

## BANKRUPTCY REFORM ACT OF 1998

OCTOBER 7, 1998.—Ordered to be printed

Mr. HYDE, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 3150]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3150), to amend title 11 of the United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) *SHORT TITLE.*—*This Act may be cited as the “Bankruptcy Reform Act of 1998”.*

(b) *TABLE OF CONTENTS.*—*The table of contents of this Act is as follows:*

*Sec. 1. Short title; table of contents.*

**TITLE I—CONSUMER BANKRUPTCY PROVISIONS**

*Subtitle A—Needs based bankruptcy*

*Sec. 101. Conversion.*

*Sec. 102. Dismissal or conversion.*

*Sec. 103. Notice of alternatives.*

*Sec. 104. Debtor financial management training test program.*

*Subtitle B—Consumer Bankruptcy Protections*

*Sec. 105. Definitions.*

*Sec. 106. Disclosures.*

*Sec. 107. Debtor’s bill of rights.*

*Sec. 108. Enforcement.*

*Sec. 109. Sense of the congress.*

- Sec. 110. *Discouraging abuse reaffirmation practices.*
- Sec. 111. *Promotion alternative dispute resolution.*
- Sec. 112. *Enhanced disclosure for credit extensions secured by a dwelling.*
- Sec. 113. *Dual use debit card.*
- Sec. 114. *Enhanced disclosures under an open-end credit plan.*
- Sec. 115. *Protection of savings earmarked for the postsecondary education of children.*
- Sec. 116. *Effect of discharge.*
- Sec. 117. *Automatic stay.*
- Sec. 118. *Reinforce the fresh start.*
- Sec. 119. *Discouraging bad faith repeat filings.*
- Sec. 120. *Curbing abusive filings.*
- Sec. 121. *Debtor retention of personal property security.*
- Sec. 122. *Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.*
- Sec. 123. *Giving secured creditors fair treatment in chapter 13.*
- Sec. 124. *Restraining abusive purchases on secured credit.*
- Sec. 125. *Fair valuation of collateral.*
- Sec. 126. *Exemptions.*
- Sec. 127. *Limitation.*
- Sec. 128. *Rolling stock equipment.*
- Sec. 129. *Discharge under chapter 13.*
- Sec. 130. *Bankruptcy judgeships.*
- Sec. 131. *Additional amendments to title 11, United States code.*
- Sec. 132. *Amendment to section 1325 of title 11, United States code.*
- Sec. 133. *Application of the codebtor stay only when the stay protects the debtor.*
- Sec. 134. *Adequate protection for investors.*
- Sec. 135. *Limitation on luxury goods.*
- Sec. 136. *Giving debtors the ability to keep leased personal property by assumption.*
- Sec. 137. *Adequate protection of lessors and purchase money secured creditors.*
- Sec. 139. *Automatic stay.*
- Sec. 140. *Extend period between bankruptcy discharges.*
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- Sec. 142. *Priorities for claims for domestic support obligations.*
- Sec. 143. *Requirements to obtain confirmation and discharge in cases involving domestic support obligations.*
- Sec. 144. *Exceptions to automatic stay in domestic support obligation proceedings.*
- Sec. 145. *Nondischargeability of certain debts for alimony, maintenance, and support.*
- Sec. 146. *Continued liability of property.*
- Sec. 147. *Protection of domestic support claims against preferential transfer motions.*
- Sec. 148. *Definition of household goods and antiques.*
- Sec. 149. *Nondischargeable debts.*

#### TITLE II—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 201. *Reenactment of chapter 12.*
- Sec. 202. *Meetings of creditors and equity security holders.*
- Sec. 203. *Protection of retirement savings in bankruptcy.*
- Sec. 204. *Protection of refinancing of security interest.*
- Sec. 205. *Executory contracts and unexpired leases.*
- Sec. 206. *Creditors and equity security holders committees.*
- Sec. 207. *Amendment to section 546 of title 11, United States code.*
- Sec. 208. *Limitation.*
- Sec. 209. *Amendment to section 330(a) of title 11, United States code.*
- Sec. 210. *Postpetition disclosure and solicitation.*
- Sec. 211. *Preferences.*
- Sec. 212. *Venue of certain proceedings.*
- Sec. 213. *Period for filing plan under chapter 11.*
- Sec. 214. *Fees arising from certain ownership interests.*
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#### TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

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*TITLE IV—SMALL BUSINESS BANKRUPTCY PROVISIONS*

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- Sec. 410. Duties of the United States trustee.*
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*TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS*

- Sec. 501. Petition and proceedings related to petition.*
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*TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM*

- Sec. 601. Creditor representation at first meeting of creditors.*
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- Sec. 604. Dismissal for failure to timely file schedules or provide required information.*
- Sec. 605. Adequate time to prepare for hearing on confirmation of the plan.*
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- Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal rules of bankruptcy procedure.*
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*TITLE VIII—BANKRUPTCY TAX PROVISIONS*

- Sec. 801. Treatment of certain liens.*
- Sec. 802. Effective notice to government.*
- Sec. 803. Notice of request for a determination of taxes.*
- Sec. 804. Rate of interest on tax claims.*
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- Sec. 806. Priority property taxes incurred.*
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- Sec. 811. Avoidance of statutory tax liens prohibited.*
- Sec. 812. Payment of taxes in the conduct of business.*
- Sec. 813. Tardily filed priority tax claims.*
- Sec. 814. Income tax returns prepared by tax authorities.*
- Sec. 815. Discharge of the estate's liability for unpaid taxes.*
- Sec. 816. Requirement to file tax returns to confirm chapter 13 plans.*
- Sec. 817. Standards for tax disclosure.*
- Sec. 818. Setoff of tax refunds.*

*TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES*

- Sec. 901. Amendment to add chapter 15 to title 11, United States code.*
- Sec. 902. Amendments to other chapters in title 11, United States code.*

**TITLE X—FINANCIAL CONTRACT PROVISIONS**

- Sec. 1001. Treatment of certain agreements by conservators or receivers of insured depository institutions.*
- Sec. 1002. Authority of the corporation with respect to failed and failing institutions.*
- Sec. 1003. Amendments relating to transfers of qualified financial contracts.*
- Sec. 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts.*
- Sec. 1005. Clarifying amendment relating to master agreements.*
- Sec. 1006. Federal deposit insurance corporation improvement act of 1991.*
- Sec. 1007. Bankruptcy code amendments.*
- Sec. 1008. Recordkeeping requirements.*
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**TITLE XI—TECHNICAL CORRECTIONS**

- Sec. 1101. Definitions.*
- Sec. 1102. Adjustment of dollar amounts.*
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- Sec. 1109. Amendment to table of sections.*
- Sec. 1110. Allowance of administrative expenses.*
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- Sec. 1113. Exceptions to discharge.*
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- Sec. 1116. Property of the estate.*
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- Sec. 1120. General provisions.*
- Sec. 1121. Appointment of elected trustee.*
- Sec. 1122. Abandonment of railroad line.*
- Sec. 1123. Contents of plan.*
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- Sec. 1126. Knowing disregard of bankruptcy law or rule.*
- Sec. 1127. Transfers made by nonprofit charitable corporations.*
- Sec. 1128. Prohibition on certain actions for failure to incur finance charges.*
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**TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS**

- Sec. 1201. Effective date; application of amendments.*

**TITLE I—CONSUMER BANKRUPTCY PROVISIONS**

**Subtitle A—Needs based bankruptcy**

**SEC. 101. CONVERSION.**

*Section 706(c) of title 11, United States Code, is amended by inserting “or consents to” after “requests”.*

**SEC. 102. DISMISSAL OR CONVERSION.**

(a) *IN GENERAL.*—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

**“§ 707. Dismissal of a case or conversion to a case under chapter 13”;**

and

(2) in subsection (b)—

(A) by inserting “(1)” after “(b)”; and

(B) in paragraph (1), as redesignated by subparagraph

(A) of this paragraph—

(i) in the first sentence—

(I) by striking “but not at the request or suggestion” and inserting “, panel trustee or”;

(II) by inserting “, or, with the debtor’s consent, convert such a case to a case under chapter 13 of this title,” after “consumer debts”; and

(III) by striking “substantial abuse” and inserting “abuse”; and

(ii) by striking the last sentence and inserting the following:

“(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor’s current monthly income less amounts set forth in clauses (ii), (iii), and (iv), and multiplied by 60 months is not less than 25 percent of the debtor’s non-priority unsecured claims in the case or \$5,000, whichever is less.

“(ii) The debtor’s monthly expenses shall be the applicable monthly expenses under National Standards, Local Standards, and Other Necessary Expenses allowance (excluding payments for debts) issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent.

“(iii) The debtor’s average monthly payments on account of secured debts shall be calculated as the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition, and dividing that total by 60 months.

“(iv) The debtor’s expenses for payment of all priority claims (including priority child support and alimony claims), which shall be calculated as the total amount of debts entitled to priority, and dividing the total by 60 months.

“(B) In any proceeding brought under this subsection, the presumption of abuse may be rebutted only by demonstrating extraordinary circumstances that require additional expenses or adjustment of current monthly total income. In order to establish extraordinary circumstances, the debtor must itemize each additional expense or adjustment of income and provide documentation for such expenses and a detailed explanation of the extraordinary circumstances which make such expenses necessary and reasonable.

*The debtor, and the attorney for the debtor if the debtor has an attorney, shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustment to income are required. The presumption of abuse may be rebutted only if such additional expenses or adjustments to income cause the debtor's current monthly income less the amounts set forth in clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than 25 percent of the debtor's nonpriority unsecured claims \$5,000, whichever is less.*

*“(C) As part of the schedule of current income and expenditures required under section 521 of this title, the debtor shall include a statement of the debtor's current monthly income, and the calculations which determine whether a presumption arises under subparagraph (A)(i), showing how each amount is calculated. The bankruptcy rules promulgated under section 2075 of title 28, United States Code, shall prescribe a form for such statement and may provide general rules on its content.*

*“(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) does not apply or has been rebutted, the court shall consider—*

*“(A) whether the debtor filed the petition in bad faith; or*

*“(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.”.*

*(b) DEFINITION.—Title 11, United States Code, is amended—*

*(1) in section 101 by inserting after paragraph (10) the following:*

*“(10A) ‘currently monthly income’ means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether it is taxable income, in the 180 days preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor's spouse, on a regular basis to the household expenses of the debtor or the debtor's dependents and, in a joint case, the debtor's spouse if not otherwise a dependent;”;*  
and

*(2) in section 704—*

*(i) in paragraph (8) by striking “and” at the end;*

*(ii) in paragraph (9) by striking the period at the end and inserting “; and”; and*

*(iii) by adding at the end the following:*

*“(10) With respect to an individual debtor under this chapter, the panel trustee or bankruptcy administrator shall review all materials filed by the debtor and, 10 days prior to the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b) of this title, and the court shall provide a copy of such statement to all creditors within 5 days. If, based on the filing of such statement with the court, the panel trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) of this title and the debtor's current monthly*

income, when multiplied by 12, is not less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, the panel trustee or bankruptcy administrator shall within 30 days file a motion to dismiss or convert under section 707(b) of this title, or file a statement setting forth the reasons the trustee does not believe that such a motion would be appropriate.

“(3)(A) If a panel trustee appointed under section 586(a)(1) of title 28 brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter was not substantially justified, the court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys’ fees.

“(B) If the court finds that the attorney for the debtor violated Rule 9011, at a minimum, the court shall order—

“(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

“(ii) the payment of the civil penalty to the panel trustee or the United States trustee.

“(C) In the case of a petition referred to in subparagraph (B), the signature of an attorney shall constitute a certificate that the attorney has—

“(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and

“(ii) determined that the petition—

“(I) is well grounded in fact; and

“(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (I) of this subsection.

“(4)(A) Except as provided in subparagraph (B), the court may award a debtor all reasonable costs in contesting a motion brought by a party in interest (other than a panel trustee or United States trustee) under this subsection (including reasonable attorneys’ fees) if—

“(i) the court does not grant the motion; and

“(ii) the court finds that—

“(I) the position of the party that brought the motion was not substantially justified; or

“(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

“(B) A party in interest that has a claim of an aggregate amount less than \$1,000 shall not be subject to subparagraph (A).

“(5) However, only the judge, United States trustee, bankruptcy administrator or panel trustee may bring a motion under this section if the debtor and the debtor’s spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the national median household monthly income calculated on a monthly basis for a household of equal size. However, for a household of more than 4 individuals, the median income

shall be that of a household of 4 individuals plus \$583 for each additional member of that household.”

(c) **CLERICAL AMENDMENT.**—*The table of sections at the beginning of chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following: “707. Dismissal of a case or conversion to a case under chapter 13.”.*

**SEC. 103. NOTICE OF ALTERNATIVES.**

Section 342(b) of title 11, United States Code, is amended to read as follows:

“(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, that individual shall be given or obtain (as required in section 521(a)(1), as part of the certification process under subchapter 1 of chapter 5) a written notice prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28. The notice shall contain the following:

“(1) A brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters.

“(2) A brief description of services that may be available to that individual from a credit counseling service that is approved by the United States trustee for that district.”.

**SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.**

(a) **DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.**—*The Director of the Executive Office for United States Trustees (in this section referred to as the “Director”) shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11 of the United States Code and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.*

(b) **TEST**—(1) *The Director shall select 3 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).*

(2) *For a 1-year period beginning not later than 270 days after the date of the enactment of this Act, such curriculum and materials shall be made available by the Director, directly or indirectly, on request to individual debtors in cases filed in such 1-year period under chapter 7 or 13 of title 11 of the United States Code.*

(c) **EVALUATION.**—(1) *During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—*

(A) *the financial management training curriculum and materials developed under subsection (a); and*

(B) *a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11 of the United States Code, and by consumer counselling groups.*



(2) Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs.

### **Subtitle B—Consumer Bankruptcy Protections**

#### **SEC. 105. DEFINITIONS.**

(a) *DEFINITIONS.*—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (3) the following:

“(3A) ‘assisted person’ means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than \$150,000;”;

(2) by inserting after paragraph (4) the following:

“(4A) ‘bankruptcy assistance’ means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing, or attendance at a creditors’ meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a proceeding under this title;”;

(3) by inserting after paragraph (12A) the following:

“(12B) ‘debt relief agency’ means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

“(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

“(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

“(C) any depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union;”.

(b) *CONFORMING AMENDMENT.*—In section 104(b)(1) by inserting “101(3),” after “sections”.

#### **SEC. 106. DISCLOSURES.**

(a) *DISCLOSURES.*—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

##### **“§ 526. Disclosures**

“(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

“(1) the written notice required under section 342(b)(1) of this title; and

“(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

“(A) all information the assisted person is required to provide with a petition and thereafter during a case under this title must be complete, accurate and truthful;

“(B) all assets and all liabilities must be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

“(C) current monthly total income, projected monthly net income and, in a chapter 13 case, monthly net income must be stated after reasonable inquiry; and

“(D) that information an assisted person provides during their case may be audited pursuant to this title and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

“(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

**“IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER**

“If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. **THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.** Ask to see the contract before you hire anyone.

“The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

“Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as

well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a “trustee” and by creditors.

“If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

“If you choose to file a chapter 13 case in which you repay your creditors what you can afford over three to five years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

“If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

“Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.’

“(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

“(1) how to value assets at replacement value, determine current monthly total income, projected monthly income and, in a chapter 13 case, net monthly income, and related calculations;

“(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

“(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

“(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for two years after the later of the date on which the notice is given the assisted person.”.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525 the following:

“526. Disclosures.”.

**SEC. 107. DEBTOR'S BILL OF RIGHTS.**

(a) *DEBTOR'S BILL OF RIGHTS.*—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

**“§ 527. Debtor’s bill of rights**

“(a) A debt relief agency shall—

“(1) no later than five business days after the first date on which a debt relief agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person’s petition under this title being filed, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

“(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: ‘We are a debt relief agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.’ or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

“(3) if an advertisement directed to the general public indicates that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: “We are a debt relief agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.” or a substantially similar statement.

“(b) A debt relief agency shall not—

“(1) fail to perform any service which the debt relief agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

“(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue and misleading or which upon the exercise of reasonable care, should be known by the debt relief agency to be untrue or misleading;

“(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

“(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of that person filing a proceeding under this title or in order to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a proceeding under this title.”.

(b) **CONFORMING AMENDMENT.**—The table of section for chapter 5 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 526, the following:

“527. Debtor’s bill of rights.”.

**SEC. 108. ENFORCEMENT.**

(a) **ENFORCEMENT.**—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 106 and 107, is amended by adding at the end the following:

**“§ 528. Debt relief agency enforcement**

“(a) **ASSISTED PERSON WAIVERS INVALID.**—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

“(b) **NONCOMPLIANCE.**—

“(1) Any contract between a debt relief agency and an assisted person for bankruptcy assistance which does not comply with the material requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

“(2) Any debt relief agency which has been found, after notice and hearing, to have—

“(A) negligently failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person;

“(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted because the debt relief agency’s negligent failure to file bankruptcy papers, including papers specified in section 521 of this title; or

“(C) negligently or intentionally disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief agency has already been paid on account of that proceeding.

“(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has rea-

son to believe that any person has violated or is violating section 526 or 527 of this title, the State—

“(A) may bring an action to enjoin such violation;

“(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

“(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

“(5) Notwithstanding any other provision of Federal law, if the court, on its own motion or on the motion of the United States trustee, finds that a person intentionally violated section 526 or 527 of this title, or engaged in a clear and consistent pattern or practice of violating section 526 or 527 of this title, the court may—

“(A) enjoin the violation of such section; or

“(B) impose an appropriate civil penalty against such person.

“(c) **RELATION TO STATE LAW.**—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.”.

(b) **CONFORMING AMENDMENT.**—The table of section for chapter 5 of title 11, United States Code, as amended by sections 106 and 107, is amended by inserting after the item relating to section 527, the following:

“528. Debt relief agency enforcement.”.

**SEC. 109. SENSE OF THE CONGRESS.**

It is the sense of the Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

**SEC. 110. DISCOURAGING ABUSE REAFFIRMATION PRACTICES.**

Section 524(c)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking “and” at the end;

(2) in subparagraph (B) by adding “and” at the end; and

(3) by adding at the end the following:

“(C) if the consideration for such agreement is based on a wholly unsecured consumer debt, such agreement contains a clear and conspicuous statement which advises the debtor—

“(i) that the debtor is entitled to a hearing before the court at which the debtor shall appear in person and at which the court will decide whether the agreement is an undue hardship, not in the debtor’s best interest, and not the result of a threat by the creditor to take any action that cannot be legally taken or that is not intended to be taken; and

“(ii) that if the debtor is represented by counsel, the debtor may waive the debtor’s right to such a hearing by

*signing a statement waiving the hearing, stating that the debtor is represented by counsel, and identifying such counsel.”;*

(3) *in subsection (6)(A)—*

(A) *by striking “and” at the end of clause (i);*

(B) *by striking the period at the end of clause (ii) and inserting “; and”;*

(C) *by adding at the end thereof the following:*

*“(iii) not entered into by the debtor as the result of a threat by the creditor to take any action that cannot be legally taken or that is not intended to be taken.”; and*

(4) *in the 3d sentence of subsection (d)—*

(A) *by striking “of this section” and inserting a comma; and*

(B) *by inserting after “such agreement” the following:*

*“or if the consideration for such agreement is based on a wholly unsecured consumer debt (except for debts owed to creditors defined in section 461(b)(10)(A)(iv) of title 12, United States Code) and the debtor has not waived the debtor’s right to a hearing on the agreement in accordance with subsection (c)(2)(C) of this section”.*

**SEC. 111. PROMOTION ALTERNATIVE DISPUTE RESOLUTION.**

(a) **REDUCTION OF CLAIM.**—Section 502 of title 11, United States Code, is amended by adding at the end the following:

*“(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on unsecured consumer debts by not more than 20 percent, if the debtor can prove by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor, if—*

*“(A) such offer was made at least 60 days before the filing of the petition;*

*“(B) such offer provided for payment of at least 60 percent of the amount of the debtor over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and*

*“(C) no part of the debt under the alternative repayment schedule is nondischargeable.*

*“(2) The debtor shall have the burden of proving that the proposed alternative repayment schedule was made in the 60-day period specified in subparagraph (A) and that the creditor unreasonably refused to consider the debtor’s proposal.”.*

(b) **LIMITATION ON AVOIDABILITY.**—Section 547 of title 11, United States Code, is amended by adding at the end the following:

*“(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.”.*

**SEC. 112. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.**

(a) **STUDY REQUIRED.**—During the period beginning 180 days after the date of enactment of this Act and ending 18 months after the date of the enactment, the Board of Governors of the Federal Re-

serve System (in this section referred to as the “Board”) shall conduct a study and submit to Congress a report (including recommendations for any appropriate legislation) regarding—

(1) whether a consumer engaging in an open-end credit transaction (as defined pursuant to section 103 of the Truth in Lending Act) secured by the consumer’s principal dwelling is provided adequate information under Federal law, including under section 127A of the Truth in Lending Act, regarding the tax deductibility of interest paid on such transaction; and

(2) whether a consumer engaging in a closed-end credit transaction (as defined pursuant to section 103 of the Truth in Lending Act) secured by the consumer’s principal dwelling is provided adequate information regarding the tax deductibility of interest paid on such transaction.

In conducting such study, the Board shall specifically consider whether additional disclosures are necessary with respect to such open-end or closed-end credit transactions in which the amount of the credit extended exceeds the fair market value of the dwelling.

(b) **REGULATIONS.**—If the Board determines that additional disclosures are necessary in connection with transactions described in subsection (a), the Board, pursuant to its authority under the Truth in Lending Act, may promulgate regulations that would require such additional disclosures. Any such regulations promulgated by the Board under this section shall not take effect before the end of the 36-month period after the date of the enactment of this Act.

**SEC. 113. DUAL USE DEBIT CARD.**

(a) **STUDY REQUIRED.**—The Board of Governors of the Federal Reserve System (in this section referred to as the “Board”) shall conduct a study of existing protections provided to consumers to limit their liability for unauthorized use or a debit card or similar access device.

(b) **SPECIFIC CONSIDERATIONS.**—In conducting the study required by subsection (a), the Board shall specifically consider the following—

(1) the extent to which existing provisions of section 909 of the Electronic Fund Transfer Act and the Board’s implementing regulations provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Funds Transfer Act or the Board’s implementing regulations thereto are necessary to provide adequate protection for consumers in this area.

(c) **REPORT AND REGULATIONS.**—Not later than 2 years after the date of the enactment of this Act, the Board shall make public a report on its findings with respect to the adequacy of existing protections afforded consumers with respect to unauthorized-use liability for debit cards and similar access devices. If the Board determines that such protections are inadequate, the Board, pursuant to its authority under the Electronic Funds Transfer Act, may issue regulations to address such inadequacy. Any regulations issued by the



Board shall not be effective before 36 months after the date of the enactment of this Act.

**SEC. 114. ENHANCED DISCLOSURES UNDER AN OPEN-END CREDIT PLAN.**

(a) **INITIAL AND ANNUAL MINIMUM PAYMENT DISCLOSURE.**—Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)) is amended by adding at the end the following:

“(9) In the case of any credit or charge card account under an open-end consumer credit plan on which a minimum monthly or periodic payment will be required, other than an account described in paragraph (8)—

“(A) the following statement: ‘The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance.’;

“(B) if the plan provides that the consumer will be permitted to forgo making a minimum payment during a specified billing cycle, a statement, if applicable, that if the consumer chooses to forgo making the minimum payment, finance charges will continue to accrue; and

“(C) an example, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and a \$500 outstanding balance, showing the estimated minimum periodic payment, and the estimated period of time it would take to repay the \$500 outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

“(10) With respect to one billing cycle per calendar year, the creditor shall transmit the information required under paragraph (9) to each consumer to whom the creditor is required to transmit a statement pursuant to subsection (b) for such billing cycle. The creditor shall also transmit to such consumer for such cycle a worksheet prescribed by the Board to assist the consumer in determining the consumer’s household income and debt obligations.”.

(b) **PERIOD MINIMUM PAYMENT DISCLOSURES.**—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

“(11) The following statement: ‘The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance.’”.

(c) **ENFORCEMENT.**—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(h) In promulgating regulations to implement the disclosure of an example required under subsection (a)(9)(C) and (a)(10), the Board shall set forth a model disclosure to accompany the example stating that the credit features shown are only an example which does not obligate the creditor, but is intended to illustrate the approximate length of time it could take to repay using the assumptions set forth in subsection (a)(9)(C) without regard to any other factors that could impact an approximate repayment period, including other credit features or the consumer’s payment or other behavior with respect to the account. Compliance with the disclosures required under subsection (a)(9)(C) and (a)(10) shall be enforced exclusively by the Federal agencies set forth in section 108.”.

(d) **REGULATORY IMPLEMENTATION.**—The Board of Governors of the Federal Reserve System (in this section referred to as the “Board”) shall promulgate regulations implementing the amendments made by subsections (a) and (b). Such regulations shall take effect no earlier than the end of the 36-month period beginning on the date of the enactment of this Act.

(e) **STUDY REQUIRED.**—The Board shall conduct a study to determine whether consumers have adequate information about borrowing activities which may result in financial problems. In studying this issue, the Board shall consider the extent to which—

(1) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(2) minimum periodic payment features offered in connection with open-end credit plans impact consumer default rates;

(3) consumers always make only the minimum payment throughout the life of the plan;

(4) consumers are aware that making only minimum payments will increase the cost and repayment period of an open-end loan; and

(5) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(f) **REPORT TO CONGRESS.**—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Board shall submit to Congress a report containing the findings of the Board in connection with the study required under subsection (b).

(g) **REGULATIONS.**—The Board shall, by regulation promulgated pursuant to its authority under the Truth in Lending Act, require additional disclosures to consumers regarding minimum payment features, including periodic statement disclosures, if the Board determines that such disclosures are necessary based on its findings. Any such regulations promulgated by the Board shall not take effect earlier than January 1, 2001.

**SEC. 115. PROTECTION OF SAVINGS EARMARKED FOR THE POST-SECONDARY EDUCATION OF CHILDREN.**

(a) **IN GENERAL.**—Section 522(b) of title 11, United States Code, as amended by section 330, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(D) postsecondary education accounts as described as follows:

“(i) except as provided under applicable State law or except as provided in paragraph (5), any funds placed in a qualified tuition program (as described in section 529(b) of the Internal Revenue Code of 1986) at least 365 days before the date of entry of the order for relief and which has not been pledged or promised to any person in connection with any extension of credit; or

“(ii) except as provided in paragraph (5), any funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) at least 365 days before the date of entry of the order for relief and which has not been pledged or promised to any person in connection with any extension of credit;”;

(4) by adding at the end the following:

“(5) For purposes of paragraph (3)(D), funds placed in a qualified tuition program or in an education individual retirement account shall not be exempt under this subsection—

“(A) unless the debtor has one or more dependent children less than 22 years of age;

“(B) if the amounts in such postsecondary accounts do not exceed the lesser of \$50,000 (in the aggregate) in accounts attributable to each such dependent child or \$100,000 (in the aggregate) attributable to all such dependent children;

“(C) to the extent such funds contributed to such account exceed \$500 per year per child; and

“(D) any individual (other than the dependent child of the debtor to whom such account is attributable) has any ownership right to such funds, or the right to obtain ownership in the future of any amount of such funds (other than upon the death or serious mental impairment of such child), or direct the application of such funds for any purpose other than the postsecondary education of such child.”.

**SEC. 116. EFFECT OF DISCHARGE.**

Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of an injunction under subsection (a)(2).

“(j)(1) An individual who is injured by the failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

“(A) the greater of—

“(i) the amount of actual damages; or

“(ii) \$1,000; and

“(B) costs and attorneys’ fees.

“(2) An action to recover for a violation specified in paragraph (1) may not be brought as a class action.”.

**SEC. 117. AUTOMATIC STAY.**

Section 362(h) of title 11, United States Code, is amended to read as follows:

“(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

“(A) actual damages; and

“(B) reasonable costs, including attorneys’ fees.

“(2) An action to recover for a violation specified in paragraph (1) may not be brought as a class action.”.

**SEC. 118. REINFORCE THE FRESH START.**

(a) **RESTORATION OF AN EFFECTIVE DISCHARGE.**—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking “by a court” and inserting “on a prisoner by any court”,

(2) by striking “section 1915(b) or (f)” and inserting “subsection (b) or (f)(2) of section 1915”, and

(3) by inserting “(or a similar non-Federal law)” after “title 28” each place it appears.

**SEC. 119. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

(1) in paragraph (1) by striking “and” at the end;

(2) in paragraph (2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the previous 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

“(A) as to all creditors if—

“(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending within such 1-year period;

“(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall

*not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or*

*“(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chapter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;*

*“(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor.*

*“(4) If a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b) of this title, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—*

*“(A) as to all creditors if—*

*“(i) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;*

*“(ii) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or*

*“(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the*

*dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or*

*“(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.”.*

**SEC. 120. CURBING ABUSIVE FILINGS.**

*(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—*

- (1) in paragraph (2), by striking “or” at the end;*
- (2) in paragraph (3), by striking the period at the end and inserting “; or”; and*
- (3) by adding at the end the following:*
- “(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—*

*“(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or*

*“(B) multiple bankruptcy filings affecting the real property.*

*If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered pursuant to this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after that recording, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.”.*

*(b) 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*
- (3) by inserting after paragraph (18) the following:*

*“(19) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) of this title as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order. The debtor in a subsequent case, however, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing; or*

*“(20) under subsection (a), of any act to enforce any lien against or security interest in real property—*

*“(A) if the debtor is ineligible under section 109(g) of this title to be a debtor in a bankruptcy case; or*

“(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.”.

**SEC. 121. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.**

Title 11, United States Code, is amended—

(1) in section 521—

(A) in paragraph (4) by striking “and” at the end;

(B) in paragraph (5) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 45 days after the first meeting of creditors under section 341(a)—

“(A) enters into an agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

“(B) redeems such property from the security interest pursuant to section 722 of this title.

“If the debtor fails to so act within the 45-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”; and

(2) in section 722 by inserting “in full at the time of redemption” before the period at the end.

**SEC. 122. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.**

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking “(e), and (f)” in subsection (c) and inserting in lieu thereof “(e), (f), and (h)”; and

(B) by redesignating subsection (h), as amended by section 117, as subsection (i) and by inserting after subsection (g) the following:

“(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—

“(1) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate therein that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired

lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; or

“(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms;

unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”; and

(2) in section 521, as amended by sections 121 and 604—

(A) in paragraph (2) by striking “consumer”;

(B) in paragraph (2)(B)—

(i) by striking “forty-five days after the filing of a notice of intent under this section” and inserting “30 days after the first date set for the meeting of creditors under section 341(a) of this title”; and

(ii) by striking “forty-five day” the second place it appears and inserting “30-day”;

(C) in paragraph (2)(C) by inserting “except as provided in section 362(h) of this title” before the semicolon; and

(D) by adding at the end the following:

“(c) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.”.

**SEC. 123. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.**

Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

“(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328 of this title, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and”.

**SEC. 124. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.**

Section 506 of title 11, United States Code, is amended by adding at the end the following:

“(e) In an individual case under chapter 7, 11, 12, or 13—

“(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price



of personal property acquired by the debtor within 5 years of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

“(2) if such allowed claim attributable to the purchase price is secured only by the personal property so acquired, the value of the personal property and the amount of the allowed secured claim shall be the sum of the unpaid principal balance of the purchase price and accrued and unpaid interest and charges at the contract rate;

“(3) if such allowed claim attributable to the purchase price is secured by the personal property so acquired and other property, the value of the security may be determined under subsection (a), but the value of the security and the amount of the allowed secured claim shall be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate; and

“(4) in any subsequent case under this title that is filed by or against the debtor in the 2-year period beginning on the date the petition is filed in the original case, the value of the personal property and the amount of the allowed secured claim shall be deemed to be not less than the amount provided under paragraphs (2) and (3).”.

**SEC. 125. FAIR VALUATION OF COLLATERAL.**

Section 506(a) of title 11, United States Code, is amended by adding at the end the following:

“In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.”.

**SEC. 126. EXEMPTIONS.**

Section 522(b)(2)(A) of title 11, United States Code, is amended—

- (1) by striking “180” and inserting “730”; and
- (2) by striking “, or for a longer portion of such 180-day period than in any other place”.

**SEC. 127. LIMITATION.**

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

- (1) in subsection (b)(2)(A) by inserting “subject to subsection (n),” before “any property”; and

- (2) by adding at the end the following:

“(n) For purposes of subsection (b)(2)(A) and notwithstanding subsection (a), the value of an interest in—

- “(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;
- “(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

“(3) a burial plot for the debtor or a dependent of the debtor;  
 shall be reduced to the extent such value is attributable to any portion of any property that the debtor disposed of in the 730-day period ending of the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b) if on such date the debtor had held the property so disposed of.”

**SEC. 128. ROLLING STOCK EQUIPMENT.**

(a) *IN GENERAL.*—Section 1168 of title 11, United States Code, is amended to read as follows:

**“§ 1168. Rolling stock equipment.**

“(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that the right to take possession and enforce those other rights and remedies shall be subject to section 362 of this title, if—

“(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court’s approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

“(B) any default, other than a default of a kind described in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—

“(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

“(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

“(I) the date that is 30 days after the date of the default or event of the default; or

“(II) the expiration of such 60-day period; and

“(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

“(2) The equipment described in this paragraph—

“(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

“(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

“(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

“(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court’s approval, to extend the 60-day period specified in subsection (a)(1).

“(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

“(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

“(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

“(1) the term ‘lease’ includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

“(2) the term ‘security interest’ means a purchase-money equipment security interest.

“(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term ‘rolling stock equipment’ includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.”.

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

**“§ 1110. Aircraft equipment and vessels**

“(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

*“(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 of this title if—*

*“(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and*

*“(B) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—*

*“(i) that occurs before the date of the order is cured before the expiration of such 60-day period;*

*“(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—*

*“(I) the date that is 30 days after the date of the default; or*

*“(II) the expiration of such 60-day period; and*

*“(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.*

*“(3) The equipment described in this paragraph—*

*“(A) is—*

*“(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or*

*“(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and*

*“(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.*

*“(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.*

*“(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).*

*“(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or condi-*

tional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

“(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

“(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

“(1) the term ‘lease’ includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

“(2) the term ‘security interest’ means a purchase-money equipment security interest.”.

**SEC. 129. DISCHARGE UNDER CHAPTER 13.**

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

“(1) provided for under section 1322(b)(5) of this title;

“(2) of the kind specified in paragraph (2), (4), (3)(B), (5), (8), or (9) of section 523(a) of this title;

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

“(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.”.

**SEC. 130. BANKRUPTCY JUDGESHIPS.**

(a) **SHORT TITLE.**—This section may be cited as the “Bankruptcy Judgeship Act of 1998”.

(b) **TEMPORARY JUDGESHIPS.**—

(1) **APPOINTMENTS.**—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the southern district of Florida.

(D) Two additional bankruptcy judgeships for the district of Maryland.

(E) One additional bankruptcy judgeship for the eastern district of Michigan.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the district of New Jersey.

(H) One additional bankruptcy judgeship for the eastern district of New York.

(I) One additional bankruptcy judgeship for the northern district of New York.

(J) One additional bankruptcy judgeship for the southern district of New York.

(K) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(L) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(M) One additional bankruptcy judgeship for the western district of Tennessee.

(N) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) that—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1);

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under section 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 remain applicable to such temporary judgeship position.

(d) TECHNICAL AMENDMENT.—The first sentence of section 152(a)(1) of title 28, United States Code, is amended to read as follows: “Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.”

(e) *TRAVEL EXPENSES OF BANKRUPTCY JUDGES.*—Section 156 of title 28, United States Code, is amended by adding at the end the following new subsection:

“(g)(1) In this subsection, the term ‘travel expenses’—

“(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and

“(B) shall not include the travel expenses of a bankruptcy judge if—

“(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and

“(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.

“(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.

“(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).

“(B) The annual report under this paragraph shall include—

“(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;

“(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and

“(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.

“(4)(A) The Director of the Administrative Office of the United States Courts shall—

“(i) consolidate the reports submitted under paragraph (3) into a single report; and

“(ii) annually submit such consolidated report to Congress.

“(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).”.

**SEC. 131. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.**

(a) Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

“(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.”.

(b) Section 523(a)(9) of title 11, United States Code, is amended by inserting “or vessel” after “vehicle”.

**SEC. 132. AMENDMENT TO SECTION 1325 OF TITLE 11, UNITED STATES CODE.**

Section 1325(b)(2) of title 11, United States Code, is amended by inserting after “received by the debtor”, “(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which is reasonably necessary to be expended)”.

**SEC. 133. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.**

Section 1301(b) of title 11, United States Code, is amended—

(1) by inserting “(1)” after “(b)”; and

(2) by adding at the end the following:

“(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—

“(i) the individual that received that consideration; or

“(ii) property not in the possession of the debtor that secures that claim.

“(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—

“(i) an individual described in subparagraph (A)(i); or

“(ii) property described in subparagraph (A)(ii).

“(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor’s interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor’s obligations under the lease.”.

**SEC. 134. ADEQUATE PROTECTION FOR INVESTORS.**

(a) **DEFINITION.**—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

“(48A) ‘securities self regulatory organization’ means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934.”

(b) **AUTOMATIC STAY.**—Section 362(b) of title 11, United States Code, as amended by section 120, is amended—

(1) in paragraph (19) by striking “or” at the end;

(2) in paragraph (20) by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (20) the following:

“(21) under subsection (a), of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization’s regulatory power; of



*the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.”.*

**SEC. 135. LIMITATION ON LUXURY GOODS.**

*Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:*

*“(C)(i) for purposes of subparagraph (A), consumer debts owed to a single creditor and aggregating more than \$250 for ‘luxury goods or services’ incurred by an individual debtor on or within 90 days before the order for relief under this title, or cash advances aggregating more than \$250 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 90 days before the order for relief under this title, are presumed to be nondischargeable; and*

*“(ii) for purposes of this subparagraph—*

*“(I) the term ‘luxury goods or services’ does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor; and*

*“(II) the term ‘an extension of consumer credit under an open end credit plan’ has the same meaning such term has for purposes of the Consumer Credit Protection Act;”.*

**SEC. 136. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.**

*Section 365 of title 11, United States Code, is amended by adding at the end the following:*

*“(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) of this title is automatically terminated.*

*“(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.*

*“(3) In a case under chapter 11 of this title in which the debtor is an individual and in a case under chapter 13 of this title, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 of this title and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.”.*

**SEC. 137. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.**

(a) *IN GENERAL.*—Chapter 13 of title 11, United States Code, is amended by adding after section 1307 the following:

**“§ 1307A. Adequate protection in chapter 13 cases**

“(a)(1)(A) *On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2)(A), to—*

“(i) *any lessor of personal property; and*

“(ii) *any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.*

“(B) *The debtor or the plan shall continue making the adequate protection payments until the earlier of the date on which—*

“(i) *the creditor begins to receive actual payments under the plan; or*

“(ii) *the debtor relinquishes possession of the property referred to in subparagraph (A) to—*

“(I) *the lessor or creditor; or*

“(II) *any third party acting under claim of right, as applicable.*

“(2) *The payments referred to in paragraph (1)(A) shall be the contract amount.*

“(b)(1) *Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).*

“(2)(A) *The payments referred to in paragraph (1) shall be payable not less frequently than monthly.*

“(B) *The amount of payments referred to in paragraph (1) shall not be less than the amount of any weekly, biweekly, monthly, or other periodic payment schedules as payable under the contract between the debtor and creditor.*

“(c) *Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—*

“(1) *for payments to a creditor or lessor described in subsection (a)(1); and*

“(2) *for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).*

“(d) *Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.*

“(e) *On or before 60 days after the filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide each creditor or lessor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property*

and continue to do so for so long as the debtor retains possession of such property.”.

(b) **CLERICAL AMENDMENT.**—*The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:*

“1307A. Adequate protection in chapter 13 cases.”.

**SEC. 139. AUTOMATIC STAY.**

Section 362(b) of title 11, United States Code, as amended by sections 120 and 134, is amended—

(1) in paragraph (20), by striking “or” at the end;  
 (2) in paragraph (21), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (21) the following:

“(22) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title;

“(23) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;

“(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;

“(25) under subsection (a)(3), of any eviction, unlawful detainer action, or similar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case; or

“(26) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs.”.

**SEC. 140. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.**

Title 11, United States Code, is amended—

(1) in section 727(a)(8) by striking “six” and inserting “8”; and

(2) in section 1328 by adding at the end the following:

“(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.”.

**SEC. 141. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.**

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

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

“(14A) ‘domestic support obligation’ means a debt that accrues before or after the entry of an order for relief under this title that is—

“(A) owed to or recoverable by—

“(i) a spouse, former spouse, or child of the debtor or that child’s legal guardian; or

“(ii) a governmental unit;

“(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child, without regard to whether such debt is expressly so designated;

“(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

“(i) a separation agreement, divorce decree, or property settlement agreement;

“(ii) an order of a court of record; or

“(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

“(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.”.

**SEC. 142. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.**

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

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking “First” and inserting “Second”;

(4) in paragraph (3), as redesignated, by striking “Second” and inserting “Third”;

(5) in paragraph (4), as redesignated, by striking “Third” and inserting “Fourth”;

(6) in paragraph (5), as redesignated, by striking “Fourth” and inserting “Fifth”;

(7) in paragraph (6), as redesignated, by striking “Fifth” and inserting “Sixth”;

(8) in paragraph (7), as redesignated, by striking “Sixth” and inserting “Seventh”; and

(9) by inserting before paragraph (2), as redesignated, the following:

“(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

“(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

“(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.”.

**SEC. 143. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.**

*Title 11, United States Code, is amended—*

*(1) in section 1129(a), by adding at the end the following:*  
*“(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that become payable after the date on which the petition is filed.”;*

*(2) in section 1325(a)—*

*(A) in paragraph (5), by striking “and” at the end;*

*(B) in paragraph (6), by striking the period at the end and inserting “; and”; and*

*(C) by adding at the end the following:*

*“(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that become payable after the date on which the petition is filed.”; and*

*(3) in section 1328(a), as amended by section 129, in the matter preceding paragraph (1), by inserting “, and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid” after “completion by the debtor of all payments under the plan”.*

**SEC. 144. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.**

*Section 362(b) of title 11, United States Code, as amended by sections 120, 134, and 139, is amended—*

*(1) by striking paragraph (2) and inserting the following:*

*“(2) under subsection (a)—*

*“(A) of the commencement or continuation of an action or proceeding for—*

*“(i) the establishment of paternity as a part of an effort to collect domestic support obligations; or*

*“(ii) the establishment or modification of an order for domestic support obligations; or*

*“(B) the collection of a domestic support obligation from property that is not property of the estate.”;*

*(2) in paragraph (25), by striking “or” at the end;*

*(3) in paragraph (26), by striking the period at the end and inserting a semicolon; and*

*(4) by inserting after paragraph (26) the following:*

*“(27) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b)); or*

*“(28) under subsection (a) with respect to—*

*“(A) the withholding, suspension, or restriction of drivers’ licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C.*

666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

“(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or

“(C) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.).”.

**SEC. 145. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

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

(1) in subsection (a), by striking paragraph (5) and inserting the following:

“(5) for a domestic support obligation;”;

(2) in subsection (c), by striking “(6), or (15)” and inserting “or (6)”; and

(3) in paragraph (15), by striking “governmental unit” and all through the end of the paragraph and inserting a semicolon.

**SEC. 146. CONTINUED LIABILITY OF PROPERTY.**

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

(1) in subsection (c), by striking paragraph (1) and inserting the following:

“(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));”;

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting “of a kind that is specified in section 523(a)(5); or”.

**SEC. 147. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.**

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

“(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation; or”.

**SEC. 148. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.**

Section 522(f)(1)(B) of title 11, United States Code, is amended as follows:

(1) by inserting “(i)” after “(B)”; and

(2) by striking “(i)” and inserting “(aa)”; and

(3) by striking “(ii)” and inserting “(bb)”; and

(4) by striking “(iii)” and inserting “(cc)”; and

(5) by adding at the end thereof the following:

“(ii) ‘household goods’ shall mean for the purposes of this subparagraph (B) clothing; furniture; appliances; one radio; one television; one VCR; linens; china; crockery; kitchenware; educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only one personal computer only if used primarily for the education or entertainment of such minor children; medical equipment and supplies; furniture exclu-

sively for the use of minor children, elderly or disabled dependents of the debtor; and personal effects (including wedding rings and the toys and hobby equipment of minor dependent children) of the debtor and his or her dependents: Provided, That the following are not included within the scope of the term 'household goods':

“(aa) works of art (unless by or of the debtor or his or her dependents);

“(bb) electronic entertainment equipment (except one television, one radio, and one VCR);

“(cc) items acquired as antiques;

“(dd) jewelry (except wedding rings);

“(ee) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.”.

**SEC. 149. NONDISCHARGEABLE DEBTS.**

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

“(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228(a), 1228(b), or 1328(b), or any other provision of this subsection, if the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt, except that all debts incurred to pay nondischargeable debts, without regard to intent, are nondischargeable if incurred within 90 days of the filing of the petition;”.

**TITLE II—DISCOURAGING BANKRUPTCY ABUSE**

**SEC. 201. REENACTMENT OF CHAPTER 12.**

(a) **REENACTMENT.**—Chapter 12 of title 11 of the United States Code, as in effect on September 30, 1998, is hereby reenacted.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on October 1, 1998.

**SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

Section 341 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.”.

**SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.**

(a) **IN GENERAL.**—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking “(2)(A) any property” and inserting:

“(3) Property listed in this paragraph is—

“(A) any property”;

(ii) in subparagraph (A), by striking “and” at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following:

“(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”;

(B) by striking paragraph (1) and inserting:

“(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.”;

(C) in the matter preceding paragraph (2)—

(i) by striking “(b)” and inserting “(b)(1)”;

(ii) by striking “paragraph (2)” both places it appears and inserting “paragraph (3)”;

(iii) by striking “paragraph (1)” each place it appears and inserting “paragraph (2)”;

(iv) by striking “Such property is—”, and

(D) by adding at the end of the subsection the following:

“(4) For purposes of paragraph (3)(C), the following shall apply:

“(A) If the retirement funds are in a retirement fund that has received a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.

“(B) If the retirement funds are in a retirement fund that has not received a favorable determination pursuant to such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

“(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

“(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986.

“(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, pursuant to section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) by reason of that direct transfer.

“(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) by reason of that distribution.

“(ii) A distribution described in this clause is an amount that—

“(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A,



414, 457, or 501(a) of the Internal Revenue Code of 1986; and

“(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.”; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking “subsection (b)(1)” and inserting “subsection (b)(2)”; and

(B) by adding at the end the following:

“(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”

(b) *AUTOMATIC STAY*.—Section 362(b) of title 11, United States Code, as amended by sections 120, 134, 139, and 144 is amended—

(1) in paragraph (27), by striking “or” at the end;

(2) in paragraph (28), by striking the period and inserting “; or”;

(3) by inserting after paragraph (28) the following:

“(29) under subsection (a), of withholding of income from a debtor’s wages and collection of amounts withheld, pursuant to the debtor’s agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

“(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

“(B) in the case of a loan from a thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of such title.”; and

(4) by adding at the end of the flush material following paragraph (19) the following: “Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.”

(c) *EXCEPTIONS TO DISCHARGE*.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking “or” at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting “; or”; and

(3) by adding at the end the following:

“(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414,

457, or 501(c) of the Internal Revenue Code of 1986, pursuant to—

“(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to section 72(p) of the Internal Revenue Code of 1986; or

“(B) a loan from the thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of such title.

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.”

(d) **PLAN CONTENTS.**—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

“(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) of this title.”

**SEC. 204. PROTECTION OF REFINANCE OF SECURITY INTEREST.**

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are amended by striking “10” each place it appears and inserting “30”.

**SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

“(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor if the trustee does not assume or reject the unexpired lease by the earlier of—

“(i) the date that is 180 days after the date of the order for relief; or

“(ii) the date of the entry of an order confirming a plan.

“(B) The court may extend the period determined under subparagraph (A) only upon a motion of the lessor.”

**SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.**

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: “On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.”

**SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.**

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

“(I) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman’s lien for storage, transportation or other costs incidental to the storage and handling

of goods, as provided by section 7-209 of the Uniform Commercial Code.”.

**SEC. 208. LIMITATION.**

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking “20” and inserting “45”.

**SEC. 209. AMENDMENT TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.**

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

(1) in subsection (3)(A) after the word “awarded”, by inserting “to an examiner, chapter 11 trustee, or professional person”; and

(2) by adding at the end of subsection (3)(A) the following:

“(3)(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.”.

**SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.**

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

“(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.”.

**SEC. 211. PREFERENCES.**

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

(1) by amending paragraph (2) to read as follows:

“(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

“(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

“(B) made according to ordinary business terms;”;

(2) in paragraph (7) by striking “or” at the end;

(3) in paragraph (8) by striking the period at the end and inserting “; or”; and

(4) by adding at the end the following:

“(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5000.”.

**SEC. 212. VENUE OF CERTAIN PROCEEDINGS.**

Section 1409(b) of title 28, United States Code, is amended by inserting “, or a nonconsumer debt against a noninsider of less than \$10,000,” after “\$5,000”.

**SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking “On” and inserting “(1) Subject to paragraph (1), on”; and

(2) by adding at the end the following:

“(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

“(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.”

**SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.**

Section 523(a)(16) of title 11, United States Code, is amended—

- (1) by striking “dwelling” the first place it appears;
- (2) by striking “ownership or” and inserting “ownership,”;
- (3) by striking “housing” the first place it appears; and
- (4) by striking “but only” and all that follows through “such period,”, and inserting “or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, and until such time as the debtor or trustee has surrendered any legal, equitable or possessory interest in such unit, such corporation, or such lot,”.

**SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

Section 304 of title 11, United States Code, is amended to read as follows:

**“§ 304. Cases ancillary to foreign proceedings**

“(a) For purposes of this section—

“(1) the term ‘domestic insurance company’ means a domestic insurance company, as such term is used in section 109(b)(2);

“(2) the term ‘foreign insurance company’ means a foreign insurance company, as such term is used in section 109(b)(3);

“(3) the term ‘United States claimant’ means a beneficiary of any deposit referred to in subsection (b) or any multibeneficiary trust referred to in subsection (b);

“(4) the term ‘United States creditor’ means, with respect to a foreign insurance company—

“(i) a United States claimant; or

“(ii) any business entity that operates in the United States and that is a creditor; and

“(5) the term ‘United States policyholder’ means a holder of an insurance policy issued in the United States.

“(b) The court may not grant relief under chapter 15 of this title with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.”

**SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.**

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following:

“other than a default that is a breach of a provision relating to—

“(i) 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 (excluding executory

contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret), if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

“(ii) 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 this subparagraph should not apply with respect to such default;” and

(B) by amending paragraph (2)(D) to read as follows:

“(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 (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret) or under an unexpired lease of real or personal property.”;

(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);

and

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

(b) **IMPAIRMENT OF CLAIMS OR INTERESTS.**—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting “or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured” before the semicolon at the end;

(2) in subparagraph (C) by striking “and” at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

“(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and”.

### **TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS**

#### **SEC. 301. DEFINITION OF DISINTERESTED PERSON.**

Section 101(14) of title 11, United States Code, is amended to read as follows:

“(14) ‘disinterested person’ means a person that—

“(A) is not a creditor, an equity security holder, or an insider;

“(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

“(C) 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 for any other reason;”.

**SEC. 302. MISCELLANEOUS IMPROVEMENTS.**

(a) **WHO MAY BE A DEBTOR.**—Section 109 of title 11, United States Code, is amended by adding at the end the following:

“(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)).

“(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved credit counseling services for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from those programs by reason of the requirements of paragraph (1).

“(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than one year after the date of that determination, and not less frequently than every year thereafter.

“(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

“(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

“(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

“(iii) is satisfactory to the court.

“(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition.”.

(b) **CHAPTER 7 DISCHARGE.**—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking “or” at the end;

(2) in paragraph (10), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.”

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

“(f) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

“(g) Subsection (f) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

“(h) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (g) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.

(d) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 121, 604, and 122, is amended by adding at the end the following:

“(d) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

“(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

“(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).”

(e) EXCEPTIONS TO DISCHARGE.—Section 523(d) of title 11, United States Code, as amended by section 202 of this Act, is amended by striking paragraph (3)(A)(i) and inserting the following:

“(i) within the applicable period of time prescribed under section 109(h), the debtor received credit counseling through a credit counseling program in accordance with section 109(h); and”

(f) GENERAL PROVISIONS.—

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

**“§ 111. Credit counseling services; financial management instructional courses**

“(a) The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and a list of instructional courses concerning personal financial management that have been approved by—

“(1) the United States trustee; or

“(2) the bankruptcy administrator for the district.”

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

“111. *Credit counseling services; financial management instructional courses.*”

(g) **DEFINITIONS.**—*Section 101 of title 11, United States Code, as amended by section 317 of this Act, is amended—*

(1) *by inserting after paragraph (13) the following:*

“(13A) *‘debtor’s principal residence’—*

“(A) *means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and*

“(B) *includes an individual condominium or cooperative unit;” and*

(2) *by inserting after paragraph (27A), as added by section 318 of this Act, the following:*

“(27B) *‘incidental property’ means, with respect to a debtor’s principal residence—*

“(A) *property commonly conveyed with a principal residence in the area where the real estate is located;*

“(B) *all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and*

“(C) *all replacements or additions;”.*

(h) **LIMITATION.**—*Section 362 of title 11, United States Code, is amended by adding at the end the following:*

“(j) *If 1 case commenced under chapter 7, 11, or 13 of this title is dismissed due to the creation of a debt repayment plan, then for purposes of section 362(c)(3) of this title the subsequent case commenced under any such chapter shall not be presumed to be filed not in good faith.*”

**SEC. 303. EXTENSIONS.**

*Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—*

(1) *in subparagraph (A), in the matter following clause (ii), by striking “or October 1, 2002, whichever occurs first”; and*

(2) *in subparagraph (F)—*

(A) *in clause (i)—*

(i) *in subclause (II), by striking “or October 1, 2002, whichever occurs first”; and*

(ii) *in the matter following subclause (II), by striking “October 1, 2003, or”; and*

(B) *in clause (ii), in the matter following subclause*

(II)—

(i) *by striking “before October 1, 2003, or”; and*

(ii) *by striking “, whichever occurs first”.*

**TITLE IV—SMALL BUSINESS BANKRUPTCY PROVISIONS**

**SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

*Section 1125(f) of title 11, United States Code, is amended to read as follows:*

“(f) *Notwithstanding subsection (b), in a small business case—*



“(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

“(2) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

“(3) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

“(4)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

“(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and

“(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.”.

**SEC. 402. DEFINITIONS.**

(a) **DEFINITIONS.**—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

“(51C) ‘small business case’ means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

“(51D) ‘small business debtor’ means—

“(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$4,000,000 (excluding debts owed to 1 or more affiliates or insiders) a case in which the United States trustee has appointed under section 1102(a)(1) of this title a committee of unsecured creditors that ‘the court has determined’ is sufficiently active and representative to provide effective oversight of the debtor, except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than \$4,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;”.

(b) **EFFECT OF DISCHARGE.**—Section 524 of title 11, United States Code, as amended by section 402, is amended by adding at the end the following:

“(k)(1) An individual who is injured by the willful failure of a creditor to substantially comply with the requirements specified in subsections (c) and (d), or by any willful violation of the injunction operating under subsection (a)(2), shall be entitled to recover—

“(A) the greater of—

“(i) the amount of actual damages; or

“(ii) \$1,000; and

“(B) costs and attorneys’ fees.

“(2) An action to recover for a violation specified in paragraph (1) may not be brought as a class action.”

(c) **CONFORMING AMENDMENT.**—Section 1102(a)(3) of title 11, United States Code, is amended by inserting “debtor” after “small business”.

**SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.**

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

**SEC. 404. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) **REPORTING REQUIRED.**—(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

**“§ 308. Debtor reporting requirements**

“A small business debtor shall file periodic financial and other reports containing information including—

“(1) the debtor’s profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

“(2) reasonable approximations of the debtor’s projected cash receipts and cash disbursements over a reasonable period;

“(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

“(4) whether the debtor is—

“(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

“(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

“(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.”

(2) The table of sections of chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

“308. Debtor reporting requirements.”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

**SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.**

(a) *PROPOSAL OF RULES AND FORMS.*—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

- (1) the debtor's profitability;
- (2) the debtor's cash receipts and disbursements; and
- (3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) *PURPOSE.*—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance between—

- (1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;
- (2) the small business debtor's interest that required reports be easy and inexpensive to complete; and
- (3) the interest of all parties that the required reports help the small business debtor to understand its financial condition and plan its future.

**SEC. 406. DUTIES IN SMALL BUSINESS CASES.**

(a) *DUTIES IN CHAPTER 11 CASES.*—Title 11 of the United States Code is amended by inserting after section 1114 the following:

**“§1115. Duties of trustee or debtor in possession in small business cases**

“In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

“(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

“(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

“(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

“(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title unless the court waives this requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

“(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

“(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

“(5) subject to section 363(c)(2) of this title, maintain insurance customary and appropriate to the industry;

“(6)(A) timely file tax returns;

“(B) subject to section 363(c)(2) of this title, timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

“(C) subject to section 363(c)(2) of this title, establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances; and

“(7) allow the United States trustee, or its designated representative, to inspect the debtor’s business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.”.

(b) **TECHNICAL AMENDMENT.**—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

“1115. Duties of trustee or debtor in possession in small business cases.”.

**SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.**

Section 1121(e) of title 11, United States Code, is amended to read as follows:

“(e) In a small business case—

“(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;

“(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

“(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

“(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

“(B) a new deadline is imposed at the time the extension is granted; and

“(C) the order extending time is signed before the existing deadline has expired.”.

**SEC. 408. PLAN CONFIRMATION DEADLINE.**

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

“(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.”.

**SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.**

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting “; and”; and

(2) by adding at the end the following:

“(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.”.

**SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.**

(a) **DUTIES OF THE UNITED STATES TRUSTEE.**—Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking “and” at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

“(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;”;

(2) in paragraph (6) by striking “and” at the end;

(3) in paragraph (7) by striking the period at the end and inserting “; and”; and

(4) by inserting after paragraph (7) the following:

“(8) in each of such small business cases—

“(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor’s viability, inquire about the debtor’s business plan, explain the debtor’s obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

“(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor’s books and records and verify that the debtor has filed its tax returns; and

“(C) review and monitor diligently the debtor’s activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

“(9) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.”.

**SEC. 411. SCHEDULING CONFERENCES.**

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking “, may”;

(2) by amending paragraph (1) to read as follows:

“(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and”;

(3) in paragraph (2) by striking “unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,” and inserting “may”.

**SEC. 412. SERIAL FILER PROVISIONS.**

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

(1) in subsection (i) as so redesignated by section 124—

(A) by striking “An” and inserting “(1) Except as provided in paragraph (2), an”;

(B) by adding at the end the following:

“(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.”;

(2) by inserting after subsection (i), as redesignated by section 124, the following:

“(j) The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—

“(1) is a debtor in a small business case pending at the time the petition is filed;

“(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

“(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

“(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C); unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.”.

**SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.**

(a) **EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.**—Section 1112(b) of title 11, United States Code, is amended to read as follows:

“(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss

a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

“(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—

“(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

“(B) if the reason is an act or omission of the debtor that—  
“(i) there exists a reasonable justification for the act or omission; and

“(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

“(3) For purposes of this subsection, cause includes—

“(A) substantial or continuing loss to or diminution of the estate;

“(B) gross mismanagement of the estate;

“(C) failure to maintain appropriate insurance;

“(D) unauthorized use of cash collateral harmful to 1 or more creditors;

“(E) failure to comply with an order of the court;

“(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

“(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

“(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

“(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

“(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

“(K) failure to pay any fees or charges required under chapter 123 of title 28;

“(L) revocation of an order of confirmation under section 1144 of this title;

“(M) inability to effectuate substantial consummation of a confirmed plan;

“(N) material default by the debtor with respect to a confirmed plan; and

“(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

“(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for

*a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.”.*

*(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—*  
*Section 1104(a) of title 11, United States Code, is amended—*

*(1) in paragraph (1) by striking “or” at the end;*  
*(2) in paragraph (2) by striking the period at the end and inserting “; or”; and*

*(3) by adding at the end the following:*

*“(3) if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a trustee is in the best interests of creditors and the estate.”.*

**SEC. 414. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.**

*Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—*

*(1) conduct a study to determine—*

*(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and*

*(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and*

*(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.*

**SEC. 415. PAYMENT OF INTEREST.**

*Section 362(d)(3) of title 11, United States Code, is amended—*

*(1) by inserting “or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later” after “90-day period”; and*

*(2) by amending subparagraph (B) to read as follows:*

*“(B) the debtor has commenced monthly payments (which payments may, in the debtor’s sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor’s interest in the real estate; or”.*



## **TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS**

### **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.**

(a) *TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.*—Section 921(d) of title 11, United States Code, is amended by inserting “notwithstanding section 301(b)” before the period at the end.

(b) *CONFORMING AMENDMENT.*—Section 301 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “A voluntary”; and

(2) by amending the last sentence to read as follows:

“(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”.

### **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.**

Section 901 of title 11, United States Code, is amended—

(1) by inserting “555, 556,” after “553,”; and

(2) by inserting “559, 560,” after “557,”.

## **TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM**

### **SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.**

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: “Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

### **SEC. 602. AUDIT PROCEDURES.**

(a) *AMENDMENTS.*—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a) by amending striking paragraph (6) to read as follows:

“(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and”;

(2) by adding at the end the following:

“(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants.

“(B) Those procedures shall—

“(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

“(ii) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

“(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

“(iv) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

“(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

“(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

“(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

“(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; and

“(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor’s discharge pursuant to section 727(d) of title 11, United States Code.”.

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as amended by section 604, is amended in paragraphs (3) and (4) by adding “or an auditor appointed pursuant to section 586 of title 28, United States Code” after “serving in the case”.

(c) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) by deleting “or” at the end of paragraph (2);

(2) by substituting “; or” for the period at the end of paragraph (3); and

(3) by adding the following at the end the following:

“(4) the debtor has failed to explain satisfactorily—

“(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; or

“(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

**SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.**

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking “, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice”; and

(B) by adding the following at the end:

*“If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor’s account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, ‘notice’ shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor’s intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324 of this title.”;*

(2) by adding at the end the following:

*“(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.*

*“(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.*

*“(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.”.*

(b) *DEBTOR'S DUTIES.*—Section 521 of title 11, United States Code, as amended by sections 121, 604, 122, 301, and 302, is amended—

(1) by inserting “(a)” before “The debtor shall—”;

(2) by striking paragraph (1) and inserting the following:

“(1) file—

“(A) a list of creditors; and

“(B) unless the court orders otherwise—

“(i) a schedule of assets and liabilities;

“(ii) a schedule of current income and current expenditures;

“(iii) a statement of the debtor’s financial affairs and, if applicable, a certificate—

“(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) of this title indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b) of this title; or

“(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

“(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

“(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

“(vi) a statement of the amount of projected monthly net income, itemized to show how calculated; and

“(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;”;

(3) by adding at the end the following:

“(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.

“(2) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case, and the court shall make such plan available to the creditor who requests such plan at a reasonable cost and not later than 5 days after such request.

“(f) An individual debtor in a case under chapter 7 or 13 shall file with the court—

“(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

“(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

“(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

“(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor’s income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

“(A) beginning on the date that is the later of 90 days after the close of the debtor’s tax year or 1 year after the order for relief, unless a plan has been confirmed; and

“(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

“(d)(1) A statement referred to in subsection (c)(4) shall disclose—

“(A) the amount and sources of income of the debtor;

“(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

“(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

“(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (e).

“(g)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

“(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

“(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

“(A) assesses the effectiveness of the procedures under paragraph (1); and

“(B) if appropriate, includes proposed legislation—

“(i) to further protect the confidentiality of tax information; and

“(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

“(h) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver’s license, passport, or other

document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.”

**SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.**

Section 521 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “The debtor”; and

(2) by adding at the end the following:

“(b)(1) Notwithstanding section 707(a) of this title, and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

“(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after such request.

“(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.”

**SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.**

(a) HEARING.—Section 1324 of title 11, United States Code, is amended—

(1) by striking “After” and inserting the following:

“(a) Except as provided in subsection (b) and after”; and

(2) by adding at the end the following:

“(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.”

(b) FILING OF PLAN.—Section 1321 of title 11, United States Code, is amended to read as follows:

**“§ 1321. Filing of plan**

“The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.”

**SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

“(d) If the current monthly total income of the debtor and in a joint case, the debtor and the debtor’s spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years. If the current monthly total income of the debtor or

*in a joint case, the debtor and the debtor's spouse combined, is less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.”; and*

(2) *in section 1329—*

(A) *by striking in subsection (c) “three years” and inserting “the applicable commitment period under section 1325(b)(1)(B)(ii)”;* and

(B) *by inserting at the end of subsection (c) the following:*

*“The duration period shall be 5 years if the current monthly total income of the debtor, and in a joint case, the debtor and the debtor's spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the current monthly total income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification.”.*

**SEC. 607. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.**

*It is the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well grounded in fact, and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.*

**SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.**

(a) **AMENDMENTS.**—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) *in the 1st sentence by striking “until the case is converted or dismissed, whichever occurs first”;* and

(2) *in the 2d sentence—*

(A) *by striking “The” and inserting “Until the plan is confirmed or the case is converted (whichever occurs first) the”;* and

(B) *by striking “less than \$300,000;” and inserting “less than \$300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be”.*

(b) **DELAYED EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on October 1, 1999.

**SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.**

*Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—*

*(1) conduct a study regarding the impact that the extension of credit to individuals who are—*

*(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and*

*(B) enrolled in post-secondary educational institutions, has on the rate of cases filed under title 11 of the United States Code; and*

*(2) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report summarizing such study.*

**SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.**

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

*(1) by inserting “(1)” after “(e)”; and*

*(2) by adding at the end the following:*

*“(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—*

*“(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or*

*“(B) that 60-day period is extended—*

*“(i) by agreement of all parties in interest; or*

*“(ii) by the court for such specific period of time as the court finds is required by for good cause as described in findings made by the court.”.*

**SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.**

*Section 348(f)(1) of title 11, United States Code, is amended—*

*(1) in subparagraph (A), by striking “and” at the end;*

*(2) in subparagraph (B)—*

*(A) by striking “in the converted case, with allowed secured claims” and inserting “only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12”; and*

*(B) by striking the period and inserting “; and”; and*

*(3) by adding at the end the following:*

*“(C) with respect to cases converted from chapter 13—*

*“(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding; and*

*“(ii) unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”.*



**TITLE VII—BANKRUPTCY DATA**

**SEC. 701. IMPROVED BANKRUPTCY STATISTICS.**

(a) *AMENDMENT.*—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

**“§ 159. Bankruptcy statistics**

“(a) *The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the ‘Office’).*

“(b) *The Director shall—*

“(1) *compile the statistics referred to in subsection (a);*

“(2) *make the statistics available to the public; and*

“(3) *not later than October 31, 1998, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.*

“(c) *The compilation required under subsection (b) shall—*

“(1) *be itemized, by chapter, with respect to title 11;*

“(2) *be presented in the aggregate and for each district; and*

“(3) *include information concerning—*

“(A) *the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;*

“(B) *the current total monthly income, projected monthly net income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;*

“(C) *the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;*

“(D) *the average period of time between the filing of the petition and the closing of the case;*

“(E) *for the reporting period—*

“(i) *the number of cases in which a reaffirmation was filed; and*

“(ii)(I) *the total number of reaffirmations filed;*

“(II) *of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and*

“(III) *of those cases, the number of cases in which the reaffirmation was approved by the court;*

“(F) *with respect to cases filed under chapter 13 of title 11, for the reporting period—*

“(i)(I) *the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and*

“(II) the number of final orders determining the value of property securing a claim issued;

“(ii) the number of cases dismissed for failure to make payments under the plan; and

“(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing;

“(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

“(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor’s counsel and damages awarded under such Rule.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 6 of title 28, United States Code, is amended by adding at the end the following:

“159. Bankruptcy statistics.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

**SEC. 702. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.**

(a) **AMENDMENT.**—Title 28 of the United States Code is amended by inserting after section 589a the following:

**“§ 589b. Bankruptcy data**

“(a) **RULES.**—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

“(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

“(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

“(b) **REPORTS.**—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

“(c) **REQUIRED INFORMATION.**—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

“(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

“(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

“(d) **FINAL REPORTS.**—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition

to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

“(1) information about the length of time the case was pending;

“(2) assets abandoned;

“(3) assets exempted;

“(4) receipts and disbursements of the estate;

“(5) expenses of administration;

“(6) claims asserted;

“(7) claims allowed; and

“(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

“(e) *PERIODIC REPORTS.*—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

“(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

“(2) length of time the case has been pending;

“(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

“(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

“(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

“(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

“(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.”.

(b) *TECHNICAL AMENDMENT.*—The table of sections of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

“589b. Bankruptcy data.”.

**SEC. 703. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.**

*It is the sense of the Congress that—*

(1) *the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the United States Code), should be released in a usable electronic form in bulk to the public subject to such appropriate privacy concerns and safeguards as the Judicial Conference of the United States may determine; and*

(2) *there should be established a bankruptcy data system in which—*

(A) *a single set of data definitions and forms are used to collect data nationwide; and*

(B) *data for any particular bankruptcy case are aggregated in the same electronic record.*

### **TITLE VIII—BANKRUPTCY TAX PROVISIONS**

#### **SEC. 801. TREATMENT OF CERTAIN LIENS.**

(a) *TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—*

(1) *in subsection (b), in the matter preceding paragraph (1), by inserting “(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)” after “under this title”;*

(2) *in subsection (b)(2), after “507(a)(1)”, insert “(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)”;* and

(3) *by adding at the end the following:*

*“(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—*

*“(1) exhaust the unencumbered assets of the estate; and*

*“(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.*

*“(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—*

*“(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or*

*“(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,*

*may be paid from property of the estate which secures a tax lien, or the proceeds of such property.”.*

(b) *DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—*

(1) *in subparagraph (A), by striking “or” at the end;*

(2) *in subparagraph (B), by striking the period at the end and inserting “; or”;* and

(3) *by adding at the end the following:*

*“(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of*

*the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.”.*

**SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.**

(a) *EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.*—Section 342 of title 11, United States Code, is amended by adding at the end the following:

“(d) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit’s claim. If the debtor’s liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

“(e) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.”.

(b) *ADOPTION OF RULES PROVIDING NOTICE.*—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor’s case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) *EFFECT OF FAILURE OF NOTICE.*—Section 342 of title 11, United States Code, as amended by subsection (a), is amended by adding at the end the following:

“(f) A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

“(1) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

“(2) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.”.

**SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.**

Section 505(b) of title 11, United States Code, is amended by striking “Unless” at the beginning of the second sentence thereof and inserting “If the request is made substantially in the manner designated by the governmental unit and unless”.

**SEC. 804. RATE OF INTEREST ON TAX CLAIMS.**

Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**“§511. Rate of interest on tax claims**

“If any provision of this title requires the payment of interest on a tax claim or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:

“(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title, secured tax claims, and administrative tax claims paid under section 503(b)(1) of this title, the rate shall be determined under applicable nonbankruptcy law.

“(2) In the case of all other tax claims, the minimum rate of interest shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, plus 3 percentage points

“(A) In the case of claims for Federal income taxes, such rate shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.

“(B) In the case of taxes paid under a confirmed plan or reorganization, such rate shall be determined as of the calendar month in which the plan is confirmed.”.

**SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.**

Section 507(a)(9)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after “petition” and before the semicolon “; plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title”; and

(2) amend clause (ii) to read as follows:

“(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

“(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

“(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

“(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.”.

**SEC. 806. PRIORITY PROPERTY TAXES INCURRED.**

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking “assessed” and inserting “incurred”.

**SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.**

Section 1328(a)(2) of title 11, United States Code, is amended by inserting “(1),” after “paragraph”.

**SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

Section 1141(d) of title 11, United States Code, as amended by section 119A, is amended by adding at the end the following:

“(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.”.

**SEC. 809. STAY OF TAX PROCEEDINGS.**

(a) SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting “, in respect of a tax liability for a taxable period ending before the order for relief.”.

(b) APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking “or” at the end;

(2) in subparagraph (D) by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.”.

**SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.**

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking “and” at the end; and

(2) in subparagraph (C)—

(A) by striking “deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,” and inserting “regular installment payments in cash, but in no case with a balloon provision, and no more

than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors.”;

(B) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.”.

**SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.**

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting “, except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;”.

**SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.**

(a) **PAYMENT OF TAXES REQUIRED.**—Section 960 of title 28, United States Code, is amended—

(1) by inserting “(a)” before “Any”; and

(2) by adding at the end the following:

“(b) Such taxes shall be paid when due in the conduct of such business unless—

“(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

“(2) payment of the tax is excused under a specific provision of title 11.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

“(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

“(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.”.

(b) **PAYMENT OF AD VALOREM TAXES REQUIRED.**—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after “estate,” and before “except” the following: “whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,”.

(c) **REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.**—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

“(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);”.



(d) **PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.**—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “or State statute” after “agreement”; and

(2) in subsection (c) by inserting “, including the payment of all ad valorem property taxes in respect of the property” before the period at the end.

**SEC. 813. TARDILY FILED PRIORITY TAX CLAIMS.**

Section 726(a)(1) of title 11, United States Code, is amended by striking “before the date on which the trustee commences distribution under this section” and inserting “on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee’s final report or the date on which the trustee commences final distribution under this section”.

**SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.**

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting “or equivalent report or notice,” after “a return,”;

(2) in clause (i)—

(A) by inserting “or given” after “filed”; and

(B) by striking “or” at the end;

(3) in clause (ii)—

(A) by inserting “or given” after “filed”; and

(B) by inserting “, report, or notice” after “return”; and

(4) by adding at the end the following:

“(iii) for purposes of this subsection, a return—

“(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law; and

“(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or”.

**SEC. 815. DISCHARGE OF THE ESTATE’S LIABILITY FOR UNPAID TAXES.**

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting “the estate,” after “misrepresentation,”.

**SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.**

(a) **FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of title 11, United States Code, as amended by section 143, is amended—

(1) in paragraph (6) by striking “and” at the end;

(2) in paragraph (7) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.”.

(b) *ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.*—(1) Chapter 13 of title 11, United States Code, as amended by section 137, is amended by adding at the end the following:

**“§ 1308. Filing of prepetition tax returns**

“(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 3-year period ending on the date of filing of the petition.

“(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

“(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date;

“(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law; and

“(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

“(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection; and

“(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

“(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.”.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”.

(c) *DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.*—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

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

“(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under

chapter 7 of this title, whichever is in the best interests of creditors and the estate.”

(d) **TIMELY FILED CLAIMS.**—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting “, and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.”

(e) **RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.**—It is the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

**SEC. 817. STANDARDS FOR TAX DISCLOSURE.**

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after “records,” the following: “including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,”;

(2) by inserting “such” after “enable”; and

(3) by striking “reasonable” where it appears after “hypothetical” and by striking “typical of holders of claims or interests” after “investor”.

**SEC. 818. SETOFF OF TAX REFUNDS.**

Section 362(b) of title 11, United States Code, as amended by sections 120, 134, 139, and 203, is amended—

(1) in paragraph (29) by striking “or”;

(2) in paragraph (29) by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (29) the following:

“(30) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

“(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

*“(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.”.*

**TITLE IX—ANCILLARY AND OTHER CROSS-BORDER  
CASES**

**SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.**

*(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:*

**“CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER  
CASES**

*“Sec.*

*“1501. Purpose and scope of application.*

**“SUBCHAPTER I—GENERAL PROVISIONS**

*“1502. Definitions.*

*“1503. International obligations of the United States.*

*“1504. Commencement of ancillary case.*

*“1505. Authorization to act in a foreign country.*

*“1506. Public policy exception.*

*“1507. Additional assistance.*

*“1508. Interpretation.*

**“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND  
CREDITORS TO THE COURT**

*“1509. Right of direct access.*

*“1510. Limited jurisdiction.*

*“1511. Commencement of case under section 301 or 303.*

*“1512. Participation of a foreign representative in a case under this title.*

*“1513. Access of foreign creditors to a case under this title.*

*“1514. Notification to foreign creditors concerning a case under this title.*

**“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND  
RELIEF**

*“1515. Application for recognition of a foreign proceeding.*

*“1516. Presumptions concerning recognition.*

*“1517. Order recognizing a foreign proceeding.*

*“1518. Subsequent information.*

*“1519. Relief that may be granted upon petition for recognition of a foreign proceeding.*

*“1520. Effects of recognition of a foreign main proceeding.*

*“1521. Relief that may be granted upon recognition of a foreign proceeding.*

*“1522. Protection of creditors and other interested persons.*

*“1523. Actions to avoid acts detrimental to creditors.*

*“1524. Intervention by a foreign representative.*

**“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN  
REPRESENTATIVES**

*“1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.*

*“1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.*

*“1527. Forms of cooperation.*

**“SUBCHAPTER V—CONCURRENT PROCEEDINGS**

*“1528. Commencement of a case under this title after recognition of a foreign main proceeding.*

*“1529. Coordination of a case under this title and a foreign proceeding.*

*“1530. Coordination of more than 1 foreign proceeding.*

*“1531. Presumption of insolvency based on recognition of a foreign main proceeding.*

*“1532. Rule of payment in concurrent proceedings.*

**“§ 1501. Purpose and scope of application**

*“(a) The purpose of this of chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—*

*“(1) cooperation between—*

*“(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and*

*“(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;*

*“(2) greater legal certainty for trade and investment;*

*“(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;*

*“(4) protection and maximization of the value of the debtor’s assets; and*

*“(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.*

*“(b) This chapter applies where—*

*“(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;*

*“(2) assistance is sought in a foreign country in connection with a case under this title;*

*“(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or*

*“(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.*

*“(c) This chapter does not apply to—*

*“(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);*

*“(2) an individual, or to an individual and such individual’s spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or*

*“(3) an entity subject to a proceeding under the Securities Investor Protection Act, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.*

**“SUBCHAPTER I—GENERAL PROVISIONS**

**“§ 1502. Definitions**

*“For the purposes of this chapter, the term—*

*“(1) ‘debtor’ means an entity that is the subject of a foreign proceeding;*

*“(2) ‘establishment’ means any place of operations where the debtor carries out a nontransitory economic activity;*

“(3) ‘foreign court’ means a judicial or other authority competent to control or supervise a foreign proceeding;

“(4) ‘foreign main proceeding’ means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

“(5) ‘foreign nonmain proceeding’ means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

“(6) ‘trustee’ includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and

“(7) ‘within the territorial jurisdiction of the United States’ when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

**“§ 1503. International obligations of the United States**

“To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

**“§ 1504. Commencement of ancillary case**

“A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

**“§ 1505. Authorization to act in a foreign country**

“A trustee or another entity, including an examiner, may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**“§ 1506. Public policy exception**

“Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**“§ 1507. Additional assistance**

“(a) Subject to the specific limitations stated elsewhere in this chapter the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

“(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

“(1) just treatment of all holders of claims against or interests in the debtor’s property;

“(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

“(3) prevention of preferential or fraudulent dispositions of property of the debtor;

“(4) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and

“(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**“§ 1508. Interpretation**

“In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

**“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT**

**“§ 1509. Right of direct access**

“(a) A foreign representative is entitled to commence a case under section 1504 by filing a petition for recognition under section 1515, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

“(b) Upon recognition, and subject to section 1510, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

“(c) Subject to section 1510 of this title, a foreign representative is subject to laws of general application.

“(d) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign representative in any State or Federal court in the United States. Any request for comity or cooperation by a foreign representative in any court shall be accompanied by a sworn statement setting forth whether recognition under section 1515 has been sought and the status of any such petition.

“(e) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

**“§ 1510. Limited jurisdiction**

“The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**“§ 1511. Commencement of case under section 301 or 303**

“(a) Upon recognition, a foreign representative may commence—

“(1) an involuntary case under section 303; or

“(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

*“(b) The petition commencing a case under subsection (a) must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative’s intent to commence a case under subsection (a) prior to such commencement.*

**“§ 1512. Participation of a foreign representative in a case under this title**

*“Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.*

**“§ 1513. Access of foreign creditors to a case under this title**

*“(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.*

*“(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.*

*“(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.*

*“(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.*

**“§ 1514. Notification to foreign creditors concerning a case under this title**

*“(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.*

*“(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.*

*“(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—*

*“(1) indicate the time period for filing proofs of claim and specify the place for their filing;*

*“(2) indicate whether secured creditors need to file their proofs of claim; and*

*“(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.*



*“(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.”*

**“SUBCHAPTER III—RECOGNITION OF A FOREIGN  
PROCEEDING AND RELIEF**

**“§ 1515. Application for recognition of a foreign proceeding**

*“(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.”*

*“(b) A petition for recognition shall be accompanied by—*

*“(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;*

*“(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or*

*“(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.”*

*“(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.”*

*“(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.”*

**“§ 1516. Presumptions concerning recognition**

*“(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.”*

*“(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.”*

*“(c) In the absence of evidence to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor’s main interests.”*

**“§ 1517. Order recognizing a foreign proceeding**

*“(a) Subject to section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—*

*“(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;*

*“(2) the foreign representative applying for recognition is a person or body as defined in section 101; and*

*“(3) the petition meets the requirements of section 1515.”*

*“(b) The foreign proceeding shall be recognized—*

*“(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or*

“(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

“(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

“(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

**“§ 1518. Subsequent information**

“From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

“(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative’s appointment; and

“(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**“§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding**

“(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

“(1) staying execution against the debtor’s assets;

“(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

“(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

“(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

“(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

**“§ 1520. Effects of recognition of a foreign main proceeding**

*“(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—*

*“(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;*

*“(2) a transfer, an encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552; and*

*“(3) unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.*

*“(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.*

*“(c) Subsection (a) does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.*

*“(d) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.*

**“§ 1521. Relief that may be granted upon recognition of a foreign proceeding**

*“(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—*

*“(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);*

*“(2) staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);*

*“(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);*

*“(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;*

*“(5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;*

*“(6) extending relief granted under section 1519(a); and*

*“(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).*

*“(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.*

*“(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.*

*“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.*

*“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).*

**“§ 1522. Protection of creditors and other interested persons**

*“(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.*

*“(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor’s business under section 1520(a)(2) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.*

*“(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.*

*“(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.*

**“§ 1523. Actions to avoid acts detrimental to creditors**

*“(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).*

*“(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.*

**“§ 1524. Intervention by a foreign representative**

*“Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.*

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS  
AND FOREIGN REPRESENTATIVES

**“§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives**

“(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

“(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

**“§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

“(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

“(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

**“§ 1527. Forms of cooperation**

“Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

“(1) appointment of a person or body, including an examiner, to act at the direction of the court;

“(2) communication of information by any means considered appropriate by the court;

“(3) coordination of the administration and supervision of the debtor’s assets and affairs;

“(4) approval or implementation of agreements concerning the coordination of proceedings; and

“(5) coordination of concurrent proceedings regarding the same debtor.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

**“§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding**

“After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**“§ 1529. Coordination of a case under this title and a foreign proceeding**

*“Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:*

*“(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—*

*“(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and*

*“(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.*

*“(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—*

*“(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and*

*“(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.*

*“(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.*

*“(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.*

**“§ 1530. Coordination of more than 1 foreign proceeding**

*“In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:*

*“(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.*

*“(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.*

*“(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.*

**“§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding**

*“In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.*

**“§ 1532. Rule of payment in concurrent proceedings**

*“Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.”*

(b) CLERICAL AMENDMENT.—*The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:*

**“15. Ancillary and Other Cross-Border Cases ..... 1501”.**

**SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.**

(a) APPLICABILITY OF CHAPTERS.—*Section 103 of title 11, United States Code, is amended—*

*(1) in subsection (a), by inserting before the period the following: “, and this chapter, sections 307, 304, 555 through 557, 559, and 560 apply in a case under chapter 15”; and*

*(2) by adding at the end the following:*

*“(j) Chapter 15 applies only in a case under such chapter, except that—*

*“(1) sections 1513 and 1514 apply in all cases under this title; and*

*“(2) section 1505 applies to trustees and to any other entity (including an examiner) authorized by the court under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors under chapter 9 who are authorized to act under section 1505.”*

(b) DEFINITIONS.—*Paragraphs (23) and (24) of title 11, United States Code, are amended to read as follows:*

*“(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;*

*“(24) ‘foreign representative’ means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;”*

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—*Section 157(b)(2) of title 28, United States Code, is amended—*

*(A) in subparagraph (N), by striking “and” at the end;*

(B) in subparagraph (O), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.”.

(2) **BANKRUPTCY CASES AND PROCEEDINGS.**—Section 1334(c)(1) of title 28, United States Code, is amended by striking “Nothing in” and inserting “Except with respect to a case under chapter 15 of title 11, nothing in”.

(3) **DUTIES OF TRUSTEES.**—Section 586(a)(3) of title 28, United States Code, is amended by inserting “15,” after “chapter”.

## **TITLE X—FINANCIAL CONTRACT PROVISIONS**

### **SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.**

(a) **DEFINITION OF QUALIFIED FINANCIAL CONTRACT.**—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting “, resolution or order” after “any similar agreement that the Corporation determines by regulation”.

(b) **DEFINITION OF SECURITIES CONTRACT.**—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

“(i) **SECURITIES CONTRACT.**—The term ‘securities contract’—

“(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

“(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

“(III) means any option entered into on a national securities exchange relating to foreign currencies;

“(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such



security, certificate of deposit, loan, interest, group or index or option;

“(V) means any margin loan;

“(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) means any combination of the agreements or transactions referred to in this clause;

“(VIII) means any option to enter into any agreement or transaction referred to in this clause;

“(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

“(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.”.

(c) **DEFINITION OF COMMODITY CONTRACT.**—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

“(iii) **COMMODITY CONTRACT.**—The term ‘commodity contract’ means—

“(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

“(II) with respect to a foreign futures commission merchant, a foreign future;

“(III) with respect to a leverage transaction merchant, a leverage transaction;

“(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

“(V) with respect to a commodity options dealer, a commodity option;

“(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) any combination of the agreements or transactions referred to in this clause;

“(VIII) any option to enter into any agreement or transaction referred to in this clause;

“(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

“(X) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.”

(d) **DEFINITION OF FORWARD CONTRACT.**—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

“(iv) **FORWARD CONTRACT.**—The term ‘forward contract’ means—

“(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity 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 2 days after the date the contract is entered into, including a repurchase agreement, reverse repurchase agreement, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

“(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

“(V) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).”.

(e) *DEFINITION OF REPURCHASE AGREEMENT.*—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

“(v) *REPURCHASE AGREEMENT.*—The terms ‘repurchase agreement’ and ‘reverse repurchase agreement’—

“(I) mean an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed 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, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

“(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

“(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

“(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

“(VI) means a security agreement or arrangement or other credit enhancement related to any

agreement or transaction referred to in subclause (I), (III), (IV), or (V).

*For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).”*

(f) *DEFINITION OF SWAP AGREEMENT.—The Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:*

*“(vi) SWAP AGREEMENT.—The term ‘swap agreement’ means—*

*“(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;*

*“(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;*

*“(III) any combination of agreements or transactions referred to in this clause;*

*“(IV) any option to enter into any agreement or transaction referred to in this clause;*

*“(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement*

that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).

Such term is applicable for purposes of this Act only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.”

(g) **DEFINITION OF TRANSFER.**—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

“(viii) **TRANSFER.**—The term ‘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 depository institutions’s equity of redemption.”

(h) **TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.**—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A), by striking “paragraph (10)” and inserting “paragraphs (9) and (10)”;

(2) in subparagraph (A)(i), by striking “to cause the termination or liquidation” and inserting “such person has to cause the termination, liquidation, or acceleration”;

(3) by amending subparagraph (A)(ii) to read as follows:

“(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);”;

(4) by amending subparagraph (E)(ii) to read as follows:

“(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);”.

(i) **AVOIDANCE OF TRANSFERS.**—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section 5242 of the Revised Statutes (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,” before “the Corporation”.

**SEC. 1002. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.**

(a) *IN GENERAL.*—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking “other than paragraph (12) of this subsection, subsection (d)(9)” and inserting “other than subsections (d)(9) and (e)(10)”; and

(2) by adding at the end the following new subparagraphs:

“(F) *CLARIFICATION.*—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

“(G) *WALKAWAY CLAUSES NOT EFFECTIVE.*—

“(i) *IN GENERAL.*—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

“(ii) *WALKAWAY CLAUSE DEFINED.*—For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party’s status as a non-defaulting party.”

(b) *TECHNICAL AND CONFORMING AMENDMENT.*—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting “or the exercise of rights or powers” after “the appointment”.

**SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.**

(a) *TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.*—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

“(9) *TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.*—

“(A) *IN GENERAL.*—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

“(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

“(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

“(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

“(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

“(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

“(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

“(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

“(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

“(D) DEFINITION.—For purposes of this section, the term ‘financial institution’ means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.”

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended by amending the

flush material following clause (ii) to read as follows: “the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.”

(c) *RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.*—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is further amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

“(B) *CERTAIN RIGHTS NOT ENFORCEABLE.*—

“(i) *RECEIVERSHIP.*—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(A) or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

“(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

“(ii) *CONSERVATORSHIP.*—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

“(iii) *NOTICE.*—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A) of this subsection.

“(C) *TREATMENT OF BRIDGE BANKS.*—The following institutions shall not be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is other-



wise the subject of a bankruptcy or insolvency proceeding for purposes of subsection (e)(9)—

“(i) a bridge bank; or

“(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—

“(I) immediately upon the organization of the institution; or

“(II) at the time of a purchase and assumption transaction between such institution and the Corporation as receiver for a depository institution in default.”.

**SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

“(11) **DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

“(A) disaffirm or repudiate all qualified financial contracts between—

“(i) any person or any affiliate of such person; and

“(ii) the depository institution in default; or

“(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).”.

**SEC. 1005. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.**

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

“(vii) **TREATMENT OF MASTER AGREEMENT AS 1 AGREEMENT.**—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.”.

**SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.**

(a) *DEFINITIONS.*—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

“(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;” and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

“(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;”;

(2) in paragraph (11), by adding before the period “and any other clearing organization with which such clearing organization has a netting contract”;

(3) by amending paragraph (14)(A)(i) to read as follows:

“(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and”;

(4) by adding at the end the following new paragraph:

“(15) *PAYMENT.*—The term ‘payment’ means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.”.

(b) *ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.*—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by amending subsection (a) to read as follows:

“(a) *GENERAL RULE.*—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).”;

(2) by adding at the end the following new subsection:

“(f) *ENFORCEABILITY OF SECURITY AGREEMENTS.*—The provisions of any security agreement or arrangement or other credit en-

hancement related to 1 or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11) and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).”.

(c) **ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.**—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by amending subsection (a) to read as follows:

“(a) **GENERAL RULE.**—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).”; and

(2) by adding at the end the following new subsection:

“(h) **ENFORCEABILITY OF SECURITY AGREEMENTS.**—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code) and shall not be stayed, avoided, or otherwise limited by any State or Federal law other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970.”.

(d) **ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.**—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by adding after section 406 the following new section:

**“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.**

“(a) **IN GENERAL.**—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency except—

“(1) any reference to the ‘Corporation as receiver’ or ‘the receiver or the Corporation’ shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

“(2) any reference to the ‘Corporation’ (other than in section 11(e)(8)(D) of such Act), the ‘Corporation, whether acting as such or as conservator or receiver’, a ‘receiver’, or a ‘conservator’ shall refer to the receiver or conservator of an uninsured na-

*tional bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and*

*“(3) any reference to an ‘insured depository institution’ or ‘depository institution’ shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.*

*“(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.*

*“(c) REGULATORY AUTHORITY.—*

*“(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.*

*“(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.*

*“(d) DEFINITIONS.—For purposes of this section, the terms ‘Federal branch’, ‘Federal agency’, and ‘foreign bank’ have the same meaning as in section 1(b) of the International Banking Act.”.*

**SEC. 1007. BANKRUPTCY CODE AMENDMENTS.**

*(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—*

*(1) in section 101—*

*(A) in paragraph (25)—*

*(i) by striking “means a contract” and inserting “means—*

*“(A) a contract”;*

*(ii) by striking “, or any combination thereof or option thereon;” and inserting “, or any other similar agreement;”; and*

*(iii) by adding at the end the following:*

*“(B) a combination of agreements or transactions referred to in subparagraphs (A) and (C);*

*“(C) an option to enter into an agreement or transaction referred to in subparagraph (A) or (B);*

*“(D) a master netting agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master netting agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master netting agreement that is referred to in subparagraph (A), (B) or (C); or*

“(E) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract, option, agreement, or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition;”;

(B) by amending paragraph (47) to read as follows:

“(47) ‘repurchase agreement’ and ‘reverse repurchase agreement’—

“(A) mean—

“(i) an agreement, including related terms, which provides for the transfer of—

“(I) a certificate of deposit, mortgage-related security (as defined in the Securities Exchange Act of 1934), mortgage loan, interest in a mortgage-related security or mortgage loan, eligible bankers’ acceptance, qualified foreign government security; or

“(II) security that is a direct obligation of, or that is fully guaranteed by, the United States or an agency of the United States against the transfer of funds by the transferee of such certificate of deposit, eligible bankers’ acceptance, security, loan, or interest;

with a simultaneous agreement by such transferee to transfer to the transferor thereof a certificate of deposit, eligible bankers’ acceptance, security, loan, or interest of the kind described in subclause (I) or (II), at a date certain not later than 1 year after the transferor’s transfer or on demand, against the transfer of funds;

“(ii) a combination of agreements or transactions referred to in clauses (i) and (iii);

“(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

“(iv) a master netting agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a repurchase agreement under this subparagraph, except that such master netting agreement shall be considered to be a repurchase agreement under this subparagraph only with respect to each agreement or transaction under such master netting agreement that is referred to in clause (i), (ii), or (iii); or

“(v) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

“(B) do not include a repurchase obligation under a participation in a commercial mortgage loan;

and, for purposes of this paragraph, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development;”;

(C) in paragraph (48) by inserting “or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission” after “1934”; and

(D) by amending paragraph (53B) to read as follows: “(53B) ‘swap agreement’ means—

“(A) an agreement, including the terms and conditions incorporated by reference in such agreement, that is—

“(i) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

“(ii) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

“(iii) a currency swap, option, future, or forward agreement;

“(iv) an equity index or an equity swap, option, future, or forward agreement;

“(v) a debt index or a debt swap, option, future, or forward agreement;

“(vi) a credit spread or a credit swap, option, future, or forward agreement; or

“(vii) a commodity index or a commodity swap, option, future, or forward agreement;

“(B) an agreement or transaction similar to an agreement or transaction referred to in this paragraph that—

“(i) is currently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

“(ii) is a forward, swap, future, or option on a rate, currency, commodity, equity security, or other equity instrument, on a debt security or other debt instrument, or on an economic index or measure of economic risk or value;

“(C) a combination of agreements or transactions referred to in this paragraph;

“(D) an option to enter into an agreement or transaction referred to in this paragraph;

“(E) a master netting agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), or (D), together with all supplements to such master netting agreement and without regard to whether such master netting agreement contains an agreement or transaction described in any such subparagraph, but only with respect to each agreement or transaction referred to in any such subparagraph that is under such master netting agreement; or

“(F) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect

*the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.”;*

(2) by amending section 741(7) to read as follows:

“(7) ‘securities contract’—

“(A) means—

“(i) a contract for the purchase, sale, or loan of a security, a mortgage loan or an interest in a mortgage loan, a group or index of securities, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any of the foregoing;

“(ii) an option entered into on a national securities exchange relating to foreign currencies;

“(iii) the guarantee by or to a securities clearing agency of a settlement of cash, securities, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any of the foregoing;

“(iv) a margin loan;

“(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

“(vi) a combination of the agreements or transactions referred to in this subparagraph;

“(vii) an option to enter into an agreement or transaction referred to in this subparagraph;

“(viii) a master netting agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master netting agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master netting agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

“(ix) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

“(B) does not include a purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;” and

(3) in section 761(4)—

(A) by striking “or” at the end of subparagraph (D); and

(B) by adding at the end the following:

“(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

“(G) a combination of the agreements or transactions referred to in this paragraph;

“(H) an option to enter into an agreement or transaction referred to in this paragraph;

“(I) a master netting agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that such master netting agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under such master netting agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

“(J) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;”.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

“(22) ‘financial institution’ means—

“(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when such Federal reserve bank, receiver, or conservator or entity 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; or

“(B) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940;”;

(2) by inserting after paragraph (22) the following:

“(22A) ‘financial participant’ means an entity that is a party to a securities contract, commodity contract or forward contract, or on the date of the filing of the petition, has a commodity contract (as defined in section 761 of this title) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least \$1,000,000,000 in notional or ac-



tual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least \$100,000,000 (aggregated across counterparties) in any such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;” and

(3) by amending paragraph (26) to read as follows:

“(26) ‘forward contract merchant’ means a Federal reserve bank, or an entity whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;”.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

“(38A) the term ‘master netting agreement’ means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

“(38B) the term ‘master netting agreement participant’ means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;”.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 120, 134, 139, 203 and 818, is amended—

(A) in paragraph (6), by inserting “, pledged to, and under the control of,” after “held by”;

(B) in paragraph (7), by inserting “, pledged to, and under the control of,” after “held by”;

(C) by amending paragraph (17) to read as follows:

“(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with a swap agreement that constitutes the setoff of a claim against the debtor for a payment or transfer due from the debtor under or in connection with a swap agreement against a payment due to the debtor from the swap participant under or in connection with a swap agreement or against cash, securities, or other

*property held by, pledged to, and under the control of, or due from such swap participant to guarantee, secure, or settle a swap agreement;*;

(D) in paragraph (27), by striking “or” at the end;

(E) in paragraph (28) by striking the period at the end and inserting “; and”; and

(F) by inserting after paragraph (28) the following new paragraph:

“(29) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.”.

(2) *LIMITATION*.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

“(i) *LIMITATION*.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17) of subsection (b) shall not be stayed by an order of a court or administrative agency in any proceeding under this title.”.

(e) *LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT*.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101-311)—

(A) by striking “under a swap agreement”;

(B) by striking “in connection with a swap agreement” and inserting “under or in connection with any swap agreement”;

(2) by redesignating subsection (g) (as added by section 222(a) of Public Law 103-394) as subsection (i); and

(3) by inserting before subsection (i) (as redesignated) the following new subsection:

“(h) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, and except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement, except under section 548(a)(1)(A) of this title.”.

(f) **FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.**—Section 548(d)(2) of title 11, United States Code, is amended—

- (1) in subparagraph (C), by striking “and”;
- (2) in subparagraph (D), by striking the period and inserting “; and”; and
- (3) by adding at the end the following new subparagraph:  
 “(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.”

(g) **TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.**—Section 555 of title 11, United States Code, is amended—

- (1) by amending the section heading to read as follows:

**“§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract”; and**

- (2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

(h) **TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.**—Section 556 of title 11, United States Code, is amended—

- (1) by amending the section heading to read as follows:

**“§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract”; and**

- (2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

(i) **TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.**—Section 559 of title 11, United States Code, is amended—

- (1) by amending the section heading to read as follows:

**“§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement”; and**

- (2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

(j) **LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.**—Section 560 of title 11, United States Code, is amended—

- (1) by amending the section heading to read as follows:

**“§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement”; and**

- (2) in the first sentence, by striking “termination of a swap agreement” and inserting “liquidation, termination, or acceleration of a swap agreement”; and

- (3) by striking “in connection with any swap agreement” and inserting “in connection with the termination, liquidation, or acceleration of a swap agreement”.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—Title 11, United States Code, is amended by inserting after section 560 the following new section:

**“§561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts**

“(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more—

- “(1) securities contracts, as defined in section 741(7);
- “(2) commodity contracts, as defined in section 761(4);
- “(3) forward contracts;
- “(4) repurchase agreements;
- “(5) swap agreements; or
- “(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

“(b) EXCEPTION.—

“(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

“(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title—

“(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent the party has no positive net equity in the commodity accounts at the debtor, as calculated under subchapter IV;

“(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

“(c) DEFINITION.—As used in this section, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.”.

(l) MUNICIPAL BANKRUPTCIES.—Section 901 of title 11, United States Code, is amended—

- (1) by inserting “, 555, 556” after “553”; and  
 (2) by inserting “, 559, 560, 561,” after “557”.

(m) **ANCILLARY PROCEEDINGS.**—Section 304 of title 11, United States Code, is amended by adding at the end the following:

“(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).”.

(n) **COMMODITY BROKER LIQUIDATIONS.**—Title 11, United States Code, is amended by inserting after section 766 the following:

**“§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

“Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.”.

(o) **STOCKBROKER LIQUIDATIONS.**—Title 11, United States Code, is amended by inserting after section 752 the following:

**“§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

“Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.”.

(p) **SETOFF.**—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting “(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, or 560 of this title)” before the period; and

(2) in subsection (b)(1), by striking “362(b)(14),” and inserting “362(b)(17), 362(b)(19), 555, 556, 559, 560,”.

(q) **SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.**—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking “financial institutions,” each place such term appears and inserting “financial institution, financial participant”;

(2) in section 546(e), by inserting “financial participant” after “financial institution,”;

(3) in section 548(d)(2)(B), by inserting “financial participant” after “financial institution,”;

(4) in section 555—

(A) by inserting “financial participant” after “financial institution,”; and

(B) by inserting before the period “, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice”; and

(5) in section 556, by inserting “, financial participant” after “commodity broker”.

(r) **CONFORMING AMENDMENTS.**—Title 11 of the United States Code is amended—

(1) in the table of sections of chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities contract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.”; and

(B) by amending the items relating to sections 555 and 556 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agreement.”; and

(2) in the table of sections of chapter 7—

(A) by inserting after the item relating to section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”; and

(B) by inserting after the item relating to section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

**SEC. 1008. RECORDKEEPING REQUIREMENTS.**

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

“(H) **RECORDKEEPING REQUIREMENTS.**—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.”.

**SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.**

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

“(2) **EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.**—An agreement to provide for the lawful collateralization of—

“(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

“(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

“(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

“(D) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.”.

**SEC. 1010. DAMAGE MEASURE.**

(a) Title 11, United States Code, is amended—

(1) by inserting after section 561 the following:

**“§562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements**

“If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, commodity contract (as defined in section 761 of this title) repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

“(1) the date of such rejection; or

“(2) the date of such liquidation, termination, or acceleration.”; and

(2) in the table of sections of chapter 5 by inserting after the item relating to section 561 the following:

“562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.

(b) **CLAIMS ARISING FROM REJECTION.**—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following:

“(2) A claim for damages calculated in accordance with section 561 of this title shall be allowed under subsection (a), (b), or (c), or

disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.”.

**SEC. 1011. SIPC STAY.**

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding after subparagraph (B) the following new subparagraph:

“(C) EXCEPTION FROM STAY.—

“(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, each as defined in title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 1 or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor whether or not with respect to 1 or more of such contracts or agreements.

“(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on securities collateral pledged by the debtor, whether or not with respect to 1 or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement or securities lent under a securities lending agreement.

“(iii) As used in this section, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.”.

**SEC. 1012. ASSET-BACKED SECURITIZATIONS.**

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by striking “or” at the end of paragraph (4);

(2) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(3) by inserting after paragraph (4) of subsection (b) the following new paragraph:

“(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a); or”; and



(4) by adding at the end the following new subsection:  
“(e) *DEFINITIONS.*—For purposes of this section, the following definitions shall apply:

“(1) *ASSET-BACKED SECURITIZATION.*—The term ‘asset-backed securitization’ means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

“(2) *ELIGIBLE ASSET.*—The term ‘eligible asset’ means—

“(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

“(B) cash; and

“(C) securities.

“(3) *ELIGIBLE ENTITY.*—The term ‘eligible entity’ means—

“(A) an issuer; or

“(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

“(4) *ISSUER.*—The term ‘issuer’ means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto.

“(5) *TRANSFERRED.*—The term ‘transferred’ means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

“(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

“(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

“(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.”.

**SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIREMENTS.**

The 2d sentence of the 2d undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended by striking “acceptances acquired under section 13 of this Act” and inserting “acceptances acquired under section 10A, 10B, 13, or 13A of this Act”.

**SEC. 1014. SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) *SEVERABILITY.*—If any provision of this Act or any amendment made by this Act, or the application of any such provision or amendment to any person or circumstance, is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

(b) *EFFECTIVE DATE.*—This Act shall take effect on the date of the enactment of this Act.

(c) *APPLICATION OF AMENDMENTS.*—The amendments made by this Act shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

**TITLE XI—TECHNICAL CORRECTIONS****SEC. 1101. DEFINITIONS.**

Section 101 of title 11, United States Code, as amended by section 317, 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 each of 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 “thereto having aggregate” and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

“(54) The term ‘transfer’ means—

“(A) the creation of a lien;

“(B) the retention of title as a security interest;

“(C) the foreclosure of a debtor’s equity of redemption;

or

“(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

“(i) property; or

“(ii) an interest in property.”;

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55) (including paragraph (54), as amended by paragraph (6) of 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 amended by paragraph (6) of this section, in entirely numerical sequence.

**SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

Section 104 of title 11, United States Code, is amended by inserting “522(f)(3), 707(b)(5),” after “522(d),” each place it appears.

**SEC. 1103. 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. 1104. TECHNICAL AMENDMENTS.**

Title 11 of the United States Code is amended—

- (1) in section 109(b)(2) by striking “subsection (c) or (d) of”;
- (2) in section 541(b)(4) by adding “or” at the end; and
- (3) in section 552(b)(1) by striking “product” each place it appears and inserting “products”.

**SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.**

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

**SEC. 1106. 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. 1107. 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. 1108. 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. 1109. 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. 1110. 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. 1111. PRIORITIES.**

Section 507(a) of title 11, United States Code, as amended by section 323, 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. 1112. EXEMPTIONS.**

Section 522 of title 11, United States Code, as amended by section 320, 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. 1113. 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 subsection (a)(9), by inserting “, watercraft, or aircraft” after “motor vehicle”;

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, 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. 1114. 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. 1115. 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. 1116. 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. 1117. 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)”;

(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, such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.”.

**SEC. 1118. 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. 1119. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

**SEC. 1120. GENERAL PROVISIONS.**

Section 901(a) of title 11, United States Code, as amended by section 408, is amended by inserting “1123(d),” after “1123(b),”.

**SEC. 1121. 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:
  - “(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. 1122. 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. 1123. 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. 1124. DISCHARGE UNDER CHAPTER 12.**

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. 1125. 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. 1126. 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”;
- (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. 1127. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.**

(a) **SALE OF PROPERTY OF ESTATE.**—Section 363(d) of title 11, United States Code, is amended—

(1) by striking “only” and all that follows through the end of the subsection and inserting “only—

“(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

“(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 of this title.”.

(b) **CONFIRMATION OF PLAN FOR REORGANIZATION.**—Section 1129(a) of title 11, United States Code, as amended by section 143, is amended by adding at the end the following:

“(15) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.”.

(c) **TRANSFER OF PROPERTY.**—Section 541 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.”.

(d) **APPLICABILITY.**—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be deemed to require the court in which a case under chapter 11 is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

**SEC. 1128. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.**

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(h) **PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.**—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.”.

**SEC. 1129. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.**

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking “20” and inserting “30”.

**SEC. 1130. TRUSTEES.**

(a) **SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of title 28, United States Code, is amended—

- (1) by inserting “(1)” after “(d)”; and
- (2) by adding at the end the following:

“(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11 of the United States Code may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.”.

(b) **EXPENSES OF STANDING TRUSTEES.**—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

“(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable or without cause based upon the administrative record before the agency.

“(4) The Attorney General shall prescribe procedures to implement this subsection.”.

**TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS**

**SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) **EFFECTIVE DATE.**—Except as provided otherwise in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

HENRY HYDE,  
BILL MCCOLLUM,  
GEORGE W. GEKAS,  
BOB GOODLATTE,  
ED BRYANT,  
STEVE CHABOT,  
RICK BOUCHER,

*Managers on the Part of the House.*

ORRIN G. HATCH,  
CHUCK GRASSLEY,  
JEFF SESSIONS,

*Managers on the Part of the Senate.*



## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3150), to amend title 11 of the United States Code, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

Differences between the House and Senate bills on several primary issues were the focus of discussions at the Conference.

### MEANS TESTING

The House version contained a pre-filing formula to steer debtors with repayment capacity into Chapter 13 repayment plans. The Senate bill directed bankruptcy judges to consider the repayment capacity of debtors who had filed in Chapter 7 bankruptcy to determine whether they were appropriately filed. The compromise combines the best aspects of both approaches. It adopts the procedural approach of the Senate bill directing bankruptcy judges to consider repayment capacity, while instructing that such repayment capacity shall be presumed by the judge if the individual meets certain bright-line standards for measuring such repayment capacity. This approach preserves the right of a debtor in bankruptcy to have a judge review his or her individual case so that the debtor's unique circumstances could be taken into account.

### NON-DISCHARGEABILITY

The House bill contained a provision that any debts incurred within 90 days of declaring bankruptcy, other than reasonably necessary living expenses not exceeding \$250, were presumed to be nondischargeable. The House bill capped necessary living expenses at \$250. The Senate bill contained a provision that debts other than reasonably necessary living expenses incurred within 90 days of declaring bankruptcy were presumed non-dischargeable. The Senate bill exempted all expenses, whether reasonable or not, up to \$400. The Conferees reached a compromise between these provisions that new debts incurred within 90 days of bankruptcy for luxury goods over \$250 in value would be presumed non-dischargeable. The compromise provides no limitation for reasonably necessary living expenses.

In addition, the House bill contained a provision that any debt incurred to pay non-dischargeable debt is also non-dischargeable. Under the Senate bill, debts incurred to pay non-dischargeable debts were only non-dischargeable if the debtor intended to discharge the newly created debt in bankruptcy. Under the Committee compromise, only debts incurred within 90 days prior to filing for

bankruptcy to pay non-dischargeable debts are non-dischargeable, however, debts incurred prior to 90 days prior to filing for bankruptcy to pay nondischargeable debts are nondischargeable only if the debtor intended to discharge the newly created debt in bankruptcy.

#### ENHANCED DISCLOSURES AND CREDITOR PENALTIES

The House bill contained disclosure requirements for debtor lawyers who advertise debt relief services to ensure that unwary consumers were not lured into bankruptcy without being fully aware of their alternatives. The Senate bill contained provisions which required certain lenders to make disclosures, regarding minimum monthly payments, total costs, among others. The House bill contained no such provisions on enhanced consumer disclosures for credit extensions. The Conferees agreed to retain the disclosure provisions for debtor attorneys and to direct the Board of Governors of the Federal Reserve to develop appropriate and meaningful additional disclosure requirements for the use of consumers. In addition, several of the Senate bill provisions which assessed stiff fines on creditors who used abusive collection techniques, were adopted in the final Conference Report. The Conference Report also specifies that the new penalties will not give rise to class action liability.

#### REAFFIRMATIONS

The House bill contained no comparable provision to the Senate bill, which imposed a requirement for a hearing before a judge for certain types of reaffirmations by debtors. The Conference Committee streamlined these judicial procedures by ensuring that every debtor who reaffirms unsecured debt has the opportunity to appear before a judge. Under the compromise an enhanced standard is provided for the review of certain reaffirmation agreements. The judge is now required to determine that the reaffirmation was in the best interest of the debtor, would not impose an undue hardship, and was not the result of coercion.

#### CRAMDOWNS

The House bill prohibited cramdowns for certain secured debts incurred within 180 days prior to bankruptcy. The Senate bill contained an absolute prohibition on cramdowns in Chapter 13 cases. The Committee compromised by prohibiting cramdowns on debts securing personal property incurred within five years of filing for bankruptcy.

#### HOMESTEAD EXEMPTION

The House version of the homestead exemption required a one-year residency prior to being able to claim the homestead exemption. The Senate versions capped all homestead exemptions at \$100,000. The Committee compromise imposes a two-year residency requirement before a debtor can claim the homestead exemption available in a particular state.

Other differences between the bills that were resolved by the Committee of Conference are apparent from a comparison of the two bills.

CURBING ABUSIVE FILINGS

The conferees have added a new paragraph to section 707(b) to make clear that, among the considerations in applying the “totality of the circumstances” test for “abuse” is whether an individual debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor. This is intended to remedy problems brought to the attention of Congress involving bankruptcy filings that were motivated in material part in order to reject executory contracts for personal services so that the debtor could negotiate a new and better contract with a different company. This problem was initially addressed in Section 212 of H.R. 3150, and the solution contained in that provision was targeted at this particular form of abuse of the bankruptcy process. With the new standard for “abuse” in Section 707(b)(2)(C), the conferees have determined that the specific provisions of Section 212 are no longer necessary, as the bankruptcy court will not have the authority to identify and remedy such abuses. The conferees intend that, under the “totality of the circumstances” test, an “abuse” of Chapter 7 exists when rejection of the personal services contract was a material reason for commencing the bankruptcy case, and economic rehabilitation of the debtor’s finances can be achieved absent rejection of the contract. The conferees also intend that application of the existing judicially-determined “bad faith” standard now be used in these circumstances in Chapter 7 cases and in Chapter 11 and Chapter 13 cases, in which the debtor or debtors are parties to a single personal services contract.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

HENRY HYDE,  
BILL MCCOLLUM,  
GEORGE W. GEKAS,  
BOB GOODLATTE,  
ED BRYANT,  
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