by inserting “to a spouse, former spouse, or child of the debtor and” after “(15)”,
- (5) in subsection (a)(17)—
- (A) by striking “by a court” and inserting “on a prisoner by any court”,
- (B) by striking “section 1915 (b) or (f)” and inserting “subsection (b) or (f)(2) of section 1915”, and
- (C) by inserting “(or a similar non-Federal law)” after “title 28” each place it appears, and
- (6) in subsection (e) by striking “a insured” and inserting “an insured”.

SEC. 17. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking “section 523” and all that follows through “or that”, and inserting “section 523, 1228(a)(1), or 1328(a)(1) of this title, or that”.

SEC. 18. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

- (1) in paragraph (1) by inserting “student” before “grant” the second place it appears, and
- (2) in paragraph (2) by striking “the program operated under part B, D, or E of” and inserting “any program operated under”.

SEC. 19. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code is amended by inserting “365 or” before “542”.

SEC. 20. LIMITATIONS ON AVOIDING POWERS.

Section 546 of title 11, United States Code, is amended by redesignating the second subsection (g) as subsection (h).

SEC. 21. PREFERENCES.

Section 547 of title 11, United States Code, is amended—

- (1) in subsection (b) by striking “subsection (c)” and inserting “subsections (c) and (h)”, and
- (2) by adding at the end the following:

“(h) If the trustee avoids under subsection (b) a security interest given between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, then such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.”.

SEC. 22. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

- (1) by inserting “an interest in” after “transfer of”,
- (2) by striking “such property” and inserting “such real property”, and
- (3) by striking “the interest” and inserting “such interest”.

SEC. 23. SETOFF.

Section 553(b)(1) of title 11, United States Code, is amended by striking “362(b)(14)” and inserting “362(b)(17)”.

SEC. 24. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking “1009”.

SEC. 25. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting “1123(d),” after “1123(b)”.

SEC. 26. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

- (1) by inserting “(1)” after “(b)”, and
- (2) by adding at the end the following new paragraph:

“(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—

“(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section, and

“(ii) the service of any trustee appointed under subsection (d) shall terminate.

“(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.”.

SEC. 27. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.

SEC. 28. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.

SEC. 29. DISCHARGE.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking “1222(b)(10)” each place it appears and inserting “1222(b)(9)”.

SEC. 30. CONTENTS OF PLAN.

Section 1322 of title 11, United States Code, is amended—

- (1) in subsection (b) by striking “(c)” and inserting “(d)”, and
- (2) in subsection (e) by striking “default, shall” and inserting “default shall”.

SEC. 31. DISCHARGE.

Paragraphs (1), (2), and (3) of section 1328(a) of title 11, United States Code, are amended to read as follows:

- “(1) provided for under section 1322(b)(5) of this title;
- “(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or
- “(3) for restitution, or a criminal fine, included in a sentence on the debtor’s conviction of a crime.”.

SEC. 32. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

- (1) by striking “made under this subsection” and inserting “made under subsection (c)”, and
- (2) by striking “This subsection” and inserting “Subsection (c) and this subsection”.

SEC. 33. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

- (1) in the first undesignated paragraph—
 - (A) by inserting “(1) the term” before “ ‘bankruptcy”, and
 - (B) by striking the period at the end and inserting “; and”, and
- (2) in the second undesignated paragraph—
 - (A) by inserting “(2) the term” before “ ‘document”, and
 - (B) by striking “this title” and inserting “title 11”.

SEC. 34. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—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.

(b) **APPLICATION OF AMENDMENTS.**—The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 764 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of the bill as so amended.

PURPOSE AND SUMMARY

H.R. 764 primarily consists of technical corrections intended to clarify original intent, correct drafting defects, and improve grammar and cross-references in title 11 of the United States Code, generally referred to as the Bankruptcy Code.¹ There are some more substantive provisions, limited in scope, designed to rectify shortcomings in current law. These include language designed to increase the \$4 million debt limitation on single asset real estate to

¹ 11 U.S.C. 101 et seq.

\$15 million in order to enable creditors to obtain expedited relief in more commercial property reorganizations; to provide protection for a purchase money lender, who has recorded a deed of trust without knowledge of a bankruptcy filing, from the trustee's power to avoid certain postpetition property transfers; to accord recognition to different policy considerations that are implicated—when there are incurable nonmonetary defaults—in the trustee's power to assume executory contracts and unexpired leases of the debtor; and to provide, as is now the case with motor vehicles, that any debt for death or personal injury arising from a debtor's unlawful operation of watercraft or aircraft while intoxicated is nondischargeable in bankruptcy.

BACKGROUND AND NEED FOR THE LEGISLATION

Any statute as complex as the Bankruptcy Code requires periodic technical corrections, and such corrections make up the majority of the provisions in the Bankruptcy Amendments of 1997. The need for most of them has arisen since the enactment of the Bankruptcy Reform Act of 1994² and relate thereto.

H.R. 764 was introduced on February 13, 1997, by Mr. Hyde, the Chairman of the Judiciary Committee, with Mr. Gekas and Mr. McCollum as original co-sponsors. Previously, Mr. Conyers, the Ranking Minority Member, had introduced H.R. 120, the Bankruptcy Law Technical Corrections Act of 1997, which is similar in many respects to the Chairman's bill. Both bills have their origins in legislation which passed the Senate in the last Congress, S. 1559, and in recommendations made by the National Bankruptcy Conference, a select, nonpartisan organization of bankruptcy experts.

At the Subcommittee hearing, testimony was received from Rep. Joe Knollenberg in support of eliminating the \$4 million ceiling in single asset real estate bankruptcies and from Rep. Vernon J. Ehlers in support of making nondischargeable in bankruptcy a debt incurred through the unlawful operation of a watercraft or aircraft while intoxicated. These members had previously introduced legislation on these issues, which was incorporated into H.R. 764. Rep. Knollenberg observed that "Investors are rendered helpless in foreclosures on single assets valued at over \$4 million."³ In stating the need for his provision, Rep. Ehlers noted that "While this issue may not garner a great deal of public attention, those who have been negatively impacted by the lack of clarity in this section of the Bankruptcy Code have suffered significantly and we ought to protect future victims of drunk boating and drunk flying, by making the simple fix called for in this bill."⁴

Testifying on a panel of expert witnesses representing organizations qualified to provide a disinterested analysis of bankruptcy legislation, Kenneth N. Klee, appearing on behalf of the National Bankruptcy Conference, stated: "Certainly the technical provisions of these bills ought to be enacted to cure defects in the Bankruptcy

²Pub. L. No. 103-394, 108 Stat. 4106 (1994).

³*Bankruptcy Amendments of 1997; and Bankruptcy Law Technical Corrections Act of 1997: Hearing on H.R. 764 and H.R. 120 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 105th Cong., 1st Sess. 27 (1997).*

⁴*Id.* at 32.

Reform Act of 1994.”⁵ Roger M. Whelan, on behalf of the American Bankruptcy Institute, commended the legislative efforts of the committee to address a number of critical issues. He stated that “Many of these, such as the right of debtor’s counsel in a chapter 7 case to receive compensation, the amendments which would further clarify the overruling of *DePrizio*—with respect to the creation of liens, and provisions such as those dealing with the appointment of a trustee, will certainly go a long way to providing the necessary clarification that we need for our Nation’s bankruptcy laws.”⁶ On the same panel, on behalf of the Commercial Law League of America, Frederick M. Luper testified as follows with reference to the ceiling in single asset real estate cases: “My experience with single asset cases, like Judge Whelan, is that the debtor and the lender have to make peace or there will never be a confirmed bankruptcy. And the stall, stall and delay, if you are the lender, or the cooling-off period if you are the debtor, doesn’t really accomplish very much, in my opinion. So I think the \$4 million should go.”⁷ The National Bankruptcy Conference, however, opposed eliminating the cap.⁸

On a panel composed of interested parties, Albert B. Sullivan, the Director of the Office of Asset Management and Disposition at the U.S. Department of Housing and Urban Development, stated that “While HUD endorses the removing of the cap in the definition of single asset real estate, it is important to note that this is a small step in addressing the more fundamental problem. Most if not all bankruptcies involving HUD or FHA programs are filed when HUD attempts to assert its regulatory and contractual rights to foreclose or gain compliance with an owner’s obligation to provide decent, safe and sanitary housing.”⁹

Testifying on behalf of the American Bankers Association on the same panel, Jill M. Sturtevant told the subcommittee that “ABA generally supports the enactment of those provisions of H.R. 764 and H.R. 120 which make necessary and desirable technical corrections to and worthwhile clarifications of provisions of the Bankruptcy Reform Act of 1994. We are particularly gratified that these bills clarify that lenders involved in the making of student loans have discretion to deny applications for other types of loans on an applicant’s prior bankruptcy.”¹⁰

HEARINGS

The Subcommittee on Commercial and Administrative Law of the Judiciary Committee held a hearing on H.R. 764 and H.R.120 on April 30, 1997. Testimony was received from the following ten witnesses: Rep. Vernon J. Ehlers; Rep. Joe Knollenberg; Kenneth N. Klee, representing the National Bankruptcy Conference; Roger M. Whelan, representing the American Bankruptcy Institute; Frederick M. Luper, representing the Commercial Law League of America; Albert B. Sullivan, Director, Office of Asset Management and

⁵*Id.* at 34.

⁶*Id.* at 48.

⁷*Id.* at 88.

⁸*Id.* at 35.

⁹*Id.* at 99.

¹⁰*Id.* at 118.

Disposition, U.S. Department of Housing and Urban Development; Donald R. Ennis, representing the American Council of Life Insurance and the Mortgage Bankers Association; Joseph C. Bonita, representing the American Land Title Association; Richard R. Gerken, representing the Equipment Leasing Association; and Jill M. Sturtevant, representing the American Bankers Association. Additional material was submitted by six individuals and organizations.

COMMITTEE CONSIDERATION

On June 25, 1997, the Subcommittee on Commercial and Administrative Law met in open session and by voice vote adopted an amendment in the nature of a substitute, which reconciled many of the differences between H.R. 764 and H.R. 120. The bill as so amended was then reported favorably to the full committee by voice vote, a quorum being present. On July 16, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 764, as amended by the subcommittee amendment in the nature of a substitute, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 764, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, October 8, 1997.

Hon. HENRY J. HYDE,
 Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 764, the Bankruptcy Amendments of 1997. This estimate supersedes the one provided on July 30, 1997, and changes the intergovernmental and private-sector mandate statements for the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), who can be reached at 226-2860, Leo Lex (for the state and local impact), who can be reached at 225-3320, and Matthew Eyles (for the private-sector impact), who can be reached at 226-2649.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 764—Bankruptcy Amendments of 1997

CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 764 would make mostly technical amendments to bankruptcy law. Enacting the bill could affect direct spending and receipts, primarily by changing the amount of bankruptcy filing fees paid to the government. Therefore, pay-as-you-go procedures would apply to this bill, but CBO estimates that any impact on direct spending and receipts would not be significant.

H.R. 764 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments. One provision of the bill would allow expedited bankruptcy proceedings in certain cases involving a single asset (for example, a large office building). State and local governments could benefit to the extent that real property is returned to productive tax rolls earlier as a result of this provision.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226-2860, Leo Lex (for the state and local impact), who can be reached at 225-3320, and Matthew Eyles (for the private-sector impact), who can be reached at 226-2649. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 provides that this Act may be cited as the “Bankruptcy Amendments of 1997.”

Section 2. Definitions

Section 2 amends the definitions contained in section 101 of title 11 of the United States Code. Paragraphs (1), (2), (4), (7), and (8) of section 2 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (3) of section 2 makes the necessary conforming amendment to cross references to the newly redesignated definitions and simplifies these references to avoid future reference errors. Paragraph (5)(A) of section 2 excludes family farms from the definition of single asset real estate.

Paragraph (5)(B) of section 2 amends section 101(51B) (renumbered section 101(57)) of the Bankruptcy Code to raise the \$4 million debt limitation on single asset real estate to \$15 million, thereby enabling creditors in more cases to obtain the expedited relief from the automatic stay which is made available under section 362(d)(3) of the Bankruptcy Code.

In general terms, single asset real estate is a single piece of real estate which generates substantially all of the gross income of the debtor, on which no other substantial business is being conducted, and which as presently defined is encumbered by no more than \$4 million in outstanding debt. Section 362(d)(3) of the Bankruptcy Code effectively provides a secured creditor with relief from the automatic stay’s bar to foreclosure on such property unless, within 90 days of the order for relief, the debtor has filed a plan of reorganization which stands a reasonable possibility of being confirmed, or unless the debtor has commenced making monthly payments to each secured creditor in an amount equal to interest at the current fair market rate on the value of the creditor’s interest in the real estate.

The present \$4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. The bill raises the ceiling to \$15 million at this time, thereby deferring the issue of eliminating the ceiling altogether, as proposed in H.R. 764 as introduced, to a later date.

Paragraph (6) of section 2 and sections 10 and 22 respond to a recent Ninth Circuit case, *In re McConville*,¹¹ in which two purchase money lenders, without knowledge that the debtor had recently filed an undisclosed chapter 11 petition in bankruptcy (later converted to chapter 7), funded the debtor’s acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. The bankruptcy estate trustee filed a complaint to avoid the lien created by the lenders’ deed of trust, asserting that the deed was an unauthorized, post-petition transfer under section 549(a) of the

¹¹ 110 F.3d 47 (9th Cir. 1997).

Bankruptcy Code. The lenders asserted that the voluntary transfer to them was a transfer of real property to good faith purchasers for value, thereby excluding it, under section 549(c) of the Bankruptcy Code, from the trustee's avoidance powers. A "purchaser" is defined in section 101(43) of the Bankruptcy Code as meaning a transferee of a voluntary transfer. The Bankruptcy Court held that the post-petition recordation of the lenders' deed of trust was without authorization under the Bankruptcy Code or by the court and was therefore avoidable under section 549(a), and that the lenders did not qualify under the section 549(c) exception as good faith purchasers of real property for value. The District Court subsequently affirmed the bankruptcy court's ruling granting the trustee the authority to avoid the lenders' lien.¹²

In re McConville was appealed to the Ninth Circuit, which affirmed the lower court ruling, subsequently issued an amended opinion also affirming the lower court, and finally issued an opinion withdrawing its previous opinion and deciding the case on other grounds, specifically that by obtaining secured credit from the lenders, after filing but before the appointment of a trustee, the debtors violated their fiduciary responsibility to their creditors.

Paragraph (6) of section 2 amends Bankruptcy Code section 101(54) (renumbered section 101(66)) to define "transfer" as including the "creation of a lien," thus protecting the lender, in the *McConville* circumstances, from the trustee's power to avoid the transfer. This gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978¹³—namely, that transfer includes creation of a lien.

Section 3. Adjustment of Dollar Amounts

Section 3 of the bill corrects an omission in section 104(b) of title 11 of the United States Code, as added by Public Law 103–394, by adding references to section 522(f)(3) so that the triennial adjustment required by section 104(b) extends to the figure representing an aggregate value of certain implements, professional books, tools of the trade, farm animals, and crops which the debtor may exempt from the property of the estate and so protect from creditors' liens. Section 522(f)(3) now sets the total permissible value of such property at \$5,000.

Section 4. Extension of Time

Section 4 of the bill makes a technical amendment to correct a reference error described in amendment notes contained in the United States Code. As specified in the amendment note relating to subsection (c)(2) of section 108 of title 11 of the United States Code, the amendment made by section 257(b)(2)(B) of Public Law 99–554 could not be executed as stated.

Section 5. Penalty for Persons Who Negligently or Fraudulently Prepare Bankruptcy Petitions

Section 5 of the bill makes a technical correction to change from the singular possessive to the plural possessive the reference to the fees payable to attorneys.

¹²*In re McConville*, D.C. No. CV–94–03308–FMS (N.D. Cal. 1994).

¹³Pub. L. No. 95–598, 92 Stat. 2549 (1978).

Section 6. Limitation on Compensation of Professional Persons

Section 328(a) of the Bankruptcy Code provides that a trustee or a creditors' and equity security holders' committee may, with court approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Section 6 amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

Section 7. Compensation to Officers

Section 7(1) of the bill amends section 330(a) of title 11 of the United States Code to enable the debtor's counsel to be compensated out of the debtor's estate in chapter 7 cases. This had been the traditional practice before the authority was inadvertently omitted in the Bankruptcy Reform Act of 1994.¹⁴ Since then, several cases have held that the 1994 amendment precludes payment from the estate to a chapter 7 debtor's attorney.¹⁵ The amendment made by section 7(2) makes a technical correction to remove an erroneous designation contained in section 330(a)(3) of title 11.

Section 8. Special Tax Provisions

Section 8 of the bill makes a technical correction in section 346(g)(1)(C) of title 11 of the United States Code to remove language referring to a repealed section of the Internal Revenue Code of 1986. Additional information regarding the repealed section is indicated in the appropriate footnote, and contained in the notes under the heading "References in Text," found in the United States Code.

Section 9. Effect of Conversion

Section 9 of the bill makes a technical correction in section 348(f)(2) of title 11 of the United States Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate.

Section 10. Automatic Stay

Section 10, to be read in conjunction with paragraph (6) of section 2, amends section 362(b) of the Code to provide that the filing of a petition does not operate as a stay if, under section 544, it is beyond the trustee's "strong arm" power to avoid, and if, under section 549, it is excluded from the trustee's avoiding power. This amendment does not authorize a lender to conduct a foreclosure sale in violation of the automatic stay.

Section 11. Executory Contracts and Unexpired Leases

This section replaced subparagraph (D) of subsection 365(b)(2) of the Bankruptcy Code with new subparagraphs (D), (E), and (F) in response to the *Claremont case*,¹⁶ which dealt with whether the debtors, operators of several automobile dealerships, had to cure certain nonmonetary defaults, which were in fact incurable, as a

¹⁴ Pub. L. No. 103-394, 108 Stat. 4106 (1994).

¹⁵ See *In re Friedland*, 182 B.R. 576 (Bankr. D. Colo. 1995); *In re Kinnemore*, 181 B.R. 520 (Bankr. D. Idaho 1995).

¹⁶ *Worthington v. General Motors Corp. (In re Claremont Acquisition Corp., Inc.)*, 113 F.3d 1029 (9th Cir. 1997).

condition to their assumption and assignment of their GM dealer agreements to third parties, which would generate value for the estate.

Section 365(b)(2) provides that “Paragraph (1) of this subsection [imposing the requirement of curing defaults prior to assumption and assignment] does not apply to a default that is a breach of a provision relating to . . . (D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.”

The district court in *Claremont*, supporting the interpretation given by the bankruptcy court, held that section 365(b)(2)(D) means that “a trustee or debtor in possession is not required to cure nonmonetary defaults in order to assume and assign executory contracts and leases.”¹⁷

Although the issue arose in the context of the treatment in bankruptcy of an automobile franchise agreement, a broad exemption from curing nonmonetary defaults would be particularly troublesome to equipment lessors. The failure to adhere to a specified maintenance schedule, for instance, could cause rapid deterioration or irreparable harm to the leased equipment. In such personal property leases, the failure to perform nonmonetary obligations is an appropriate bar to a bankruptcy trustee’s assumption of the lease.

The court of appeals in *Claremont* concluded that “subsection (D) provides an exception from cure for satisfaction of ‘penalty rates’ and ‘penalty provisions,’” refuting the argument that the clause following “or” in (D) is a catch-all provision excepting from cure any “nonmonetary obligations.” Under this construction, therefore, nonmonetary defaults (with very limited exceptions) would have to be cured. Such a rule, although reasonable as a matter of public policy for a lease of equipment that can lose value quickly, might lead to inappropriate results in other potential applications. For that reason, the Committee sought to give legislative expression to principled approaches that would fairly treat the parties to a range of leases and executory contracts and protect the interests of creditors collectively.

Section 11 accords recognition to different policy considerations that are implicated in leasing arrangements and executory contracts. For reasons noted above, failure to perform nonmonetary obligations under a personal property lease bars assumption. With real estate leases, a bankruptcy trustee reasonably should be expected to cure defaults that are curable, but is not to be required to do the impossible and cure incurable defaults before assumption. The debtor’s estate in the real estate context, for example, should not be deprived of a retail lease that is a valuable asset and may be needed for reorganization merely because the store has conducted a going-out-of-business sale or violated a clause against closing for a period of time. With contracts requiring substantial future performance on both sides—so-called executory contracts—the courts shall determine, based on the equities, whether incurable

¹⁷ *In re Claremont Acquisition Corp., Inc.*, 186 B.R. 977, 989–90 (C.D. Cal. 1995).

defaults prevent assumption; this would be the fairest approach, for example, with franchise agreements.

In the case of an automobile franchise agreement, for instance, the trustee for the estate of the dealer must cure curable defaults and will be able to assume or assign the franchise only when defaults are impossible to cure and a bankruptcy judge—based on the equities—determines that the bar to assumption and assignment should not apply. It is expected that the court would be mindful of the ability of the trustee or debtor in possession to meet the manufacturer's contractual requirements with regard to quality assurance, warranty service, and trademark protection.

It is not the intention of the Committee to restrict the ability of the nondebtor party to a lease or executory contract to obtain compensation for any actual pecuniary loss resulting from the debtor's incurable nonmonetary default or to obtain adequate assurance of future performance under such contract or lease.

Section 12. Amendment to Table of Sections

Section 12 of the bill makes a technical amendment to conform the wording of an item in the table of sections to the wording of the section heading represented by that item.

Section 13. Allowance of Administrative Expenses

Section 13 amends section 503(b)(4) of the Bankruptcy Code to limit the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors' and equity security holders' committees would not be recoverable, but expenses incurred for such professional services by the committees themselves would be.

Section 14. Priorities

Section 14 of the bill makes technical amendments to section 507(a) of title 11 of the United States Code. The amendment made by section 14(1) corrects an error in the punctuation at the end of section 507(a)(3). The amendment made by section 14(2) corrects an omission in paragraph (7) of section 507(a) and conforms paragraph (7) to the other paragraphs of section 507(a) that provide priority only to unsecured claims.

Section 15. Exemptions

This section would make grammatical and clarifying amendments to section 522(f)(1)(A) and a conforming amendment to section 522(g)(2) of the Bankruptcy Code.

Section 16. Exceptions to Discharge

Section 16 of the bill amends section 523 of the Bankruptcy Code, relating to the discharge of debts, to correct the inadvertent omission of a cross-reference to paragraph (15) in paragraph (3)(A), to correct a technical error in the placement of paragraph (15), which was added to section 523 by section 304(e)(1) of the Bankruptcy Reform Act of 1994, and to require that the debt must be owed to a spouse, former spouse, or child of the debtor. See the amendment notes contained in the United States Code. The effect

of this amendment is to fulfill Congress's original intention to exclude from discharge certain family obligations if the debtor has the ability to pay them and the benefit of a discharge to the debtor does not outweigh the detriment to the spouse, former spouse, or child.

This section also amends section 523(a)(9), which makes non-dischargeable any debt resulting from death or personal injury arising from the debtor's unlawful operation of a motor vehicle while intoxicated, to add "watercraft, or aircraft" after "motor vehicle." Neither additional term should be defined or included as a "motor vehicle" in section 523(a)(9) and each is intended to comprise unpowered as well as motor powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law.

Finally, this section amends section 523(a)(17), added by the Omnibus Consolidated Rescissions and Appropriations Act of 1996,¹⁸ to narrow its application in accordance with its original intent. Paragraph (17), enacted in the context of prison litigation reform, excepts from discharge the filing fees or related costs or expenses assessed by a court in a civil case or appeal. Because of a drafting error, however, this section might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely by those who are prisoners. Section 16(5) eliminates the ambiguity and makes other conforming changes.

Section 17. Effect of Discharge

Section 17 of the bill makes technical amendments to correct errors in section 524(a)(3) of title 11 of the United States Code, caused by section 257(o)(2) of Public Law 99-554 and section 501(d)(14)(A) of Public Law 103-394. For a description of these errors, see the appropriate footnote and amendment notes in the United States Code.

Section 18. Protection Against Discriminatory Treatment

Section 18 of the bill amends section 525(c) of the Bankruptcy Code to make a technical amendment to conform a reference to its antecedent reference. The omission of "student" before "grant" in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. Section 18 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant's bankruptcy history;

¹⁸Pub. L. No. 104-134, sec. 804(b).

only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Section 19. Property of the Estate

Production payments are royalties tied to the production of a certain volume or value of oil or gas, determined without regard to production costs. They typically would be paid by an oil or gas operator to the owner of the underlying property on which the oil or gas is found. Under section 541(b)(4)(B)(ii) of the Bankruptcy Code, added by the Bankruptcy Reform Act of 1994, production payments are generally excluded from the debtor's estate, provided they could be included only by virtue of section 542 of the Bankruptcy Code, which relates generally to the obligation of those holding property which belongs in the estate to turn it over to the trustee. Section 19 adds to this proviso a reference to section 365 of the Bankruptcy Code, which authorizes the trustee to assume or reject an executory contract or unexpired lease. It thereby clarifies the original Congressional intent to generally exclude production payments from the debtor's estate.

Section 20. Limitations on Avoiding Powers

Section 20 of the bill amends section 546 of title 11 of the United States Code to correct an erroneous duplicate subsection designation caused by Public Law 103-394. For additional information, see the appropriate footnote and amendment notes in the United States Code.

Section 21. Preferences

Section 547 of the Bankruptcy Code authorizes trustees to avoid preferential payments made to creditors by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. Because of the concern that corporate insiders (such as officers and directors) who are creditors of their own corporation have an unfair advantage over outside creditors, section 547 also authorizes trustees to avoid preferential payments made to insider creditors between 90 days and one year before filing. Several recent cases, including *DePrizio*,¹⁹ allowed the trustee to "reach-back" and avoid a transfer to a noninsider creditor which fell within the 90-day to one year time frame if an insider benefited from the transfer in some way.

This had the effect of discouraging lenders from obtaining loan guarantees, lest transfers to the lender be vulnerable to recapture by reason of the debtor's insider relationship with the loan guarantor. Section 202 of the Bankruptcy Reform Act of 1994 addressed the *DePrizio* problem by inserting a new section 550(c) into the Bankruptcy Code to prevent avoidance or recovery from a non-insider creditor during the 90-day to one year period even though the transfer to the noninsider benefited an insider creditor. The National Bankruptcy Conference points out, however, that "No amendment was made to section 547, which deals with the avoidance of preferences as an initial proposition. Therefore some commentators have speculated that the trustee could still use section

¹⁹*In re V.N. DePrizio Construction Co.*, 874 F.2d 1186 (7th Cir. 1989); *Ray v. City Bank & Trust Co. (In re C&L Cartage Co.)*, 899 F.2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Corp. v. Lowrey (In re Robinson Brothers Drilling)*, 892 F.2d 850 (10th Cir. 1989).

547 to avoid a preferential lien given to a noninsider bank, more than 90 days but less than one year before bankruptcy, where the transfer benefited an insider guarantor of the debtor's debt to the bank.”²⁰

Section 21 makes a perfecting amendment to section 547 to provide that if the trustee avoids a security interest given by the debtor to a noninsider for the benefit of an insider creditor between 90 days and one year before filing, that avoidance is valid only with respect to the insider creditor. Thus both the previous amendment to section 550 and the perfecting amendment to section 547 protect the noninsider from the avoiding powers of the trustee exercised with respect to transfers during the 90-day to one year pre-filing period.

Section 22. Postpetition Transactions

Section 22, to be read in conjunction with paragraph (6) of section 2, amends section 549(c) to clarify its application to an interest in real property.

Section 23. Setoff

Section 23 of the bill amends section 553(b)(1) of title 11 of the United States Code to correct a paragraph cross reference that was not conformed by Public Law 103-394 at the time the paragraph referred to was redesignated by that law. For a description of the error, see the appropriate footnote and amendment notes in the United States Code.

Section 24. Disposition of Property of the Estate

Section 24 of the bill amends section 726(b) of title 11 of the United States Code to strike an erroneous reference to a nonexistent section. For a description of the error, see the appropriate footnote and amendment notes in the United States Code.

Section 25. General Provisions

Section 25 of the bill amends section 901(a) of title 11 of the United States Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11.

Section 26. Appointment of Elected Trustee

This section refines existing law by clarifying the procedure for giving effect to the election of a private trustee in a chapter 11 reorganization case. Section 702(b) of the Bankruptcy Code permits creditors at the meeting of creditors to elect one person to serve as trustee in the case, provided certain conditions are met. Section 1104(b) of the Bankruptcy Code relates to the convening of the meeting of creditors for this purpose and the conduct of the election. Section 26 of the bill would renumber Section 1104(b) as Section 1104(b)(1) and add a new subsection 1104(b)(2) requiring the United States trustee to file a report certifying the election when an eligible, disinterested trustee is elected under paragraph (1). The effect of such filing would be to consider such elected trustee as selected and appointed for purposes of Section 1104 and to terminate the service of any trustee appointed under subsection (d),

²⁰Hearing on H.R. 764 and H.R. 120, *supra* note 3, at 39.

which provides for the appointment of a trustee or examiner by the United States trustee, subject to court approval, if the court orders such an appointment or in the event of a trustee or examiner's death, resignation, removal or failure to qualify.

Section 27. Abandonment of Railroad Line; Section 28. Contents of Plan

Sections 27 and 28 of the bill amend sections 1170(e)(1) and 1172(c)(1) of title 11 of the United States Code to reflect the facts that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104-88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

Section 29. Discharge

Section 29 of the bill amends section 1228 of the Bankruptcy Code, dealing with discharge under chapter 12, to correct erroneous references.

Section 30. Contents of Plan

Section 30 of the bill amends section 1322 of the Bankruptcy Code, dealing with the content of a chapter 13 reorganization plan, to correct an erroneous reference and a punctuation error.

Section 31. Discharge

This section would amend section 1328(a) of the Bankruptcy Code, dealing with discharges under chapter 13, to omit a redundancy.

Section 32. Bankruptcy Cases and Proceedings

Section 32 of the bill amends section 1334(d) of title 28 of the United States Code to correct erroneous references. For a description of the errors, see the appropriate footnote and amendment notes in the United States Code.

Section 33. Knowing Disregard of Bankruptcy Law or Rule

This section amends section 156(a) of title 18 of the United States Code, which defined "bankruptcy petition preparer" and "document for filing," by making stylistic changes and correcting a reference to title 11 of the United States Code.

Section 34. Effective Date; Application of Amendments

This section provides that amendments made by this act shall take effect on the date of enactment, but shall apply only to cases commenced under title 11 on or after the date of enactment. The vast majority of Bankruptcy Code changes made by this act are technical and will not change the results in future cases.

AGENCY VIEWS

No agency views were received on H.R. 764.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 11, UNITED STATES CODE

* * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 101. Definitions

In this [title—] *title*:

(1) *The term* “accountant” means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized[;].

(2) *The term* “affiliate” means—
(A) * * *

* * * * *

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement[;].

[(4)] (3) *The term* “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law[;].

[(5)] (4) *The term* “claim” means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured[;].

[(6)] (5) *The term* “commodity broker” means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title[;].

[(7)] (6) *The term* “community claim” means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case[;].

[(8)] (7) *The term* “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose[;].

[(9)] (8) *The term* “corporation”—

(A) * * *

(B) does not include limited partnership[;].

[(10)] (9) *The term* “creditor” means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim[;].

[(11)] (10) *The term* “custodian” means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor’s creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors[;].

[(12)] (11) *The term* “debt” means liability on a claim[;].

[(12A)] (12) *The term* “debt for child support” means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor[;].

(13) *The term* “debtor” means person or municipality concerning which a case under this title has been commenced[;].

(14) *The term* “disinterested person” means person that—

(A) * * *

* * * * *

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason[;].

(15) *The term* “entity” includes person, estate, trust, governmental unit, and United States trustee[;].

(16) *The term* “equity security” means—

(A) * * *

* * * * *

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph[;].

(17) *The term* “equity security holder” means holder of an equity security of the debtor[;].

(18) *The term* “family farmer” means—

(A) * * *

* * * * *

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members

of such family, and such family or such relatives conduct the farming operation, and

(i) * * *

* * * * *

(iii) if such corporation issues stock, such stock is not publicly traded[;].

(19) *The term* “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title[;].

(20) *The term* “farmer” means (except when such term appears in the term “family farmer”) person that received more than 80 percent of such person’s gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person[;].

(21) *The term* “farming operation” includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state[;].

[(21A)] (22) *The term* “farmout agreement” means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property[;].

[(21B)] (23) *The term* “Federal depository institutions regulatory agency” means—

(A) * * *

* * * * *

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation[;].

[(22)] (24) *The term* “financial institution” means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer[;].

[(23)] (25) *The term* “foreign proceeding” means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor’s domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by

composition, extension, or discharge, or effecting a reorganization[;].

[(24)] (26) *The term “foreign representative” means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding[;].*

[(25)] (27) *The term “forward contract” means a contract (other than a commodity contract) for the purchase, sale, or transfer of ;a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any combination thereof or option thereon[;].*

[(26)] (28) *The term “forward contract merchant” means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade[;].*

[(27)] (29) *The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government[;].*

[(28)] (30) *The term “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor’s property, or an equity security of the debtor[;].*

[(29)] (31) *The term “indenture trustee” means trustee under an indenture[;].*

[(30)] (32) *The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker[;].*

[(31)] (33) *The term “insider” includes—*

(A) * * *

* * * * *

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor[;].

[(32)] (34) *The term “insolvent” means—*

(A) * * *

* * * * *

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due[;].

[(33)] (35) The term “institution-affiliated party”—

(A) * * *

* * * * *

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act[;].

[(34)] (36) The term “insured credit union” has the meaning given it in section 101(7) of the Federal Credit Union Act[;].

[(35)] (37) The term “insured depository institution”—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of [paragraphs (21B) and (33)(A)] paragraphs (23) and (35) of this subsection)[;].

[(35A)] (38) The term “intellectual property” means—

(A) * * *

* * * * *

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law[; and].

[(36)] (39) The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding[;].

[(37)] (40) The term “lien” means charge against or interest in property to secure payment of a debt or performance of an obligation[;].

[(38)] (41) The term “margin payment” means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments[; and].

[(39)] (42) The term “mask work” has the meaning given it in section 901(a)(2) of title 17.

[(40)] (43) The term “municipality” means political subdivision or public agency or instrumentality of a State[;].

[(41)] (44) The term “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) * * *

* * * * *

(C) is the legal or beneficial owner of an asset of—

(i) * * *

* * * * *

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit[;].

[(42)] (45) *The term* “petition” means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title[;].

[(42A)] (46) *The term* “production payment” means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs[;].

[(43)] (47) *The term* “purchaser” means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee[;].

[(44)] (48) *The term* “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier[;].

[(45)] (49) *The term* “relative” means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree[;].

[(46)] (50) *The term* “repo participant” means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor[;].

[(47)] (51) *The term* “repurchase agreement” (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds[;].

[(48)] (52) *The term* “securities clearing agency” means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A[;].

[(49)] (53) *The term* “security”—

(A) * * *

(B) does not include—

(i) * * *

* * * * *

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered[;].

[(50)] (54) *The term* “security agreement” means agreement that creates or provides for a security interest[;].

[(51)] (55) *The term* “security interest” means lien created by an agreement[;].

[(51A)] (56) *The term* “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade[;].

[(51B)] (57) *The term* “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor or *who is not a family farmer* and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than [;\$4,000,000;] \$15,000,000 as of the date of the filing of the petition.

[(51C)] (58) *The term* “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000[;].

[(52)] (59) *The term* “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title[;].

[(53)] (60) *The term* “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute[;].

[(53A)] (61) *The term* “stockbroker” means person—

(A) * * *

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person’s own account[;].

[(53B)] (62) *The term* “swap agreement” means—

(A) * * *

* * * * *

(C) a master agreement for any of the foregoing together with all supplements[;].

[(53C)] (63) *The term “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor[;].*

[(56A)] (64) *The term “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized[;].*

[(53D)] (65) *The term “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan[;].*

[(54) “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor’s equity of redemption;]

(66) *The term “transfer” means—*

- (A) *creation of a lien;*
- (B) *retention of title as a security interest;*
- (C) *foreclosure of the debtor’s equity of redemption; or*
- (D) *every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property.*

[(55)] (67) *The term “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States[;].*

* * * * *

§ 104. Adjustment of dollar amounts

(a) * * *

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), 522(d), 522(f)(3), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), 522(f)(3), and 523(a)(2)(C) of this title.

* * * * *

§ 108. Extension of time

(a) * * *

* * * * *

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, [922, or] 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

* * * * *

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) * * *

* * * * *

(j)(1) * * *

* * * * *

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable [attorney's] attorneys' fees and costs of the action, to be paid by the bankruptcy petition preparer.

* * * * *

CHAPTER 3—CASE ADMINISTRATION

* * * * *

SUBCHAPTER II—OFFICERS

* * * * *

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and condi-

tions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

* * * * *

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney—

- (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
- (B) reimbursement for actual, necessary expenses.

* * * * *

(3)~~[(A)]~~ In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) * * *

* * * * *

SUBCHAPTER III—ADMINISTRATION

* * * * *

§ 346. Special tax provisions

(a) * * *

* * * * *

(g)(1) Neither gain nor loss shall be recognized on a transfer—

- (A) by operation of law, of property to the estate;
- (B) other than a sale, of property from the estate to the debtor; or

(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan~~], except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986~~].

* * * * *

§ 348. Effect of conversion

(a) * * *

* * * * *

(f)(1) * * *

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

* * * * *

SUBCHAPTER IV—ADMINISTRATIVE POWERS

* * * * *

§ 362. Automatic stay

(a) * * *

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) * * *

* * * * *

(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; [or]

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition[.]; or

(19) under subsection (a) of this section, of any transfer that is not avoidable under section 544 and not avoidable under section 549.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

* * * * *

§ 365. Executory contracts and unexpired leases

(a) * * *

(b)(1) * * *

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

* * * * *

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; **[or]**

[(D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.]

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract or under an unexpired lease of real or personal property;

(E) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

(F) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that paragraph (1) should not apply with respect to such default.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1) * * *

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; *or*

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief **[; or]**.

[(4) such lease is of nonresidential real property under which the debtor is the lessee of an aircraft terminal or aircraft gate at an airport at which the debtor is the lessee under one or more additional nonresidential leases of an aircraft terminal or aircraft gate and the trustee, in connection with such assumption or assignment, does not assume all such leases or does not assume and assign all of such leases to the same person, except that the trustee may assume or assign less than all of such leases with the airport operator’s written consent.]

(d)(1) * * *

* * * * *

[(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination

event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

[(6) For the purpose of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate—

[(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

[(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

[(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, except for property of the debtor found by the court not to be necessary to an effective reorganization.

[(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to—

[(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

[(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

[(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

[(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the af-

affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title.】

【(10)】 (5) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor’s rights under such lease or under this title.

* * * * *

(f)(1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection【; except that the trustee may not assign an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate if there has occurred a termination event】.

* * * * *

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

* * * * *

SUBCHAPTER III—THE ESTATE

* * * * *

【556. Contractual right to liquidate a commodity contract or forward contract.】
556. *Contractual right to liquidate a commodities contract or forward contract.*

* * * * *

SUBCHAPTER I—CREDITORS AND CLAIMS

* * * * *

§ 503. Allowance of administrative expenses

(a) * * *

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1) * * *

* * * * *

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under *subparagraph (A), (B), (C), (D), or (E)* of paragraph (3) of this subsection, based on the time, the na-

ture, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

* * * * *

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) * * *

* * * * *

(3) Third, allowed unsecured claims, but only to the extent of \$4,000 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) * * *

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor[;].

* * * * *

(7) Seventh, allowed *unsecured* claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

* * * * *

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

* * * * *

§ 522. Exemptions

(a) * * *

* * * * *

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt—

(i) * * *

(ii) to the extent that such debt—

(I) * * *

(II) **includes a liability designated as** *is for a liability that is designated as, and is actually in the nature of,* alimony, maintenance, or support**], unless such liability is actually in the nature of alimony, maintenance or support.];** or

* * * * *

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) * * *

* * * * *

(2) the debtor could have avoided such transfer under **subsection (f)(2)] subsection (f)(1)(B)** of this section.

* * * * *

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) * * *

* * * * *

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), **[or (6)] (6), or (15)** of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), **[or (6)] (6), or (15)** of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

* * * * *

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, *watercraft, or aircraft* if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

* * * * *

(15) *to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by*

the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;

* * * * *

(17) for a fee imposed [by a court] on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under [section 1915 (b) or (f)] subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law).

* * * * *

(e) Any institution-affiliated party of [a insured] an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

§ 524. Effect of discharge

(a) A discharge in a case under this title—

(1) * * *

* * * * *

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under [section 523 or 1328(a)(1) of this title, or that] section 523, 1228(a)(1), or 1328(a)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

* * * * *

§ 525. Protection against discriminatory treatment

(a) * * *

* * * * *

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a *student* grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, “student loan program” means [the program operated under part B, D, or E of] *any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.*

* * * * *

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) * * *

(b) Property of the estate does not include—

(1) * * *

* * * * *

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A) * * *

(B)(i) * * *

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title; or

* * * * *

§ 546. Limitations on avoiding powers

(a) * * *

* * * * *

[(g)] (h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

§ 547. Preferences

(a) * * *

(b) Except as provided in [subsection (c)] subsections (c) and (h) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) * * *

* * * * *

(h) If the trustee avoids under subsection (b) a security interest given between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, then such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.

* * * * *

§ 549. Postpetition transactions

(a) * * *

* * * * *

(c) The trustee may not avoid under subsection (a) of this section a transfer of *an interest in* real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of [such property] *such real property*, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to [the interest] *such interest* of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

* * * * *

§ 553. Setoff

(a) * * *

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), [362(b)(14)] 362(b)(17), 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) * * *

* * * * *

CHAPTER 7—LIQUIDATION

* * * * *

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

* * * * *

§ 726. Distribution of property of the estate

(a) * * *

* * * * *

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section [1009,] 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

* * * * *

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

* * * * *

SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 557, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

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CHAPTER 11—REORGANIZATION

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SUBCHAPTER I—OFFICERS AND ADMINISTRATION

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§ 1104. Appointment of trustee or examiner

(a) * * *

(b)(1) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(2)(A) *If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—*

(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section, and

(ii) the service of any trustee appointed under subsection (d) shall terminate.

(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.

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SUBCHAPTER IV—RAILROAD REORGANIZATION

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§ 1170. Abandonment of railroad line

(a) * * *

* * * * *

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under [section 11347] *section 11326(a)* of title 49.

* * * * *

§ 1172. Contents of plan

(a) * * *

* * * * *

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under [section 11347] *section 11326(a)* of title 49.

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CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

* * * * *

SUBCHAPTER II—THE PLAN

* * * * *

§ 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or [1222(b)(10)] 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or **[1222(b)(10)]**
1222(b)(9) of this title; or
(2) of the kind specified in section 523(a) of this title.

* * * * *

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or **[1222(b)(10)]**
1222(b)(9) of this title; or
(2) of a kind specified in section 523(a) of this title.

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**CHAPTER 13—ADJUSTMENT OF DEBTS OF AN
INDIVIDUAL WITH REGULAR INCOME**

* * * * *

SUBCHAPTER II—THE PLAN

* * * * *

§ 1322. Contents of plan

(a) * * *

(b) Subject to subsections (a) and **[(c)]** (d) of this section, the plan may—

(1) * * *

* * * * *

(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the **[default, shall]** *default shall* be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

* * * * *

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

[(1) provided for under section 1322(b)(5) of this title;
[(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

[(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.]

(1) provided for under section 1322(b)(5) of this title;
(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.

* * * * *

SECTION 1334 OF TITLE 28, UNITED STATES CODE

§ 1334. Bankruptcy cases and proceedings

(a) * * *

* * * * *

(d) Any decision to abstain or not to abstain [made under this subsection] *made under subsection (c)* (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. [This subsection] *Subsection (c) and this subsection* shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

SECTION 156 OF TITLE 18, UNITED STATES CODE

§ 156. Knowing disregard of bankruptcy law or rule

(a) DEFINITIONS.—In this section—

(1) *the term* “bankruptcy petition preparer” means a person, other than the debtor’s attorney or an employee of such an attorney, who prepares for compensation a document for filing[.]; *and*

(2) *the term* “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under [this title] *title 11*.

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