

Calendar No. 110

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

**H. R. 833**

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**AN ACT**

To amend title 11 of the United States Code, and  
for other purposes.

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MAY 12, 1999

Read twice and placed on the calendar

Calendar No. 110

106TH CONGRESS  
1ST SESSION

**H. R. 833**

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IN THE SENATE OF THE UNITED STATES

MAY 6, 1999

Received

MAY 12, 1999

Read twice and placed on the calendar

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**AN ACT**

To amend title 11 of the United States Code, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Bankruptcy Reform Act of 1999”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of  
5 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. Enforcement.

Sec. 107. Sense of the Congress.

Sec. 108. Discouraging abusive reaffirmation practices.

Sec. 109. Promotion of alternative dispute resolution.

Sec. 110. Enhanced disclosure for credit extensions secured by a dwelling.

Sec. 111. Dual use debit card.

Sec. 112. Enhanced disclosures under an open-end credit plan.

Sec. 113. Protection of savings earmarked for the postsecondary education of  
children.

Sec. 114. Effect of discharge.

Sec. 115. Limiting trustee liability.

Sec. 116. Reinforce the fresh start.

Sec. 117. Discouraging bad faith repeat filings.

Sec. 118. Curbing abusive filings.

Sec. 119. Debtor retention of personal property security.

Sec. 120. Relief from the automatic stay when the debtor does not complete in-  
tended surrender of consumer debt collateral.

Sec. 121. Giving secured creditors fair treatment in chapter 13.

Sec. 122. Restraining abusive purchases on secured credit.

Sec. 123. Fair valuation of collateral.

Sec. 124. Domiciliary requirements for exemptions.

Sec. 125. Restrictions on certain exempt property obtained through fraud.

Sec. 126. Rolling stock equipment.

Sec. 127. Discharge under chapter 13.

Sec. 128. Bankruptcy judgeships.

Sec. 129. Additional amendments to title 11, United States Code.

Sec. 130. Amendment to section 1325 of title 11, United States Code.

Sec. 131. Application of the codebtor stay only when the stay protects the debt-  
or.

Sec. 132. Adequate protection for investors.

Sec. 133. Limitation on luxury goods.

Sec. 134. Allowing a debtor to retain leased personal property by assumption.

- Sec. 135. Adequate protection of lessors and purchase money secured creditors.
- Sec. 136. Automatic stay.
- Sec. 137. Extend period between bankruptcy discharges.
- Sec. 138. Definition of domestic support obligation.
- Sec. 139. Priorities for claims for domestic support obligations.
- Sec. 140. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec. 141. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 142. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 143. Continued liability of property.
- Sec. 144. Protection of domestic support claims against preferential transfer motions.
- Sec. 145. Clarification of meaning of household goods.
- Sec. 146. Nondischargeable debts.
- Sec. 147. Monetary limitation on certain exempt property.
- Sec. 148. Bankruptcy fees.
- Sec. 149. Collection of child support.
- Sec. 150. Excluding employee benefit plan participant contributions and other property from the estate.
- Sec. 151. Clarification of postpetition wages and benefits.
- Sec. 152. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 153. Automatic stay inapplicable to certain proceedings against the debtor.
- Sec. 154. Disclosures.
- Sec. 155. Debtor's bill of rights.

#### 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 refinance 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.
- Sec. 215. Defaults based on nonmonetary obligations.
- Sec. 216. Sharing of compensation.
- Sec. 217. Priority for administrative expenses.
- Sec. 218. Nondischargeability of certain educational benefits and loans.

#### TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 301. Definition of disinterested person.
- Sec. 302. Miscellaneous improvements.
- Sec. 303. Extensions.
- Sec. 304. Local filing of bankruptcy cases.
- Sec. 305. Permitting assumption of contracts.

## TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 401. Flexible rules for disclosure Statement and plan.
- Sec. 402. Definitions.
- Sec. 403. Standard form disclosure Statement and plan.
- Sec. 404. Uniform national reporting requirements.
- Sec. 405. Uniform reporting rules and forms for small business cases.
- Sec. 406. Duties in small business cases.
- Sec. 407. Plan filing and confirmation deadlines.
- Sec. 408. Plan confirmation deadline.
- Sec. 409. Prohibition against extension of time.
- Sec. 410. Duties of the United States trustee.
- Sec. 411. Scheduling conferences.
- Sec. 412. Serial filer provisions.
- Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee or examiner.
- Sec. 414. Study of operation of title 11, United States Code, with respect to small businesses.
- Sec. 415. Payment of interest.

## TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 501. Petition and proceedings related to petition.
- Sec. 502. Applicability of other sections to chapter 9.

## TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

- Sec. 601. Creditor representation at first meeting of creditors.
- Sec. 602. Audit procedures.
- Sec. 603. Giving creditors fair notice in chapter 7 and 13 cases.
- 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.
- Sec. 606. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 608. Elimination of certain fees payable in chapter 11 bankruptcy cases.
- Sec. 609. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 610. Prompt relief from stay in individual cases.
- Sec. 611. Stopping abusive conversions from chapter 13.
- Sec. 612. Bankruptcy appeals.
- Sec. 613. GAO study.
- Sec. 614. Compensating trustees.

## TITLE VII—BANKRUPTCY DATA

- Sec. 701. Improved bankruptcy statistics.
- Sec. 702. Uniform rules for the collection of bankruptcy data.
- Sec. 703. Sense of the Congress regarding availability of bankruptcy data.

## 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.
- Sec. 805. Tolling of priority of tax claim time periods.

- Sec. 806. Priority property taxes incurred.
- Sec. 807. Chapter 13 discharge of fraudulent and other taxes.
- Sec. 808. Chapter 11 discharge of fraudulent taxes.
- Sec. 809. Stay of tax proceedings.
- Sec. 810. Periodic payment of taxes in chapter 11 cases.
- 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. Other amendments to titles 11 and 28, 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.
- Sec. 1009. Exemptions from contemporaneous execution requirement.
- Sec. 1010. Damage measure.
- Sec. 1011. Sipe stay.
- Sec. 1012. Asset-backed securitizations.
- Sec. 1013. Federal Reserve collateral requirements.
- Sec. 1014. Effective date; application of amendments.

#### TITLE XI—TECHNICAL CORRECTIONS

- Sec. 1101. Definitions.
- Sec. 1102. Adjustment of dollar amounts.
- Sec. 1103. Extension of time.
- Sec. 1104. Technical amendments.
- Sec. 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 1106. Limitation on compensation of professional persons.
- Sec. 1107. Special tax provisions.
- Sec. 1108. Effect of conversion.
- Sec. 1109. Allowance of administrative expenses.
- Sec. 1110. Priorities.
- Sec. 1111. Exemptions.
- Sec. 1112. Exceptions to discharge.
- Sec. 1113. Effect of discharge.
- Sec. 1114. Protection against discriminatory treatment.

Sec. 1115. Property of the estate.  
 Sec. 1116. Preferences.  
 Sec. 1117. Postpetition transactions.  
 Sec. 1118. Disposition of property of the estate.  
 Sec. 1119. General provisions.  
 Sec. 1120. Appointment of elected trustee.  
 Sec. 1121. Abandonment of railroad line.  
 Sec. 1122. Contents of plan.  
 Sec. 1123. Discharge under chapter 12.  
 Sec. 1124. Bankruptcy cases and proceedings.  
 Sec. 1125. Knowing disregard of bankruptcy law or rule.  
 Sec. 1126. Transfers made by nonprofit charitable corporations.  
 Sec. 1127. Prohibition on certain actions for failure to incur finance charges.  
 Sec. 1128. Protection of valid purchase money security interests.  
 Sec. 1129. Trustees.

TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF  
 AMENDMENTS

Sec. 1201. Effective date; application of amendments.

1                   **TITLE I—CONSUMER**  
 2                   **BANKRUPTCY PROVISIONS**  
 3                   **Subtitle A—Needs based**  
 4                   **bankruptcy**

5 **SEC. 101. CONVERSION.**

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

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

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

11                   (1) by striking the section heading and insert-  
 12                   ing the following:

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

15                   and

16                   (2) in subsection (b)—

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

2 (B) in paragraph (1), as redesignated by  
3 subparagraph (A) of this paragraph—

4 (i) in the first sentence—

5 (I) by striking “but not at the re-  
6 quest or suggestion of” and inserting  
7 “the trustee, or”;

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

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

14 (ii) by striking the second and third  
15 sentences and inserting the following:

16 “(2)(A)(i) In considering under paragraph (1) wheth-  
17 er the granting of relief would be an abuse of the provi-  
18 sions of this chapter, the court shall presume abuse exists  
19 if the debtor’s current monthly income less estimated ad-  
20 ministrative expenses and reasonable attorneys’ fees, and  
21 amounts set forth in clauses (ii) for monthly expenses  
22 (which shall include, if applicable, the continuation of ac-  
23 tual expenses of a dependent child under the age of 18  
24 for tuition, books, and required fees at a private elemen-  
25 tary or secondary school, not exceeding \$10,000 per year,



1 which amount shall be adjusted pursuant to section  
2 104(b)), (iii) for monthly payments on account of secured  
3 debts, and (iv) for monthly unsecured priority debt pay-  
4 ments, and multiplied by 60 months is not less than  
5 \$6,000.

6       “(ii) The debtor’s monthly expenses shall be the debt-  
7 or’s applicable monthly expense amounts specified under  
8 the National Standards and Local Standards, and the  
9 debtor’s actual monthly expenses for the categories speci-  
10 fied as Other Necessary Expenses issued by the Internal  
11 Revenue Service for the area in which the debtor resides,  
12 as in effect on the date of the entry of the order for relief,  
13 for the debtor, the dependents of the debtor, and the  
14 spouse of the debtor in a joint case, if the spouse is not  
15 otherwise a dependent. In addition, if it is demonstrated  
16 that it is reasonable and necessary, the debtor may also  
17 subtract an allowance of up to 5% of the food and clothing  
18 categories as specified by the National Standards issued  
19 by the Internal Revenue Service. Notwithstanding any  
20 other provision of this clause, the debtor’s monthly ex-  
21 penses shall not include any payments for debts.

22       “(iii) The debtor’s average monthly payments on ac-  
23 count of secured debts shall be calculated as the total of  
24 all amounts scheduled as contractually due to secured

1 creditors in each month of the 60 months following the  
2 date of the petition, and dividing that total by 60 months.

3       “(iv) The debtor’s monthly unsecured priority debt  
4 payments (including payments for priority child support  
5 and alimony claims) shall be calculated as the total  
6 amount of unsecured debts entitled to priority, and divid-  
7 ing the total by 60 months.

8       “(v) For the purposes of this subsection, a family or  
9 household shall consist of the debtor, the debtor’s spouse,  
10 and the debtor’s dependents, but not a legally separated  
11 spouse unless the spouse files a joint case with the debtor.

12       “(B) In any motion filed under this subsection, the  
13 presumption of abuse may be rebutted only by dem-  
14 onstrating extraordinary circumstances that require addi-  
15 tional expenses or adjustment of current monthly income.  
16 In order to establish extraordinary circumstances, the  
17 debtor must itemize each additional expense or adjustment  
18 of income and provide documentation for such expenses  
19 or adjustment of income and a detailed explanation of the  
20 extraordinary circumstances which make such expenses or  
21 adjustment of income necessary and reasonable. The debt-  
22 or shall attest under oath to the accuracy of any informa-  
23 tion provided to demonstrate that additional expenses or  
24 adjustment to income are required. The presumption of  
25 abuse may be rebutted only if such additional expenses

1 or adjustments to income cause the debtor's current  
2 monthly income less estimated administrative expenses  
3 and reasonable attorneys' fees, and the amounts set forth  
4 in clauses (ii), (iii), and (iv) of subparagraph (A) when  
5 multiplied by 60 to be less than \$6,000.

6       “(C) No judge, United States trustee, panel trustee,  
7 bankruptcy administrator or other party in interest shall  
8 bring a motion under this paragraph if the debtor and  
9 the debtor's spouse combined, as of the date of the order  
10 for relief, have current monthly total income equal to or  
11 less than the regional median household monthly income  
12 calculated on a semiannual basis for a household of equal  
13 size. However, for a household of more than four individ-  
14 uals, the median income shall be that of a household of  
15 four individuals plus \$583 for each additional member of  
16 that household.

17       “(3) In considering under paragraph (1) whether the  
18 granting of relief would be an abuse of the provisions of  
19 this chapter in a case in which the presumption in para-  
20 graph (2)(A)(i) does not apply or has been rebutted, the  
21 court shall consider—

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

24               “(B) the totality of the circumstances (includ-  
25 ing whether the debtor seeks to reject a personal

1 services contract and the financial need for such re-  
2 jection as sought by the debtor) of the debtor’s fi-  
3 nancial situation demonstrates abuse.

4 “(4)(A) If a panel trustee appointed under section  
5 586(a)(1) of title 28 or bankruptcy administrator brings  
6 a motion for dismissal or conversion under this subsection  
7 and the court grants that motion and finds that the action  
8 of the counsel for the debtor in filing under this chapter  
9 violated Rule 9011, the court shall assess damages which  
10 may include ordering:

11 “(i) the counsel for the debtor to reimburse the  
12 trustee for all reasonable costs, including reasonable  
13 attorneys’ fees.

14 “(ii) the assessment of an appropriate civil pen-  
15 alty against the counsel for the debtor; and

16 “(iii) the payment of the civil penalty to the  
17 panel trustee, bankruptcy administrator or the  
18 United States trustee.

19 “(B) In the case of a petition filed under sections  
20 301, 302, or 303 of this title and supporting lists, sched-  
21 ules and documents filed under section 521(a)(1) of this  
22 title, the signature of an attorney on the petition shall con-  
23 stitute a certificate that the attorney has—

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

1           “(ii) determined that the petition, lists, sched-  
2 ules, and documents—

3           “(I) are well grounded in fact; and

4           “(II) are warranted by existing law or a  
5 good faith argument for the extension, modi-  
6 fication, or reversal of existing law and do not  
7 constitute an abuse under paragraph (1) of this  
8 subsection.

9           “(5) The court may award a debtor all reasonable  
10 costs in contesting a motion filed by a party in interest  
11 (not including a trustee or the United States trustee)  
12 under this subsection (including reasonable attorneys’  
13 fees) if—

14           “(A) the court does not grant the motion; and

15           “(B) the court finds that—

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

18           “(ii) the party brought the motion solely  
19 for the purpose of coercing a debtor into  
20 waiving a right guaranteed to the debtor under  
21 this title.

22           “(6) However, only the court, the United States  
23 trustee, or the trustee may file a motion to dismiss or con-  
24 vert a case under this subsection if the current monthly  
25 income of the debtor and the debtor’s spouse combined,

1 as of the date of the order for relief, when multiplied by  
2 12, is less than the highest national median family income  
3 last reported by the Bureau of the Census for a family  
4 of equal or lesser size, or in the case of a household of  
5 one person, the national median household income for one  
6 earner. Notwithstanding the foregoing, the national me-  
7 dian family income for a family of more than four individ-  
8 uals shall be the national median family income last re-  
9 ported by the Bureau of the Census for a family of four  
10 individuals plus \$583 for each additional member of the  
11 family.

12 “(7) In making a determination whether to dismiss  
13 a case under this section, the court may not take into con-  
14 sideration whether a debtor has made, or continues to  
15 make, charitable contributions (that meet the definition  
16 of ‘charitable contribution’ under section 548(d)(3)) to  
17 any qualified religious or charitable entity or organization  
18 (as that term is defined in section 548(d)(4)).

19 “(8) Not later than 3 years after the date of the en-  
20 actment of the Bankruptcy Reform Act of 1999, the Di-  
21 rector of the Executive Office for United States Trustees  
22 shall submit a report, to the Committee on the Judiciary  
23 of the House of Representatives and the Committee on  
24 the Judiciary of the Senate, containing its findings regard-  
25 ing the utilization of the Internal Revenue Service stand-

1 ards for determining the current monthly expenses under  
2 section 707(b)(1)(A)(ii) of title 11, United States Code,  
3 of debtors and the impact that the application of such  
4 standards has had on debtors and on the bankruptcy  
5 courts. Such report may include recommendations for  
6 amendments to such title, consistent with the Director’s  
7 findings.”.

8 (b) DEFINITIONS.—Section 101 of title 11, United  
9 States Code, is amended—

10 (1) by inserting after paragraph (10) the fol-  
11 lowing:

12 “(10A) ‘current monthly income’ means the av-  
13 erage monthly income from all sources derived which  
14 the debtor, or in a joint case, the debtor and the  
15 debtor’s spouse, receive without regard to whether it  
16 is taxable income, in the 180 days preceding the  
17 date of determination, and includes any amount paid  
18 by anyone other than the debtor or, in a joint case,  
19 the debtor and the debtor’s spouse, on a regular  
20 basis to the household expenses of the debtor or the  
21 debtor’s dependents and, in a joint case, the debtor’s  
22 spouse if not otherwise a dependent, but excludes  
23 payments to victims of war crimes or crimes against  
24 humanity and benefits received under the Social Se-  
25 curity Act;”;

1           (2) by inserting after paragraph (17) the fol-  
2           lowing:

3           “(17A) ‘estimated administrative expenses and  
4           reasonable attorneys’ fees’ means 10 percent of pro-  
5           jected payments under a chapter 13 plan;”.

6           (c) ADMINISTRATIVE PROVISIONS.—Section 704 of  
7           title 11, United States Code, is amended—

8           (1) in paragraph (8) by striking “and” at the  
9           end;

10          (2) in paragraph (9) by striking the period at  
11          the end and inserting “; and”; and

12          (3) by adding at the end the following:

13          “(10)(A) With respect to an individual debtor,  
14          the trustee shall review all materials filed by the  
15          debtor, consider all information presented at the  
16          first meeting of creditors, and within 10 days after  
17          the first meeting of creditors file with the court a  
18          statement as to whether or not the debtor’s case  
19          should be presumed to be an abuse under section  
20          707(b) of this title. The court shall provide a copy  
21          of such statement to all creditors within 5 days after  
22          such statement is filed. If, based on the filing of  
23          such statement with the court, the trustee deter-  
24          mines that the debtor’s case should be presumed to  
25          be an abuse under section 707(b) of this title and



1 if the current monthly income of the debtor and the  
2 debtor’s spouse combined, as of the date of the order  
3 for relief, when multiplied by 12, is not less than the  
4 highest national median family income reported for  
5 a family of equal or lesser size, or in the case of a  
6 household of one person, the national median house-  
7 hold income for one earner, then the trustee shall  
8 within 30 days of the filing of such statement,  
9 either—

10 “(i) file a motion to dismiss or convert  
11 under section 707(b) of this title; or

12 “(ii) file a statement setting forth the rea-  
13 sons the trustee or bankruptcy administrator  
14 does not believe that such a motion would be  
15 appropriate.

16 “(B) Notwithstanding subparagraph (A), for  
17 purposes of this paragraph the national family in-  
18 come for a family of more than four individuals shall  
19 be the national median family income last reported  
20 by the Bureau of the Census for a family of four in-  
21 dividuals plus \$583 for each additional member of  
22 the family.”.

23 (d) DEBTOR’S DUTIES.—Section 521(a)(1)(B) of  
24 title 11, United States Code, as amended by section 603,  
25 is amended—

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

2 (2) in clause (vi) by adding “and” at the end;

3 and

4 (3) by inserting the following after clause (vi):

5 “(vii) a statement of the debtor’s cur-  
6 rent monthly income, and the calculations  
7 which determine whether a presumption  
8 arises under section 707(b)(2)(A)(i), show-  
9 ing how each amount is calculated.”.

10 (e) BANKRUPTCY FORMS.—Section 2075 of title 28,  
11 United States Code, is amended by adding the following  
12 at the end of the first paragraph:

13 “The bankruptcy rules promulgated under this section  
14 shall prescribe a form for the statement referred to in sec-  
15 tion 521(a)(1)(B)(vii) of title 11, United States Code, and  
16 may provide general rules on the content of such state-  
17 ment.”.

18 (f) CHAPTER 13.—Section 1325(a) of title 11, United  
19 States Code, is amended—

20 (1) in paragraph (5) by striking “and” at the  
21 end;

22 (2) in paragraph (6) by striking the period and  
23 inserting “; and”; and

24 (3) by inserting the following after paragraph  
25 (6):

1           “(7) the action of the debtor in filing the peti-  
2           tion under this chapter was in good faith.”.

3           (g) CLERICAL AMENDMENT.—The table of sections  
4 at the beginning of chapter 7 of title 11, United States  
5 Code, is amended by striking the item relating to section  
6 707 and inserting the following:

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

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

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

10          “(b) Before the commencement of a case under this  
11 title by an individual whose debts are primarily consumer  
12 debts, the clerk shall give to such individual written notice  
13 containing—

14           “(1) a brief description of—

15               “(A) chapters 7, 11, 12, and 13 and the  
16               general purpose, benefits, and costs of pro-  
17               ceeding under each of those chapters; and

18               “(B) the types of services available from  
19               credit counseling agencies; and

20           “(2) statements specifying that—

21               “(A) a person who knowingly and fraudu-  
22               lently conceals assets or makes a false oath or  
23               statement under penalty of perjury in connec-  
24               tion with a bankruptcy case shall be subject to  
25               fine, imprisonment, or both; and

1           “(B) all information supplied by a debtor  
2           in connection with a bankruptcy case is subject  
3           to examination by the Attorney General.”.

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

6           (a) DEVELOPMENT OF FINANCIAL MANAGEMENT  
7 AND TRAINING CURRICULUM AND MATERIALS.—The Di-  
8 rector of the Executive Office for United States Trustees  
9 (in this section referred to as the “Director”) shall consult  
10 with a wide range of individuals who are experts in the  
11 field of debtor education, including trustees who are ap-  
12 pointed under chapter 13 of title 11, United States Code,  
13 and who operate financial management education pro-  
14 grams for debtors, and shall develop a financial manage-  
15 ment training curriculum and materials that can be used  
16 to educate individual debtors on how to better manage  
17 their finances.

18           (b) TEST—(1) The Director shall select 6 judicial dis-  
19 tricts of the United States in which to test the effective-  
20 ness of the financial management training curriculum and  
21 materials developed under subsection (a).

22           (2) For a 18-month period beginning not later than  
23 270 days after the date of the enactment of this Act, such  
24 curriculum and materials shall be, for the 6 judicial dis-  
25 tricts selected under paragraph (1), used as the instruc-

1 tional course concerning personal financial management  
2 for purposes of section 111 of title 11, United States  
3 Code.

4 (c) EVALUATION.—(1) During the 1-year period re-  
5 ferred to in subsection (b), the Director shall evaluate the  
6 effectiveness of—

7 (A) the financial management training cur-  
8 riculum and materials developed under subsection  
9 (a); and

10 (B) a sample of existing consumer education  
11 programs such as those described in the Report of  
12 the National Bankruptcy Review Commission (Octo-  
13 ber 20, 1997) that are representative of consumer  
14 education programs carried out by the credit indus-  
15 try, by trustees serving under chapter 13 of title 11,  
16 United States Code, and by consumer counselling  
17 groups.

18 (2) Not later than 3 months after concluding such  
19 evaluation, the Director shall submit a report to the  
20 Speaker of the House of Representatives and the Presi-  
21 dent pro tempore of the Senate, for referral to the appro-  
22 priate committees of the Congress, containing the findings  
23 of the Director regarding the effectiveness of such cur-  
24 riculum, such materials, and such programs and their  
25 costs.

1     **Subtitle B—Consumer Bankruptcy**  
2                     **Protections**

3     **SEC. 105. DEFINITIONS.**

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

6                     (1) by inserting after paragraph (2) the fol-  
7 lowing:

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

11                     (2) by inserting after paragraph (4) the fol-  
12 lowing:

13                             “(4A) ‘bankruptcy assistance’ means any goods  
14 or services sold or otherwise provided to an assisted  
15 person with the express or implied purpose of pro-  
16 viding information, advice, counsel, document prepa-  
17 ration or filing, or attendance at a creditors’ meeting  
18 or appearing in a proceeding on behalf of another or  
19 providing legal representation with respect to a pro-  
20 ceeding under this title;”;

21                     (3) by inserting after paragraph (12A) the fol-  
22 lowing:

23                             “(12B) ‘debt relief agency’ means any person  
24 who provides any bankruptcy assistance to an as-  
25 sisted person in return for the payment of money or

1 other valuable consideration, or who is a bankruptcy  
2 petition preparer pursuant to section 110 of this  
3 title, but does not include any person that is any of  
4 the following or an officer, director, employee or  
5 agent thereof—

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

9 “(B) any creditor of the person to the ex-  
10 tent the creditor is assisting the person to re-  
11 structure any debt owed by the person to the  
12 creditor; or

13 “(C) any depository institution (as defined  
14 in section 3 of the Federal Deposit Insurance  
15 Act) or any Federal credit union or State credit  
16 union (as those terms are defined in section  
17 101 of the Federal Credit Union Act), or any  
18 affiliate or subsidiary of such a depository insti-  
19 tution or credit union;”.

20 (b) CONFORMING AMENDMENT.—In section  
21 104(b)(1) by inserting “101(3),” after “sections”.

22 **SEC. 106. ENFORCEMENT.**

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

1 **“§ 526. Debt relief agency enforcement**

2 “(a) A debt relief agency shall not—

3 “(1) fail to perform any service which the debt  
4 relief agency has told the assisted person or prospec-  
5 tive assisted person the agency would provide that  
6 person in connection with the preparation for or ac-  
7 tivities during a case or proceeding under this title;

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

14 “(3) misrepresent to any assisted person or pro-  
15 spective assisted person, directly or indirectly, af-  
16 firmatively or by material omission, what services  
17 the debt relief agency can reasonably expect to pro-  
18 vide that person, or the benefits an assisted person  
19 may obtain or the difficulties the person may experi-  
20 ence if the person seeks relief in a proceeding pursu-  
21 ant to this title; or

22 “(4) advise an assisted person or prospective  
23 assisted person to incur more debt in contemplation  
24 of that person filing a case under this title or in  
25 order to pay an attorney or bankruptcy petition pre-  
26 parer fee or charge for services performed as part of



1 preparing for or representing a debtor in a case  
2 under this title.”.

3 “(b) ASSISTED PERSON WAIVERS INVALID.—Any  
4 waiver by any assisted person of any protection or right  
5 provided by or under this section shall not be enforceable  
6 against the debtor by any Federal or State court or any  
7 other person, but may be enforced against a debt relief  
8 agency.

9 “(c) NONCOMPLIANCE.—

10 “(1) Any contract between a debt relief agency  
11 and an assisted person for bankruptcy assistance  
12 which does not comply with the material require-  
13 ments of this section shall be treated as void and  
14 may not be enforced by any Federal or State court  
15 or by any other person.

16 “(2) Any debt relief agency shall be liable to an  
17 assisted person in the amount of any fees or charges  
18 in connection with providing bankruptcy assistance  
19 to such person which the debt relief agency has re-  
20 ceived, for actual damages, and for reasonable attor-  
21 neys’ fees and costs if the debt relief agency is  
22 found, after notice and hearing, to have—

23 “(A) intentionally or negligently failed to  
24 comply with any provision of this section with

1           respect to a bankruptcy case or related pro-  
2           ceeding of the assisted person;

3           “(B) provided bankruptcy assistance to an  
4           assisted person in a case or related proceeding  
5           which is dismissed or converted because of the  
6           debt relief agency’s intentional or negligent fail-  
7           ure to file bankruptcy papers, including papers  
8           specified in section 521 of this title; or

9           “(C) intentionally or negligently dis-  
10          regarded the material requirements of this title  
11          or the Federal Rules of Bankruptcy Procedure  
12          applicable to such debt relief agency.

13          “(3) In addition to such other remedies as are  
14          provided under State law, whenever the chief law en-  
15          forcement officer of a State, or an official or agency  
16          designated by a State, has reason to believe that any  
17          person has violated or is violating this section, the  
18          State—

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

21                 “(B) may bring an action on behalf of its  
22                 residents to recover the actual damages of as-  
23                 sisted persons arising from such violation, in-  
24                 cluding any liability under paragraph (2); and

1           “(C) in the case of any successful action  
2           under subparagraph (A) or (B), shall be award-  
3           ed the costs of the action and reasonable attor-  
4           ney fees as determined by the court.

5           “(4) The United States District Court for any  
6           district located in the State shall have concurrent ju-  
7           risdiction of any action under subparagraph (A) or  
8           (B) of paragraph (3).

9           “(5) Notwithstanding any other provision of  
10          Federal law and in addition to any other remedy  
11          provided under Federal or State law, if the court, on  
12          its own motion or on the motion of the United  
13          States trustee or the debtor, finds that a person in-  
14          tentionally violated this section, or engaged in a  
15          clear and consistent pattern or practice of violating  
16          this section, the court may—

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

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

20          “(c) RELATION TO STATE LAW.—This section shall  
21          not annul, alter, affect or exempt any person subject to  
22          those sections from complying with any law of any State  
23          except to the extent that such law is inconsistent with  
24          those sections, and then only to the extent of the inconsis-  
25          tency.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-  
2 tions for chapter 5 of title 11, United States Code, is  
3 amended by inserting after the item relating to section  
4 527, the following:

“526. Debt relief agency enforcement.”.

5 **SEC. 107. SENSE OF THE CONGRESS.**

6 It is the sense of the Congress that States should de-  
7 velop curricula relating to the subject of personal finance,  
8 designed for use in elementary and secondary schools.

9 **SEC. 108. DISCOURAGING ABUSIVE REAFFIRMATION PRAC-**  
10 **TICES.**

11 Section 524 of title 11, United States Code, is  
12 amended—

13 (1) in subsection (c)—

14 (A) in paragraph (2)—

15 (i) in subparagraph (A) by striking  
16 “and” at the end;

17 (ii) in subparagraph (B) by adding  
18 “and” at the end; and

19 (iii) by adding at the end the fol-  
20 lowing:

21 “(C) if the consideration for such agreement is  
22 based on a wholly unsecured consumer debt (except  
23 for debts owed to creditors defined in section  
24 461(b)(1)(A)(iv) of title 12, United States Code),

1 such agreement contains a clear and conspicuous  
2 statement which advises the debtor—

3 “(i) that the debtor is entitled to a hearing  
4 before the court at which the debtor shall ap-  
5 pear in person and at which the court will de-  
6 cide whether the agreement is an undue hard-  
7 ship, not in the debtor’s best interest, and not  
8 the result of a threat by the creditor to take  
9 any action that cannot be legally taken or that  
10 is not intended to be taken; and

11 “(ii) that if the debtor is represented by  
12 counsel, the debtor may waive the debtor’s right  
13 to such a hearing by signing a statement  
14 waiving the hearing, stating that the debtor is  
15 represented by counsel, and identifying such  
16 counsel;”; and

17 (B) in paragraph (6)(A)—

18 (i) by striking “and” at the end of  
19 clause (i);

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

22 (iii) by adding at the end thereof the  
23 following:

24 “(iii) not entered into by the debtor as the  
25 result of a threat by the creditor to take any

1           action that cannot be legally taken or that is  
2           not intended to be taken.”; and

3           (2) in the third sentence of subsection (d)—

4                   (A) by striking “of this section” and in-  
5                   serting a comma; and

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

8           “or if the consideration for such agreement is based on  
9           a wholly unsecured consumer debt (except for debts owed  
10          to creditors defined in section 461(b)(1)(A)(iv) of title 12,  
11          United States Code) and the debtor has not waived the  
12          debtor’s right to a hearing on the agreement in accordance  
13          with subsection (c)(2)(C) of this section”.

14   **SEC. 109. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**  
15                                   **TION.**

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

19               “(k)(1) The court, on the motion of the debtor and  
20          after a hearing, may reduce a claim filed under this sec-  
21          tion based wholly on unsecured consumer debts by not  
22          more than 20 percent, if the debtor can prove by clear  
23          and convincing evidence that the claim was filed by a cred-  
24          itor who unreasonably refused to negotiate a reasonable  
25          alternative repayment schedule proposed by an approved

1 credit counseling agency acting on behalf of the debtor,  
2 and if—

3 “(A) such offer was made within the period be-  
4 ginning 60 days before the filing of the petition;

5 “(B) such offer provided for payment of at least  
6 60 percent of the amount of the debt over a period  
7 not to exceed the repayment period of the loan, or  
8 a reasonable extension thereof; and

9 “(C) no part of the debt under the alternative  
10 repayment schedule is nondischargeable, is entitled  
11 to priority under section 507 of this title, or would  
12 be paid a greater percentage in a chapter 13 pro-  
13 ceeding than offered by the debtor.

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

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

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

1 **SEC. 110. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
2 **SIONS SECURED BY A DWELLING.**

3 (a) **STUDY REQUIRED.**—During the period beginning  
4 180 days after the date of the enactment of this Act and  
5 ending 18 months after the date of the enactment, the  
6 Board of Governors of the Federal Reserve System (in this  
7 section referred to as the “Board”) shall conduct a study  
8 and submit to Congress a report (including recommenda-  
9 tions for any appropriate legislation) regarding—

10 (1) whether a consumer engaging in an open-  
11 end credit transaction (as defined pursuant to sec-  
12 tion 103 of the Truth in Lending Act) secured by the  
13 consumer’s principal dwelling is provided adequate  
14 information under Federal law, including under sec-  
15 tion 127A of the Truth in Lending Act, regarding  
16 the tax deductibility of interest paid on such trans-  
17 action; and

18 (2) whether a consumer engaging in a closed-  
19 end credit transaction (as defined pursuant to sec-  
20 tion 103 of the Truth in Lending Act) secured by  
21 the consumer’s principal dwelling is provided ade-  
22 quate information regarding the tax deductibility of  
23 interest paid on such transaction.

24 In conducting such study, the Board shall specifically con-  
25 sider whether additional disclosures are necessary with re-  
26 spect to such open-end or closed-end credit transactions



1 in which the amount of the credit extended exceeds the  
2 fair market value of the dwelling.

3 (b) REGULATIONS.—If the Board determines that ad-  
4 ditional disclosures are necessary in connection with trans-  
5 actions described in subsection (a), the Board, pursuant  
6 to its authority under the Truth in Lending Act, may pro-  
7 mulgate regulations that would require such additional  
8 disclosures. Any such regulations promulgated by the  
9 Board under this section shall not take effect before the  
10 end of the 36-month period after the date of the enact-  
11 ment of this Act.

12 **SEC. 111. DUAL USE DEBIT CARD.**

13 (a) STUDY REQUIRED.—The Board of Governors of  
14 the Federal Reserve System (in this section referred to  
15 as the “Board”) shall conduct a study of existing protec-  
16 tions provided to consumers to limit their liability for un-  
17 authorized use of a debit card or similar access device.

18 (b) SPECIFIC CONSIDERATIONS.—In conducting the  
19 study required by subsection (a), the Board shall specifi-  
20 cally consider the following—

21 (1) the extent to which existing provisions of  
22 section 909 of the Electronic Fund Transfer Act and  
23 the Board’s implementing regulations provide ade-  
24 quate unauthorized use liability protection for con-  
25 sumers;

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

5           (3) whether amendments to the Electronic  
6 Funds Transfer Act or the Board's implementing  
7 regulations thereto are necessary to provide ade-  
8 quate protection for consumers in this area.

9           (c) REPORT AND REGULATIONS.—Not later than 2  
10 years after the date of the enactment of this Act, the  
11 Board shall make public a report on its findings with re-  
12 spect to the adequacy of existing protections afforded con-  
13 sumers with respect to unauthorized-use liability for debit  
14 cards and similar access devices. If the Board determines  
15 that such protections are inadequate, the Board, pursuant  
16 to its authority under the Electronic Funds Transfer Act,  
17 may issue regulations to address such inadequacy. Any  
18 regulations issued by the Board shall not be effective be-  
19 fore 36 months after the date of the enactment of this  
20 Act.

21 **SEC. 112. ENHANCED DISCLOSURES UNDER AN OPEN-END**  
22 **CREDIT PLAN.**

23           (a) INITIAL AND ANNUAL MINIMUM PAYMENT DIS-  
24 CLOSURE.—Section 127(a) of the Truth in Lending Act

1 (15 U.S.C. 1637(a)) is amended by adding at the end the  
2 following:

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

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

18                   “(B) if the plan provides that the con-  
19                   sumer will be permitted to forgo making a min-  
20                   imum payment during a specified billing cycle,  
21                   a statement, if applicable, that if the consumer  
22                   chooses to forgo making the minimum payment,  
23                   finance charges will continue to accrue; and

24                   “(C) the following examples:

1           “(i) if the average account balance  
2           under a creditor’s open-end consumer cred-  
3           it plan, taken as an average of the account  
4           balances for all consumer accounts under  
5           that open-end consumer credit plan, is  
6           \$1,000 or less, two examples, based on an  
7           annual percentage rate and method for de-  
8           termining minimum periodic payments re-  
9           cently in effect for that creditor, and based  
10          on outstanding balances of \$250 and \$500,  
11          showing the estimated minimum periodic  
12          payments, and the estimated period of time  
13          it would take to repay those outstanding  
14          balances of \$250 and \$500, if the con-  
15          sumer paid only the minimum periodic  
16          payment on each monthly or periodic state-  
17          ment and obtained no additional extensions  
18          of credit; or

19          “(ii) if the average account balance  
20          under a creditor’s open-end consumer cred-  
21          it plan, taken as an average of the account  
22          balances for all consumer accounts under  
23          that open-end consumer credit plan, is  
24          more than \$1,000, three examples, based  
25          on an annual percentage rate and method

1           for determining minimum periodic pay-  
2           ments recently in effect for that creditor,  
3           and outstanding balances of \$1,000,  
4           \$1,500 and \$2,000, showing the estimated  
5           minimum periodic payments, and the esti-  
6           mated period of time it would take to  
7           repay those outstanding balances of  
8           \$1,000, \$1,500 and \$2,000 if the con-  
9           sumer paid only the minimum periodic  
10          payment on each monthly or periodic state-  
11          ment and obtained no additional extensions  
12          of credit.

13           “(10) With respect to one billing cycle per cal-  
14          endar year, the creditor shall transmit to each con-  
15          sumer to whom the creditor is required to transmit  
16          a statement pursuant to subsection (b) for such bill-  
17          ing cycle the following information:

18           “(A) the following statement: ‘The min-  
19          imum payment amount shown on your billing  
20          statement is the smallest payment which you  
21          can make in order to keep the account in good  
22          standing. This payment option is offered as a  
23          convenience and you may make larger payments  
24          at any time. Making only the minimum pay-  
25          ment each month will increase the amount of

1 interest you pay and the length of time it takes  
2 to repay your outstanding balance.’;

3 “(B) if the plan provides that the con-  
4 sumer will be permitted to forgo making a min-  
5 imum payment during a specified billing cycle,  
6 a statement, if applicable, that if the consumer  
7 chooses to forgo making the minimum payment,  
8 finance charges will continue to accrue;

9 “(C) an example, based on an annual per-  
10 centage rate and method for determining min-  
11 imum periodic payments recently in effect for  
12 that creditor, and a \$500 outstanding balance,  
13 showing the estimated minimum periodic pay-  
14 ment, and the estimated period of time it would  
15 take to repay the \$500 outstanding balance if  
16 the consumer paid only the minimum periodic  
17 payment on each monthly or periodic statement  
18 and obtained no additional extensions of credit;  
19 and

20 “(D) a worksheet prescribed by the Board  
21 to assist the consumer in determining the con-  
22 sumer’s household income and debt obliga-  
23 tions.”.

1 (b) PERIODIC MINIMUM PAYMENT DISCLOSURES.—  
2 Section 127(b) of the Truth in Lending Act (15 U.S.C.  
3 1637(b)) is amended by adding at the end the following:

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

13 “(12) the required minimum payment amount  
14 represented as a dollar figure.

15 “(13) the date by which or the period within  
16 which the required minimum payment must be  
17 made.”.

18 (c) DISCLOSURES RELATED TO INTRODUCTORY  
19 RATES.—Section 127(c)(1)(A)(i) of the Truth in Lending  
20 Act (15 U.S.C. 1637(c)(1)(A)(i)) is amended by inserting  
21 the following at the end of subclause (III):

22 “(IV) Where the initial rate is tem-  
23 porary and will expire within a period of  
24 less than 1 year, and is lower than the rate

1 that will apply after the temporary rate  
2 expires—

3 “(A) the time period during  
4 which the initial rate will remain in  
5 effect; and

6 “(B) the annual percentage rate  
7 that will apply to the account after  
8 the temporary rate expires, or if that  
9 rate is a variable rate, the fact that  
10 the rate is variable, the rate at the  
11 time of mailing, and how the rate is  
12 determined.

13 “(V)(A) Subject to subclauses (C) and  
14 (D), where the initial rate may increase  
15 upon the occurrence of one or more spe-  
16 cific events, the following information:

17 “(i) the initial rate and the in-  
18 creased rate that may apply;

19 “(ii) if the increased rate is a  
20 variable rate, the fact that the in-  
21 creased rate is variable, the rate at  
22 the time of mailing, and how the rate  
23 is determined; and



1                   “(iii) the specific event or events  
2                   that may result in imposing the in-  
3                   creased rate.

4                   “(B) At the creditor’s option, the  
5                   creditor may disclose the period for which  
6                   the increased rate will remain in effect.

7                   “(C) If the increased rate cannot be  
8                   determined at the time disclosures are  
9                   given, an explanation of the specific event  
10                  or events that may result in an increased  
11                  rate must be disclosed.

12                  “(D) A creditor is not required to dis-  
13                  close an increased rate that is imposed  
14                  when credit privileges are permanently ter-  
15                  minated.”.

16                  (d) INTERNET-BASED CREDIT CARD SOLICITA-  
17                  TIONS.—(1)—Section 127(c) of the Truth in Lending Act  
18                  (15 U.S.C. 1637(c)) is amended by inserting after para-  
19                  graph (5) the following:

20                         “(6)(A) Any application to open a credit card  
21                         account for any person under an open-end consumer  
22                         credit plan, and any solicitation to open such an ac-  
23                         count without requiring an application, that is made  
24                         available through the Internet or an interactive com-  
25                         puter service, shall disclose the following:

1 “(i) the information.—

2 “(I) described in paragraph (1)(A) in  
3 the form required under section 122(c) of  
4 this chapter, subject to subsection (e); and

5 “(II) described in paragraph (1)(B) in  
6 a clear and conspicuous form, subject to  
7 subsections (e) and (f);

8 “(ii) a statement, in a conspicuous and  
9 prominent location on or with the application or  
10 solicitation, that—

11 “(I) the information is accurate as of  
12 the date the application or solicitation was  
13 posted;

14 “(II) the information contained in the  
15 application or solicitation is subject to  
16 change after such date;

17 “(III) the applicant should contact the  
18 creditor for information on any change in  
19 the information presented on or with the  
20 application or solicitation since it was post-  
21 ed;

22 “(iii) a clear and conspicuous disclosure of  
23 the date the application or solicitation was post-  
24 ed and how frequently the information de-  
25 scribed in subclause (i) is updated; and

1           “(iv) a disclosure, in a conspicuous and  
2           prominent location on or with the application or  
3           solicitation, of a toll-free telephone number or  
4           e-mail address at which the applicant may con-  
5           tact the creditor to obtain any change in the in-  
6           formation provided on or with the application or  
7           solicitation since it was posted.

8           “(B) The disclosures required under subparagraph  
9 (A) may be contained either:

10           “(i) on the webpage which contains the applica-  
11           tion or solicitation; or

12           “(ii) on a separate webpage which can be di-  
13           rectly accessed using a hypertext link which is con-  
14           tained on the webpage which contains the applica-  
15           tion or solicitation.

16           “(C) Upon receipt of a request for any of the infor-  
17           mation referred to in subparagraph (A), the creditor or  
18           its agent shall promptly disclose any change in the infor-  
19           mation required to be disclosed under subparagraph (A).

20           “(D) For purposes of this paragraph (6)—

21           “(i) the term ‘Internet’ means the international  
22           computer network of both Federal and non-Federal  
23           interoperable packets switched data networks; and

24           “(ii) the term ‘interactive computer service’  
25           means any information service system, or access

1 software provider that provides or enables computer  
2 access by multiple users to a computer server, in-  
3 cluding specifically a service or system that provides  
4 access to the Internet and such systems operated or  
5 services offered by libraries or educational institu-  
6 tions.”.

7 (2) Section 122(c)(1) of the Truth in Lending Act  
8 (15 U.S.C. 1632(c)(1)) is amended by striking “and  
9 (4)(C)(i)(I)” and inserting “, (4)(C)(i)(I) and  
10 (6)(A)(i)(I)”.

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

14 “(h) In promulgating regulations to implement the  
15 disclosure of an example required under subsection  
16 (a)(9)(C) and (a)(10), the Board shall set forth a model  
17 disclosure to accompany the example stating that the cred-  
18 it features shown are only an example which does not obli-  
19 gate the creditor, but is intended to illustrate the approxi-  
20 mate length of time it could take to repay using the as-  
21 sumptions set forth in subsection (a)(9)(C) without regard  
22 to any other factors that could impact an approximate re-  
23 payment period, including other credit features or the con-  
24 sumer’s payment or other behavior with respect to the ac-  
25 count. Compliance with the disclosures required under

1 subsection (a)(9)(C) and (a)(10) shall be enforced exclu-  
2 sively by the Federal agencies set forth in section 108.”.

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

10 (g) STUDY REQUIRED.—The Board shall conduct a  
11 study to determine whether consumers have adequate in-  
12 formation about borrowing activities which may result in  
13 financial problems. In studying this issue, the Board shall  
14 consider the extent to which—

15 (1) consumers, in establishing new credit ar-  
16 rangements, are aware of their existing payment ob-  
17 ligations, the need to consider those obligations in  
18 deciding to take on new credit, and how taking on  
19 excessive credit can result in financial difficulty;

20 (2) minimum periodic payment features offered  
21 in connection with open-end credit plans impact con-  
22 sumer default rates;

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



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

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

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

6 “(C) except as provided in paragraph (n), funds  
7 placed in an education individual retirement account  
8 (as defined in section 530(b)(1) of the Internal Rev-  
9 enue Code of 1986) not less than 365 days before  
10 the date of entry of the order of relief but only to  
11 the extent such funds—

12 “(i) are not pledged or promised to any en-  
13 tity in connection with any extension of credit;  
14 and

15 “(ii) are not excess contributions (as de-  
16 scribed in section 4973(e) of the Internal Rev-  
17 enue Code of 1986).”; and

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

19 “(n) For purposes of subsection (b)(3)(C), funds  
20 placed in an education individual retirement account shall  
21 not be exempt under this subsection—

22 “(1) unless the designated beneficiary of such  
23 account was a dependent child of the debtor for the  
24 taxable year for which the funds were placed in such  
25 account; and

1 “(2) to the extent such funds exceed—

2 “(A) \$50,000 in the aggregate in all such  
3 accounts having the same designated bene-  
4 ficiary; or

5 “(B) \$100,000 in the aggregate in all such  
6 accounts attributable to all such dependent chil-  
7 dren of the debtor.”.

8 **SEC. 114. EFFECT OF DISCHARGE.**

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

11 “(i) The willful failure of a creditor to credit pay-  
12 ments received under a plan confirmed under this title (in-  
13 cluding a plan of reorganization confirmed under chapter  
14 11 of this title) in the manner required by the plan (in-  
15 cluding crediting the amounts required under the plan)  
16 shall constitute a violation of any injunction under sub-  
17 section (a)(2) which has arisen at the time of the failure.

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

23 “(A) the greater of—

24 “(i) the amount of actual damages; or

25 “(ii) \$1,000; and



1 “(B) costs and attorneys’ fees.

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

4 **SEC. 115. LIMITING TRUSTEE LIABILITY.**

5 (a) **QUALIFICATION OF TRUSTEE.**—Section 322 of  
6 title 11, United States Code, is amended—

7 (1) in subsection (a) by adding at the end the  
8 following:

9 “The trustee in a case under this title is not liable  
10 personally or on such trustee’s bond for acts taken  
11 within the scope of the trustee’s duties or authority  
12 as delineated by other sections of this title or by  
13 order of the court, except to the extent that the  
14 trustee acted with gross negligence. Gross negligence  
15 shall be defined as reckless indifference or deliberate  
16 disregard of the trustee’s fiduciary duty.”; and

17 (2) in subsection (c) by inserting “for any acts  
18 within the scope of the trustee’s authority defined in  
19 subsection (a)” before the period at the end.

20 (b) **ROLE AND CAPACITY OF TRUSTEE.**—Section 323  
21 of title 11, United States Code, is amended—

22 (1) in subsection (b) by inserting at the end the  
23 following: “in the trustee’s official capacity as rep-  
24 resentative of the estate” before the period at the  
25 end; and

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

2 “(c) The trustee in a case under this title may not  
3 be sued, either personally, in a representative capacity, or  
4 against the trustee’s bond in favor of the United States—

5 “(1) for acts taken in furtherance of the trust-  
6 ee’s duties or authority in a case in which the debtor  
7 is subsequently determined to be ineligible for relief  
8 under the chapter in which the trustee was ap-  
9 pointed; or

10 “(2) for the dissemination of statistics and  
11 other information regarding a case or cases, unless  
12 the trustee has actual knowledge that the informa-  
13 tion is false.

14 “(d) The trustee in a case under this title may not  
15 be sued in a personal capacity without leave of the bank-  
16 ruptcy court in which the case is pending.”.

17 **SEC. 116. REINFORCE THE FRESH START.**

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

21 (1) by striking “by a court” and inserting “by  
22 any court”;

23 (2) by striking “section 1915(b) or (f)” and in-  
24 serting “subsection (b) or (f)(2) of section 1915”;

25 and

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

3 **SEC. 117. DISCOURAGING BAD FAITH REPEAT FILINGS.**

4           Section 362(e) of title 11, United States Code, is  
5 amended—

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

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

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

12                 “(3) If a single or joint case is filed by or  
13                 against an individual debtor under chapter 7, 11, or  
14                 13 (other than a case refiled under a chapter other  
15                 than chapter 7 after dismissal under section 707(b)  
16                 of this title), and if a single or joint case of the debt-  
17                 or was pending within the previous 1-year period but  
18                 was dismissed, the stay under subsection (a) with re-  
19                 spect to any action taken with respect to a debt or  
20                 property securing such debt or with respect to any  
21                 lease will terminate with respect to the debtor on the  
22                 30th day after the filing of the later case. Upon mo-  
23                 tion by a party in interest for continuation of the  
24                 automatic stay and upon notice and a hearing, the  
25                 court may extend the stay in particular cases as to

1 any or all creditors (subject to such conditions or  
2 limitations as the court may then impose) after no-  
3 tice and a hearing completed before the expiration of  
4 the 30-day period only if the party in interest dem-  
5 onstrates that the filing of the later case is in good  
6 faith as to the creditors to be stayed. A case is pre-  
7 sumptively filed not in good faith (but such pre-  
8 sumption may be rebutted by clear and convincing  
9 evidence to the contrary)—

10 “(A) as to all creditors if—

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

15 “(ii) a previous case under any of  
16 chapters 7, 11, or 13 in which the indi-  
17 vidual was a debtor was dismissed within  
18 such 1-year period, after the debtor failed  
19 to file or amend the petition or other docu-  
20 ments as required by this title or the court  
21 without substantial excuse (but mere inad-  
22 vertence or negligence shall not be sub-  
23 stantial excuse unless the dismissal was  
24 caused by the negligence of the debtor’s at-  
25 torney), failed to provide adequate protec-

1           tion as ordered by the court, or failed to  
2           perform the terms of a plan confirmed by  
3           the court; or

4           “(iii) there has not been a substantial  
5           change in the financial or personal affairs  
6           of the debtor since the dismissal of the  
7           next most previous case under any of chap-  
8           ters 7, 11, or 13 of this title, or there is  
9           not any other reason to conclude that the  
10          later case will be concluded, if a case under  
11          chapter 7 of this title, with a discharge,  
12          and if a chapter 11 or 13 case, a con-  
13          firmed plan which will be fully performed;

14          “(B) as to any creditor that commenced an  
15          action under subsection (d) in a previous case  
16          in which the individual was a debtor if, as of  
17          the date of dismissal of such case, that action  
18          was still pending or had been resolved by termi-  
19          nating, conditioning, or limiting the stay as to  
20          actions of such creditor.

21          “(4) If a single or joint case is filed by or  
22          against an individual debtor under this title (other  
23          than a case refiled under a chapter other than chap-  
24          ter 7 after a dismissal under section 707(b) of this  
25          title), and if two or more single or joint cases of the

1 debtor were pending within the previous year but  
2 were dismissed, the stay under subsection (a) will  
3 not go into effect upon the filing of the later case.  
4 On request of a party in interest, the court shall  
5 promptly enter an order confirming that no stay is  
6 in effect. If a party in interest requests within 30  
7 days of the filing of the later case, the court may  
8 order the stay to take effect in the case as to any  
9 or all creditors (subject to such conditions or limita-  
10 tions as the court may impose), after notice and  
11 hearing, only if the party in interest demonstrates  
12 that the filing of the later case is in good faith as  
13 to the creditors to be stayed. A stay imposed pursu-  
14 ant to the preceding sentence will be effective on the  
15 date of entry of the order allowing the stay to go  
16 into effect. A case is presumptively not filed in good  
17 faith (but such presumption may be rebutted by  
18 clear and convincing evidence to the contrary)—

19 “(A) as to all creditors if—

20 “(i) two or more previous cases under  
21 this title in which the individual was a  
22 debtor were pending within the 1-year pe-  
23 riod;

24 “(ii) a previous case under this title in  
25 which the individual was a debtor was dis-

1 missed within the time period stated in  
2 this paragraph after the debtor failed to  
3 file or amend the petition or other docu-  
4 ments as required by this title or the court  
5 without substantial excuse (but mere inad-  
6 vertence or negligence shall not be sub-  
7 stantial excuse unless the dismissal was  
8 caused by the negligence of the debtor's at-  
9 torney), failed to provide adequate protec-  
10 tion as ordered by the court, or failed to  
11 perform the terms of a plan confirmed by  
12 the court; or

13 “(iii) there has not been a substantial  
14 change in the financial or personal affairs  
15 of the debtor since the dismissal of the  
16 next most previous case under this title, or  
17 there is not any other reason to conclude  
18 that the later case will be concluded, if a  
19 case under chapter 7, with a discharge,  
20 and if a case under chapter 11 or 13, with  
21 a confirmed plan that will be fully per-  
22 formed; or

23 “(B) as to any creditor that commenced an  
24 action under subsection (d) in a previous case  
25 in which the individual was a debtor if, as of

1           the date of dismissal of such case, such action  
2           was still pending or had been resolved by termi-  
3           nating, conditioning, or limiting the stay as to  
4           action of such creditor.”.

5 **SEC. 118. CURBING ABUSIVE FILINGS.**

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

8           (1) in paragraph (2), by striking “or” at the  
9           end;

10           (2) in paragraph (3), by striking the period at  
11           the end and inserting “; or”; and

12           (3) by adding at the end the following:

13           “(4) with respect to a stay of an act against  
14           real property under subsection (a), by a creditor  
15           whose claim is secured by an interest in such real  
16           estate, if the court finds that the filing of the bank-  
17           ruptcy petition was part of a scheme to delay,  
18           hinder, and defraud creditors that involved either—

19           “(A) transfer of all or part ownership of,  
20           or other interest in, the real property without  
21           the consent of the secured creditor or court ap-  
22           proval; or

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



1 If recorded in compliance with applicable State laws gov-  
2 erning notices of interests or liens in real property, an  
3 order entered pursuant to this subsection shall be binding  
4 in any other case under this title purporting to affect the  
5 real property filed not later than 2 years after that record-  
6 ing, except that a debtor in a subsequent case may move  
7 for relief from such order based upon changed cir-  
8 cumstances or for good cause shown, after notice and a  
9 hearing. Any Federal, State, or local governmental unit  
10 which accepts notices of interests or liens in real property  
11 shall accept any certified copy of an order described in  
12 this subsection for indexing and recording.”.

13 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
14 United States Code, is amended—

15 (1) in paragraph (17), by striking “or” at the  
16 end;

17 (2) in paragraph (18) by striking the period at  
18 the end and inserting a semicolon; and

19 (3) by inserting after paragraph (18) the fol-  
20 lowing:

21 “(19) under subsection (a), of any act to en-  
22 force any lien against or security interest in real  
23 property following the entry of an order under sec-  
24 tion 362(d)(4) of this title as to that property in any  
25 prior bankruptcy case for a period of 2 years after

1 entry of such an order. The debtor in a subsequent  
2 case, however, may move the court for relief from  
3 such order based upon changed circumstances or for  
4 other good cause shown (consistent with the stand-  
5 ards for good faith in subsection (c)), after notice  
6 and a hearing; or

7 “(20) under subsection (a), of any act to en-  
8 force any lien against or security interest in real  
9 property—

10 “(A) if the debtor is ineligible under sec-  
11 tion 109(g) of this title to be a debtor in a  
12 bankruptcy case; or

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

17 **SEC. 119. DEBTOR RETENTION OF PERSONAL PROPERTY**  
18 **SECURITY.**

19 Title 11, United States Code, is amended—

20 (1) in section 521—

21 (A) in paragraph (4) by striking “, and”  
22 at the end and inserting a semicolon;

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

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

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

9           “(A) enters into an agreement with the  
10 creditor pursuant to section 524(c) of this title  
11 with respect to the claim secured by such prop-  
12 erty; or

13           “(B) redeems such property from the secu-  
14 rity interest pursuant to section 722 of this  
15 title.

16           “If the debtor fails to so act within the 45-day pe-  
17 riod, the stay under section 362(a) of this title is  
18 terminated with respect to the personal property of  
19 the estate or of the debtor which is affected, such  
20 property shall no longer be property of the estate,  
21 and the creditor may take whatever action as to  
22 such property as is permitted by applicable nonbank-  
23 ruptcy law, unless the court determines on the mo-  
24 tion of the trustee brought before the expiration of  
25 such 45-day period, and after notice and a hearing,

1 that such property is of consequential value or ben-  
2 efit to the estate, orders appropriate adequate pro-  
3 tection of the creditor’s interest, and orders the  
4 debtor to deliver any collateral in the debtor’s pos-  
5 session to the trustee.”; and

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

8 **SEC. 120. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
9 **DEBTOR DOES NOT COMPLETE INTENDED**  
10 **SURRENDER OF CONSUMER DEBT COLLAT-**  
11 **ERAL.**

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

14 (1) in section 362—

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

18 (B) by redesignating subsection (h) as sub-  
19 section (i) and by inserting after subsection (g)  
20 the following:

21 “(h) In an individual case pursuant to chapter 7, 11,  
22 or 13 the stay provided by subsection (a) is terminated  
23 with respect to personal property of the estate or of the  
24 debtor securing in whole or in part a claim, or subject  
25 to an unexpired lease, and such personal property shall

1 no longer be property of the estate if the debtor fails with-  
2 in the applicable time set by section 521(a)(2) of this  
3 title—

4           “(1) to file timely any statement of intention  
5           required under section 521(a)(2) of this title with  
6           respect to that property or to indicate therein that  
7           the debtor will either surrender the property or re-  
8           tain it and, if retaining it, either redeem the prop-  
9           erty pursuant to section 722 of this title, reaffirm  
10          the debt it secures pursuant to section 524(c) of this  
11          title, or assume the unexpired lease pursuant to sec-  
12          tion 365(p) of this title if the trustee does not do  
13          so, as applicable; or

14          “(2) to take timely the action specified in that  
15          statement of intention, as it may be amended before  
16          expiration of the period for taking action, unless the  
17          statement of intention specifies reaffirmation and  
18          the creditor refuses to reaffirm on the original con-  
19          tract terms;

20 unless the court determines on the motion of the trustee  
21 filed before the expiration of the applicable time set by  
22 section 521(a)(2), and after notice and a hearing, that  
23 such property is of consequential value or benefit to the  
24 estate, orders appropriate adequate protection of the  
25 creditor’s interest, and orders the debtor to deliver any

1 collateral in the debtor’s possession to the trustee. If the  
2 court does not so determine an order, the stay shall termi-  
3 nate upon the conclusion of the proceeding on the mo-  
4 tion.”; and

5 (2) in section 521, as amended by sections 603  
6 and 604—

7 (A) in paragraph (2) by striking “con-  
8 sumer”;

9 (B) in paragraph (2)(B)—

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

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

18 (C) in paragraph (2)(C) by inserting “ex-  
19 cept as provided in section 362(h) of this title”  
20 before the semicolon; and

21 (D) by inserting after subsection (b) the  
22 following:

23 “(c) If the debtor fails timely to take the action speci-  
24 fied in subsection (a)(6) of this section, or in paragraphs  
25 (1) and (2) of section 362(h) of this title, with respect

1 to property which a lessor or bailor owns and has leased,  
2 rented, or bailed to the debtor or as to which a creditor  
3 holds a security interest not otherwise voidable under sec-  
4 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-  
5 ing in this title shall prevent or limit the operation of a  
6 provision in the underlying lease or agreement which has  
7 the effect of placing the debtor in default under such lease  
8 or agreement by reason of the occurrence, pendency, or  
9 existence of a proceeding under this title or the insolvency  
10 of the debtor. Nothing in this subsection shall be deemed  
11 to justify limiting such a provision in any other cir-  
12 cumstance.”.

13 **SEC. 121. GIVING SECURED CREDITORS FAIR TREATMENT**  
14 **IN CHAPTER 13.**

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

17 “(i) the plan provides that the holder of  
18 such claim retain the lien securing such claim  
19 until the earlier of payment of the underlying  
20 debt determined under nonbankruptcy law or  
21 discharge under section 1328 of this title, and  
22 that if the case under this chapter is dismissed  
23 or converted without completion of the plan,  
24 such lien shall also be retained by such holder

1 to the extent recognized by applicable nonbank-  
2 ruptcy law; and”.

3 **SEC. 122. RESTRAINING ABUSIVE PURCHASES ON SECURED**  
4 **CREDIT.**

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

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

9 “(1) subsection (a) shall not apply to an al-  
10 lowed claim to the extent attributable in whole or in  
11 part to the purchase price of personal property ac-  
12 quired by the debtor within 5 years of the filing of  
13 the petition, except for the purpose of applying para-  
14 graph (3) of this subsection;

15 “(2) if such allowed claim attributable to the  
16 purchase price is secured only by the personal prop-  
17 erty so acquired, the value of the personal property  
18 and the amount of the allowed secured claim shall  
19 be the sum of the unpaid principal balance of the  
20 purchase price and accrued and unpaid interest and  
21 charges at the contract rate;

22 “(3) if such allowed claim attributable to the  
23 purchase price is secured by the personal property so  
24 acquired and other property, the value of the secu-  
25 rity may be determined under subsection (a), but the



1 value of the security and the amount of the allowed  
2 secured claim shall be not less than the unpaid prin-  
3 cipal balance of the purchase price of the personal  
4 property acquired and unpaid interest and charges  
5 at the contract rate; and

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

14 **SEC. 123. FAIR VALUATION OF COLLATERAL.**

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

17 “In the case of an individual debtor under chapters 7 and  
18 13, such value with respect to personal property securing  
19 an allowed claim shall be determined based on the replace-  
20 ment value of such property as of the date of filing the  
21 petition without deduction for costs of sale or marketing.  
22 With respect to property acquired for personal, family, or  
23 household purpose, replacement value shall mean the price  
24 a retail merchant would charge for property of that kind

1 considering the age and condition of the property at the  
2 time value is determined.”.

3 **SEC. 124. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

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

6 (1) by striking “180” and inserting “730”; and

7 (2) by striking “, or for a longer portion of  
8 such 180-day period than in any other place” and  
9 inserting “or if the debtor’s domicile has not been  
10 located at a single State for such 730-day period,  
11 the place in which the debtor’s domicile was located  
12 for 180 days immediately preceding the 730-day pe-  
13 riod or for a longer portion of such 180-day period  
14 than in any other place”.

15 **SEC. 125. RESTRICTIONS ON CERTAIN EXEMPT PROPERTY**  
16 **OBTAINED THROUGH FRAUD.**

17 Section 522 of title 11, United States Code, as  
18 amended by section 113, is amended—

19 (1) in subsection (b)(2)(A) by inserting “sub-  
20 ject to subsection (o),” before “any property”; and

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

22 “(o) For purposes of subsection (b)(3)(A) and not-  
23 withstanding subsection (a), the value of an interest in—

24 “(1) real or personal property that the debtor  
25 or a dependent of the debtor uses as a residence;

1           “(2) a cooperative that owns property that the  
2           debtor or a dependent of the debtor uses as a resi-  
3           dence; or

4           “(3) a burial plot for the debtor or a dependent  
5           of the debtor,

6 shall be reduced to the extent such value is attributable  
7 to any portion of any property that the debtor disposed  
8 of in the 730-day period ending of the date of the filing  
9 of the petition, with the intent to hinder, delay, or defraud  
10 a creditor and that the debtor could not exempt, or that  
11 portion that the debtor could not exempt, under subsection  
12 (b) if on such date the debtor had held the property so  
13 disposed of.”.

14 **SEC. 126. ROLLING STOCK EQUIPMENT.**

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

17 **“§ 1168. Rolling stock equipment**

18           “(a)(1) The right of a secured party with a security  
19 interest in or of a lessor or conditional vendor of equip-  
20 ment described in paragraph (2) to take possession of such  
21 equipment in compliance with an equipment security  
22 agreement, lease, or conditional sale contract, and to en-  
23 force any of its other rights or remedies under such secu-  
24 rity agreement, lease, or conditional sale contract, to sell,  
25 lease, or otherwise retain or dispose of such equipment,

1 is not limited or otherwise affected by any other provision  
2 of this title or by any power of the court, except that the  
3 right to take possession and enforce those other rights and  
4 remedies shall be subject to section 362 of this title, if—

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

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

15           “(i) that occurs before the date of com-  
16           mencement of the case and is an event of de-  
17           fault therewith is cured before the expiration of  
18           such 60-day period;

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

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

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

3                   “(iii) that occurs on or after the expiration  
4                   of such 60-day period is cured in accordance  
5                   with the terms of such security agreement,  
6                   lease, or conditional sale contract, if cure is per-  
7                   mitted under that agreement, lease, or condi-  
8                   tional sale contract.

9                   “(2) The equipment described in this paragraph—

10                   “(A) is rolling stock equipment or accessories  
11                   used on rolling stock equipment, including super-  
12                   structures or racks, that is subject to a security in-  
13                   terest granted by, leased to, or conditionally sold to  
14                   a debtor; and

15                   “(B) includes all records and documents relat-  
16                   ing to such equipment that are required, under the  
17                   terms of the security agreement, lease, or conditional  
18                   sale contract, that is to be surrendered or returned  
19                   by the debtor in connection with the surrender or re-  
20                   turn of such equipment.

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

24                   “(b) The trustee and the secured party, lessor, or  
25                   conditional vendor whose right to take possession is pro-

1 tected under subsection (a) may agree, subject to the  
2 court's approval, to extend the 60-day period specified in  
3 subsection (a)(1).

4       “(c)(1) In any case under this chapter, the trustee  
5 shall immediately surrender and return to a secured party,  
6 lessor, or conditional vendor, described in subsection  
7 (a)(1), equipment described in subsection (a)(2), if at any  
8 time after the date of commencement of the case under  
9 this chapter such secured party, lessor, or conditional ven-  
10 dor is entitled pursuant to subsection (a)(1) to take pos-  
11 session of such equipment and makes a written demand  
12 for such possession of the trustee.

13       “(2) At such time as the trustee is required under  
14 paragraph (1) to surrender and return equipment de-  
15 scribed in subsection (a)(2), any lease of such equipment,  
16 and any security agreement or conditional sale contract  
17 relating to such equipment, if such security agreement or  
18 conditional sale contract is an executory contract, shall be  
19 deemed rejected.

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

23               “(1) the term ‘lease’ includes any written agree-  
24 ment with respect to which the lessor and the debt-  
25 or, as lessee, have expressed in the agreement or in

1 a substantially contemporaneous writing that the  
2 agreement is to be treated as a lease for Federal in-  
3 come tax purposes; and

4 “(2) the term ‘security interest’ means a pur-  
5 chase-money equipment security interest.

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

11 (b) AIRCRAFT EQUIPMENT AND VESSELS.—Section  
12 1110 of title 11, United States Code, is amended to read  
13 as follows:

14 **“§ 1110. Aircraft equipment and vessels**

15 “(a)(1) Except as provided in paragraph (2) and sub-  
16 ject to subsection (b), the right of a secured party with  
17 a security interest in equipment described in paragraph  
18 (3), or of a lessor or conditional vendor of such equipment,  
19 to take possession of such equipment in compliance with  
20 a security agreement, lease, or conditional sale contract,  
21 and to enforce any of its other rights or remedies, under  
22 such security agreement, lease, or conditional sale con-  
23 tract, to sell, lease, or otherwise retain or dispose of such  
24 equipment, is not limited or otherwise affected by any  
25 other provision of this title or by any power of the court.

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

4               “(A) before the date that is 60 days after the  
5 date of the order for relief under this chapter, the  
6 trustee, subject to the approval of the court, agrees  
7 to perform all obligations of the debtor under such  
8 security agreement, lease, or conditional sale con-  
9 tract; and

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

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

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

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

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

24                              “(iii) that occurs on or after the expiration  
25 of such 60-day period is cured in compliance



1 with the terms of such security agreement,  
2 lease, or conditional sale contract, if a cure is  
3 permitted under that agreement, lease, or con-  
4 tract.

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

6 “(A) is—

7 “(i) an aircraft, aircraft engine, propeller,  
8 appliance, or spare part (as defined in section  
9 40102 of title 49) that is subject to a security  
10 interest granted by, leased to, or conditionally  
11 sold to a debtor that, at the time such trans-  
12 action is entered into, holds an air carrier oper-  
13 ating certificate issued pursuant to chapter 447  
14 of title 49 for aircraft capable of carrying 10 or  
15 more individuals or 6,000 pounds or more of  
16 cargo; or

17 “(ii) a documented vessel (as defined in  
18 section 30101(1) of title 46) that is subject to  
19 a security interest granted by, leased to, or con-  
20 ditionally sold to a debtor that is a water car-  
21 rier that, at the time such transaction is en-  
22 tered into, holds a certificate of public conven-  
23 ience and necessity or permit issued by the De-  
24 partment of Transportation; and

1           “(B) includes all records and documents relat-  
2           ing to such equipment that are required, under the  
3           terms of the security agreement, lease, or conditional  
4           sale contract, to be surrendered or returned by the  
5           debtor in connection with the surrender or return of  
6           such equipment.

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

10          “(b) The trustee and the secured party, lessor, or  
11          conditional vendor whose right to take possession is pro-  
12          tected under subsection (a) may agree, subject to the ap-  
13          proval of the court, to extend the 60-day period specified  
14          in subsection (a)(1).

15          “(c)(1) In any case under this chapter, the trustee  
16          shall immediately surrender and return to a secured party,  
17          lessor, or conditional vendor, described in subsection  
18          (a)(1), equipment described in subsection (a)(3), if at any  
19          time after the date of the order for relief under this chap-  
20          ter such secured party, lessor, or conditional vendor is en-  
21          titled pursuant to subsection (a)(1) to take possession of  
22          such equipment and makes a written demand for such pos-  
23          session to the trustee.

24          “(2) At such time as the trustee is required under  
25          paragraph (1) to surrender and return equipment de-

1 scribed in subsection (a)(3), any lease of such equipment,  
2 and any security agreement or conditional sale contract  
3 relating to such equipment, if such security agreement or  
4 conditional sale contract is an executory contract, shall be  
5 deemed rejected.

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

9 “(1) the term ‘lease’ includes any written agree-  
10 ment with respect to which the lessor and the debt-  
11 or, as lessee, have expressed in the agreement or in  
12 a substantially contemporaneous writing that the  
13 agreement is to be treated as a lease for Federal in-  
14 come tax purposes; and

15 “(2) the term ‘security interest’ means a pur-  
16 chase-money equipment security interest.”.

17 **SEC. 127. DISCHARGE UNDER CHAPTER 13.**

18 Section 1328(a) of title 11, United States Code, is  
19 amended by striking paragraphs (1) through (3) and in-  
20 serting the following:

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

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

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

4           “(4) for restitution, or damages, awarded in a  
5           civil action against the debtor as a result of willful  
6           or malicious injury by the debtor that caused per-  
7           sonal injury to an individual or the death of an indi-  
8           vidual.”.

9   **SEC. 128. BANKRUPTCY JUDGESHIPS.**

10          (a) **SHORT TITLE.**—This section may be cited as the  
11          “Bankruptcy Judgeship Act of 1999”.

12          (b) **TEMPORARY JUDGESHIPS.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21          (2) VACANCIES.—The first vacancy occurring in  
22 the office of a bankruptcy judge in each of the judi-  
23 cial districts set forth in paragraph (1) that—

24               (A) results from the death, retirement, res-  
25  ignation, or removal of a bankruptcy judge; and

1           (B) occurs 5 years or more after the ap-  
2           pointment date of a bankruptcy judge ap-  
3           pointed under paragraph (1),  
4 shall not be filled.

5           (c) EXTENSIONS.—

6           (1) IN GENERAL.—The temporary bankruptcy  
7           judgeship positions authorized for the northern dis-  
8           trict of Alabama, the district of Delaware, the dis-  
9           trict of Puerto Rico, the district of South Carolina,  
10          and the eastern district of Tennessee under section  
11          3(a)(1), (3), (7), (8), and (9) of the Bankruptcy  
12          Judgeship Act of 1992 (28 U.S.C. 152 note) are ex-  
13          tended until the first vacancy occurring in the office  
14          of a bankruptcy judge in the applicable district re-  
15          sulting from the death, retirement, resignation, or  
16          removal of a bankruptcy judge and occurring—

17                 (A) 8 years or more after November 8,  
18                 1993, with respect to the northern district of  
19                 Alabama;

20                 (B) 10 years or more after October 28,  
21                 1993, with respect to the district of Delaware;

22                 (C) 8 years or more after August 29,  
23                 1994, with respect to the district of Puerto  
24                 Rico;

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

4           (E) 8 years or more after November 23,  
5           1993, with respect to the eastern district of  
6           Tennessee.

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

11          (d) TECHNICAL AMENDMENT.—The first sentence of  
12          section 152(a)(1) of title 28, United States Code, is  
13          amended to read as follows: “Each bankruptcy judge to  
14          be appointed for a judicial district as provided in para-  
15          graph (2) shall be appointed by the United States court  
16          of appeals for the circuit in which such district is lo-  
17          cated.”.

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

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

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

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

3           “(i) the payment for the travel expenses is  
4 paid by such bankruptcy judge from the per-  
5 sonal funds of such bankruptcy judge; and

6           “(ii) such bankruptcy judge does not re-  
7 ceive funds (including reimbursement) from the  
8 United States or any other person or entity for  
9 the payment of such travel expenses.

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

14          “(3)(A) Each chief bankruptcy judge shall submit an  
15 annual report to the Director of the Administrative Office  
16 of the United States Courts on the travel expenses of each  
17 bankruptcy judge assigned to the applicable district (in-  
18 cluding the travel expenses of the chief bankruptcy judge  
19 of such district).

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

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



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

5           “(iii) the number of days of each travel de-  
6           scribed under clause (ii), with the name of the bank-  
7           ruptcy judge to whom the travel applies.

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

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

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

14           “(B) The consolidated report submitted under this  
15           paragraph shall include the specific information required  
16           under paragraph (3)(B), including the name of each bank-  
17           ruptcy judge with respect to clauses (i), (ii), and (iii) of  
18           paragraph (3)(B).”.

19           **SEC. 129. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**  
20   **STATES CODE.**

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

23           “(10) Tenth, allowed claims for death or per-  
24           sonal injuries resulting from the operation of a  
25           motor vehicle or vessel if such operation was unlaw-

1           ful because the debtor was intoxicated from using al-  
2           cohol, a drug or another substance.”.

3 **SEC. 130. AMENDMENT TO SECTION 1325 OF TITLE 11,**  
4                                   **UNITED STATES CODE.**

5           Section 1325(b) of title 11, United States Code, is  
6 amended—

7                   (1) in paragraph (1), by inserting “to unse-  
8                   cured creditors” after “to make payments”;

9                   (2) in paragraph (2)—

10                           (A) by inserting “current monthly” before  
11                           “income”;

12                           (B) by striking “and which is not” and in-  
13                           serting “less amounts”;

14                           (C) by inserting after “received by the  
15                           debtor”, “(other than child support payments,  
16                           foster care payments, or disability payments for  
17                           a dependent child made in accordance with ap-  
18                           plicable nonbankruptcy law and which is rea-  
19                           sonably necessary to be expended)”; and

20                           (D) in subparagraph (A) by inserting after  
21                           “dependent of the debtor” the following: “, as  
22                           determined in accordance with section  
23                           707(b)(2)(A) and if applicable 707(b)(2)(B)”.

1 **SEC. 131. APPLICATION OF THE CODEBTOR STAY ONLY**  
2 **WHEN THE STAY PROTECTS THE DEBTOR.**

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

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

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

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

14 (i) the individual that received that consider-  
15 ation; or

16 (ii) property not in the possession of the debt-  
17 or that secures that claim.

18 “(B) Notwithstanding subparagraph (A), the stay  
19 provided by subsection (a) shall apply in any case in which  
20 the debtor is primarily obligated to pay the creditor in  
21 whole or in part with respect to a claim described in sub-  
22 paragraph (A) under a legally binding separation or prop-  
23 erty settlement agreement or divorce or dissolution decree  
24 with respect to—

25 (i) an individual described in subparagraph  
26 (A)(i); or

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

2           “(3) Notwithstanding subsection (c), the stay pro-  
3 vided by subsection (a) shall terminate as of the date of  
4 confirmation of the plan, in any case in which the plan  
5 of the debtor provides that the debtor’s interest in per-  
6 sonal property subject to a lease with respect to which the  
7 debtor is the lessee will be surrendered or abandoned or  
8 no payments will be made under the plan on account of  
9 the debtor’s obligations under the lease.”.

10 **SEC. 132. ADEQUATE PROTECTION FOR INVESTORS.**

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

14           “(48A) ‘securities self regulatory organization’  
15 means either a securities association registered with  
16 the Securities and Exchange Commission pursuant  
17 to section 15A of the Securities Exchange Act of  
18 1934 or a national securities exchange registered  
19 with the Securities and Exchange Commission pur-  
20 suant to section 6 of the Securities Exchange Act of  
21 1934;”.

22           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
23 United States Code, as amended by section 118, is  
24 amended—

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

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

5 (3) by inserting after paragraph (20) the fol-  
6 lowing:

7 “(21) under subsection (a), of the commence-  
8 ment or continuation of an investigation or action by  
9 a securities self regulatory organization to enforce  
10 such organization’s regulatory power; of the enforce-  
11 ment of an order or decision, other than for mone-  
12 tary sanctions, obtained in an action by the securi-  
13 ties self regulatory organization to enforce such or-  
14 ganization’s regulatory power; or of any act taken by  
15 the securities self regulatory organization to delist,  
16 delete, or refuse to permit quotation of any stock  
17 that does not meet applicable regulatory require-  
18 ments.”.

19 **SEC. 133. LIMITATION ON LUXURY GOODS.**

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

22 “(C)(i) for purposes of subparagraph (A),  
23 consumer debts owed to a single creditor and  
24 aggregating more than \$250 for ‘luxury goods  
25 or services’ incurred by an individual debtor on

1 or within 90 days before the order for relief  
2 under this title, or cash advances aggregating  
3 more than \$250 that are extensions of con-  
4 sumer credit under an open end credit plan ob-  
5 tained by an individual debtor on or within 90  
6 days before the order for relief under this title,  
7 are presumed to be nondischargeable; and

8 “(ii) for purposes of this subparagraph—

9 “(I) the term ‘luxury goods or serv-  
10 ices’ does not include goods or services rea-  
11 sonably necessary for the support or main-  
12 tenance of the debtor or a dependent of the  
13 debtor; and

14 “(II) the term ‘an extension of con-  
15 sumer credit under an open end credit  
16 plan’ has the same meaning such term has  
17 for purposes of the Consumer Credit Pro-  
18 tection Act;”.

19 **SEC. 134. ALLOWING THE DEBTOR TO RETAIN LEASED PER-**  
20 **SONAL PROPERTY BY ASSUMPTION.**

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

23 “(p)(1) If a lease of personal property is rejected or  
24 not timely assumed by the trustee under subsection (d),  
25 the leased property is no longer property of the estate and

1 the stay under section 362(a) of this title is automatically  
2 terminated.

3       “(2) In the case of an individual under chapter 7,  
4 the debtor may notify the creditor in writing that the debt-  
5 or desires to assume the lease. Upon being so notified,  
6 the creditor may, at its option, notify the debtor that it  
7 is willing to have the lease assumed by the debtor and  
8 may, at its option, condition such assumption on cure of  
9 any outstanding default on terms set by the contract. If  
10 within 30 days of the notice from the creditor the debtor  
11 notifies the lessor in writing that the lease is assumed,  
12 the liability under the lease will be assumed by the debtor  
13 and not by the estate. The stay under section 362 of this  
14 title and the injunction under section 524(a) of this title  
15 shall not be violated by notification of the debtor and ne-  
16 gotiation of cure under this subsection. Nothing in this  
17 paragraph shall require a debtor to assume a lease, or a  
18 creditor to permit assumption.

19       “(3) In a case under chapter 11 of this title in which  
20 the debtor is an individual and in a case under chapter  
21 13 of this title, if the debtor is the lessee with respect  
22 to personal property and the lease is not assumed in the  
23 plan confirmed by the court, the lease is deemed rejected  
24 as of the conclusion of the hearing on confirmation. If the  
25 lease is rejected, the stay under section 362 of this title

1 and any stay under section 1301 is automatically termi-  
 2 nated with respect to the property subject to the lease.”.

3 **SEC. 135. ADEQUATE PROTECTION OF LESSORS AND PUR-**  
 4 **CHASE MONEY SECURED CREDITORS.**

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

8 **“§ 1307A. Adequate protection in chapter 13 cases**

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

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

14 “(ii) any creditor holding a claim secured by  
 15 personal property to the extent that the claim is at-  
 16 tributable to the purchase of that property by the  
 17 debtor.

18 “(B) The debtor or the plan shall continue making  
 19 the adequate protection payments required under subpara-  
 20 graph (A) until the earlier of the date on which—

21 “(i) the creditor begins to receive actual pay-  
 22 ments under the plan; or

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

25 “(I) the lessor or creditor; or



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

3           “(2) The payments referred to in paragraph (1)(A)  
4 shall be the contract amount and shall reduce any amount  
5 payable under section 1326(a) of the title.

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

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

12          “(B) The amount of payments referred to in para-  
13 graph (1) shall not be less than the amount of any weekly,  
14 biweekly, monthly, or other periodic payment scheduled as  
15 payable under the contract between the debtor and cred-  
16 itor.

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

22                   “(1) for payments to a creditor or lessor de-  
23                   scribed in subsection (a)(1); and

1           “(2) for the deferral of payments to such cred-  
2           itor or lessor under the plan until the payment of  
3           amounts described in section 1326(b).

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

10          “(e) On or before 60 days after the filing of a case  
11          under this chapter, a debtor retaining possession of per-  
12          sonal property subject to a lease or securing a claim attrib-  
13          utable in whole or in part to the purchase price of such  
14          property shall provide each creditor or lessor reasonable  
15          evidence of the maintenance of any required insurance  
16          coverage with respect to the use or ownership of such  
17          property and continue to do so for so long as the debtor  
18          retains possession of such property.”.

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

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

23          **SEC. 136. AUTOMATIC STAY.**

24          Section 362(b) of title 11, United States Code, as  
25          amended by sections 118 and 132, is amended—

1           (1) in paragraph (20), by striking “or” at the  
2           end;

3           (2) in paragraph (21), by striking the period at  
4           the end and inserting a semicolon; and

5           (3) by inserting after paragraph (21) the fol-  
6           lowing:

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

10          “(23) under subsection (a)(3), of the continu-  
11          ation of any eviction, unlawful detainer action, or  
12          similar proceeding by a lessor against a debtor in-  
13          volving residential real property in which the debtor  
14          resides as a tenant under a rental agreement and  
15          the debtor has not paid rent to the lessor pursuant  
16          to the terms of the lease agreement or applicable  
17          State law after the commencement and during the  
18          course of the case;

19          “(24) under subsection (a)(3), of the com-  
20          mencement or continuation of any eviction, unlawful  
21          detainer action, or similar proceeding by a lessor  
22          against a debtor involving residential real property  
23          in which the debtor resides as a tenant under a rent-  
24          al agreement that has terminated pursuant to the  
25          lease agreement or applicable State law;

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

6           “(26) under subsection (a)(3), of eviction ac-  
7           tions based on endangerment to property or person  
8           or the use of illegal drugs.”.

9   **SEC. 137. EXTEND PERIOD BETWEEN BANKRUPTCY DIS-**  
10                                   **CHARGES.**

11           Title 11, United States Code, is amended—

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

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

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

22   **SEC. 138. DEFINITION OF DOMESTIC SUPPORT OBLIGA-**  
23                                   **TION.**

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

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

2 (2) by inserting after paragraph (14) the fol-  
3 lowing:

4 “(14A) ‘domestic support obligation’ means a  
5 debt that accrues before or after the entry of an  
6 order for relief under this title that is—

7 “(A) owed to or recoverable by—

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

10 or

11 “(ii) a governmental unit;

12 “(B) in the nature of alimony, mainte-  
13 nance, or support (including assistance provided  
14 by a governmental unit) of such spouse, former  
15 spouse, or child, without regard to whether such  
16 debt is expressly so designated;

17 “(C) established or subject to establish-  
18 ment before or after entry of an order for relief  
19 under this title, by reason of applicable provi-  
20 sions of—

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

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

1                   “(iii) a determination made in accord-  
2                   ance with applicable nonbankruptcy law by  
3                   a governmental unit; and

4                   “(D) not assigned to a nongovernmental  
5                   entity, unless that obligation is assigned volun-  
6                   tarily by the spouse, former spouse, child, or  
7                   parent solely for the purpose of collecting the  
8                   debt.”.

9   **SEC. 139. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
10                   **PORT OBLIGATIONS.**

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

13                   (1) by striking paragraph (7);

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

16                   (3) in paragraph (2), as redesignated, by strik-  
17                   ing “First” and inserting “Second”;

18                   (4) in paragraph (3), as redesignated, by strik-  
19                   ing “Second” and inserting “Third”;

20                   (5) in paragraph (4), as redesignated, by strik-  
21                   ing “Third” and inserting “Fourth”;

22                   (6) in paragraph (5), as redesignated, by strik-  
23                   ing “Fourth” and inserting “Fifth”;

24                   (7) in paragraph (6), as redesignated, by strik-  
25                   ing “Fifth” and inserting “Sixth”;

1 (8) in paragraph (7), as redesignated, by strik-  
2 ing “Sixth” and inserting “Seventh”; and

3 (9) by inserting before paragraph (2), as redesi-  
4 gnated, the following:

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

10 “(A) Claims that, as of the date of entry  
11 of the order for relief, are owed directly to a  
12 spouse, former spouse, or child of the debtor, or  
13 the parent of such child, without regard to  
14 whether the claim is filed by the spouse, former  
15 spouse, child, or parent, or is filed by a govern-  
16 mental unit on behalf of that person.

17 “(B) Claims that, as of the date of entry  
18 of the order for relief, are assigned by a spouse,  
19 former spouse, child of the debtor, or the par-  
20 ent of that child to a governmental unit or are  
21 owed directly to a governmental unit under ap-  
22 plicable nonbankruptcy law.”.

1 **SEC. 140. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
2 **DISCHARGE IN CASES INVOLVING DOMESTIC**  
3 **SUPPORT OBLIGATIONS.**

4 Title 11, United States Code, is amended—

5 (1) in section 1129(a), by adding at the end the  
6 following:

7 “(14) If the debtor is required by a judicial or  
8 administrative order or statute to pay a domestic  
9 support obligation, the debtor has paid all amounts  
10 payable under such order or statute for such obliga-  
11 tion that become payable after the date on which the  
12 petition is filed.”;

13 (2) in section 1325(a)—

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

16 (B) in paragraph (6), by striking the pe-  
17 riod at the end and inserting “; and”; and

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

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

25 (3) in section 1328(a), as amended by section  
26 127, in the matter preceding paragraph (1), by in-



1       serting “, and with respect to a debtor who is re-  
2       quired by a judicial or administrative order to pay  
3       a domestic support obligation, certifies that all  
4       amounts payable under such order or statute that  
5       are due on or before the date of the certification (in-  
6       cluding amounts due before or after the petition was  
7       filed) have been paid” after “completion by the debt-  
8       or of all payments under the plan”.

9       **SEC. 141. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
10       **SUPPORT OBLIGATION PROCEEDINGS.**

11       Section 362(b) of title 11, United States Code, as  
12       amended by sections 118, 132, and 136, is amended—

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

15               “(2) under subsection (a)—

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

18                               “(i) the establishment of paternity; or

19                               “(ii) the establishment or modification  
20       of an order for domestic support obliga-  
21       tions; or

22                       “(B) the collection of a domestic support  
23       obligation from property that is not property of  
24       the estate;”;

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

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

5           (4) by inserting after paragraph (26) the fol-  
6 lowing:

7           “(27) under subsection (a) with respect to the  
8 withholding of income pursuant to an order as speci-  
9 fied in section 466(b) of the Social Security Act (42  
10 U.S.C. 666(b)); or

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

12           “(A) the withholding, suspension, or re-  
13 striction of drivers’ licenses, professional and  
14 occupational licenses, and recreational licenses  
15 pursuant to State law, as specified in section  
16 466(a)(16) of the Social Security Act (42  
17 U.S.C. 666(a)(16)) or with respect to the re-  
18 porting of overdue support owed by an absent  
19 parent to any consumer reporting agency as  
20 specified in section 466(a)(7) of the Social Se-  
21 curity Act (42 U.S.C. 666(a)(7));

22           “(B) the interception of tax refunds, as  
23 specified in sections 464 and 466(a)(3) of the  
24 Social Security Act (42 U.S.C. 664 and  
25 666(a)(3)); or

1           “(C) the enforcement of medical obliga-  
2           tions as specified under title IV of the Social  
3           Security Act (42 U.S.C. 601 et seq.).”.

4 **SEC. 142. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**  
5 **ALIMONY, MAINTENANCE, AND SUPPORT.**

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

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

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

11           (2) in subsection (a)(15)—

12           (A) by inserting “or” after “court of  
13           record,”; and

14           (B) by striking “unless—” and all that fol-  
15           lows through “debtor” the last place it appears;  
16           and

17           (3) in subsection (c), by striking “(6), or (15)”  
18           each place it appears and inserting “or (6)”.

19 **SEC. 143. CONTINUED LIABILITY OF PROPERTY.**

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

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

24           “(1) a debt of a kind specified in paragraph (1)  
25           or (5) of section 523(a) (in which case, notwith-

1 standing any provision of applicable nonbankruptcy  
2 law to the contrary, such property shall be liable for  
3 a debt of a kind specified in section 523(a)(5);” and

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

8 **SEC. 144. PROTECTION OF DOMESTIC SUPPORT CLAIMS**

9 **AGAINST PREFERENTIAL TRANSFER MO-**  
10 **TIONS.**

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

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

16 **SEC. 145. CLARIFICATION OF MEANING OF HOUSEHOLD**

17 **GOODS.**

18 Section 101 of title 11, United States Code, is  
19 amended by inserting after paragraph (27) the following:

20 “(27A) ‘household goods’ includes tangible per-  
21 sonal property normally found in or around a resi-  
22 dence, but does not include motorized vehicles used  
23 for transportation purposes;”.

1 **SEC. 146. NONDISCHARGEABLE DEBTS.**

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

4 “(14A) incurred to pay a debt that is non-  
5 dischargeable by reason of section 727, 1141,  
6 1228(a), 1228(b), or 1328(c), or any other provision  
7 of this subsection, if the debtor incurred the debt to  
8 pay such a nondischargeable debt with the intent to  
9 discharge in bankruptcy the newly-created debt, ex-  
10 cept that all debts incurred to pay nondischargeable  
11 debts, without regard to intent, are nondischargeable  
12 if incurred within 90 days of the filing of the peti-  
13 tion;”.

14 **SEC. 147. MONETARY LIMITATION ON CERTAIN EXEMPT**  
15 **PROPERTY.**

16 (a) AMENDMENT.—Section 522 of title 11, United  
17 States Code, as amended by section 125, is amended—

18 (1) in subsection (b)(2)(A) by striking “sub-  
19 section (o)” and inserting “subsections (o) and (p)”  
20 before “any property”; and

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

22 “(p)(1) Except as provided in paragraphs (2) and  
23 (3), as a result of electing under subsection (b)(3)(A) to  
24 exempt property under State or local law, a debtor may  
25 not exempt any interest that exceeds \$250,000 in value,  
26 in the aggregate, in—

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

3           “(B) a cooperative that owns property that the  
4           debtor or a dependent of the debtor uses as a resi-  
5           dence; or

6           “(C) a burial plot for the debtor or a dependent  
7           of the debtor.

8           “(2) The limitation under paragraph (1) shall not  
9           apply to an exemption claimed under subsection (b)(3)(A)  
10          by a family farmer for the principal residence of that  
11          farmer.

12          “(3) Paragraph (1) shall not apply to debtors if appli-  
13          cable State law provides by statute that such paragraph  
14          shall not apply to debtors.”.

15          (b) APPLICATION OF AMENDMENT TO INDIVIDUAL  
16          STATES.—(1) Section 522(p) of title 11, United States  
17          Code, as added by subsection (a), shall not apply with re-  
18          spect to a State before the end of the first regular session  
19          of the State legislature following the date of the enactment  
20          of this Act.

21          (2) For purposes of paragraph (1), the term “State”  
22          has the meaning given such term in section 101 of title  
23          11, United States Code.

1 **SEC. 148. BANKRUPTCY FEES.**

2 Section 1930 of title 28, United States Code, is  
3 amended—

4 (1) in subsection (a) by striking “Notwith-  
5 standing section 1915 of this title, the” and insert-  
6 ing “The”; and

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

8 “(f)(1) Pursuant to procedures prescribed by the Ju-  
9 dicial Conference of the United States, the district court  
10 or the bankruptcy court may waive the filing fee in a case  
11 under chapter 7 of title 11 for an individual debtor who  
12 is unable to pay such fee in installments. For purposes  
13 of this paragraph, the term ‘filing fee’ means the filing  
14 fee required by subsection (a), or any other fee prescribed  
15 by the Judicial Conference under subsections (b) and (c)  
16 that is payable to the clerk upon the commencement of  
17 a case under chapter 7 of title 11, United States Code.

18 “(2) The district court or the bankruptcy court may  
19 also waive for such debtors other fees prescribed pursuant  
20 to subsections (b) and (c).

21 “(3) This subsection does not restrict the district  
22 court or the bankruptcy court from waiving, in accordance  
23 with Judicial Conference policy, fees prescribed pursuant  
24 to such subsections for other debtors and creditors.”.

1 **SEC. 149. COLLECTION OF CHILD SUPPORT.**

2 (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-  
3 tion 704 of title 11, United States Code, as amended by  
4 section 102, is amended—

5 (1) by inserting “(a)” before “The trustee”;

6 (2) in paragraph (9) by striking “and” at the  
7 end;

8 (3) in paragraph (10) by striking the period  
9 and inserting “; and”; and

10 (4) by adding at the end the following:

11 “(11) if, with respect to an individual debtor,  
12 there is a claim for support of a child of the debtor  
13 or a custodial parent of such child entitled to receive  
14 priority under section 507(a)(1) of this title, provide  
15 the applicable notification specified in subsection (b).

16 “(b)(1) In any case described in subsection (a)(11),  
17 the trustee shall—

18 “(A)(i) notify in writing the holder of the claim  
19 of the right of such holder to use the services of a  
20 State child support enforcement agency established  
21 under sections 464 and 466 of the Social Security  
22 Act for the State in which the holder resides; and

23 “(ii) include in the notice under this paragraph  
24 the address and telephone number of the child sup-  
25 port enforcement agency; and



1           “(B)(i) notify in writing the State child support  
2           agency of the State in which the holder of the claim  
3           resides of the claim;

4           “(ii) include in the notice under this paragraph  
5           the name, address, and telephone number of the  
6           holder of the claim; and

7           “(iii) at such time as the debtor is granted a  
8           discharge under section 727 of this title, notify the  
9           holder of such claim and the State child support  
10          agency of the State in which such holder resides  
11          of—

12                   “(I) the granting of the discharge;

13                   “(II) the last recent known address of the  
14                   debtor; and

15                   “(III) with respect to the debtor’s case, the  
16                   name of each creditor that holds a claim that  
17                   is not discharged under paragraph (2), (4), or  
18                   (14A) of section 523(a) of this title or that was  
19                   reaffirmed by the debtor under section 524(c)  
20                   of this title.

21          “(2)(A) If, after receiving a notice under paragraph  
22          (1)(B)(iii), a holder of a claim or a State child support  
23          agency is unable to locate the debtor that is the subject  
24          of the notice, such holder or such agency may request from

1 a creditor described in paragraph (1)(B)(iii)(III) the last  
2 known address of the debtor.

3 “(B) Notwithstanding any other provision of law, a  
4 creditor that makes a disclosure of a last known address  
5 of a debtor in connection with a request made under sub-  
6 paragraph (A) shall not be liable to the debtor or any  
7 other person by reason of making such disclosure.”.

8 (b) DUTIES OF TRUSTEE UNDER CHAPTER 13.—  
9 Section 1302 of title 11, United States Code, is  
10 amended—

11 (1) in subsection (b)—

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

14 (B) in paragraph (5) by striking the period  
15 and inserting “; and”; and

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

17 “(6) if, with respect to an individual debtor,  
18 there is a claim for support of a child of the debtor  
19 or a custodial parent of such child entitled to receive  
20 priority under section 507(a)(1) of this title, provide  
21 the applicable notification specified in subsection  
22 (d).”; and

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

24 “(d)(1) In any case described in subsection (b)(6),  
25 the trustee shall—

1           “(A)(i) notify in writing the holder of the claim  
2           of the right of such holder to use the services of a  
3           State child support enforcement agency established  
4           under sections 464 and 466 of the Social Security  
5           Act for the State in which the holder resides; and

6           “(ii) include in the notice under this paragraph  
7           the address and telephone number of the child sup-  
8           port enforcement agency; and

9           “(B)(i) notify in writing the State child support  
10          agency of the State in which the holder of the claim  
11          resides of the claim; and

12          “(ii) include in the notice under this paragraph  
13          the name, address, and telephone number of the  
14          holder of the claim;

15          “(iii) at such time as the debtor is granted a  
16          discharge under section 1328 of this title, notify the  
17          holder of the claim and the State child support  
18          agency of the State in which such holder resides  
19          of—

20                 “(I) the granting of the discharge;

21                 “(II) the last recent known address of the  
22                 debtor; and

23                 “(III) with respect to the debtor’s case, the  
24                 name of each creditor that holds a claim that  
25                 is not discharged under paragraph (2), (4), or

1 (14A) of section 523(a) of this title or that was  
2 reaffirmed by the debtor under section 524(c)  
3 of this title.

4 “(2)(A) If, after receiving a notice under paragraph  
5 (1)(B)(iii), a holder of a claim or a State child support  
6 agency is unable to locate the debtor that is the subject  
7 of the notice, such holder or such agency may request from  
8 a creditor described in paragraph (1)(B)(iii) the last  
9 known address of the debtor.

10 “(B) Notwithstanding any other provision of law, a  
11 creditor that makes a disclosure of a last known address  
12 of a debtor in connection with a request made under sub-  
13 paragraph (A) shall not be liable to the debtor or any  
14 other person by reason of making such disclosure.”

15 **SEC. 150. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
16 **PANT CONTRIBUTIONS AND OTHER PROP-**  
17 **ERTY FROM THE ESTATE.**

18 (a) IN GENERAL.—Section 541(b) of title 11, United  
19 States Code, is amended—

20 (1) by striking “or” at the end of paragraph  
21 (4)(B)(ii);

22 (2) by striking the period at the end of para-  
23 graph (5) and inserting “; or”; and

24 (3) by inserting after paragraph (5) the fol-  
25 lowing:

1           “(7) any amount or interest in property to the  
 2           extent that an employer has withheld amounts from  
 3           the wages of employees for contribution to an em-  
 4           ployee benefit plan subject to title I of the Employee  
 5           Retirement Income Security Act of 1974, or to the  
 6           extent that the employer has received amounts as a  
 7           result of payments by participants or beneficiaries to  
 8           an employer for contribution to an employee benefit  
 9           plan subject to title I of the Employee Retirement  
 10          Income Security Act of 1974.”.

11          (b) APPLICATION OF AMENDMENT.—The amendment  
 12          made by this section shall not apply to cases commenced  
 13          under title 11, United States Code, before the expiration  
 14          of the 180-day period beginning on the date of the enact-  
 15          ment of this Act.

16        **SEC. 151. CLARIFICATION OF POSTPETITION WAGES AND**  
 17                                    **BENEFITS.**

18          Section 503(b)(1)(A) of title 11, United States Code,  
 19          is amended to read as follows:

20                   “(A) the actual, necessary costs and expenses of  
 21                   preserving the estate, including wages, salaries, or  
 22                   commissions for services rendered after the com-  
 23                   mencement of the case, and wages and benefits at-  
 24                   tributable to any period of time after commencement  
 25                   of the case as a result of the debtor’s violation of

1 Federal law, without regard to when the original un-  
2 lawful act occurred or to whether any services were  
3 rendered;”.

4 **SEC. 152. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
5 **SUPPORT OBLIGATION PROCEEDINGS.**

6 Section 362(b)(2) of title 11, United States Code, is  
7 amended—

8 (1) in subparagraph (A) by striking “or” at the  
9 end;

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

12 (3) by adding at the end the following:

13 “(C) under subsection (a) of—

14 “(i) the withholding of income for  
15 payment of a domestic support obligation  
16 pursuant to a judicial or administrative  
17 order or statute for such obligation that  
18 first becomes payable after the date on  
19 which the petition is filed; or

20 “(ii) the withholding of income for  
21 payment of a domestic support obligation  
22 owed directly to the spouse, former spouse  
23 or child of the debtor or the parent of such  
24 child, pursuant to a judicial or administra-  
25 tive order or statute for such obligation

1           that becomes payable before the date on  
2           which the petition is filed unless the court  
3           finds, after notice and hearing, that such  
4           withholding would render the plan infeasible;”.

6 **SEC. 153. AUTOMATIC STAY INAPPLICABLE TO CERTAIN**  
7 **PROCEEDINGS AGAINST THE DEBTOR.**

8           Section 362(b)(2) of title 11, United States Code, as  
9 amended by section 153, is amended—

10           (1) in subparagraph (B) by striking “or” at the  
11 end;

12           (2) by inserting after subparagraph (C) the following:  
13

14           “(D) the commencement or continuation of  
15 a proceeding concerning a child custody or visitation;  
16

17           “(E) the commencement or continuation of  
18 a proceeding alleging domestic violence; or

19           “(F) the commencement or continuation of  
20 a proceeding seeking a dissolution of marriage,  
21 except to the extent the proceeding concerns  
22 property of the estate;”.

1 **SEC. 154. DISCLOSURES.**

2 (a) DISCLOSURES.—Subchapter II of chapter 5 of  
3 title 11, United States Code, as amended by section 106,  
4 is amended by adding at the end the following:

5 **“§ 527. Disclosures**

6 “(a) A debt relief agency providing bankruptcy assist-  
7 ance to an assisted person shall provide the following no-  
8 tices to the assisted person:

9 “(1) the written notice required under section  
10 342(b)(1) of this title; and

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

18 “(A) all information the assisted person is  
19 required to provide with a petition and there-  
20 after during a case under this title must be  
21 complete, accurate and truthful;

22 “(B) all assets and all liabilities must be  
23 completely and accurately disclosed in the docu-  
24 ments filed to commence the case, and the re-  
25 placement value of each asset as defined in sec-  
26 tion 506 of this title must be stated in those



1 documents where requested after reasonable in-  
2 quiry to establish such value;

3 “(C) current monthly income, the amounts  
4 specified in section 707(b)(2) and, in a chapter  
5 13 case, disposable income (determined in ac-  
6 cordance with section 707(b)(2)) must be stated  
7 after reasonable inquiry; and

8 “(D) that information an assisted person  
9 provides during their case may be audited pur-  
10 suant to this title and that failure to provide  
11 such information may result in dismissal of the  
12 proceeding under this title or other sanction in-  
13 cluding, in some instances, criminal sanctions.

14 “(b) A debt relief agency providing bankruptcy assist-  
15 ance to an assisted person shall provide each assisted per-  
16 son at the same time as the notices required under sub-  
17 section (a)(1) with the following statement, to the extent  
18 applicable, or one substantially similar. The statement  
19 shall be clear and conspicuous and shall be in a single  
20 document separate from other documents or notices pro-  
21 vided to the assisted person:

22 “‘IMPORTANT INFORMATION ABOUT BANK-  
23 RUPTCY ASSISTANCE SERVICES FROM AN AT-  
24 TORNEY OR BANKRUPTCY PETITION PRE-  
25 PARER.

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

11       “‘The following information helps you understand  
12 what must be done in a routine bankruptcy case to help  
13 you evaluate how much service you need. Although bank-  
14 ruptcy can be complex, many cases are routine.

15       “‘Before filing a bankruptcy case, either you or your  
16 attorney should analyze your eligibility for different forms  
17 of debt relief made available by the Bankruptcy Code and  
18 which form of relief is most likely to be beneficial for you.  
19 Be sure you understand the relief you can obtain and its  
20 limitations. To file a bankruptcy case, documents called  
21 a Petition, Schedules and Statement of Financial Affairs,  
22 as well as in some cases a Statement of Intention need  
23 to be prepared correctly and filed with the bankruptcy  
24 court. You will have to pay a filing fee to the bankruptcy  
25 court. Once your case starts, you will have to attend the

1 required first meeting of creditors where you may be ques-  
2 tioned by a court official called a “trustee” and by credi-  
3 tors.

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

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

13       “‘If you select another type of relief under the Bank-  
14 ruptcy Code other than chapter 7 or chapter 13, you will  
15 want to find out what needs to be done from someone fa-  
16 miliar with that type of relief.

17       “‘Your bankruptcy case may also involve litigation.  
18 You are generally permitted to represent yourself in litiga-  
19 tion in bankruptcy court, but only attorneys, not bank-  
20 ruptcy petition preparers, can give you legal advice.’.

21       “(c) Except to the extent the debt relief agency pro-  
22 vides the required information itself after reasonably dili-  
23 gent inquiry of the assisted person or others so as to ob-  
24 tain such information reasonably accurately for inclusion  
25 on the petition, schedules or statement of financial affairs,

1 a debt relief agency providing bankruptcy assistance to an  
2 assisted person, to the extent permitted by nonbankruptcy  
3 law, shall provide each assisted person at the time re-  
4 quired for the notice required under subsection (a)(1) rea-  
5 sonably sufficient information (which shall be provided in  
6 a clear and conspicuous writing) to the assisted person  
7 on how to provide all the information the assisted person  
8 is required to provide under this title pursuant to section  
9 521, including—

10           “(1) how to value assets at replacement value,  
11           determine current monthly income, the amounts  
12           specified in section 707(b)(2)) and, in a chapter 13  
13           case, how to determine disposable income in accord-  
14           ance with section 707(b)(2) and related calculations;

15           “(2) how to complete the list of creditors, in-  
16           cluding how to determine what amount is owed and  
17           what address for the creditor should be shown; and

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

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

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

“527. Disclosures.”.

5 **SEC. 155. DEBTOR’S BILL OF RIGHTS.**

6 Subchapter II of chapter 5 of title 11, United States  
7 Code, as amended by sections 106 and 154, is amended  
8 by adding at the end the following:

9 **“§ 528. Debtor’s bill of rights**

10 “(a) A debt relief agency shall—

11 “(1) no later than five business days after the  
12 first date on which a debt relief agency provides any  
13 bankruptcy assistance services to an assisted person,  
14 but prior to such assisted person’s petition under  
15 this title being filed, execute a written contract with  
16 the assisted person specifying clearly and conspicu-  
17 ously the services the agency will provide the as-  
18 sisted person and the basis on which fees or charges  
19 will be made for such services and the terms of pay-  
20 ment, and give the assisted person a copy of the  
21 fully executed and completed contract in a form the  
22 person can keep;

23 “(2) disclose in any advertisement of bank-  
24 ruptcy assistance services or of the benefits of bank-  
25 ruptcy directed to the general public (whether in

1 general media, seminars or specific mailings, tele-  
2 phonic or electronic messages or otherwise) that the  
3 services or benefits are with respect to proceedings  
4 under this title, clearly and conspicuously using the  
5 following statement: ‘We are a debt relief agency.  
6 We help people file Bankruptcy petitions to obtain  
7 relief under the Bankruptcy Code.’ or a substantially  
8 similar statement. An advertisement shall be of  
9 bankruptcy assistance services if it describes or of-  
10 fers bankruptcy assistance with a chapter 13 plan,  
11 regardless of whether chapter 13 is specifically men-  
12 tioned, including such statements as ‘federally super-  
13 vised repayment plan’ or ‘Federal debt restructuring  
14 help’ or other similar statements which would lead  
15 a reasonable consumer to believe that help with  
16 debts was being offered when in fact in most cases  
17 the help available is bankruptcy assistance with a  
18 chapter 13 plan; and

19 “(3) if an advertisement directed to the general  
20 public indicates that the debt relief agency provides  
21 assistance with respect to credit defaults, mortgage  
22 foreclosures, lease eviction proceedings, excessive  
23 debt, debt collection pressure, or inability to pay any  
24 consumer debt, disclose conspicuously in that adver-  
25 tisement that the assistance is with respect to or

1 may involve proceedings under this title, using the  
 2 following statement: ‘We are a debt relief agency.  
 3 We help people file Bankruptcy petitions to obtain  
 4 relief under the Bankruptcy Code.’ or a substantially  
 5 similar statement.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-  
 7 tions for chapter 5 of title 11, United States Code, as  
 8 amended by sections 106 and 154, is amended by inserting  
 9 after the item relating to section 527, the following:

“528. Debtor’s bill of rights.”.

10 **TITLE II—DISCOURAGING**  
 11 **BANKRUPTCY ABUSE**

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

13 (a) REENACTMENT.—Chapter 12 of title 11, United  
 14 States Code, as in effect on March 31, 1999, is hereby  
 15 reenacted.

16 (b) EFFECTIVE DATE.—The amendment made by  
 17 subsection (a) shall take effect on March 31, 1999.

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

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

22 “(e) Notwithstanding subsections (a) and (b), the  
 23 court, on the request of a party in interest and after notice  
 24 and a hearing, for cause may order that the United States  
 25 trustee not convene a meeting of creditors or equity secu-

1 rity holders if the debtor has filed a plan as to which the  
2 debtor solicited acceptances prior to the commencement  
3 of the case.”.

4 **SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
5 **RUPTCY.**

6 (a) IN GENERAL.—Section 522 of title 11, United  
7 States Code, as amended by sections 113, 125, and 147  
8 is amended—

9 (1) in subsection (b)—

10 (A) in paragraph (2)—

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

12 “(3) Property listed in this paragraph is—

13 “(A) subject to subsections (o) and (p),”;

14 (ii) in subparagraph (B), by striking

15 “and” at the end;

16 (iii) in subparagraph (C), by striking

17 the period at the end and inserting “;

18 and”; and

19 (iv) by adding at the end the fol-

20 lowing:

21 “(D) retirement funds to the extent that those

22 funds are in a fund or account that is exempt from

23 taxation under section 401, 403, 408, 408A, 414,

24 457, or 501(a) of the Internal Revenue Code of

25 1986.”;



1 (B) by striking paragraph (1) and insert-  
2 ing:

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

7 (C) in the matter preceding paragraph  
8 (2)—

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

11 (ii) by striking “paragraph (2)” both  
12 places it appears and inserting “paragraph  
13 (3)”;

14 (iii) by striking “paragraph (1)” each  
15 place it appears and inserting “paragraph  
16 (2)”;

17 (iv) by striking “Such property is—”;  
18 and

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

21 “(4) For purposes of paragraph (3)(D) and sub-  
22 section (d)(12), the following shall apply:

23 “(A) If the retirement funds are in a retirement  
24 fund that has received a favorable determination  
25 pursuant to section 7805 of the Internal Revenue

1 Code of 1986, and that determination is in effect as  
2 of the date of the commencement of the case under  
3 section 301, 302, or 303 of this title, those funds  
4 shall be presumed to be exempt from the estate.

5 “(B) If the retirement funds are in a retirement  
6 fund that has not received a favorable determination  
7 pursuant to such section 7805, those funds are ex-  
8 empt from the estate if the debtor demonstrates  
9 that—

10 “(i) no prior determination to the contrary  
11 has been made by a court or the Internal Rev-  
12 enue Service; and

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

16 “(C) A direct transfer of retirement funds from  
17 one fund or account that is exempt from taxation  
18 under section 401, 403, 408, 408A, 414, 457, or  
19 501(a) of the Internal Revenue Code of 1986, pur-  
20 suant to section 401(a)(31) of the Internal Revenue  
21 Code of 1986, or otherwise, shall not cease to qualify  
22 for exemption under paragraph (3)(D) or subsection  
23 (d)(12) by reason of that direct transfer.

24 “(D)(i) Any distribution that qualifies as an eli-  
25 gible rollover distribution within the meaning of sec-

1       tion 402(c) of the Internal Revenue Code of 1986 or  
2       that is described in clause (ii) shall not cease to  
3       qualify for exemption under paragraph (3)(D) or  
4       subsection (d)(12) by reason of that distribution.

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

7                       “(I) has been distributed from a fund or  
8       account that is exempt from taxation under sec-  
9       tion 401, 403, 408, 408A, 414, 457, or 501(a)  
10      of the Internal Revenue Code of 1986; and

11                      “(II) to the extent allowed by law, is de-  
12      posited in such a fund or account not later than  
13      60 days after the distribution of that amount.”;  
14      and

15      (2) in subsection (d)—

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

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

20                      “(12) Retirement funds to the extent that those  
21      funds are in a fund or account that is exempt from  
22      taxation under section 401, 403, 408, 408A, 414,  
23      457, or 501(a) of the Internal Revenue Code of  
24      1986.”.

1 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
2 United States Code, as amended by sections 118, 132,  
3 136, and 141 is amended—

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

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

8 (3) by inserting after paragraph (28) the fol-  
9 lowing:

10 “(29) under subsection (a), of withholding of  
11 income from a debtor’s wages and collection of  
12 amounts withheld, pursuant to the debtor’s agree-  
13 ment authorizing that withholding and collection for  
14 the benefit of a pension, profit-sharing, stock bonus,  
15 or other plan established under section 401, 403,  
16 408, 408A, 414, 457, or 501(a) of the Internal Rev-  
17 enue Code of 1986 that is sponsored by the em-  
18 ployer of the debtor, or an affiliate, successor, or  
19 predecessor of such employer—

20 “(A) to the extent that the amounts with-  
21 held and collected are used solely for payments  
22 relating to a loan from a plan that satisfies the  
23 requirements of section 408(b)(1) of the Em-  
24 ployee Retirement Income Security Act of 1974

1 or is subject to section 72(p) of the Internal  
2 Revenue Code of 1986; or

3 “(B) in the case of a loan from a thrift  
4 savings plan described in subchapter III of title  
5 5, that satisfies the requirements of section  
6 8433(g) of such title.”; and

7 (4) by adding at the end of the flush material  
8 following paragraph (29) the following: “Paragraph  
9 (29) does not apply to any amount owed to a plan  
10 referred to in that paragraph that is incurred under  
11 a loan made during the 1-year period preceding the  
12 filing of a petition. Nothing in paragraph (29) may  
13 be construed to provide that any loan made under  
14 a governmental plan under section 414(d), or a con-  
15 tract or account under section 403(b), of the Inter-  
16 nal Revenue Code of 1986 constitutes a claim or a  
17 debt under this title.”.

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

20 (1) by striking “or” at the end of paragraph  
21 (17);

22 (2) by striking the period at the end of para-  
23 graph (18) and inserting “; or”; and

24 (3) by adding at the end the following:

1           “(19) owed to a pension, profit-sharing, stock  
2           bonus, or other plan established under section 401,  
3           403, 408, 408A, 414, 457, or 501(c) of the Internal  
4           Revenue Code of 1986, pursuant to—

5                   “(A) a loan permitted under section  
6                   408(b)(1) of the Employee Retirement Income  
7                   Security Act of 1974) or subject to section  
8                   72(p) of the Internal Revenue Code of 1986; or

9                   “(B) a loan from the thrift savings plan  
10                  described in subchapter III of title 5, that satis-  
11                  fies the requirements of section 8433(g) of such  
12                  title.

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

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

24                   “(f) A plan may not materially alter the terms of a  
25 loan described in section 362(b)(29) of this title.”.

1 **SEC. 204. PROTECTION OF REFINANCE OF SECURITY IN-**  
2 **TEREST.**

3 Subparagraphs (A), (B), and (C) of section 547(e)(2)  
4 of title 11, United States Code, are amended by striking  
5 “10” each place it appears and inserting “30”.

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

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

10 “(4)(A) Subject to subparagraph (B), in any case  
11 under any chapter in this title, an unexpired lease of non-  
12 residential real property under which the debtor is the les-  
13 see shall be deemed rejected, and the trustee shall imme-  
14 diately surrender such property to the lessor, if the trustee  
15 does not assume or reject the unexpired lease by the ear-  
16 lier of—

17 “(i) the date that is 120 days after the date of  
18 the order for relief; or

19 “(ii) the date of the entry of an order con-  
20 firming a plan.

21 “(B)(i) The court may extend the period determined  
22 under subparagraph (A) for 120 days upon motion of the  
23 trustee or the lessor for cause.

24 “(ii) If the court grants an extension under clause  
25 (i), the court may grant a subsequent extension only upon  
26 prior written consent of the lessor.”.

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

3 (a) APPOINTMENT.—Section 1102(a)(2) of title 11,  
4 United States Code, is amended by inserting before the  
5 first sentence the following: “On its own motion or on re-  
6 quest of a party in interest, and after notice and hearing,  
7 the court may order a change in the membership of a com-  
8 mittee appointed under this subsection, if the court deter-  
9 mines that the change is necessary to ensure adequate rep-  
10 resentation of creditors or equity security holders. The  
11 court may expand the membership of a committee to in-  
12 clude a creditor that is small business if the court deter-  
13 mines that such creditor holds claims of the kind rep-  
14 resented by such committee that are, in the aggregate, dis-  
15 proportionately large when compared to the annual gross  
16 revenue of such creditor.”.

17 (b) INFORMATION.—Section 1102(b) of title 11,  
18 United States Code, is amended by adding at the end the  
19 following:

20 “(3) A committee appointed under subsection (a)  
21 shall provide access to information for creditors who hold  
22 claims of the kind represented by such committee and who  
23 are not appointed such committee, shall to be open for  
24 comment from such creditors, and shall be subject to a  
25 court order compelling additional reports or disclosure to  
26 be made to such creditors.”.



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

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

5 “(i) Notwithstanding section 545 (2) and (3) of this  
6 title, the trustee may not avoid a warehouseman’s lien for  
7 storage, transportation or other costs incidental to the  
8 storage and handling of goods, as provided by section 7–  
9 209 of the Uniform Commercial Code.”.

10 **SEC. 208. LIMITATION.**

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

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

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

17 (1) in paragraph (3)—

18 (A) in subparagraph (A) after “awarded”,  
19 by inserting “to an examiner, chapter 11 trust-  
20 ee, or professional person”; and

21 (B) by redesignating subdivisions (A)  
22 through (E) as clauses (i) through (iv), respec-  
23 tively; and

24 (2) by adding at the the following:

25 “(B) In determining the amount of reasonable  
26 compensation to be awarded a trustee, the court

1 shall treat such compensation as a commission based  
2 on the results achieved.”.

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

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

6 “(g) Notwithstanding subsection (b), an acceptance  
7 or rejection of the plan may be solicited from a holder  
8 of a claim or interest if such solicitation complies with ap-  
9 plicable nonbankruptcy law and if such holder was solici-  
10 ited before the commencement of the case in a manner  
11 complying with applicable nonbankruptcy law.”.

12 **SEC. 211. PREFERENCES.**

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

15 (1) by amending paragraph (2) to read as fol-  
16 lows:

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

21 “(A) made in the ordinary course of busi-  
22 ness or financial affairs of the debtor and the  
23 transferee; or

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

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

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

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

6           “(9) if, in a case filed by a debtor whose debts  
7           are not primarily consumer debts, the aggregate  
8           value of all property that constitutes or is affected  
9           by such transfer is less than \$5,000.”.

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

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

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

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

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

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

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

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

1 **SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP IN-**  
2 **TERESTS.**

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

5 (1) by striking “dwelling” the first place it ap-  
6 pears;

7 (2) by striking “ownership or” and inserting  
8 “ownership,”;

9 (3) by striking “housing” the first place it ap-  
10 pears; and

11 (4) by striking “but only” and all that follows  
12 through “such period,” and inserting “or a lot in a  
13 homeowners association, for as long as the debtor or  
14 the trustee has a legal, equitable, or possessory own-  
15 ership interest in such unit, such corporation, or  
16 such lot,”.

17 **SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
18 **TIONS.**

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

22 (1) in subsection (b)—

23 (A) in paragraph (1)(A) by striking the  
24 semicolon at the end and inserting the fol-  
25 lowing:

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

3 “(i) the satisfaction of any provision (other  
4 than a penalty rate or penalty provision) relat-  
5 ing to a default arising from any failure to per-  
6 form nonmonetary obligations under an unex-  
7 pired lease of real property, if it is impossible  
8 for the trustee to cure such default by per-  
9 forming nonmonetary acts at and after the time  
10 of assumption; or

11 “(ii) the satisfaction of any provision  
12 (other than a penalty rate or penalty provision)  
13 relating to a default arising from any failure to  
14 perform nonmonetary obligations under an ex-  
15 ecutory contract (excluding executory contracts  
16 that transfer a right or interest under a filed or  
17 issued patent, copyright, trademark, trade  
18 dress, or trade secret), if it is impossible for the  
19 trustee to cure such default by performing non-  
20 monetary acts at and after the time of assump-  
21 tion and if the court determines, based on the  
22 equities of the case, that this subparagraph  
23 should not apply with respect to such default;”;  
24 and

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

3 “(D) the satisfaction of any penalty rate or  
4 penalty provision relating to a default arising from  
5 a failure to perform nonmonetary obligations under  
6 an executory contract (excluding executory contracts  
7 that transfer a right or interest under a filed or  
8 issued patent, copyright, trademark, trade dress, or  
9 trade secret) or under an unexpired lease of real or  
10 personal property.”;

11 (2) in subsection (c)—

12 (A) in paragraph (2) by adding “or” at the  
13 end;

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

16 (C) by striking paragraph (4);

17 (3) in subsection (d)—

18 (A) by striking paragraphs (5) through  
19 (9); and

20 (B) by redesignating paragraph (10) as  
21 paragraph (5); and

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

1 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-  
2 tion 1124(2) of title 11, United States Code, is  
3 amended—

4 (1) in subparagraph (A) by inserting “or of a  
5 kind that section 365(b)(2) of this title expressly  
6 does not require to be cured” before the semicolon  
7 at the end;

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

10 (3) by redesignating subparagraph (D) as sub-  
11 paragraph (E); and

12 (4) by inserting after subparagraph (C) the fol-  
13 lowing:

14 “(D) if such claim or such interest arises  
15 from any failure to perform a nonmonetary ob-  
16 ligation, compensates the holder of such claim  
17 or such interest (other than the debtor or an in-  
18 sider) for any actual pecuniary loss incurred by  
19 such holder as a result of such failure; and”.

20 **SEC. 216. SHARING OF COMPENSATION.**

21 Section 504 of title 11, United States Code, is  
22 amended by adding at the end the following:

23 “(c) This section shall not apply with respect to shar-  
24 ing, or agreeing to share, compensation with a bona fide  
25 public service attorney referral program that operates in

1 accordance with non-Federal law regulating attorney re-  
2 ferral services and with rules of professional responsibility  
3 applicable to attorney acceptance of referrals.”.

4 **SEC. 217. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

5 Section 503(b) of title 11, United States Code, is  
6 amended—

7 (1) by deleting “and” at the end of paragraph  
8 (5);

9 (2) by striking the period at the end of para-  
10 graph (6) and inserting “; and”; and

11 (3) by inserting the following after paragraph  
12 (6):

13 “(7) with respect to a nonresidential real prop-  
14 erty lease previously assumed under section 365,  
15 and subsequently rejected, a sum equal to all mone-  
16 tary obligations due, excluding those arising from or  
17 relating to a failure to operate or penalty provisions,  
18 for the period of one year following the later of the  
19 rejection date or date of actual turnover of the  
20 premises, without reduction or setoff for any reason  
21 whatsoever except for sums actually received or to be  
22 received from a nondebtor; and the claim for remain-  
23 ing sums due for the balance of the term of the lease  
24 shall be a claim under section 502(b)(6).”.



1 **SEC. 218. NONDISCHARGEABILITY OF CERTAIN EDU-**  
2 **CATIONAL BENEFITS AND LOANS.**

3 Section 523(a)(8) of title 11, United States Code, is  
4 amended to read as follows:

5 “(8) for—

6 “(A) an educational benefit overpayment  
7 or loan made, insured or guaranteed by a gov-  
8 ernmental unit, or made under any program  
9 funded in whole or in part by a governmental  
10 unit or nonprofit institution, or for an obliga-  
11 tion to repay funds received as an educational  
12 benefit, scholarship or stipend; or

13 “(B) any other education loan incurred by  
14 an individual debtor that meets the definition of  
15 ‘Qualified Education Loan’ under section  
16 221(e)(1) of the Internal Revenue Code,  
17 unless excepting such debt from discharge under this  
18 paragraph will impose an undue hardship on the  
19 debtor and a debtor’s dependents;”.

20 **TITLE III—GENERAL BUSINESS**  
21 **BANKRUPTCY PROVISIONS**

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

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

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

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

3           “(B) is not and was not, within 2 years be-  
4 fore the date of the filing of the petition, a di-  
5 rector, officer, or employee of the debtor; and

6           “(C) does not have an interest materially  
7 adverse to the interest of the estate or of any  
8 class of creditors or equity security holders, by  
9 reason of any direct or indirect relationship to,  
10 connection with, or interest in, the debtor, or  
11 for any other reason;”.

12 **SEC. 302. MISCELLANEOUS IMPROVEMENTS.**

13       (a) WHO MAY BE A DEBTOR.—Section 109 of title  
14 11, United States Code, is amended by adding at the end  
15 the following:

16       “(h)(1) Subject to paragraphs (2) and (3) and not-  
17 withstanding any other provision of this section, an indi-  
18 vidual may not be a debtor under this title unless that  
19 individual has, during the 90-day period preceding the  
20 date of filing of the petition of that individual, received  
21 credit counseling, including, at a minimum, participation  
22 in an individual or group briefing that outlined the oppor-  
23 tunities for available credit counseling and assisted that  
24 individual in performing an initial budget analysis,  
25 through a credit counseling program (offered through an

1 approved credit counseling service described in section  
2 111(a)).

3       “(2)(A) Paragraph (1) shall not apply with respect  
4 to a debtor who resides in a district for which the United  
5 States trustee or bankruptcy administrator of the bank-  
6 ruptcy court of that district determines that the approved  
7 credit counseling services for that district are not reason-  
8 ably able to provide adequate services to the additional  
9 individuals who would otherwise seek credit counseling  
10 from those programs by reason of the requirements of  
11 paragraph (1).

12       “(B) Each United States trustee or bankruptcy ad-  
13 ministrator that makes a determination described in sub-  
14 paragraph (A) shall review that determination not later  
15 than one year after the date of that determination, and  
16 not less frequently than every year thereafter.

17       “(3)(A) Subject to subparagraph (B), the require-  
18 ments of paragraph (1) shall not apply with respect to  
19 a debtor who submits to the court a certification that—

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

22               “(ii) states that the debtor requested credit  
23 counseling services from an approved credit coun-  
24 seling service, but was unable to obtain the services  
25 referred to in paragraph (1) during the 5-day period

1 beginning on the date on which the debtor made  
2 that request or that the exigent circumstances re-  
3 quire filing before such 5-day period expires; and

4 “(iii) is satisfactory to the court.

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

11 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
12 11, United States Code, is amended—

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

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

17 (3) by adding at the end the following:

18 “(11) after the filing of the petition, the debtor  
19 failed to complete an instructional course concerning  
20 personal financial management described in section  
21 111 unless the debtor resides in a district for which  
22 the United States trustee or bankruptcy adminis-  
23 trator of the bankruptcy court of that district deter-  
24 mines that the approved instructional courses are  
25 not adequate to provide service to the additional in-

1 individuals who would be required to compete the in-  
2 structional course by reason of the requirements of  
3 this section. Each United States trustee or bank-  
4 ruptcy administrator that makes such a determina-  
5 tion shall review that determination not later than 1  
6 year after the date of that determination, and not  
7 less frequently than every year thereafter.”.

8 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
9 11, United States Code, as amended by section 137, is  
10 amended by adding at the end the following:

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

15 “(h) Subsection (g) shall not apply with respect to  
16 a debtor who resides in a district for which the United  
17 States trustee or bankruptcy administrator of the bank-  
18 ruptcy court of that district determines that the approved  
19 instructional courses are not adequate to provide service  
20 to the additional individuals who would be required to  
21 complete the instructional course by reason of the require-  
22 ments of this section.

23 “(i) Each United States trustee or bankruptcy ad-  
24 ministrator that makes a determination described in sub-  
25 section (h) shall review that determination not later than

1 1 year after the date of that determination, and not less  
2 frequently than every year thereafter.”.

3 (d) DEBTOR’S DUTIES.—Section 521 of title 11,  
4 United States Code, as amended by sections 604 and 120,  
5 is amended by adding at the end the following:

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

8 “(1) a certificate from the credit counseling  
9 service that provided the debtor services under sec-  
10 tion 109(h); and

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

14 (e) GENERAL PROVISIONS.—

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

18 “§ 111. **Credit counseling services; financial manage-**  
19 **ment instructional courses**

20 “(a) The clerk of each district shall maintain a pub-  
21 licly available list of credit counseling agencies and of pro-  
22 grams described in section 109(h) and instructional  
23 courses offered by such agencies currently approved by—

24 “(1) the United States Trustee; or

1           “(2) the bankruptcy administrator for the dis-  
2       trict.

3           “(b) The United States Trustee or bankruptcy ad-  
4       ministrators shall only approve credit counseling agencies  
5       which satisfy standards set in regulations promulgated by  
6       the Federal Trade Commission and which are accredited  
7       by the Council on Accreditation or an equivalent third  
8       party nonprofit accrediting organization.

9           “(c) The United States Trustee or bankruptcy ad-  
10      ministrators shall only approve programs or courses under  
11      subsection (a) if they satisfy standards set in regulations  
12      promulgated by the Executive Office of the United States  
13      Trustees. The Executive Office of the United States  
14      Trustee is authorized to promulgate regulations setting  
15      such standards.

16          “(d) The Federal Trade Commission shall have au-  
17      thority to promulgate regulations setting standards for  
18      credit counseling agencies for the purposes of subsection  
19      (b). Such standards shall establish minimum requirements  
20      for such agencies with respect to providing qualified coun-  
21      selors, safekeeping and payment of client funds, disclosure  
22      to clients, adequate counseling with respect to client credit  
23      problems, and such other matters as relate to the quality  
24      and financial security of such programs. Nothing in this  
25      provision shall limit the authority of the Federal Trade

1 Commission pursuant to the Federal Trade Commission  
2 Act (15 U.S.C. 45 et seq.).

3 “(e) The United States Trustee or bankruptcy ad-  
4 ministrator may notify the clerk that a credit counseling  
5 agency, or a program or course, is no longer approved,  
6 in which case the clerk shall remove it from the list main-  
7 tained under subsection (a).”.

8 (2) REGULATIONS.—The Federal Trade Com-  
9 mission and the Executive Office of United States  
10 Trustees shall promulgate regulations pursuant to  
11 the power delegated in this section within 180 days  
12 of the date of the enactment of this Act.

13 (3) CLERICAL AMENDMENT.—The table of sec-  
14 tions at the beginning of chapter 1 of title 11,  
15 United States Code, is amended by adding at the  
16 end the following:

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

17 (e) DEFINITIONS.—Section 101 of title 11, United  
18 States Code, is amended—

19 (1) by inserting after paragraph (13) the fol-  
20 lowing:

21 “(13A) ‘debtor’s principal residence’ means a  
22 residential structure including incidental property  
23 when the structure contains 1 to 4 units, whether or  
24 not that structure is attached to real property, and  
25 includes, without limitation, an individual condo-



1       minium or cooperative unit or mobile or manufac-  
2       tured home or trailer;”;

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

5               “(27B) ‘incidental property’ means property in-  
6       cidental to such residence including, without limita-  
7       tion, property commonly conveyed with a principal  
8       residence where the real estate is located, window  
9       treatments, carpets, appliances and equipment lo-  
10      cated in the residence, and easements, appur-  
11      tenances, fixtures, rents, royalties, mineral rights, oil  
12      and gas rights, escrow funds and insurance pro-  
13      ceeds;”;

14              (3) in section 362(b), as amended by sections  
15      117, 118, 132, 136, 141, 203, 818, and 1007—

16              (A) in paragraph (28) by striking “or” at  
17      the end thereof;

18              (B) in paragraph (29) by striking the pe-  
19      riod at the end and inserting “; or”; and

20              (C) by inserting after paragraph (29) the  
21      following:

22              “(30) under subsection (a), until a prepetition  
23      default is cured fully in a case under chapter 13 of  
24      this title by actual payment of all arrears as re-  
25      quired by the plan, of the postponement, continu-

1       ation or other similar delay of a prepetition fore-  
2       closure proceeding or sale in accordance with appli-  
3       cable nonbankruptcy law, but nothing herein shall  
4       imply that such postponement, continuation or other  
5       similar delay is a violation of the stay under sub-  
6       section (a).”; and

7               (4) by amending section 1322(b)(2) to read as  
8       follows:

9               “(2) modify the rights of holders of secured  
10       claims, other than a claim secured primarily by a se-  
11       curity interest in property used as the debtor’s prin-  
12       cipal residence at any time during 180 days prior to  
13       the filing of the petition, or of holders of unsecured  
14       claims, or leave unaffected the rights of holders of  
15       any class of claims;”.

16       (f) LIMITATION.—Section 362 of title 11, United  
17       States Code, is amended by adding at the end the fol-  
18       lowing:

19               “(j) If one case commenced under chapter 7, 11, or  
20       13 of this title is dismissed due to the creation of a debt  
21       repayment plan administered by a credit counseling agen-  
22       cy approved pursuant to section 111 of this title, then for  
23       purposes of section 362(c)(3) of this title the subsequent  
24       case commenced under any such chapter shall not be pre-  
25       sumed to be filed not in good faith.”.

1 (g) RETURN OF GOODS SHIPPED.—Section 546(g) of  
2 title 11, United States Code, as added by section 222(a)  
3 of Public Law 103–394, is amended to read as follows:

4 “(h) Notwithstanding the rights and powers of a  
5 trustee under sections 544(a), 545, 547, 549, and 553 of  
6 this title, if the court determines on a motion by the trust-  
7 ee made not later than 120 days after the date of the order  
8 for relief in a case under chapter 11 of this title and after  
9 notice and hearing, that a return is in the best interests  
10 of the estate, the debtor, with the consent of the creditor,  
11 and subject to the prior rights, if any, of third parties in  
12 such goods, may return goods shipped to the debtor by  
13 the creditor before the commencement of the case, and the  
14 creditor may offset the purchase price of such goods  
15 against any claim of the creditor against the debtor that  
16 arose before the commencement of the case.”.

17 **SEC. 303. EXTENSIONS.**

18 Section 302(d)(3) of the Bankruptcy, Judges, United  
19 States Trustees, and Family Farmer Bankruptcy Act of  
20 1986 (28 U.S.C. 581 note) is amended—

21 (1) in subparagraph (A), in the matter fol-  
22 lowing clause (ii), by striking “or October 1, 2002,  
23 whichever occurs first”; and

24 (2) in subparagraph (F)—

25 (A) in clause (i)—

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

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

7 (B) in clause (ii), in the matter following  
8 subclause (II)—

9 (i) by striking “before October 1,  
10 2003, or”; and

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

13 **SEC. 304. LOCAL FILING OF BANKRUPTCY CASES.**

14 Section 1408 of title 28, United States Code, is  
15 amended—

16 (1) by striking “Except” and inserting “(a) Ex-  
17 cept”; and

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

19 “(b) For the purposes of subsection (a), if the debtor  
20 is a corporation, the domicile and residence of the debtor  
21 are conclusively presumed to be where the debtor’s prin-  
22 cipal place of business in the United States is located.”.

23 **SEC. 305. PERMITTING ASSUMPTION OF CONTRACTS.**

24 (a) Section 365(c) of title 11, United States Code,  
25 is amended to read as follows:

1       “(c)(1) The trustee may not assume or assign an ex-  
2       ecutory contract or unexpired lease of the debtor, whether  
3       or not the contract or lease prohibits or restricts assign-  
4       ment of rights or delegation of duties, if—

5               “(A)(i) applicable law excuses a party to the  
6       contract or lease from accepting performance from  
7       or rendering performance to an assignee of the con-  
8       tract or lease, whether or not the contract or lease  
9       prohibits or restricts assignment of rights or delega-  
10      tion of duties; and

11              “(ii) the party does not consent to the assump-  
12      tion or assignment; or

13              “(B) the contract is a contract to make a loan,  
14      or extend other debt financing or financial accom-  
15      modations, to or for the benefit of the debtor, or to  
16      issue a security of the debtor.

17       “(2) Notwithstanding paragraph (1)(A) and applica-  
18      ble nonbankruptcy law, in a case under chapter 11 of this  
19      title, a trustee in a case in which a debtor is a corporation,  
20      or a debtor in possession, may assume an executory con-  
21      tract or unexpired lease of the debtor, whether or not the  
22      contract or lease prohibits or restricts assignment of rights  
23      or delegation of duties.

24       “(3) The trustee may not assume or assign an unex-  
25      pired lease of the debtor of nonresidential real property,

1 whether or not the contract or lease prohibits or restricts  
2 assignment of rights or delegation of duties, if the lease  
3 has been terminated under applicable nonbankruptcy law  
4 before the order for relief.”.

5 (b) Section 365(d) of title 11, United States Code,  
6 is amended by striking paragraphs (5), (6), (7), (8), and  
7 (9), and redesignating paragraph (10) as paragraph (5).

8 (c) Section 365(e) of title 11, United States Code,  
9 is amended to read as follows:

10 “(e)(1) Notwithstanding a provision in an executory  
11 contract or unexpired lease, or in applicable law, an execu-  
12 tory contract or unexpired lease of the debtor may not be  
13 terminated or modified, and any right or obligation under  
14 such contract or lease may not be terminated or modified,  
15 at any time after the commencement of the case solely  
16 because of a provision in such contract or lease that is  
17 conditioned on—

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

20 “(B) the commencement of a case under this  
21 title; or

22 “(C) the appointment of or taking possession by  
23 a trustee in a case under this title or a custodian be-  
24 fore such commencement.

1       “(2) Paragraph (1) does not apply to an executory  
2 contract or unexpired lease of the debtor if the trustee  
3 may not assume or assign, and the debtor in possession  
4 may not assume, the contract or lease by reason of the  
5 provisions of subsection (c) of this section.”.

6       (d) Section 365(f)(1) of title 11, United States Code,  
7 is amended by striking the semicolon and all that follows  
8 through “event”.

9               **TITLE IV SMALL BUSINESS**  
10              **BANKRUPTCY PROVISIONS**

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

13       (a) Section 1125(a)(1) of title 11, United States  
14 Code, is amended by inserting before the semicolon fol-  
15 lowing:

16 “and in determining whether a disclosure statement pro-  
17 vides adequate information, the court shall consider the  
18 complexity of the case, the benefit of additional informa-  
19 tion to creditors and other parties in interest, and the cost  
20 of providing additional information”.

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

23       “(f) Notwithstanding subsection (b)—

1           “(1) the court may determine that the plan  
2           itself provides adequate information and that a separate disclosure statement is not necessary;  
3

4           “(2) the court may approve a disclosure statement submitted on standard forms approved by the  
5           court or adopted pursuant to section 2075 of title  
6           28, United States Code; and  
7

8           “(3)(A) the court may conditionally approve a disclosure statement subject to final approval after  
9           notice and a hearing;  
10

11           “(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure  
12           statement if the debtor provides adequate information to each holder of a claim or interest that is  
13           solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before  
14           the date of the hearing on confirmation of the plan; and  
15  
16  
17  
18

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

20  
21 **SEC. 402. DEFINITIONS.**

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



1           “(51C) ‘small business case’ means a case filed  
2 under chapter 11 of this title in which the debtor is  
3 a small business debtor; and

4           “(51D) ‘small business debtor’ means (A) a  
5 person (including affiliates of such person that are  
6 also debtors under this title) that has aggregate non-  
7 contingent, liquidated secured and unsecured debts  
8 as of the date of the petition or the order for relief  
9 in an amount not more than \$4,000,000 (excluding  
10 debts owed to one or more affiliates or insiders), ex-  
11 cept that if a group of affiliated debtors has aggre-  
12 gate noncontingent liquidated secured and unsecured  
13 debts greater than \$4,000,000 (excluding debt owed  
14 to one or more affiliates or insiders), then no mem-  
15 ber of such group is a small business debtor;”.

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

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

21       The Advisory Committee on Bankruptcy Rules of the  
22 Judicial Conference of the United States shall, within a  
23 reasonable period of time after the date of the enactment  
24 of this Act, propose for adoption standard form disclosure  
25 statements and plans of reorganization for small business

1 debtors (as defined in section 101 of title 11, United  
2 States Code, as amended by this Act), designed to achieve  
3 a practical balance between—

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

7 (2) economy and simplicity for debtors.

8 **SEC. 404. UNIFORM NATIONAL REPORTING REQUIRE-**  
9 **MENTS.**

10 (a) REPORTING REQUIRED.—

11 (1) Title 11, United States Code, is amended by  
12 inserting after section 307 the following:

13 **“§ 308. Debtor reporting requirements**

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

16 “(1) the debtor’s profitability, that is, approxi-  
17 mately how much money the debtor has been earn-  
18 ing or losing during current and recent fiscal peri-  
19 ods;

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

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

25 “(4) whether the debtor is—

1           “(A) in compliance in all material respects  
2           with postpetition requirements imposed by this  
3           title and the Federal Rules of Bankruptcy Pro-  
4           cedure; and

5           “(B) timely filing tax returns and paying  
6           taxes and other administrative claims when due,  
7           and, if not, what the failures are and how, at  
8           what cost, and when the debtor intends to rem-  
9           edy such failures; and

10          “(5) such other matters as are in the best inter-  
11          ests of the debtor and creditors, and in the public  
12          interest in fair and efficient procedures under chap-  
13          ter 11 of this title.”.

14          (2) The table of sections of chapter 3 of title  
15          11, United States Code, is amended by inserting  
16          after the item relating to section 307 the following:

“308. Debtor reporting requirements.”.

17          (b) EFFECTIVE DATE.—The amendments made by  
18          subsection (a) shall take effect 60 days after the date on  
19          which rules are prescribed pursuant to section 2075, title  
20          28, United States Code to establish forms to be used to  
21          comply with section 308 of title 11, United States Code,  
22          as added by subsection (a).

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

3 (a) PROPOSAL OF RULES AND FORMS.—The Advi-  
4 sory Committee on Bankruptcy Rules of the Judicial Con-  
5 ference of the United States shall propose for adoption  
6 amended Federal Rules of Bankruptcy Procedure and Of-  
7 ficial Bankruptcy Forms to be used by small business  
8 debtors to file periodic financial and other reports con-  
9 taining information, including information relating to—

10 (1) the debtor's profitability;

11 (2) the debtor's cash receipts and disburse-  
12 ments; and

13 (3) whether the debtor is timely filing tax re-  
14 turns and paying taxes and other administrative  
15 claims when due.

16 (b) PURPOSE.—The rules and forms proposed under  
17 subsection (a) shall be designed to achieve a practical bal-  
18 ance between—

19 (1) the reasonable needs of the bankruptcy  
20 court, the United States trustee, creditors, and other  
21 parties in interest for reasonably complete informa-  
22 tion;

23 (2) the small business debtor's interest that re-  
24 quired reports be easy and inexpensive to complete;  
25 and

1           (3) the interest of all parties that the required  
2 reports help the small business debtor to understand  
3 its financial condition and plan its future.

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

5           (a) DUTIES IN CHAPTER 11 CASES.—Title 11,  
6 United States Code, is amended by inserting after section  
7 1114 the following:

8 **“§ 1115. Duties of trustee or debtor in possession in**  
9 **small business cases**

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

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

16                         “(A) its most recent balance sheet, state-  
17 ment of operations, cash-flow statement, Fed-  
18 eral income tax return; or

19                         “(B) a statement made under penalty of  
20 perjury that no balance sheet, statement of op-  
21 erations, or cash-flow statement has been pre-  
22 pared and no Federal tax return has been filed;

23                 “(2) attend, through its responsible individual,  
24 meetings scheduled by the court or the United  
25 States trustee, including initial debtor interviews

1 and meetings of creditors convened under section  
2 341 of this title;

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

9 “(4) file all postpetition financial and other re-  
10 ports required by the Federal Rules of Bankruptcy  
11 Procedure or by local rule of the district court;

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

15 “(6)(A) timely file tax returns;

16 “(B) subject to section 363(c)(2) of this title,  
17 timely pay all administrative expense tax claims, ex-  
18 cept those being contested by appropriate pro-  
19 ceedings being diligently prosecuted; and

20 “(C) subject to section 363(c)(2) of this title,  
21 establish one or more separate deposit accounts not  
22 later than 10 business days after the date of order  
23 for relief (or as soon thereafter as possible if all  
24 banks contacted decline the business) and deposit  
25 therein, not later than 1 business day after receipt

1       thereof or a responsible time set by the court, all  
2       taxes payable for periods beginning after the date  
3       the case is commenced that are collected or withheld  
4       by the debtor for governmental units unless the  
5       court waives this requirement after notice and hear-  
6       ing; and

7               “(7) allow the United States trustee, or its des-  
8       ignated representative, to inspect the debtor’s busi-  
9       ness premises, books, and records at reasonable  
10      times, after reasonable prior written notice, unless  
11      notice is waived by the debtor.”.

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

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

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

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

18      “(e) In a small business case—

19               “(1) only the debtor may file a plan until after  
20      90 days after the date of the order for relief, unless  
21      a trustee has been appointed under this chapter, or  
22      unless the court, on request of a party in interest  
23      and after notice and hearing, shortens such time;

24               “(2) the debtor shall file a plan, and any nec-  
25      essary disclosure statement, not later than 90 days

1 after the date of the order for relief, unless the  
2 United States Trustee has appointed under section  
3 1102(a)(1) of this title a committee of unsecured  
4 creditors that the court has determined, before the  
5 90 days has expired, is sufficiently active and rep-  
6 resentative to provide effective oversight of the debt-  
7 or; and

8 “(3) the time periods specified in paragraphs  
9 (1) and (2) of this subsection and the time fixed in  
10 section 1129(e) of this title for confirmation of a  
11 plan, may be extended only as follows:

12 “(A) On request of a party in interest  
13 made within the respective periods, and after  
14 notice and hearing, the court may for cause  
15 grant one or more extensions, cumulatively not  
16 to exceed 60 days, if the movant establishes—

17 “(i) that no cause exists to dismiss or  
18 convert the case or appoint a trustee or ex-  
19 aminer under subparagraphs (A) (I) of  
20 section 1112(b) of this title; and

21 “(ii) that there is a reasonable possi-  
22 bility the court will confirm a plan within  
23 a reasonable time;

24 “(B) On request of a party in interest  
25 made within the respective periods, and after



1 notice and hearing, the court may for cause  
2 grant one or more extensions in excess of those  
3 authorized under subparagraph (A) of this  
4 paragraph, if the movant establishes:

5 “(i) that no cause exists to dismiss or  
6 convert the case or appoint a trustee or ex-  
7 aminer under subparagraphs (A) (I) of  
8 section 1112(b)(3) of this title; and

9 “(ii) that it is more likely than not  
10 that the court will confirm a plan within a  
11 reasonable time; and

12 “(C) a new deadline shall be imposed  
13 whenever an extension is granted.”.

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

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

17 “(e) In a small business case, the debtor shall confirm  
18 a plan not later than 150 days after the date of the order  
19 for relief unless—

20 “(1) the United States Trustee has appointed,  
21 under section 1102(a)(1) of this title, a committee  
22 of unsecured creditors that the court has deter-  
23 mined, before the 150 days has expired, is suffi-  
24 ciently active and representative to provide effective  
25 oversight of the debtor; or

1           “(2) such 150-day period is extended as pro-  
2           vided in section 1121(e)(3) of this title.”.

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

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

6           (1) in paragraph (2)(B)(vi) by striking the pe-  
7           riod at the end and inserting “; and”; and

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

9           “(3) in a small business case, not extend the  
10          time periods specified in sections 1121(e) and  
11          1129(e) of this title except as provided in section  
12          1121(e)(3) of this title.”.

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

14          Section 586(a) of title 28, United States Code, is  
15 amended—

16          (1) in paragraph (3)—

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

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

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

23               “(H) in small business cases (as defined in  
24               section 101 of title 11), performing the addi-

1            tional duties specified in title 11 pertaining to  
2            such cases”;

3            (2) in paragraph (5) by striking “and at the  
4            end”;

5            (3) in paragraph (6) by striking the period at  
6            the end and inserting “; and”; and

7            (4) by inserting after paragraph (7) the fol-  
8            lowing:

9            “(7) in each of such small business cases—

10            “(A) conduct an initial debtor interview as  
11            soon as practicable after the entry of order for  
12            relief but before the first meeting scheduled  
13            under section 341(a) of title 11 at which time  
14            the United States trustee shall begin to inves-  
15            tigate the debtor’s viability, inquire about the  
16            debtor’s business plan, explain the debtor’s obli-  
17            gations to file monthly operating reports and  
18            other required reports, attempt to develop an  
19            agreed scheduling order, and inform the debtor  
20            of other obligations;

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

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

5           “(8) in cases in which the United States trustee  
6           finds material grounds for any relief under section  
7           1112 of title 11, the United States trustee shall  
8           apply promptly to the court for relief.”.

9   **SEC. 411. SCHEDULING CONFERENCES.**

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

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

14           (2) by amending paragraph (1) to read as fol-  
15       lows:

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

19           (3) in paragraph (2) by striking “unless incon-  
20       sistent with another provision of this title or with  
21       applicable Federal Rules of Bankruptcy Procedure”,  
22       and inserting “may”.

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

24       Section 362 of title 11, United States Code, as  
25   amended by section 302, is amended—

1           (1) in subsection (i) as so redesignated by sec-  
2           tion 122—

3                   (A) by striking “An” and inserting “(1)  
4           Except as provided in paragraph (2), an”; and

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

6           “(2) If such violation is based on an action taken by  
7           an entity in the good-faith belief that subsection (h) ap-  
8           plies to the debtor, then recovery under paragraph (1)  
9           against such entity shall be limited to actual damages.”;  
10          and

11                   (2) by inserting after subsection (j), as added  
12          by section 302, the following:

13           “(k)(1) Except as provided in paragraph (2) of this  
14          subsection, the provisions of subsection (a) of this section  
15          shall not apply in a case in which the debtor—

16                   “(A) is a debtor in a case under this title pend-  
17          ing at the time the petition is filed;

18                   “(B) was a debtor in a case under this title  
19          which was dismissed for any reason by an order that  
20          became final in the 2-year period ending on the date  
21          of the order for relief entered with respect to the pe-  
22          tition;

23                   “(C) was a debtor in a case under this title in  
24          which a chapter 11, 12, or 13 plan was confirmed

1 in the 2-year period ending on the date of the order  
2 for relief entered with respect to the petition; or

3 “(D) is an entity that has succeeded to sub-  
4 stantially all of the assets or business of a debtor de-  
5 scribed in subparagraph (A), (B), or (C).

6 “(2) This subsection shall not apply—

7 “(A) to a case initiated by an involuntary peti-  
8 tion filed by a creditor that is not an insider or affil-  
9 iate of the debtor; or

10 “(B) after such time as the debtor, after notice  
11 and a hearing, demonstrates by a preponderance of  
12 the evidence, that the filing of such petition resulted  
13 from circumstances beyond the control of the debtor  
14 and not foreseeable at the time the earlier case was  
15 filed; and that it is more likely than not that the  
16 court will confirm a plan, other than a liquidating  
17 plan, within a reasonable time.”.

18 **SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
19 **VERSION AND APPOINTMENT OF TRUSTEE**  
20 **OR EXAMINER.**

21 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-  
22 VERSION.—Section 1112(b) of title 11, United States  
23 Code, is amended to read as follows:

24 “(b)(1) Except as provided in paragraphs (2) and (4)  
25 of this subsection, and in subsection (c) of this section,

1 on request of a party in interest, and after notice and a  
2 hearing, the court shall convert a case under this chapter  
3 to a case under chapter 7 of this title or dismiss a case  
4 under this chapter, or appoint a trustee or examiner under  
5 section 1104(e) of this title, whichever is in the best inter-  
6 est of creditors and the estate, if the movant establishes  
7 cause.

8       “(2) The court may decline to grant the relief speci-  
9 fied in paragraph (1) of this subsection if the debtor or  
10 another party in interest objects and establishes by a pre-  
11 ponderance of the evidence that—

12               “(A) it is more likely than not that a plan will  
13 be confirmed within a time as fixed by this title or  
14 by order of the court entered pursuant to section  
15 1121(e)(3), or within a reasonable time if no time  
16 has been fixed; and

17               “(B) if the cause is an act or omission of the  
18 debtor that—

19                       “(i) there exists a reasonable justification  
20 for the act or omission; and

21                       “(ii) the act or omission will be cured with-  
22 in a reasonable time fixed by the court not to  
23 exceed 30 days after the court decides the mo-  
24 tion, unless the movant expressly consents to a  
25 continuance for a specific period of time, or

1           compelling circumstances beyond the control of  
2           the debtor justify an extension.

3           “(3) For purposes of this subsection, cause  
4 includes—

5           “(A) substantial or continuing loss to or dimi-  
6           nution of the estate;

7           “(B) gross mismanagement of the estate;

8           “(C) failure to maintain insurance that poses a  
9           material risk to the estate or the public;

10           “(D) unauthorized use of cash collateral harm-  
11           ful to one or more creditors;

12           “(E) failure to comply with an order of the  
13           court;

14           “(F) failure timely to satisfy any filing or re-  
15           porting requirement established by this title or by  
16           any rule applicable to a case under this chapter;

17           “(G) failure to attend the meeting of creditors  
18           convened under section 341(a) of this title;

19           “(H) failure timely to provide information or  
20           attend meetings reasonably requested by the United  
21           States trustee or bankruptcy administrator;

22           “(I) failure timely to pay taxes due after the  
23           date of the order for relief or to file tax returns due  
24           after the order for relief;



1           “(J) failure to file a disclosure statement, or to  
2           file or confirm a plan, within the time fixed by this  
3           title or by order of the court;

4           “(K) failure to pay any fees or charges required  
5           under chapter 123 of title 28, United States Code;

6           “(L) revocation of an order of confirmation  
7           under section 1144 of this title;

8           “(M) inability to effectuate substantial con-  
9           summation of a confirmed plan;

10           “(N) material default by the debtor with re-  
11           spect to a confirmed plan; and

12           “(O) termination of a plan by reason of the oc-  
13           currence of a condition specified in the plan.

14           “(4) The court may grant relief under this subsection  
15           for cause as defined in subparagraphs C, F, G, H, or K  
16           of paragraph 3 of this subsection only upon motion of the  
17           United States trustee or bankruptcy administrator or  
18           upon the courts own motion.

19           “(5) The court shall commence the hearing on any  
20           motion under this subsection not later than 30 days after  
21           filing of the motion, and shall decide the motion within  
22           15 days after commencement of the hearing, unless the  
23           movant expressly consents to a continuance for a specific  
24           period of time or compelling circumstances prevent the

1 court from meeting the time limits established by this  
2 paragraph.”.

3 (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF  
4 TRUSTEE OR EXAMINER.—Section 1104 of title 11,  
5 United States Code, is amended by adding at the end the  
6 following:

7 “(e) If grounds exist to convert or dismiss the case  
8 under section 1112 of this title, the court may instead ap-  
9 point a trustee or examiner, if it determines that such ap-  
10 pointment is in the best interests of creditors and the es-  
11 tate.”.

12 **SEC. 414. STUDY OF OPERATION OF TITLE 11, UNITED**  
13 **STATES CODE, WITH RESPECT TO SMALL**  
14 **BUSINESSES.**

15 Not later than 2 years after the date of the enact-  
16 ment of this Act, the Administrator of the Small Business  
17 Administration, in consultation with the Attorney General,  
18 the Director of the Administrative Office of United States  
19 Trustees, and the Director of the Administrative Office  
20 of the United States Courts, shall—

21 (1) conduct a study to determine—

22 (A) the internal and external factors that  
23 cause small businesses, especially sole propri-  
24 etorships, to become debtors in cases under title  
25 11, United States Code, and that cause certain

1 small businesses to successfully complete cases  
2 under chapter 11 of such title; and

3 (B) how Federal laws relating to bank-  
4 ruptcy may be made more effective and efficient  
5 in assisting small businesses to remain viable;  
6 and

7 (2) submit to the President pro tempore of the  
8 Senate and the Speaker of the House of Representa-  
9 tives a report summarizing that study.

10 **SEC. 415. PAYMENT OF INTEREST.**

11 Section 362(d)(3) of title 11, United States Code, is  
12 amended—

13 (1) by inserting “or 30 days after the court de-  
14 termines that the debtor is subject to this para-  
15 graph, whichever is later” after “90-day period”;  
16 and

17 (2) by amending subparagraph (B) to read as  
18 follows:

19 “(B) the debtor has commenced monthly  
20 payments (which payments may, in the debtor’s  
21 sole discretion, notwithstanding section  
22 363(c)(2) of this title, be made from rents or  
23 other income generated before or after the com-  
24 mencement of the case by or from the property)  
25 to each creditor whose claim is secured by such

1 real estate (other than a claim secured by a  
2 judgment lien or by an unmatured statutory  
3 lien), which payments are in an amount equal  
4 to interest at the then-applicable nondefault  
5 contract rate of interest on the value of the  
6 creditor's interest in the real estate; or”.

7 **TITLE V—MUNICIPAL**  
8 **BANKRUPTCY PROVISIONS**

9 **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
10 **TION.**

11 (a) TECHNICAL AMENDMENT RELATING TO MUNICI-  
12 PALITIES.—Section 921(d) of title 11, United States  
13 Code, is amended by inserting “notwithstanding section  
14 301(b)” before the period at the end.

15 (b) CONFORMING AMENDMENT.—Section 301 of title  
16 11, United States Code, is amended—

17 (1) by inserting “(a)” before “A voluntary”;  
18 and

19 (2) by amending the last sentence to read as  
20 follows:

21 “(b) The commencement of a voluntary case under  
22 a chapter of this title constitutes an order for relief under  
23 such chapter.”.

1 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
2 **TER 9.**

3 Section 901(a) of title 11, United States Code, is  
4 amended—

5 (1) by inserting “555, 556,” after “553,”; and

6 (2) by inserting “559, 560, 561, 562” after  
7 “557.”.

8 **TITLE VI—STREAMLINING THE**  
9 **BANKRUPTCY SYSTEM**

10 **SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING**  
11 **OF CREDITORS.**

12 Section 341(e) of title 11, United States Code, is  
13 amended by inserting after the first sentence the fol-  
14 lowing: “Notwithstanding any local court rule, provision  
15 of a State constitution, any other Federal or State law  
16 that is not a bankruptcy law, or other requirement that  
17 representation at the meeting of creditors under sub-  
18 section (a) be by an attorney, a creditor holding a con-  
19 sumer debt or any representative of the creditor (which  
20 may include an entity or an employee of an entity and  
21 may be a representative for more than one creditor) shall  
22 be permitted to appear at and participate in the meeting  
23 of creditors and activities related thereto in a case under  
24 chapter 7 or 13, either alone or in conjunction with an  
25 attorney for the creditor. Nothing in this subsection shall

1 be construed to require any creditor to be represented by  
2 an attorney at any meeting of creditors.”.

3 **SEC. 602. AUDIT PROCEDURES.**

4 (a) AMENDMENTS.—Section 586 of title 28, United  
5 States Code, is amended—

6 (1) in subsection (a) by amending striking  
7 paragraph (6) to read as follows:

8 “(6) make such reports as the Attorney General  
9 directs, including the results of audits performed  
10 under subsection (f); and”; and

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

12 “(f)(1)(A) The Attorney General shall establish pro-  
13 cedures to determine the accuracy, veracity, and complete-  
14 ness of petitions, schedules, and other information which  
15 the debtor is required to provide under sections 521 and  
16 1322 of title 11, and, if applicable, section 111 of title  
17 11, in individual cases filed under chapter 7 or 13 of such  
18 title. Such audits shall be in accordance with generally ac-  
19 cepted auditing standards and performed by independent  
20 certified public accountants or independent licensed public  
21 accountants.

22 “(B) Those procedures shall—

23 “(i) establish a method of selecting appropriate  
24 qualified persons to contract to perform those au-  
25 dits;

1           “(ii) establish a method of randomly selecting  
2 cases to be audited, except that not less than 1 out  
3 of every 250 cases in each Federal judicial district  
4 shall be selected for audit;

5           “(iii) require audits for schedules of income and  
6 expenses which reflect greater than average  
7 variances from the statistical norm of the district in  
8 which the schedules were filed; and

9           “(iv) establish procedures for providing, not less  
10 frequently than annually, public information con-  
11 cerning the aggregate results of such audits includ-  
12 ing the percentage of cases, by district, in which a  
13 material misstatement of income or expenditures is  
14 reported.

15          “(2) The United States trustee for each district is  
16 authorized to contract with auditors to perform audits in  
17 cases designated by the United States trustee according  
18 to the procedures established under paragraph (1).

19          “(3)(A) The report of each audit conducted under  
20 this subsection shall be filed with the court and trans-  
21 mitted to the United States trustee. Each report shall  
22 clearly and conspicuously specify any material  
23 misstatement of income or expenditures or of assets iden-  
24 tified by the person performing the audit. In any case  
25 where a material misstatement of income or expenditures

1 or of assets has been reported, the clerk of the bankruptcy  
2 court shall give notice of the misstatement to the creditors  
3 in the case.

4 “(B) If a material misstatement of income or expend-  
5 itures or of assets is reported, the United States trustee  
6 shall—

7 “(i) report the material misstatement, if appro-  
8 priate, to the United States Attorney pursuant to  
9 section 3057 of title 18, United States Code; and

10 “(ii) if advisable, take appropriate action, in-  
11 cluding but not limited to commencing an adversary  
12 proceeding to revoke the debtor’s discharge pursuant  
13 to section 727(d) of title 11, United States Code.”.

14 (b) AMENDMENTS TO SECTION 521 OF TITLE 11,  
15 U.S.C.—Section 521(a) of title 11, United States Code,  
16 as amended by section 603, is amended in paragraphs (3)  
17 and (4) by adding “or an auditor appointed pursuant to  
18 section 586 of title 28, United States Code” after “serving  
19 in the case”.

20 (c) AMENDMENTS TO SECTION 727 OF TITLE 11,  
21 U.S.C.—Section 727(d) of title 11, United States Code,  
22 is amended—

23 (1) by deleting “or” at the end of paragraph  
24 (2);



1           (2) by substituting “; or” for the period at the  
2           end of paragraph (3); and

3           (3) by adding the following at the end the fol-  
4           lowing:

5           “(4) the debtor has failed to explain  
6           satisfactorily—

7                   “(A) a material misstatement in an audit  
8                   performed pursuant to section 586(f) of title  
9                   28, United States Code; or

10                   “(B) a failure to make available for inspec-  
11                   tion all necessary accounts, papers, documents,  
12                   financial records, files, and all other papers,  
13                   things, or property belonging to the debtor that  
14                   are requested for an audit conducted pursuant  
15                   to section 586(f) of title 28, United States  
16                   Code.”.

17           (d) **EFFECTIVE DATE.**—The amendments made by  
18           this section shall take effect 18 months after the date of  
19           the enactment of this Act.

20           **SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7**  
21                                   **AND 13 CASES.**

22           (a) **NOTICE.**—Section 342 of title 11, United States  
23           Code, is amended—

24                   (1) in subsection (c)—

1 (A) by striking “, but the failure of such  
2 notice to contain such information shall not in-  
3 validate the legal effect of such notice”; and

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

5 “If the credit agreement between the debtor and the cred-  
6 itor or the last communication before the filing of the peti-  
7 tion in a voluntary case from the creditor to a debtor who  
8 is an individual states an account number of the debtor  
9 which is the current account number of the debtor with  
10 respect to any debt held by the creditor against the debtor,  
11 the debtor shall include such account number in any notice  
12 to the creditor required to be given under this title. If the  
13 creditor has specified to the debtor an address at which  
14 the creditor wishes to receive correspondence regarding  
15 the debtor’s account, any notice to the creditor required  
16 to be given by the debtor under this title shall be given  
17 at such address. For the purposes of this section, ‘notice’  
18 shall include, but shall not be limited to, any correspond-  
19 ence from the debtor to the creditor after the commence-  
20 ment of the case, any statement of the debtor’s intention  
21 under section 521(a)(2) of this title, notice of the com-  
22 mencement of any proceeding in the case to which the  
23 creditor is a party, and any notice of the hearing under  
24 section 1324 of this title.”;

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

1           “(d) At any time, a creditor in a case of an individual  
2 debtor under chapter 7 or 13 may file with the court and  
3 serve on the debtor a notice of the address to be used to  
4 notify the creditor in that case. After 5 days following re-  
5 ceipt of such notice, any notice the court or the debtor  
6 is required to give the creditor shall be given at that ad-  
7 dress.

8           “(e) An entity may file with the court a notice stating  
9 its address for notice in cases under chapters 7 and 13.  
10 After 30 days following the filing of such notice, any notice  
11 in any case filed under chapter 7 or 13 given by the court  
12 shall be to that address unless specific notice is given  
13 under subsection (d) with respect to a particular case.

14           “(f) Notice given to a creditor other than as provided  
15 in this section shall not be effective notice until it has been  
16 brought to the attention of the creditor. If the creditor  
17 has designated a person or department to be responsible  
18 for receiving notices concerning bankruptcy cases and has  
19 established reasonable procedures so that bankruptcy no-  
20 tices received by the creditor will be delivered to such de-  
21 partment or person, notice will not be brought to the at-  
22 tention of the creditor until received by such person or  
23 department. No sanction under section 362(h) of this title  
24 or any other sanction which a court may impose on ac-  
25 count of violations of the stay under section 362(a) of this

1 title or failure to comply with section 542 or 543 of this  
2 title may be imposed on any action of the creditor unless  
3 the action takes place after the creditor has received notice  
4 of the commencement of the case effective under this sec-  
5 tion.”.

6 (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
7 United States Code, as amended by sections 604, 120, and  
8 302, is amended—

9 (1) by inserting “(a)” before “The debtor  
10 shall—”;

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

13 “(1) file—

14 “(A) a list of creditors; and

15 “(B) unless the court orders otherwise—

16 “(i) a schedule of assets and liabil-  
17 ities;

18 “(ii) a schedule of current monthly in-  
19 come and current expenditures prepared in  
20 accordance with section 707(b)(2);

21 “(iii) a statement of the debtor’s fi-  
22 nancial affairs and, if applicable, a  
23 certificate—

24 “(I) of an attorney whose name  
25 is on the petition as the attorney for

1 the debtor or any bankruptcy petition  
2 preparer signing the petition pursuant  
3 to section 110(b)(1) of this title indi-  
4 cating that such attorney or bank-  
5 ruptcy petition preparer delivered to  
6 the debtor any notice required by sec-  
7 tion 342(b) of this title; or

8 “(II) if no attorney for the debt-  
9 or is indicated and no bankruptcy pe-  
10 tition preparer signed the petition, of  
11 the debtor that such notice was ob-  
12 tained and read by the debtor;

13 “(iv) copies of any Federal tax re-  
14 turns, including any schedules or attach-  
15 ments, filed by the debtor for the 3-year  
16 period preceding the order for relief;

17 “(v) copies of all payment advices or  
18 other evidence of payment, if any, received  
19 by the debtor from any employer of the  
20 debtor in the period 60 days prior to the  
21 filing of the petition; and

22 “(vi) a statement disclosing any rea-  
23 sonably anticipated increase in income or  
24 expenditures over the 12-month period fol-  
25 lowing the date of filing;” and

1           (3) by adding at the end the following:

2           “(e)(1) At any time, a creditor, in the case of an indi-  
3           vidual under chapter 7 or 13, may file with the court no-  
4           tice that the creditor requests the petition, schedules, and  
5           a statement of affairs filed by the debtor in the case and  
6           the court shall make those documents available to the  
7           creditor who requests those documents at a reasonable  
8           cost within 5 business days after such request.

9           “(2) At any time, a creditor in a case under chapter  
10          13 may file with the court notice that the creditor requests  
11          the plan filed by the debtor in the case, and the court  
12          shall make such plan available to the creditor who requests  
13          such plan at a reasonable cost and not later than 5 days  
14          after such request.

15          “(f) An individual debtor in a case under chapter 7  
16          or 13 shall file with the court—

17                 “(1) at the time filed with the taxing authority,  
18                 all tax returns, including any schedules or attach-  
19                 ments, with respect to the period from the com-  
20                 mencement of the case until such time as the case  
21                 is closed;

22                 “(2) at the time filed with the taxing authority,  
23                 all tax returns, including any schedules or attach-  
24                 ments, that were not filed with the taxing authority  
25                 when the schedules under subsection (a)(1) were

1 filed with respect to the period that is 3 years before  
2 the order for relief;

3 “(3) any amendments to any of the tax returns,  
4 including schedules or attachments, described in  
5 paragraph (1) or (2); and

6 “(4) in a case under chapter 13, a statement  
7 subject to the penalties of perjury by the debtor of  
8 the debtor’s current monthly income and expendi-  
9 tures in the preceding tax year and current monthly  
10 income less expenditures for the month preceding  
11 the statement prepared in accordance with section  
12 707(b)(2) that shows how the amounts are  
13 calculated—

14 “(A) beginning on the date that is the  
15 later of 90 days after the close of the debtor’s  
16 tax year or 1 year after the order for relief, un-  
17 less a plan has been confirmed; and

18 “(B) thereafter, on or before the date that  
19 is 45 days before each anniversary of the con-  
20 firmation of the plan until the case is closed.

21 “(g)(1) A statement referred to in subsection (f)(4)  
22 shall disclose—

23 “(A) the amount and sources of income of the  
24 debtor;

1           “(B) the identity of any persons responsible  
2           with the debtor for the support of any dependents of  
3           the debtor; and

4           “(C) the identity of any persons who contrib-  
5           uted, and the amount contributed, to the household  
6           in which the debtor resides.

7           “(2) The tax returns, amendments, and statement of  
8           income and expenditures described in paragraph (1) shall  
9           be available to the United States trustee, any bankruptcy  
10          administrator, any trustee, and any party in interest for  
11          inspection and copying, subject to the requirements of  
12          subsection (h).

13          “(h)(1) Not later than 30 days after the date of the  
14          enactment of the Consumer Bankruptcy Reform Act of  
15          1999, the Director of the Administrative Office of the  
16          United States Courts shall establish procedures for safe-  
17          guarding the confidentiality of any tax information re-  
18          quired to be provided under this section.

19          “(2) The procedures under paragraph (1) shall in-  
20          clude reasonable restrictions on creditor access to tax in-  
21          formation that is required to be provided under this sec-  
22          tion to verify creditor identity and to restrict use of the  
23          information except with respect to the case.

24          “(3) Not later than 1 year after the date of the enact-  
25          ment of the Consumer Bankruptcy Reform Act of 1999,



1 the Director of the Administrative Office of the United  
2 States Courts shall prepare, and submit to Congress a re-  
3 port that—

4           “(A) assesses the effectiveness of the proce-  
5 dures under paragraph (1) to provide timely and  
6 sufficient information to creditors concerning the  
7 case; and

8           “(B) if appropriate, includes proposed  
9 legislation—

10                   “(i) to further protect the confidentiality of  
11 tax information or to make it better available to  
12 creditors; and

13                   “(ii) to provide penalties for the improper  
14 use by any person of the tax information re-  
15 quired to be provided under this section.

16           “(i) If requested by the United States trustee or a  
17 trustee serving in the case, the debtor provide a document  
18 that establishes the identity of the debtor, including a  
19 driver’s license, passport, or other document that contains  
20 a photograph of the debtor and such other personal identi-  
21 fying information relating to the debtor that establishes  
22 the identity of the debtor.”.

23           (c) Section 1324 of title 11, United States Code, is  
24 amended—

25                   (1) by inserting “(a)” before “After”; and

1 (2) by inserting at the end thereof—

2 “(c) Whenever a party in interest is given notice of  
3 a hearing on the confirmation or modification of a plan  
4 under this chapter, such notice shall include the informa-  
5 tion provided by the debtor on the most recent statement  
6 filed with the court pursuant to section 521(a)(1)(B)(ii)  
7 or (f)(4) of this title.”.

8 **SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
9 **ULES OR PROVIDE REQUIRED INFORMATION.**

10 Section 521 of title 11, United States Code, as  
11 amended by section 603 is amended by inserting after sub-  
12 section (a) the following:

13 “(b)(1) Notwithstanding section 707(a) of this title,  
14 and subject to paragraph (2), if an individual debtor in  
15 a voluntary case under chapter 7 or 13 fails to file all  
16 of the information required under subsection (a)(1) within  
17 45 days after the filing of the petition commencing the  
18 case, the case shall be automatically dismissed effective  
19 on the 46th day after the filing of the petition.

20 “(2) With respect to a case described in paragraph  
21 (1), any party in interest may request the court to enter  
22 an order dismissing the case. The court shall, if so re-  
23 quested, enter an order of dismissal not later than 5 days  
24 after such request.

1       “(3) Upon request of the debtor made within 45 days  
2 after the filing of the petition commencing a case de-  
3 scribed in paragraph (1), the court may allow the debtor  
4 an additional period not to exceed 45 days to file the infor-  
5 mation required under subsection (a)(1) if the court finds  
6 justification for extending the period for the filing.”.

7 **SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
8 **CONFIRMATION OF THE PLAN.**

9       (a) HEARING.—Section 1324 of title 11, United  
10 States Code, is amended—

11           (1) by striking “After” and inserting the fol-  
12 lowing:

13       “(a) Except as provided in subsection (b) and after”;  
14 and

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

16       “(b) The hearing on confirmation of the plan may  
17 be held not earlier than 20 days, and not later than 45  
18 days, after the meeting of creditors under section 341(a)  
19 of this title.”.

20 **SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
21 **IN CERTAIN CASES.**

22       Title 11, United States Code, is amended—

23           (1) by amending section 1322(d) to read as fol-  
24 lows:

1           “(d) If the current monthly income of the debtor and  
2 the debtor’s spouse combined, when multiplied by 12, is  
3 not less than the highest national median family income  
4 last reported by the Bureau of the Census for a family  
5 of equal or lesser size or, in the case of a household of  
6 one person, not less than the national median household  
7 income for one earner, the plan may not provide for pay-  
8 ments over a period that is longer than 5 years. If the  
9 current monthly income of the debtor and the debtor’s  
10 spouse combined, when multiplied by 12, is less than the  
11 highest national median family income for a family of  
12 equal or lesser size, or in the case of a household of one  
13 person, the national median household income for one  
14 earner, the plan may not provide for payments over a pe-  
15 riod that is longer than 3 years, unless the court, for  
16 cause, approves a longer period, but the court may not  
17 approve a period that is longer than 5 years. Notwith-  
18 standing the foregoing, the national median family income  
19 for a family of more than four individuals shall be the  
20 national median family income last reported by the Bu-  
21 reau of the Census for a family of four individuals plus  
22 \$583 for each additional member of the family.”;

23           (2) in section 1325(b)(1)(B) as amended by  
24           section 130—

1 (A) by striking “three year period” and in-  
2 serting “applicable commitment period”; and

3 (B) by inserting at the end of subpara-  
4 graph (B) the following: “The ‘applicable com-  
5 mitment period’ shall be not less than 5 years  
6 if the current monthly income of the debtor and  
7 the debtor’s spouse combined, when multiplied  
8 by 12, is not less than the highest national me-  
9 dian family income last reported by the Bureau  
10 of the Census for a family of equal or lesser  
11 size, or in the case of a household of one per-  
12 son, the national median household income for  
13 one earner. Notwithstanding the foregoing, the  
14 national median family income for a family of  
15 more than four individuals shall be the national  
16 median family income last reported by the Bu-  
17 reau of the Census for a family of four individ-  
18 uals plus \$583 for each additional member of  
19 the family.”; and

20 (3) in section 1329—

21 (A) by striking in subsection (c) “three  
22 years” and inserting “the applicable commit-  
23 ment period under section 1325(b)(1)(B)”;

24 (B) by inserting at the end of subsection  
25 (c) the following:

1 “The duration period shall be 5 years if the current  
2 monthly income of the debtor and the debtor’s spouse  
3 combined, when multiplied by 12, is not less than the high-  
4 est national median family income last reported by the Bu-  
5 reau of the Census for a family of equal or lesser size or,  
6 in the case of a household of one person, the national me-  
7 dian household income for one earner, as of the date of  
8 the modification and shall be 3 years if the current month-  
9 ly total income of the debtor and the debtor’s spouse com-  
10 bined, when multiplied by 12, is less than the highest na-  
11 tional median family income last reported by the Bureau  
12 of the Census for a family of equal or lesser size or, in  
13 the case of a household of one person, less than the na-  
14 tional median household income for one earner as of the  
15 date of the modification. Notwithstanding the foregoing,  
16 the national median family income for a family of more  
17 than four individuals shall be the national median family  
18 income last reported by the Bureau of the Census for a  
19 family of four individuals plus \$583 for each additional  
20 member of the family.”.

21 **SEC. 607. SENSE OF THE CONGRESS REGARDING EXPAN-**  
22 **SION OF RULE 9011 OF THE FEDERAL RULES**  
23 **OF BANKRUPTCY PROCEDURE.**

24 It is the sense of the Congress that rule 9011 of the  
25 Federal Rules of Bankruptcy Procedure (11 U.S.C. App)

1 should be modified to include a requirement that all docu-  
2 ments (including schedules), signed and unsigned, sub-  
3 mitted to the court or to a trustee by debtors who rep-  
4 resent themselves and debtors who are represented by an  
5 attorney be submitted only after the debtor or the debtor’s  
6 attorney has made reasonable inquiry to verify that the  
7 information contained in such documents is well grounded  
8 in fact, and is warranted by existing law or a good-faith  
9 argument for the extension, modification, or reversal of  
10 existing law.

11 **SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN**  
12 **CHAPTER 11 BANKRUPTCY CASES.**

13 (a) AMENDMENTS.—Section 1930(a)(6) of title 28,  
14 United States Code, is amended—

15 (1) in the first sentence by striking “until the  
16 case is converted or dismissed, whichever occurs  
17 first”; and

18 (2) in the second sentence—

19 (A) by striking “The” and inserting “Until  
20 the plan is confirmed or the case is converted  
21 (whichever occurs first) the”; and

22 (B) by striking “less than \$300,000;” and  
23 inserting “less than \$300,000. Until the case is  
24 converted, dismissed, or closed (whichever oc-

1           curs first and without regard to confirmation of  
2           the plan) the fee shall be”.

3           (b) **DELAYED EFFECTIVE DATE.**—The amendments  
4 made by subsection (a) shall take effect on October 1,  
5 1999.

6 **SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
7 **TENDED TO DEPENDENT STUDENTS.**

8           Not later than 1 year after the date of the enactment  
9 of this Act, the Comptroller General of the United States  
10 shall—

11           (1) conduct a study regarding the impact that  
12 the extension of credit to individuals who are—

13                   (A) claimed as dependents for purposes of  
14 the Internal Revenue Code of 1986; and

15                   (B) enrolled in post-secondary educational  
16 institutions,

17           has on the rate of cases filed under title 11, United  
18 States Code; and

19           (2) submit to the Speaker of the House of Rep-  
20 resentatives and the President pro tempore of the  
21 Senate a report summarizing such study.

22 **SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
23 **CASES.**

24           Section 362(e) of title 11, United States Code, is  
25 amended—



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

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

3 “(2) Notwithstanding paragraph (1), in the case of  
4 an individual filing under chapter 7, 11, or 13, the stay  
5 under subsection (a) shall terminate on the date that is  
6 60 days after a request is made by a party in interest  
7 under subsection (d), unless—

8 “(A) a final decision is rendered by the court  
9 during the 60-day period beginning on the date of  
10 the request; or

11 “(B) that 60-day period is extended—

12 “(i) by agreement of all parties in interest;

13 or

14 “(ii) by the court for such specific period  
15 of time as the court finds is required by for  
16 good cause as described in findings made by the  
17 court.”.

18 **SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**

19 **TER 13.**

20 Section 348(f)(1) of title 11, United States Code, is  
21 amended—

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

24 (2) in subparagraph (B)—

1 (A) by striking “in the converted case,  
2 with allowed secured claims” and inserting  
3 “only in a case converted to chapter 11 or 12  
4 but not in a case converted to chapter 7, with  
5 allowed secured claims in cases under chapters  
6 11 and 12”; and

7 (B) by striking the period and inserting “;  
8 and”; and

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

10 “(C) with respect to cases converted from chap-  
11 ter 13—

12 “(i) the claim of any creditor holding secu-  
13 rity as of the date of the petition shall continue  
14 to be secured by that security unless the full  
15 amount of such claim determined under appli-  
16 cable nonbankruptcy law has been paid in full  
17 as of the date of conversion, notwithstanding  
18 any valuation or determination of the amount  
19 of an allowed secured claim made for the pur-  
20 poses of the chapter 13 proceeding; and

21 “(ii) unless a prebankruptcy default has  
22 been fully cured pursuant to the plan at the  
23 time of conversion, in any proceeding under this  
24 title or otherwise, the default shall have the ef-

1           fect given under applicable nonbankruptcy  
2           law.”.

3 **SEC. 612. BANKRUPTCY APPEALS.**

4           (a) APPEALS.—Title 28, United States Code, is  
5 amended by inserting after section 1292 the following:

6 **“§ 1293. Bankruptcy appeals**

7           “(a) The courts of appeals (other than the United  
8 States Court of Appeals for the Federal Circuit) shall have  
9 jurisdiction of appeals from the following:

10           “(1) Final orders and judgments entered by  
11 bankruptcy courts and district courts in cases under  
12 title 11, in proceedings arising under title 11, and  
13 in proceedings arising in or related to a case under  
14 title 11, including final orders in proceedings regard-  
15 ing the automatic stay of section 362 of title 11,  
16 United States Code.

17           “(2) Interlocutory orders entered by bankruptcy  
18 courts and district courts granting, continuing,  
19 modifying, refusing or dissolving injunctions, or re-  
20 fusing to dissolve or modify injunctions in cases  
21 under title 11, in proceedings arising under title 11,  
22 and in proceedings arising in or related to a case  
23 under title 11, other than interlocutory orders in  
24 proceedings regarding the automatic stay of section  
25 362 of title 11, United States Code.

1           “(3) Interlocutory orders of bankruptcy courts  
2           and district courts entered under section 1104(a) or  
3           1121(d) of title 11, or the refusal to enter an order  
4           under such section.

5           “(4) An interlocutory order of a bankruptcy  
6           court or district court entered in a case under title  
7           11, in a proceeding arising under title 11, or in a  
8           proceeding arising in or related to a case under title  
9           11, if the court of appeals that would have jurisdic-  
10          tion of an appeal of a final order entered in such  
11          case or such proceeding permits, in its discretion,  
12          appeal to be taken from such interlocutory order.

13          “(5) Final decisions, judgments, orders, and de-  
14          crees entered by a bankruptcy appellate panel under  
15          subsection (b) of this section.

16          “(b)(1) The judicial council of a circuit may establish  
17          a bankruptcy appellate panel composed of bankruptcy  
18          judges in the circuit who are appointed by the judicial  
19          council, which panel shall exercise the jurisdiction to re-  
20          view orders and judgments of bankruptcy courts described  
21          in paragraphs (1) through (5) of subsection (a) of this  
22          section unless—

23                 “(A) the appellant elects at the time of filing  
24                 the appeal; or

1           “(B) any other party elects, not later than 10  
2           days after service of the notice of the appeal,  
3 to have such jurisdiction exercised by the court of appeals.

4           “(2) An appeal to be heard by a bankruptcy appellate  
5 panel under paragraph (1) shall be heard by three mem-  
6 bers of the bankruptcy appellate panel, provided that a  
7 member of such panel may not hear an appeal originating  
8 in the district for which such member is appointed or des-  
9 ignated under section 152 of this title.

10          “(3) If authorized by the Judicial Conference of the  
11 United States, the judicial councils of two or more circuits  
12 may establish a joint bankruptcy appellate panel.”.

13          (b) PROCEDURAL RULES.—Until rules of practice  
14 and procedure are promulgated or amended pursuant to  
15 the Rules Enabling Act (28 U.S.C. 2071–77) to govern  
16 appeals to a bankruptcy appellate panel or to a court of  
17 appeals exercising jurisdiction pursuant to section 1293  
18 of title 28, as added by this Act, the following shall apply:

19           (1) A notice of appeal with respect to an appeal  
20 from an order or judgment of a bankruptcy court to  
21 a court of appeals or a bankruptcy appellate panel  
22 must be filed within the time provided in Rule 8002  
23 of the Federal Rules of Bankruptcy Procedure.

24           (2) An appeal to a bankruptcy appellate panel  
25 shall be taken in the manner provided in Part VIII

1 of the Federal Rules of Bankruptcy Procedure and  
2 local court rules.

3 (3) An appeal from an order or judgment of a  
4 bankruptcy court directly to a court of appeals shall  
5 be governed by the rules of practice and procedure  
6 that apply to a civil appeal from a judgment of a  
7 district court exercising original jurisdiction, as if  
8 the bankruptcy court were a district court, except as  
9 provided in paragraph (1) regarding the time to ap-  
10 peal or by local court rules.

11 (4) An appeal to a court of appeals from a deci-  
12 sion, judgment, order, or decree entered by a bank-  
13 ruptcy appellate panel exercising appellate jurisdic-  
14 tion shall be taken in the manner provided by Rule  
15 6(b) of the Federal Rules of Appellate Procedure.

16 (c) REPEALER.—(1) Section 158 of title 28, United  
17 States Code, is repealed.

18 (2) The table of sections of chapter 6 of title 28,  
19 United States Code, is amended by striking the item relat-  
20 ing to section 158.

21 **SEC. 613. GAO STUDY.**

22 (a) STUDY.—Not later than 270 days after the date  
23 of the enactment of this Act, the Comptroller General of  
24 the United States shall conduct a study of the feasibility,  
25 effectiveness, and cost of requiring trustees appointed

1 under title 11, United States Code, or the bankruptcy  
2 courts, to provide to the Office of Child Support Enforce-  
3 ment promptly after the commencement of cases by indi-  
4 vidual debtors under such title, the names and social secu-  
5 rity numbers of such debtors for the purposes of allowing  
6 such Office to determine whether such debtors have out-  
7 standing obligations for child support (as determined on  
8 the basis of information in the Federal Case Registry or  
9 other national database).

10 (b) REPORT.—Not later than 300 days after the date  
11 of the enactment of this Act, the Comptroller General shall  
12 submit to the Speaker of the House of Representatives  
13 and the President pro tempore of the Senate, a report con-  
14 taining the results of the study required by subsection (a).

15 **SEC. 614. COMPENSATING TRUSTEES.**

16 Title 11, United States Code, is amended—

17 (1) in section 104(b)(1) in the material pre-  
18 ceding subparagraph (A)—

19 (A) by striking “and”; and

20 (B) by inserting “, 1326(b)(3)” before  
21 “immediately”;

22 (2) in section 326, by inserting at the end the  
23 following:

24 “(e) Notwithstanding any other provision of this sec-  
25 tion, the court shall allow reasonable compensation under

1 section 330(a) of this title for the services and expenses  
2 of the trustee in taking the actions described in para-  
3 graphs (1) and (2) if—

4 “(1) a trustee in a chapter 7 case commences  
5 a motion to dismiss or convert under section 707(b)  
6 and such motion is granted; or

7 “(2) the trustee demonstrates by a preponder-  
8 ance of the evidence that the case was converted or  
9 dismissed because of the trustee’s actions.”; and

10 (3) in section 1326(b)—

11 (A) in paragraph (1), by striking “and”;

12 (B) in paragraph (2), by striking the pe-  
13 riod at the end thereof and inserting “; and”;  
14 and

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

16 “(3)(A) the amount of the compensation de-  
17 scribed in subclauses (I) and (II) which is unpaid at  
18 the time of each such payment, prorated over the re-  
19 maining duration of the plan—

20 “(i) and which has been allowed in a  
21 case—

22 “(I) converted to this chapter; or

23 “(II) dismissed from chapter 7 in  
24 which the debtor in this case was a debtor,  
25 whether dismissed voluntarily by the debt-



1 or or on motion of the trustee under sec-  
2 tion 707(b);

3 “(ii) but only to the extent such compensa-  
4 tion has been allowed to a chapter 7 trustee  
5 under section 326(e);

6 “(B) the compensation payable to the chapter 7  
7 trustee in the case under this chapter shall not ex-  
8 ceed the greater of the trustee fee allowed pursuant  
9 to section 330 of this title plus—

10 “(i) \$25 per month; or

11 “(ii) the amount payable to unsecured non-  
12 priority creditors as provided by the plan multi-  
13 plied by 5 percent, and the result divided by the  
14 number of months in the plan; and

15 “(C) notwithstanding any other provision of  
16 this title, any such compensation awarded to a chap-  
17 ter 7 trustee in a converted or dismissed case shall  
18 be payable and may be collected in a case under this  
19 chapter—

20 “(i) even if such amount has been dis-  
21 charged in a prior proceeding under this title;  
22 and

23 “(ii) only to the extent permitted by this  
24 section.”.

# 1 **TITLE VII—BANKRUPTCY DATA**

## 2 **SEC. 701. IMPROVED BANKRUPTCY STATISTICS.**

3 (a) AMENDMENT.—Chapter 6 of part I of title 28,  
4 United States Code, is amended by adding at the end the  
5 following:

### 6 **“§ 159. Bankruptcy statistics**

7 “(a) The clerk of each district shall compile statistics  
8 regarding individual debtors with primarily consumer  
9 debts seeking relief under chapters 7, 11, and 13 of title  
10 11. Those statistics shall be in a form prescribed by the  
11 Director of the Administrative Office of the United States  
12 Courts (referred to in this section as the ‘Office’).

13 “(b) The Director shall—

14 “(1) compile the statistics referred to in sub-  
15 section (a);

16 “(2) make the statistics available to the public;  
17 and

18 “(3) not later than October 31, 2000, and an-  
19 nually thereafter, prepare, and submit to Congress a  
20 report concerning the information collected under  
21 subsection (a) that contains an analysis of the infor-  
22 mation.

23 “(c) The compilation required under subsection (b)  
24 shall—

1           “(1) be itemized, by chapter, with respect to  
2 title 11, United States Code;

3           “(2) be presented in the aggregate and for each  
4 district; and

5           “(3) include information concerning—

6           “(A) the total assets and total liabilities of  
7 the debtors described in subsection (a), and in  
8 each category of assets and liabilities, as re-  
9 ported in the schedules prescribed pursuant to  
10 section 2075 of this title and filed by those  
11 debtors;

12           “(B) the current monthly income, and av-  
13 erage income and average expenses of those  
14 debtors as reported on the schedules and state-  
15 ments that each such debtor files under sections  
16 521 and 1322 of title 11, United States Code;

17           “(C) the aggregate amount of debt dis-  
18 charged in the reporting period, determined as  
19 the difference between the total amount of debt  
20 and obligations of a debtor reported on the  
21 schedules and the amount of such debt reported  
22 in categories which are predominantly non-  
23 dischargeable;

1           “(D) the average period of time between  
2 the filing of the petition and the closing of the  
3 case;

4           “(E) for the reporting period—

5                 “(i) the number of cases in which a  
6 reaffirmation was filed; and

7                 “(ii)(I) the total number of reaffirma-  
8 tions filed;

9                 “(II) of those cases in which a reaffir-  
10 mation was filed, the number in which the  
11 debtor was not represented by an attorney;  
12 and

13                 “(III) of those cases, the number of  
14 cases in which the reaffirmation was ap-  
15 proved by the court;

16           “(F) with respect to cases filed under  
17 chapter 13 of title 11, for the reporting  
18 period—

19                 “(i)(I) the number of cases in which a  
20 final order was entered determining the  
21 value of property securing a claim in an  
22 amount less than the amount of the claim;  
23 and

1           “(II) the number of final orders deter-  
2           mining the value of property securing a  
3           claim issued;

4           “(ii) the number of cases dismissed,  
5           the number of cases dismissed for failure  
6           to make payments under the plan, the  
7           number of cases refiled after dismissal,  
8           and the number of cases in which the plan  
9           was completed, separately itemized with re-  
10          spect to the number of modifications made  
11          before completion of the plan, if any; and

12          “(iii) the number of cases in which  
13          the debtor filed another case within the 6  
14          years previous to the filing;

15          “(G) the number of cases in which credi-  
16          tors were fined for misconduct and any amount  
17          of punitive damages awarded by the court for  
18          creditor misconduct; and

19          “(H) the number of cases in which sanc-  
20          tions under rule 9011 of the Federal Rules of  
21          Bankruptcy Procedure were imposed against  
22          debtor’s counsel and damages awarded under  
23          such Rule.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 6 of title 28, United States  
3 Code, is amended by adding at the end the following:

“159. Bankruptcy statistics.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect 18 months after the date of  
6 the enactment of this Act.

7 **SEC. 702. UNIFORM RULES FOR THE COLLECTION OF BANK-**  
8 **RUPTCY DATA.**

9 (a) AMENDMENT.—Title 28, United States Code, is  
10 amended by inserting after section 589a the following:

11 **“§ 589b. Bankruptcy data**

12 “(a) RULES.—The Attorney General shall, within a  
13 reasonable time after the effective date of this section,  
14 issue rules requiring uniform forms for (and from time  
15 to time thereafter to appropriately modify and approve)—

16 “(1) final reports by trustees in cases under  
17 chapters 7, 12, and 13 of title 11, United States  
18 Code; and

19 “(2) periodic reports by debtors in possession or  
20 trustees, as the case may be, in cases under chapter  
21 11 of title 11, United States Code.

22 “(b) REPORTS.—All reports referred to in subsection  
23 (a) shall be designed (and the requirements as to place  
24 and manner of filing shall be established) so as to facili-  
25 tate compilation of data and maximum possible access of

1 the public, both by physical inspection at one or more cen-  
2 tral filing locations, and by electronic access through the  
3 Internet or other appropriate media.

4 “(c) REQUIRED INFORMATION.—The information re-  
5 quired to be filed in the reports referred to in subsection  
6 (b) shall be that which is in the best interests of debtors  
7 and creditors, and in the public interest in reasonable and  
8 adequate information to evaluate the efficiency and practi-  
9 cality of the Federal bankruptcy system. In issuing rules  
10 proposing the forms referred to in subsection (a), the At-  
11 torney General shall strike the best achievable practical  
12 balance between—

13 “(1) the reasonable needs of the public for in-  
14 formation about the operational results of the Fed-  
15 eral bankruptcy system; and

16 “(2) economy, simplicity, and lack of undue  
17 burden on persons with a duty to file reports.

18 “(d) FINAL REPORTS.—Final reports proposed for  
19 adoption by trustees under chapters 7, 12, and 13 of title  
20 11 shall, in addition to such other matters as are required  
21 by law or as the Attorney General in the discretion of the  
22 Attorney General, shall propose, include with respect to  
23 a case under such title—

24 “(1) information about the length of time the  
25 case was pending;

1           “(2) assets abandoned;  
2           “(3) assets exempted;  
3           “(4) receipts and disbursements of the estate;  
4           “(5) expenses of administration;  
5           “(6) claims asserted;  
6           “(7) claims allowed; and  
7           “(8) distributions to claimants and claims dis-  
8           charged without payment,  
9 in each case by appropriate category and, in cases under  
10 chapters 12 and 13 of title 11, date of confirmation of  
11 the plan, each modification thereto, and defaults by the  
12 debtor in performance under the plan.

13           “(e) PERIODIC REPORTS.—Periodic reports proposed  
14 for adoption by trustees or debtors in possession under  
15 chapter 11 of title 11 shall, in addition to such other mat-  
16 ters as are required by law or as the Attorney General,  
17 in the discretion of the Attorney General, shall propose,  
18 include—

19           “(1) information about the standard industry  
20 classification, published by the Department of Com-  
21 merce, for the businesses conducted by the debtor;

22           “(2) length of time the case has been pending;

23           “(3) number of full-time employees as at the  
24 date of the order for relief and at end of each re-  
25 porting period since the case was filed;





1           (1) the national policy of the United States  
2           should be that all data held by bankruptcy clerks in  
3           electronic form, to the extent such data reflects only  
4           public records (as defined in section 107 of title 11,  
5           United States Code), should be released in a usable  
6           electronic form in bulk to the public subject to such  
7           appropriate privacy concerns and safeguards as the  
8           Judicial Conference of the United States may deter-  
9           mine; and

10           (2) there should be established a bankruptcy  
11           data system in which—

12                   (A) a single set of data definitions and  
13                   forms are used to collect data nationwide; and

14                   (B) data for any particular bankruptcy  
15                   case are aggregated in the same electronic  
16                   record.

## 17       **TITLE VIII—BANKRUPTCY TAX** 18                   **PROVISIONS**

### 19       **SEC. 801. TREATMENT OF CERTAIN LIENS.**

20           (a) TREATMENT OF CERTAIN LIENS.—Section 724  
21           of title 11, United States Code, is amended—

22                   (1) in subsection (b), in the matter preceding  
23                   paragraph (1), by inserting “(other than to the ex-  
24                   tent that there is a properly perfected unavoidable  
25                   tax lien arising in connection with an ad valorem tax

1 on real or personal property of the estate)” after  
2 “under this title”;

3 (2) in subsection (b)(2), after “507(a)(1)”, in-  
4 sert “(except that such expenses, other than claims  
5 for wages, salaries, or commissions which arise after  
6 the filing of a petition, shall be limited to expenses  
7 incurred under chapter 7 of this title and shall not  
8 include expenses incurred under chapter 11 of this  
9 title)”;

10 (3) by adding at the end the following:

11 “(e) Before subordinating a tax lien on real or per-  
12 sonal property of the estate, the trustee shall—

13 “(1) exhaust the unencumbered assets of the  
14 estate; and

15 “(2) in a manner consistent with section 506(c)  
16 of this title, recover from property securing an al-  
17 lowed secured claim the reasonable, necessary costs  
18 and expenses of preserving or disposing of that prop-  
19 erty.

20 “(f) Notwithstanding the exclusion of ad valorem tax  
21 liens set forth in this section and subject to the require-  
22 ments of subsection (e)—

23 “(1) claims for wages, salaries, and commis-  
24 sions that are entitled to priority under section  
25 507(a)(3) of this title; or

1           “(2) claims for contributions to an employee  
2           benefit plan entitled to priority under section  
3           507(a)(4) of this title,  
4           may be paid from property of the estate which secures  
5           a tax lien, or the proceeds of such property.”.

6           (b) DETERMINATION OF TAX LIABILITY.—Section  
7           505(a)(2) of title 11, United States Code, is amended—

8           (1) in subparagraph (A), by striking “or” at  
9           the end;

10          (2) in subparagraph (B), by striking the period  
11          at the end and inserting “; or”; and

12          (3) by adding at the end the following:

13          “(C) the amount or legality of any amount aris-  
14          ing in connection with an ad valorem tax on real or  
15          personal property of the estate, if the applicable pe-  
16          riod for contesting or redetermining that amount  
17          under any law (other than a bankruptcy law) has ex-  
18          pired.”.

19   **SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.**

20          (a) EFFECTIVE NOTICE TO GOVERNMENTAL  
21          UNITS.—Section 342 of title 11, United States Code, as  
22          amended by section 603, is amended by adding at the end  
23          the following:

24          “(g) If a debtor lists a governmental unit as a cred-  
25          itor in a list or schedule, any notice required to be given

1 by the debtor under this title, any rule, any applicable law,  
2 or any order of the court, shall identify the department,  
3 agency, or instrumentality through which the debtor is in-  
4 debted. The debtor shall identify (with information such  
5 as a taxpayer identification number, loan, account or con-  
6 tract number, or real estate parcel number, where applica-  
7 ble), and describe the underlying basis for the govern-  
8 mental unit's claim. If the debtor's liability to a govern-  
9 mental unit arises from a debt or obligation owed or in-  
10 curred by another individual, entity, or organization, or  
11 under a different name, the debtor shall identify such indi-  
12 vidual, entity, organization, or name.

13       “(h) The clerk shall keep and update quarterly, in  
14 the form and manner as the Director of the Administra-  
15 tive Office of the United States Courts prescribes, and  
16 make available to debtors, a register in which a govern-  
17 mental unit may designate a safe harbor mailing address  
18 for service of notice in cases pending in the district. A  
19 governmental unit may file a statement with the clerk des-  
20 ignating a safe harbor address to which notices are to be  
21 sent, unless such governmental unit files a notice of  
22 change of address.”.

23       (b) ADOPTION OF RULES PROVIDING NOTICE.—The  
24 Advisory Committee on Bankruptcy Rules of the Judicial  
25 Conference shall, within a reasonable period of time after

1 the date of the enactment of this Act, propose for adoption  
2 enhanced rules for providing notice to State, Federal, and  
3 local government units that have regulatory authority over  
4 the debtor or which may be creditors in the debtor's case.  
5 Such rules shall be reasonably calculated to ensure that  
6 notice will reach the representatives of the governmental  
7 unit, or subdivision thereof, who will be the proper persons  
8 authorized to act upon the notice. At a minimum, the rules  
9 should require that the debtor—

10           (1) identify in the schedules and the notice, the  
11           subdivision, agency, or entity in respect of which  
12           such notice should be received;

13           (2) provide sufficient information (such as case  
14           captions, permit numbers, taxpayer identification  
15           numbers, or similar identifying information) to per-  
16           mit the governmental unit or subdivision thereof, en-  
17           titled to receive such notice, to identify the debtor or  
18           the person or entity on behalf of which the debtor  
19           is providing notice where the debtor may be a suc-  
20           cessor in interest or may not be the same as the per-  
21           son or entity which incurred the debt or obligation;  
22           and

23           (3) identify, in appropriate schedules, served to-  
24           gether with the notice, the property in respect of  
25           which the claim or regulatory obligation may have

1 arisen, if any, the nature of such claim or regulatory  
2 obligation and the purpose for which notice is being  
3 given.

4 (c) EFFECT OF FAILURE OF NOTICE.—Section 342  
5 of title 11, United States Code, as amended by section  
6 603 and subsection (a), is amended by adding at the end  
7 the following:

8 “(i) A notice that does not comply with subsections  
9 (d) and (e) shall not be effective unless the debtor dem-  
10 onstrates, by clear and convincing evidence, that timely  
11 notice was given in a manner reasonably calculated to sat-  
12 isfy the requirements of this section was given, and that—

13 “(1) either the notice was timely sent to the  
14 safe harbor address provided in the register main-  
15 tained by the clerk of the district in which the case  
16 was pending for such purposes; or

17 “(2) no safe harbor address was provided in  
18 such list for the governmental unit and that an offi-  
19 cer of the governmental unit who is responsible for  
20 the matter or claim had actual knowledge of the case  
21 in sufficient time to act.”.

22 **SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF**  
23 **TAXES.**

24 Section 505(b) of title 11, United States Code, is  
25 amended by striking “Unless” at the beginning of the sec-

1 ond sentence thereof and inserting “If the request is made  
2 substantially in the manner designated by the govern-  
3 mental unit and unless”.

4 **SEC. 804. RATE OF INTEREST ON TAX CLAIMS.**

5 (a) AMENDMENT.—Chapter 5 of title 11, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 **“§ 511. Rate of interest on tax claims**

9 “If any provision of this title requires the payment  
10 of interest on a tax claim or requires the payment of inter-  
11 est to enable a creditor to receive the present value of the  
12 allowed amount of a tax claim, the rate of interest shall  
13 be as follows:

14 “(1) In the case of ad valorem tax claims,  
15 whether secured or unsecured, other unsecured tax  
16 claims where interest is required to be paid under  
17 section 726(a)(5) of this title, secured tax claims,  
18 and administrative tax claims paid under section  
19 503(b)(1) of this title, the rate shall be determined  
20 under applicable nonbankruptcy law.

21 “(2) In the case of all other tax claims, the  
22 minimum rate of interest shall be the Federal short-  
23 term rate rounded to the nearest full percent, deter-  
24 mined under section 1274(d) of the Internal Rev-  
25 enue Code of 1986, plus 3 percentage points.



1 “(A) In the case of claims for Federal in-  
 2 come taxes, such rate shall be subject to any  
 3 adjustment that may be required under section  
 4 6621(d) of the Internal Revenue Code of 1986.

5 “(B) In the case of taxes paid under a con-  
 6 firmed plan or reorganization, such rate shall  
 7 be determined as of the calendar month in  
 8 which the plan is confirmed.”.

9 (b) CONFORMING AMENDMENT.—The table of sec-  
 10 tions of chapter 5 of title 11, United States Code, is  
 11 amended by inserting after the item relating to section  
 12 510 the following:

“511. Rate of interest on tax claims.”.

13 **SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERI-**  
 14 **ODS.**

15 Section 507(a)(8)(A) of title 11, United States Code,  
 16 as so redesignated, is amended—

17 (1) in clause (i) by inserting after “petition”  
 18 and before the semicolon “, plus any time, plus 6  
 19 months, during which the stay of proceedings was in  
 20 effect in a prior case under this title”; and

21 (2) amend clause (ii) to read as follows:

22 “(ii) assessed within 240 days before  
 23 the date of the filing of the petition, exclu-  
 24 sive of—

1           “(I) any time plus 30 days dur-  
2           ing which an offer in compromise with  
3           respect of such tax, was pending or in  
4           effect during such 240-day period;

5           “(II) any time plus 30 days dur-  
6           ing which an installment agreement  
7           with respect of such tax was pending  
8           or in effect during such 240-day pe-  
9           riod, up to 1 year; and

10           “(III) any time plus 6 months  
11           during which a stay of proceedings  
12           against collections was in effect in a  
13           prior case under this title during such  
14           240-day period.”.

15 **SEC. 806. PRIORITY PROPERTY TAXES INCURRED.**

16           Section 507(a)(8)(B) of title 11, United States Code,  
17 is amended by striking “assessed” and inserting “in-  
18 curred”.

19 **SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND**  
20 **OTHER TAXES.**

21           Section 1328(a)(2) of title 11, United States Code,  
22 is amended by inserting “(1),” after “paragraph”.

23 **SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

24           Section 1141(d) of title 11, United States Code, is  
25 amended by adding at the end the following:

1       “(6) Notwithstanding the provisions of paragraph  
2 (1), the confirmation of a plan does not discharge a debtor  
3 which is a corporation from any debt for a tax or customs  
4 duty with respect to which the debtor made a fraudulent  
5 return or willfully attempted in any manner to evade or  
6 defeat such tax.”.

7 **SEC. 809. STAY OF TAX PROCEEDINGS.**

8       (a) SECTION 362 STAY LIMITED TO PREPETITION  
9 TAXES.—Section 362(a)(8) of title 11, United States  
10 Code, is amended by striking the period at the end and  
11 inserting “, in respect of a tax liability for a taxable period  
12 ending before the order for relief.”.

13       (b) APPEAL OF TAX COURT DECISIONS PER-  
14 MITTED.—Section 362(b)(9) of title 11, United States  
15 Code, is amended—

16               (1) in subparagraph (C) by striking “or” at the  
17 end;

18               (2) in subparagraph (D) by striking the period  
19 at the end and inserting “; or”; and

20               (3) by adding at the end the following:

21                       “(E) the appeal of a decision by a court or  
22 administrative tribunal which determines a tax  
23 liability of the debtor without regard to whether  
24 such determination was made prepetition or  
25 postpetition.”.

1 **SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**  
2 **CASES.**

3 Section 1129(a)(9) of title 11, United States Code,  
4 is amended—

5 (1) in subparagraph (B) by striking “and” at  
6 the end; and

7 (2) in subparagraph (C)—

8 (A) by striking “deferred cash payments,  
9 over a period not exceeding six years after the  
10 date of assessment of such claim,” and insert-  
11 ing “regular installment payments in cash, but  
12 in no case with a balloon provision, and no  
13 more than three months apart, beginning no  
14 later than the effective date of the plan and  
15 ending on the earlier of five years after the pe-  
16 tition date or the last date payments are to be  
17 made under the plan to unsecured creditors,”;  
18 and

19 (B) by striking the period at the end and  
20 inserting “; and”; and

21 (3) by adding at the end the following:

22 “(D) with respect to a secured claim which  
23 would be described in section 507(a)(8) of this  
24 title but for its secured status, the holder of  
25 such claim will receive on account of such claim  
26 cash payments of not less than is required in

1           subparagraph (C) and over a period no greater  
2           than is required in such subparagraph.”.

3 **SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
4                                   **ITED.**

5           Section 545(2) of title 11, United States Code, is  
6 amended by striking the semicolon at the end and insert-  
7 ing “, except where such purchaser is a purchaser de-  
8 scribed in section 6323 of the Internal Revenue Code of  
9 1986 or similar provision of State or local law;”.

10 **SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
11                                   **NESS.**

12           (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
13 title 28, United States Code, is amended—

14                   (1) by inserting “(a)” before “Any”; and

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

16           “(b) Such taxes shall be paid when due in the conduct  
17 of such business unless—

18                   “(1) the tax is a property tax secured by a lien  
19 against property that is abandoned within a reason-  
20 able time after the lien attaches, by the trustee of  
21 a bankruptcy estate, pursuant to section 554 of title  
22 11, United States Code; or

23                   “(2) payment of the tax is excused under a spe-  
24 cific provision of title 11, United States Code.

1       “(c) In a case pending under chapter 7 of title 11,  
2 payment of a tax may be deferred until final distribution  
3 is made under section 726 of title 11, United States Code,  
4 if—

5               “(1) the tax was not incurred by a trustee duly  
6 appointed under chapter 7 of title 11, United States  
7 Code; or

8               “(2) before the due date of the tax, the court  
9 has made a finding of probable insufficiency of  
10 funds of the estate to pay in full the administrative  
11 expenses allowed under section 503(b) of title 11  
12 that have the same priority in distribution under  
13 section 726(b) of title 11 as such tax.”.

14       (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
15 Section 503(b)(1)(B) of title 11, United States Code, is  
16 amended in clause (i) by inserting after “estate,” and be-  
17 fore “except” the following: “whether secured or unse-  
18 cured, including property taxes for which liability is in rem  
19 only, in personam or both,”.

20       (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE  
21 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of  
22 title 11, United States Code, is amended by adding at the  
23 end the following:

24               “(D) notwithstanding the requirements of sub-  
25 section (a) of this section, a governmental unit shall

1 not be required to file a request for the payment of  
2 a claim described in subparagraph (B) or (C);”.

3 (d) PAYMENT OF TAXES AND FEES AS SECURED  
4 CLAIMS.—Section 506 of title 11, United States Code, is  
5 amended—

6 (1) in subsection (b) by inserting “or State  
7 statute” after “agreement”; and

8 (2) in subsection (c) by inserting “, including  
9 the payment of all ad valorem property taxes in re-  
10 spect of the property” before the period at the end.

11 **SEC. 813. TARDILY FILED PRIORITY TAX CLAIMS.**

12 Section 726(a)(1) of title 11, United States Code, is  
13 amended by striking “before the date on which the trustee  
14 commences distribution under this section” and inserting  
15 “on or before the earlier of 10 days after the mailing to  
16 creditors of the summary of the trustee’s final report or  
17 the date on which the trustee commences final distribution  
18 under this section”.

19 **SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AU-**  
20 **THORITIES.**

21 Section 523(a)(1)(B) of title 11, United States Code,  
22 is amended—

23 (1) by inserting “or equivalent report or no-  
24 tice,” after “a return,”;

25 (2) in clause (i)—

1 (A) by inserting “or given” after “filed”;

2 and

3 (B) by striking “or” at the end;

4 (3) in clause (ii)—

5 (A) by inserting “or given” after “filed”;

6 and

7 (B) by inserting “, report, or notice” after

8 “return”; and

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

10 “(iii) for purposes of this subsection,

11 a return—

12 “(I) must satisfy the require-

13 ments of applicable nonbankruptcy

14 law, and includes a return prepared

15 pursuant to section 6020(a) of the In-

16 ternal Revenue Code of 1986, or simi-

17 lar State or local law, or a written

18 stipulation to a judgment entered by a

19 nonbankruptcy tribunal, but does not

20 include a return made pursuant to

21 section 6020(b) of the Internal Rev-

22 enue Code of 1986, or similar State

23 or local law; and



1                                   “(II) must have been filed in a  
2                                   manner permitted by applicable non-  
3                                   bankruptcy law; or”.

4 **SEC. 815. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
5 **PAID TAXES.**

6           Section 505(b) of title 11, United States Code, is  
7 amended in the second sentence by inserting “the estate,”  
8 after “misrepresentation,”.

9 **SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
10 **FIRM CHAPTER 13 PLANS.**

11           (a) FILING OF PREPETITION TAX RETURNS RE-  
12 QUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of  
13 title 11, United States Code, as amended by section 140,  
14 is amended—

15                   (1) in paragraph (6) by striking “and” at the  
16                   end;

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

19                   (3) by adding at the end the following:

20                   “(8) if the debtor has filed all Federal, State,  
21                   and local tax returns as required by section 1308 of  
22                   this title.”.

23           (b) ADDITIONAL TIME PERMITTED FOR FILING TAX  
24 RETURNS.—(1) Chapter 13 of title 11, United States

1 Code, as amended by section 135, is amended by adding  
2 at the end the following:

3 **“§ 1308. Filing of prepetition tax returns**

4 “(a) On or before the day prior to the day on which  
5 the first meeting of the creditors is convened under section  
6 341(a) of this title, the debtor shall have filed with appro-  
7 priate tax authorities all tax returns for all taxable periods  
8 ending in the 3-year period ending on the date of filing  
9 of the petition.

10 “(b) If the tax returns required by subsection (a)  
11 have not been filed by the date on which the first meeting  
12 of creditors is convened under section 341(a) of this title,  
13 the trustee may continue such meeting for a reasonable  
14 period of time, to allow the debtor additional time to file  
15 any unfiled returns, but such additional time shall be no  
16 more than—

17 “(1) for returns that are past due as of the  
18 date of the filing of the petition, 120 days from such  
19 date;

20 “(2) for returns which are not past due as of  
21 the date of the filing of the petition, the later of 120  
22 days from such date or the due date for such re-  
23 turns under the last automatic extension of time for  
24 filing such returns to which the debtor is entitled,

1 and for which request has been timely made, accord-  
2 ing to applicable nonbankruptcy law; and

3 “(3) upon notice and hearing, and order en-  
4 tered before the lapse of any deadline fixed accord-  
5 ing to this subsection, where the debtor dem-  
6 onstrates, by clear and convincing evidence, that the  
7 failure to file the returns as required is because of  
8 circumstances beyond the control of the debtor, the  
9 court may extend the deadlines set by the trustee as  
10 provided in this subsection for—

11 “(A) a period of no more than 30 days for  
12 returns described in paragraph (1) of this sub-  
13 section; and

14 “(B) for no more than the period of time  
15 ending on the applicable extended due date for  
16 the returns described in paragraph (2).

17 “(c) For purposes of this section only, a return in-  
18 cludes a return prepared pursuant to section 6020 (a) or  
19 (b) of the Internal Revenue Code of 1986 or similar State  
20 or local law, or a written stipulation to a judgment entered  
21 by a nonbankruptcy tribunal.”.

22 (2) The table of sections of chapter 13 of title 11,  
23 United States Code, is amended by inserting after the  
24 item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”.

1           (c) DISMISSAL OR CONVERSION ON FAILURE TO  
2 COMPLY.—Section 1307 of title 11, United States Code,  
3 is amended—

4           (1) by redesignating subsections (e) and (f) as  
5 subsections (f) and (g), respectively; and

6           (2) by inserting after subsection (d) the fol-  
7 lowing:

8           “(e) Upon the failure of the debtor to file tax returns  
9 under section 1308 of this title, on request of a party in  
10 interest or the United States trustee and after notice and  
11 a hearing, the court shall dismiss a case or convert a case  
12 under this chapter to a case under chapter 7 of this title,  
13 whichever is in the best interests of creditors and the es-  
14 tate.”.

15          (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
16 title 11, United States Code, is amended by striking the  
17 period at the end and inserting “, and except that in a  
18 case under chapter 13 of this title, a claim of a govern-  
19 mental unit for a tax in respect of a return filed under  
20 section 1308 of this title shall be timely if it is filed on  
21 or before 60 days after such return or returns were filed  
22 as required.”.

23          (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
24 CONFIRMATION.—It is the sense of the Congress that the  
25 Advisory Committee on Bankruptcy Rules of the Judicial

1 Conference should, within a reasonable period of time  
2 after the date of the enactment of this Act, propose for  
3 adoption amended Federal Rules of Bankruptcy Proce-  
4 dure which provide that—

5           (1) notwithstanding the provisions of Rule  
6           3015(f), in cases under chapter 13 of title 11,  
7           United States Code, a governmental unit may object  
8           to the confirmation of a plan on or before 60 days  
9           after the debtor files all tax returns required under  
10          sections 1308 and 1325(a)(7) of title 11, United  
11          States Code; and

12          (2) in addition to the provisions of Rule 3007,  
13          in a case under chapter 13 of title 11, United States  
14          Code, no objection to a tax in respect of a return re-  
15          quired to be filed under such section 1308 shall be  
16          filed until such return has been filed as required.

17 **SEC. 817. STANDARDS FOR TAX DISCLOSURE.**

18          Section 1125(a) of title 11, United States Code, is  
19 amended in paragraph (1)—

20           (1) by inserting after “records,” the following:  
21           “including a full discussion of the potential material  
22           Federal, State, and local tax consequences of the  
23           plan to the debtor, any successor to the debtor, and  
24           a hypothetical investor domiciled in the State in  
25           which the debtor resides or has its principal place of

1 business typical of the holders of claims or interests  
2 in the case,”;

3 (2) by inserting “such” after “enable”; and

4 (3) by striking “reasonable” where it appears  
5 after “hypothetical” and by striking “typical of hold-  
6 ers of claims or interests” after “investor”.

7 **SEC. 818. SETOFF OF TAX REFUNDS.**

8 Section 362(b) of title 11, United States Code, as  
9 amended by sections 118, 132, 136, and 203, is  
10 amended—

11 (1) in paragraph (29) by striking “or”;

12 (2) in paragraph (30) by striking the period at  
13 the end and inserting “; or”; and

14 (3) by inserting after paragraph (30) the fol-  
15 lowing:

16 “(31) under subsection (a) of the setoff of an  
17 income tax refund, by a governmental unit, in re-  
18 spect of a taxable period which ended before the  
19 order for relief against an income tax liability for a  
20 taxable period which also ended before the order for  
21 relief, unless—

22 “(A) prior to such setoff, an action to de-  
23 termine the amount or legality of such tax li-  
24 ability under section 505(a) was commenced; or

1           “(B) where the setoff of an income tax re-  
 2           fund is not permitted because of a pending ac-  
 3           tion to determine the amount or legality of a  
 4           tax liability, the governmental unit may hold  
 5           the refund pending the resolution of the ac-  
 6           tion.”.

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

9           **SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
 10           **UNITED STATES CODE.**

11           (a) IN GENERAL.—Title 11, United States Code, is  
 12           amended by inserting after chapter 13 the following:

13           **“CHAPTER 15—ANCILLARY AND OTHER**  
 14           **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.

**1 “§ 1501. Purpose and scope of application**

2           “(a) The purpose of this chapter is to incorporate the  
3 Model Law on Cross-Border Insolvency so as to provide  
4 effective mechanisms for dealing with cases of cross-border  
5 insolvency with the objectives of—

6                   “(1) cooperation between—

7                           “(A) United States courts, United States  
8 trustees, trustees, examiners, debtors, and debtors  
9 in possession; and

10                           “(B) the courts and other competent au-  
11 thorities of foreign countries involved in cross-  
12 border insolvency cases;



1           “(2) greater legal certainty for trade and in-  
2           vestment;

3           “(3) fair and efficient administration of cross-  
4           border insolvencies that protects the interests of all  
5           creditors, and other interested entities, including the  
6           debtor;

7           “(4) protection and maximization of the value  
8           of the debtor’s assets; and

9           “(5) facilitation of the rescue of financially  
10          troubled businesses, thereby protecting investment  
11          and preserving employment.

12          “(b) This chapter applies where—

13               “(1) assistance is sought in the United States  
14               by a foreign court or a foreign representative in con-  
15               nection with a foreign proceeding;

16               “(2) assistance is sought in a foreign country in  
17               connection with a case under this title;

18               “(3) a foreign proceeding and a case under this  
19               title with respect to the same debtor are taking place  
20               concurrently; or

21               “(4) creditors or other interested persons in a  
22               foreign country have an interest in requesting the  
23               commencement of, or participating in, a case or pro-  
24               ceeding under this title.

25          “(c) This chapter does not apply to—

1           “(1) a proceeding concerning an entity, other  
2 than a foreign insurance company, identified by ex-  
3 clusion in subsection 109(b);

4           “(2) an individual, or to an individual and such  
5 individual’s spouse, who have debts within the limits  
6 specified in section 109(e) and who are citizens of  
7 the United States or aliens lawfully admitted for  
8 permanent residence in the United States; or

9           “(3) an entity subject to a proceeding under the  
10 Securities Investor Protection Act, a stockbroker  
11 subject to subchapter III of chapter 7 of this title,  
12 or a commodity broker subject to subchapter IV of  
13 chapter 7 of this title.

14           “(d) The court may not grant relief under this chap-  
15 ter with respect to any deposit, escrow, trust fund, or  
16 other security required or permitted under any applicable  
17 State insurance law or regulation for the benefit of claim  
18 holders in the United States.

19           “SUBCHAPTER I—GENERAL PROVISIONS

20           “§ 1502. Definitions

21           “For the purposes of this chapter, the term—

22           “(1) ‘debtor’ means an entity that is the subject  
23 of a foreign proceeding;

1           “(2) ‘establishment’ means any place of oper-  
2           ations where the debtor carries out a nontransitory  
3           economic activity;

4           “(3) ‘foreign court’ means a judicial or other  
5           authority competent to control or supervise a foreign  
6           proceeding;

7           “(4) ‘foreign main proceeding’ means a foreign  
8           proceeding taking place in the country where the  
9           debtor has the center of its main interests;

10          “(5) ‘foreign nonmain proceeding’ means a for-  
11          eign proceeding, other than a foreign main pro-  
12          ceeding, taking place in a country where the debtor  
13          has an establishment;

14          “(6) ‘trustee’ includes a trustee, a debtor in  
15          possession in a case under any chapter of this title,  
16          or a debtor under chapter 9 of this title; and

17          “(7) ‘within the territorial jurisdiction of the  
18          United States’ when used with reference to property  
19          of a debtor refers to tangible property located within  
20          the territory of the United States and intangible  
21          property deemed under applicable nonbankruptcy  
22          law to be located within that territory, including any  
23          property subject to attachment or garnishment that  
24          may properly be seized or garnished by an action in  
25          a Federal or State court in the United States.

1 **“§ 1503. International obligations of the United States**

2 “To the extent that this chapter conflicts with an ob-  
3 ligation of the United States arising out of any treaty or  
4 other form of agreement to which it is a party with one  
5 or more other countries, the requirements of the treaty  
6 or agreement prevail.

7 **“§ 1504. Commencement of ancillary case**

8 “A case under this chapter is commenced by the filing  
9 of a petition for recognition of a foreign proceeding under  
10 section 1515.

11 **“§ 1505. Authorization to act in a foreign country**

12 “A trustee or another entity (including an examiner)  
13 may be authorized by the court to act in a foreign country  
14 on behalf of an estate created under section 541. An entity  
15 authorized to act under this section may act in any way  
16 permitted by the applicable foreign law.

17 **“§ 1506. Public policy exception**

18 “Nothing in this chapter prevents the court from re-  
19 fusing to take an action governed by this chapter if the  
20 action would be manifestly contrary to the public policy  
21 of the United States.

22 **“§ 1507. Additional assistance**

23 “(a) Subject to the specific limitations stated else-  
24 where in this chapter the court, upon recognition of a for-  
25 eign proceeding, the court may provide additional assist-

1 ance to a foreign representative under this title or under  
2 other laws of the United States.

3 “(b) In determining whether to provide additional as-  
4 sistance under this title or under other laws of the United  
5 States, the court shall consider whether such additional  
6 assistance, consistent with the principles of comity, will  
7 reasonably assure—

8 “(1) just treatment of all holders of claims  
9 against or interests in the debtor’s property;

10 “(2) protection of claim holders in the United  
11 States against prejudice and inconvenience in the  
12 processing of claims in such foreign proceeding;

13 “(3) prevention of preferential or fraudulent  
14 dispositions of property of the debtor;

15 “(4) distribution of proceeds of the debtor’s  
16 property substantially in accordance with the order  
17 prescribed by this title; and

18 “(5) if appropriate, the provision of an oppor-  
19 tunity for a fresh start for the individual that such  
20 foreign proceeding concerns.

21 **“§ 1508. Interpretation**

22 “In interpreting this chapter, the court shall consider  
23 its international origin, and the need to promote an appli-  
24 cation of this chapter that is consistent with the applica-  
25 tion of similar statutes adopted by foreign jurisdictions.

1 “SUBCHAPTER II—ACCESS OF FOREIGN REP-  
2 RESENTATIVES AND CREDITORS TO THE  
3 COURT

4 “§ 1509. **Right of direct access**

5 “(a) A foreign representative may commence a case  
6 under section 1504 of this title by filing with the court  
7 a petition for recognition of a foreign proceeding under  
8 section 1515 of this title.

9 “(b) If the court grants recognition under section  
10 1515 of this title, and subject to any limitations that the  
11 court may impose consistent with the policy of this  
12 chapter—

13 “(1) the foreign representative has the capacity  
14 to sue and be sued in a court in the United States;

15 “(2) the foreign representative may apply di-  
16 rectly to a court in the United States for appropriate  
17 relief in that court; and

18 “(3) a court in the United States shall grant  
19 comity or cooperation to the foreign representative.

20 “(c) A request for comity or cooperation by a foreign  
21 representative in a court in the United States shall be ac-  
22 companied by a certified copy of an order granting rec-  
23 ognition under section 1517 of this title.

24 “(d) If the court denies recognition under this chap-  
25 ter, the court may issue any appropriate order necessary

1 to prevent the foreign representative from obtaining com-  
2 ity or cooperation from courts in the United States.

3 “(e) Whether or not the court grants recognition, and  
4 subject to sections 306 and 1510 of this title, a foreign  
5 representative is subject to applicable nonbankruptcy law.

6 “(f) Notwithstanding any other provision of this sec-  
7 tion, the failure of a foreign representative to commence  
8 a case or to obtain recognition under this chapter does  
9 not affect any right the foreign representative may have  
10 to sue in a court in the United State to collect or recover  
11 a claim which is the property of the debtor.”.

12 **“§ 1510. Limited jurisdiction**

13 “The sole fact that a foreign representative files a  
14 petition under section 1515 does not subject the foreign  
15 representative to the jurisdiction of any court in the  
16 United States for any other purpose.

17 **“§ 1511. Commencement of case under section 301 or**  
18 **303**

19 “(a) Upon recognition, a foreign representative may  
20 commence—

21 “(1) an involuntary case under section 303; or

22 “(2) a voluntary case under section 301 or 302,  
23 if the foreign proceeding is a foreign main pro-  
24 ceeding.

1 “(b) The petition commencing a case under sub-  
2 section (a) must be accompanied by certified copy of an  
3 order granting recognition. The court where the petition  
4 for recognition has been filed must be advised of the for-  
5 eign representative’s intent to commence a case under sub-  
6 section (a) prior to such commencement.

7 **“§ 1512. Participation of a foreign representative in a**  
8 **case under this title**

9 “Upon recognition of a foreign proceeding, the for-  
10 eign representative in that proceeding is entitled to par-  
11 ticipate as a party in interest in a case regarding the debt-  
12 or under this title.

13 **“§ 1513. Access of foreign creditors to a case under**  
14 **this title**

15 “(a) Foreign creditors have the same rights regarding  
16 the commencement of, and participation in, a case under  
17 this title as domestic creditors.

18 “(b)(1) Subsection (a) does not change or codify  
19 present law as to the priority of claims under section 507  
20 or 726 of this title, except that the claim of a foreign cred-  
21 itor under those sections shall not be given a lower priority  
22 than that of general unsecured claims without priority  
23 solely because the holder of such claim is a foreign cred-  
24 itor.







1           “(1) a certified copy of the decision com-  
2           mencing the foreign proceeding and appointing the  
3           foreign representative;

4           “(2) a certificate from the foreign court affirm-  
5           ing the existence of the foreign proceeding and of  
6           the appointment of the foreign representative; or

7           “(3) in the absence of evidence referred to in  
8           paragraphs (1) and (2), any other evidence accept-  
9           able to the court of the existence of the foreign pro-  
10          ceeding and of the appointment of the foreign rep-  
11          resentative.

12          “(c) A petition for recognition shall also be accom-  
13          panied by a statement identifying all foreign proceedings  
14          with respect to the debtor that are known to the foreign  
15          representative.

16          “(d) The documents referred to in paragraphs (1)  
17          and (2) of subsection (b) must be translated into English.  
18          The court may require a translation into English of addi-  
19          tional documents.

20          **“§ 1516. Presumptions concerning recognition**

21          “(a) If the decision or certificate referred to in section  
22          1515(b) indicates that the foreign proceeding is a foreign  
23          proceeding as defined in section 101 and that the person  
24          or body is a foreign representative as defined in section  
25          101, the court is entitled to so presume.

1 “(b) The court is entitled to presume that documents  
2 submitted in support of the petition for recognition are  
3 authentic, whether or not they have been legalized.

4 “(c) In the absence of evidence to the contrary, the  
5 debtor’s registered office, or habitual residence in the case  
6 of an individual, is presumed to be the center of the debt-  
7 or’s main interests.

8 **“§ 1517. Order recognizing a foreign proceeding**

9 “(a) Subject to section 1506, after notice and a hear-  
10 ing an order recognizing a foreign proceeding shall be en-  
11 tered if—

12 “(1) the foreign proceeding is a foreign main  
13 proceeding or foreign nonmain proceeding within the  
14 meaning of section 1502;

15 “(2) the foreign representative applying for rec-  
16 ognition is a person or body as defined in section  
17 101; and

18 “(3) the petition meets the requirements of sec-  
19 tion 1515.

20 “(b) The foreign proceeding shall be recognized—

21 “(1) as a foreign main proceeding if it is taking  
22 place in the country where the debtor has the center  
23 of its main interests; or

24 “(2) as a foreign nonmain proceeding if the  
25 debtor has an establishment within the meaning of

1 section 1502 in the foreign country where the pro-  
2 ceeding is pending.

3 “(c) A petition for recognition of a foreign proceeding  
4 shall be decided upon at the earliest possible time. Entry  
5 of an order recognizing a foreign proceeding constitutes  
6 recognition under this chapter.

7 “(d) The provisions of this subchapter do not prevent  
8 modification or termination of recognition if it is shown  
9 that the grounds for granting it were fully or partially  
10 lacking or have ceased to exist, but in considering such  
11 action the court shall give due weight to possible prejudice  
12 to parties that have relied upon the granting of recogni-  
13 tion. The case under this chapter may be closed in the  
14 manner prescribed under section 350.

15 **“§ 1518. Subsequent information**

16 “From the time of filing the petition for recognition  
17 of the foreign proceeding, the foreign representative shall  
18 file with the court promptly a notice of change of status  
19 concerning—

20 “(1) any substantial change in the status of the  
21 foreign proceeding or the status of the foreign rep-  
22 resentative’s appointment; and

23 “(2) any other foreign proceeding regarding the  
24 debtor that becomes known to the foreign represent-  
25 ative.

1 **“§ 1519. Relief that may be granted upon petition for**  
2 **recognition of a foreign proceeding**

3 “(a) From the time of filing a petition for recognition  
4 until the court rules on the petition, the court may, at  
5 the request of the foreign representative, where relief is  
6 urgently needed to protect the assets of the debtor or the  
7 interests of the creditors, grant relief of a provisional na-  
8 ture, including—

9 “(1) staying execution against the debtor’s as-  
10 sets;

11 “(2) entrusting the administration or realiza-  
12 tion of all or part of the debtor’s assets located in  
13 the United States to the foreign representative or  
14 another person authorized by the court, including an  
15 examiner, in order to protect and preserve the value  
16 of assets that, by their nature or because of other  
17 circumstances, are perishable, susceptible to devalu-  
18 ation or otherwise in jeopardy; and

19 “(3) any relief referred to in paragraph (3),  
20 (4), or (7) of section 1521(a).

21 “(b) Unless extended under section 1521(a)(6), the  
22 relief granted under this section terminates when the peti-  
23 tion for recognition is decided upon.

24 “(c) It is a ground for denial of relief under this sec-  
25 tion that such relief would interfere with the administra-  
26 tion of a foreign main proceeding.



1           “(4) section 552 applies to property of the debt-  
2           or that is within the territorial jurisdiction of the  
3           United States.”.

4           “(b) Subsection (a) does not affect the right to com-  
5           mence an individual action or proceeding in a foreign  
6           country to the extent necessary to preserve a claim against  
7           the debtor.

8           “(c) Subsection (a) does not affect the right of a for-  
9           eign representative or an entity to file a petition com-  
10          mencing a case under this title or the right of any party  
11          to file claims or take other proper actions in such a case.

12       **“§ 1521. Relief that may be granted upon recognition**  
13                               **of a foreign proceeding**

14          “(a) Upon recognition of a foreign proceeding, wheth-  
15          er main or nonmain, where necessary to effectuate the  
16          purpose of this chapter and to protect the assets of the  
17          debtor or the interests of the creditors, the court may, at  
18          the request of the foreign representative, grant any appro-  
19          priate relief, including—

20               “(1) staying the commencement or continuation  
21               of an individual action or proceeding concerning the  
22               debtor’s assets, rights, obligations or liabilities to the  
23               extent they have not been stayed under section  
24               1520(a);



1           “(2) staying execution against the debtor’s as-  
2           sets to the extent it has not been stayed under sec-  
3           tion 1520(a);

4           “(3) suspending the right to transfer, encumber  
5           or otherwise dispose of any assets of the debtor to  
6           the extent this right has not been suspended under  
7           section 1520(a);

8           “(4) providing for the examination of witnesses,  
9           the taking of evidence or the delivery of information  
10          concerning the debtor’s assets, affairs, rights, obliga-  
11          tions or liabilities;

12          “(5) entrusting the administration or realiza-  
13          tion of all or part of the debtor’s assets within the  
14          territorial jurisdiction of the United States to the  
15          foreign representative or another person, including  
16          an examiner, authorized by the court;

17          “(6) extending relief granted under section  
18          1519(a); and

19          “(7) granting any additional relief that may be  
20          available to a trustee, except for relief available  
21          under sections 522, 544, 545, 547, 548, 550, and  
22          724(a).

23          “(b) Upon recognition of a foreign proceeding, wheth-  
24          er main or nonmain, the court may, at the request of the  
25          foreign representative, entrust the distribution of all or

1 part of the debtor’s assets located in the United States  
2 to the foreign representative or another person, including  
3 an examiner, authorized by the court, provided that the  
4 court is satisfied that the interests of creditors in the  
5 United States are sufficiently protected.

6 “(c) In granting relief under this section to a rep-  
7 resentative of a foreign nonmain proceeding, the court  
8 must be satisfied that the relief relates to assets that,  
9 under the law of the United States, should be adminis-  
10 tered in the foreign nonmain proceeding or concerns infor-  
11 mation required in that proceeding.

12 “(d) The court may not enjoin a police or regulatory  
13 act of a governmental unit, including a criminal action or  
14 proceeding, under this section.

15 “(e) The standards, procedures, and limitations ap-  
16 plicable to an injunction shall apply to relief under para-  
17 graphs (1), (2), (3), and (6) of subsection (a).

18 **“§ 1522. Protection of creditors and other interested**  
19 **persons**

20 “(a) The court may grant relief under section 1519  
21 or 1521, or may modify or terminate relief under sub-  
22 section (c), only if the interests of the creditors and other  
23 interested entities, including the debtor, are sufficiently  
24 protected.

1           “(b) The court may subject relief granted under sec-  
2 tion 1519 or 1521, or the operation of the debtor’s busi-  
3 ness under section 1520(a)(3) of this title, to conditions  
4 it considers appropriate, including the giving of security  
5 or the filing of a bond.

6           “(c) The court may, at the request of the foreign rep-  
7 resentative or an entity affected by relief granted under  
8 section 1519 or 1521, or at its own motion, modify or  
9 terminate such relief.

10          “(d) Section 1104(d) shall apply to the appointment  
11 of an examiner under this chapter. Any examiner shall  
12 comply with the qualification requirements imposed on a  
13 trustee by section 322.

14   **“§ 1523. Actions to avoid acts detrimental to creditors**

15          “(a) Upon recognition of a foreign proceeding, the  
16 foreign representative has standing in a case concerning  
17 the debtor pending under another chapter of this title to  
18 initiate actions under sections 522, 544, 545, 547, 548,  
19 550, and 724(a).

20          “(b) When the foreign proceeding is a foreign  
21 nonmain proceeding, the court must be satisfied that an  
22 action under subsection (a) relates to assets that, under  
23 United States law, should be administered in the foreign  
24 nonmain proceeding.

1 **“§ 1524. Intervention by a foreign representative**

2 “Upon recognition of a foreign proceeding, the for-  
3 eign representative may intervene in any proceedings in  
4 a State or Federal court in the United States in which  
5 the debtor is a party.

6 **“SUBCHAPTER IV—COOPERATION WITH FOR-**  
7 **EIGN COURTS AND FOREIGN REPRESENTA-**  
8 **TIVES**

9 **“§ 1525. Cooperation and direct communication be-**  
10 **tween the court and foreign courts or for-**  
11 **foreign representatives**

12 “(a) Consistent with section 1501, the court shall co-  
13 operate to the maximum extent possible with foreign  
14 courts or foreign representatives, either directly or  
15 through the trustee.

16 “(b) The court is entitled to communicate directly  
17 with, or to request information or assistance directly from,  
18 foreign courts or foreign representatives, subject to the  
19 rights of parties in interest to notice and participation.

20 **“§ 1526. Cooperation and direct communication be-**  
21 **tween the trustee and foreign courts or**  
22 **foreign representatives**

23 “(a) Consistent with section 1501, the trustee or  
24 other person, including an examiner, authorized by the  
25 court, shall, subject to the supervision of the court, cooper-

1 ate to the maximum extent possible with foreign courts  
2 or foreign representatives.

3 “(b) The trustee or other person, including an exam-  
4 iner, authorized by the court is entitled, subject to the su-  
5 pervision of the court, to communicate directly with for-  
6 eign courts or foreign representatives.

7 **“§ 1527. Forms of cooperation**

8 “Cooperation referred to in sections 1525 and 1526  
9 may be implemented by any appropriate means,  
10 including—

11 “(1) appointment of a person or body, including  
12 an examiner, to act at the direction of the court;

13 “(2) communication of information by any  
14 means considered appropriate by the court;

15 “(3) coordination of the administration and su-  
16 pervision of the debtor’s assets and affairs;

17 “(4) approval or implementation of agreements  
18 concerning the coordination of proceedings; and

19 “(5) coordination of concurrent proceedings re-  
20 garding the same debtor.

1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

2 **“§ 1528. Commencement of a case under this title**

3 **after recognition of a foreign main pro-**

4 **ceeding**

5 “After recognition of a foreign main proceeding, a  
6 case under another chapter of this title may be commenced  
7 only if the debtor has assets in the United States. The  
8 effects of such case shall be restricted to the assets of the  
9 debtor that are within the territorial jurisdiction of the  
10 United States and, to the extent necessary to implement  
11 cooperation and coordination under sections 1525, 1526,  
12 and 1527, to other assets of the debtor that are within  
13 the jurisdiction of the court under sections 541(a) of this  
14 title, and 1334(e) of title 28, to the extent that such other  
15 assets are not subject to the jurisdiction and control of  
16 a foreign proceeding that has been recognized under this  
17 chapter.

18 **“§ 1529. Coordination of a case under this title and a**

19 **foreign proceeding**

20 “Where a foreign proceeding and a case under an-  
21 other chapter of this title are taking place concurrently  
22 regarding the same debtor, the court shall seek coopera-  
23 tion and coordination under sections 1525, 1526, and  
24 1527, and the following shall apply:

1           “(1) When the case in the United States is tak-  
2           ing place at the time the petition for recognition of  
3           the foreign proceeding is filed—

4                   “(A) any relief granted under sections  
5                   1519 or 1521 must be consistent with the relief  
6                   granted in the case in the United States; and

7                   “(B) even if the foreign proceeding is rec-  
8                   ognized as a foreign main proceeding, section  
9                   1520 does not apply.

10           “(2) When a case in the United States under  
11           this title commences after recognition, or after the  
12           filing of the petition for recognition, of the foreign  
13           proceeding—

14                   “(A) any relief in effect under sections  
15                   1519 or 1521 shall be reviewed by the court  
16                   and shall be modified or terminated if incon-  
17                   sistent with the case in the United States; and

18                   “(B) if the foreign proceeding is a foreign  
19                   main proceeding, the stay and suspension re-  
20                   ferred to in section 1520(a) shall be modified or  
21                   terminated if inconsistent with the relief grant-  
22                   ed in the case in the United States.

23           “(3) In granting, extending, or modifying relief  
24           granted to a representative of a foreign nonmain  
25           proceeding, the court must be satisfied that the re-

1        relief relates to assets that, under the law of the  
2        United States, should be administered in the foreign  
3        nonmain proceeding or concerns information re-  
4        quired in that proceeding.

5            “(4) In achieving cooperation and coordination  
6        under sections 1528 and 1529, the court may grant  
7        any of the relief authorized under section 305.

8        **“§ 1530. Coordination of more than 1 foreign pro-**  
9            **ceeding**

10        “In matters referred to in section 1501, with respect  
11        to more than 1 foreign proceeding regarding the debtor,  
12        the court shall seek cooperation and coordination under  
13        sections 1525, 1526, and 1527, and the following shall  
14        apply:

15            “(1) Any relief granted under section 1519 or  
16        1521 to a representative of a foreign nonmain pro-  
17        ceeding after recognition of a foreign main pro-  
18        ceeding must be consistent with the foreign main  
19        proceeding.

20            “(2) If a foreign main proceeding is recognized  
21        after recognition, or after the filing of a petition for  
22        recognition, of a foreign nonmain proceeding, any  
23        relief in effect under section 1519 or 1521 shall be  
24        reviewed by the court and shall be modified or termi-



1 nated if inconsistent with the foreign main pro-  
2 ceeding.

3 “(3) If, after recognition of a foreign nonmain  
4 proceeding, another foreign nonmain proceeding is  
5 recognized, the court shall grant, modify, or termi-  
6 nate relief for the purpose of facilitating coordina-  
7 tion of the proceedings.

8 **“§ 1531. Presumption of insolvency based on recogni-  
9 tion of a foreign main proceeding**

10 “In the absence of evidence to the contrary, recogni-  
11 tion of a foreign main proceeding is for the purpose of  
12 commencing a proceeding under section 303, proof that  
13 the debtor is generally not paying its debts as such debts  
14 become due.

15 **“§ 1532. Rule of payment in concurrent proceedings**

16 “Without prejudice to secured claims or rights in  
17 rem, a creditor who has received payment with respect to  
18 its claim in a foreign proceeding pursuant to a law relating  
19 to insolvency may not receive a payment for the same  
20 claim in a case under any other chapter of this title re-  
21 garding the debtor, so long as the payment to other credi-  
22 tors of the same class is proportionately less than the pay-  
23 ment the creditor has already received.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
 2 for title 11, United States Code, is amended by inserting  
 3 after the item relating to chapter 13 the following:

“15. Ancillary and Other Cross-Border Cases ..... 1501”.

4 **SEC. 902. OTHER AMENDMENTS TO TITLES 11 AND 28,**  
 5 **UNITED STATES CODE.**

6 (a) APPLICABILITY OF CHAPTERS.—Section 103 of  
 7 title 11, United States Code, is amended—

8 (1) in subsection (a), by inserting before the pe-  
 9 riod the following: “, and this chapter, sections 307,  
 10 304, 555 through 557, 559, and 560 apply in a case  
 11 under chapter 15”; and

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

13 “(j) Chapter 15 applies only in a case under such  
 14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all  
 16 cases under this title; and

17 “(2) section 1509 applies whether or not a case  
 18 under this title is pending.”.

19 (b) DEFINITIONS.—Paragraphs (23) and (24) of title  
 20 11, United States Code, are amended to read as follows:

21 “(23) ‘foreign proceeding’ means a collective ju-  
 22 dicial or administrative proceeding in a foreign coun-  
 23 try, including an interim proceeding, under a law re-  
 24 lating to insolvency or adjustment of debt in which  
 25 proceeding the assets and affairs of the debtor are

1 subject to control or supervision by a foreign court,  
2 for the purpose of reorganization or liquidation;

3 “(24) ‘foreign representative’ means a person  
4 or body, including a person or body appointed on an  
5 interim basis, authorized in a foreign proceeding to  
6 administer the reorganization or the liquidation of  
7 the debtor’s assets or affairs or to act as a rep-  
8 resentative of the foreign proceeding;”.

9 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
10 CODE.—

11 (1) PROCEDURES.—Section 157(b)(2) of title  
12 28, United States Code, is amended—

13 (A) in subparagraph (N), by striking  
14 “and” at the end;

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

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

18 “(P) recognition of foreign proceedings and  
19 other matters under chapter 15 of title 11, United  
20 States Code.”.

21 (2) BANKRUPTCY CASES AND PROCEEDINGS.—

22 Section 1334(c) of title 28, United States Code, is  
23 amended by striking “Nothing in” and inserting  
24 “Except with respect to a case under chapter 15 of  
25 title 11, nothing in”.

1           (3) DUTIES OF TRUSTEES.—Section 586(a)(3)  
2           of title 28, United States Code, is amended by strik-  
3           ing “or 13” and inserting “13, or 15,” after “chap-  
4           ter”.

5           (d) OTHER SECTIONS OF TITLE 11.—(1) Section  
6           109(b)(3) of title 11, United States Code, is amended to  
7           read as follows:

8           “ (3)(A) a foreign insurance company, engaged  
9           in such business in the United States; or

10           “(B) a foreign bank, savings bank, cooperative  
11           bank, savings and loan association, building and  
12           loan association, or credit union, which has a branch  
13           or agency (as defined in section 3101 of title 12,  
14           United States Code) in the United States.”.

15           (2) Section 303(k) of title 11, United States Code,  
16           is repealed.

17           (3)(A) Section 304 of title 11, United States Code,  
18           is repealed.

19           (B) The table of sections of chapter 3 of title 11,  
20           United States Code, is amended by striking the item relat-  
21           ing to section 304.

22           (C) Section 306 of title 11, United States Code, is  
23           amended by striking “, 304,” each place it appears.

24           (4) Section 305(a)(2) of title 11, United States  
25           Code, is amended to read:

1           “(2)(A) a petition under section 1515 of this  
2 title for recognition of a foreign proceeding has been  
3 granted; and

4           “(B) the purposes of chapter 15 of this title  
5 would be best served by such dismissal or suspen-  
6 sion.”.

7           (5) Section 508 of title 11, United States Code,  
8 is amended by striking subsection (a) and by strik-  
9 ing out the letter “(b)” at the beginning of the sec-  
10 ond paragraph.

## 11 **TITLE X—FINANCIAL CONTRACT** 12 **PROVISIONS**

### 13 **SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CON-** 14 **SERVATORS OR RECEIVERS OF INSURED DE-** 15 **POSITORY INSTITUTIONS.**

16           (a) **DEFINITION OF QUALIFIED FINANCIAL CON-**  
17 **TRACT.**—Section 11(e)(8)(D)(i) of the Federal Deposit In-  
18 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by  
19 inserting “, resolution or order” after “any similar agree-  
20 ment that the Corporation determines by regulation”.

21           (b) **DEFINITION OF SECURITIES CONTRACT.**—Sec-  
22 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act  
23 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-  
24 lows:

1                   “(ii) SECURITIES CONTRACT.—The  
2 term ‘securities contract’—

3                   “(I) means a contract for the  
4 purchase, sale, or loan of a security, a  
5 certificate of deposit, a mortgage loan,  
6 or any interest in a mortgage loan, a  
7 group or index of securities, certifi-  
8 cates of deposit, or mortgage loans or  
9 interests therein (including any inter-  
10 est therein or based on the value  
11 thereof) or any option on any of the  
12 foregoing, including any option to  
13 purchase or sell any such security,  
14 certificate of deposit, loan, interest,  
15 group or index, or option;

16                   “(II) does not include any pur-  
17 chase, sale, or repurchase obligation  
18 under a participation in a commercial  
19 mortgage loan unless the Corporation  
20 determines by regulation, resolution,  
21 or order to include any such agree-  
22 ment within the meaning of such  
23 term;

1           “(III) means any option entered  
2 into on a national securities exchange  
3 relating to foreign currencies;

4           “(IV) means the guarantee by or  
5 to any securities clearing agency of  
6 any settlement of cash, securities, cer-  
7 tificates of deposit, mortgage loans or  
8 interests therein, group or index of se-  
9 curities, certificates of deposit, or  
10 mortgage loans or interests therein  
11 (including any interest therein or  
12 based on the value thereof) or option  
13 on any of the foregoing, including any  
14 option to purchase or sell any such se-  
15 curity, certificate of deposit, loan, in-  
16 terest, group or index or option;

17           “(V) means any margin loan;

18           “(VI) means any other agree-  
19 ment or transaction that is similar to  
20 any agreement or transaction referred  
21 to in this clause;

22           “(VII) means any combination of  
23 the agreements or transactions re-  
24 ferred to in this clause;

1           “(VIII) means any option to  
2 enter into any agreement or trans-  
3 action referred to in this clause;

4           “(IX) means a master agreement  
5 that provides for an agreement or  
6 transaction referred to in subclause  
7 (I), (III), (IV), (V), (VI), (VII), or  
8 (VIII), together with all supplements  
9 to any such master agreement, with-  
10 out regard to whether the master  
11 agreement provides for an agreement  
12 or transaction that is not a securities  
13 contract under this clause, except that  
14 the master agreement shall be consid-  
15 ered to be a securities contract under  
16 this clause only with respect to each  
17 agreement or transaction under the  
18 master agreement that is referred to  
19 in subclause (I), (III), (IV), (V), (VI),  
20 (VII), or (VIII); and

21           “(X) means any security agree-  
22 ment or arrangement or other credit  
23 enhancement related to any agree-  
24 ment or transaction referred to in this  
25 clause.”.



1 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
2 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
3 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
4 lows:

5 “(iii) COMMODITY CONTRACT.—The  
6 term ‘commodity contract’ means—

7 “(I) with respect to a futures  
8 commission merchant, a contract for  
9 the purchase or sale of a commodity  
10 for future delivery on, or subject to  
11 the rules of, a contract market or  
12 board of trade;

13 “(II) with respect to a foreign fu-  
14 tures commission merchant, a foreign  
15 future;

16 “(III) with respect to a leverage  
17 transaction merchant, a leverage  
18 transaction;

19 “(IV) with respect to a clearing  
20 organization, a contract for the pur-  
21 chase or sale of a commodity for fu-  
22 ture delivery on, or subject to the  
23 rules of, a contract market or board  
24 of trade that is cleared by such clear-  
25 ing organization, or commodity option

1 traded on, or subject to the rules of,  
2 a contract market or board of trade  
3 that is cleared by such clearing orga-  
4 nization;

5 “(V) with respect to a commodity  
6 options dealer, a commodity option;

7 “(VI) any other agreement or  
8 transaction that is similar to any  
9 agreement or transaction referred to  
10 in this clause;

11 “(VII) any combination of the  
12 agreements or transactions referred to  
13 in this clause;

14 “(VIII) any option to enter into  
15 any agreement or transaction referred  
16 to in this clause;

17 “(IX) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclause (I),  
20 (II), (III), (IV), (V), (VI), (VII), or  
21 (VIII), together with all supplements  
22 to any such master agreement, with-  
23 out regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a com-

1 commodity contract under this clause, ex-  
2 cept that the master agreement shall  
3 be considered to be a commodity con-  
4 tract under this clause only with re-  
5 spect to each agreement or trans-  
6 action under the master agreement  
7 that is referred to in subclause (I),  
8 (II), (III), (IV), (V), (VI), (VII), or  
9 (VIII); or

10 “(X) a security agreement or ar-  
11 rangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in this  
14 clause.”.

15 (d) DEFINITION OF FORWARD CONTRACT.—Section  
16 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
17 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

18 “(iv) FORWARD CONTRACT.—The  
19 term ‘forward contract’ means—

20 “(I) a contract (other than a  
21 commodity contract) for the purchase,  
22 sale, or transfer of a commodity or  
23 any similar good, article, service,  
24 right, or interest which is presently or  
25 in the future becomes the subject of

1 dealing in the forward contract trade,  
2 or product or byproduct thereof, with  
3 a maturity date more than 2 days  
4 after the date the contract is entered  
5 into, including, but not limited to, a  
6 repurchase agreement, reverse repur-  
7 chase agreement, consignment, lease,  
8 swap, hedge transaction, deposit, loan,  
9 option, allocated transaction,  
10 unallocated transaction, or any other  
11 similar agreement;

12 “(II) any combination of agree-  
13 ments or transactions referred to in  
14 subclauses (I) and (III);

15 “(III) any option to enter into  
16 any agreement or transaction referred  
17 to in subclause (I) or (II);

18 “(IV) a master agreement that  
19 provides for an agreement or trans-  
20 action referred to in subclauses (I),  
21 (II), or (III), together with all supple-  
22 ments to any such master agreement,  
23 without regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a forward

1 contract under this clause, except that  
2 the master agreement shall be consid-  
3 ered to be a forward contract under  
4 this clause only with respect to each  
5 agreement or transaction under the  
6 master agreement that is referred to  
7 in subclause (I), (II), or (III); or

8 “(V) a security agreement or ar-  
9 rangement or other credit enhance-  
10 ment related to any agreement or  
11 transaction referred to in subclause  
12 (I), (II), (III), or (IV).”.

13 (e) DEFINITION OF REPURCHASE AGREEMENT.—  
14 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as  
16 follows:

17 “(v) REPURCHASE AGREEMENT.—The  
18 term ‘repurchase agreement’ (which defini-  
19 tion also applies to a reverse repurchase  
20 agreement)—

21 “(I) mean an agreement, includ-  
22 ing related terms, which provides for  
23 the transfer of one or more certifi-  
24 cates of deposit, mortgage-related se-  
25 curities (as such term is defined in

1 the Securities Exchange Act of 1934),  
2 mortgage loans, interests in mortgage-  
3 related securities or mortgage loans,  
4 eligible bankers' acceptances, qualified  
5 foreign government securities or secu-  
6 rities that are direct obligations of, or  
7 that are fully guaranteed by, the  
8 United States or any agency of the  
9 United States against the transfer of  
10 funds by the transferee of such certifi-  
11 cates of deposit, eligible bankers' ac-  
12 ceptances, securities, loans, or inter-  
13 ests with a simultaneous agreement  
14 by such transferee to transfer to the  
15 transferor thereof certificates of de-  
16 posit, eligible bankers' acceptances,  
17 securities, loans, or interests as de-  
18 scribed above, at a date certain not  
19 later than 1 year after such transfers  
20 or on demand, against the transfer of  
21 funds, or any other similar agreement;

22 “(II) does not include any repur-  
23 chase obligation under a participation  
24 in a commercial mortgage loan unless  
25 the Corporation determines by regula-

1           tion, resolution, or order to include  
2           any such participation within the  
3           meaning of such term;

4           “(III) means any combination of  
5           agreements or transactions referred to  
6           in subclauses (I) and (IV);

7           “(IV) means any option to enter  
8           into any agreement or transaction re-  
9           ferred to in subclause (I) or (III);

10          “(V) means a master agreement  
11          that provides for an agreement or  
12          transaction referred to in subclause  
13          (I), (III), or (IV), together with all  
14          supplements to any such master  
15          agreement, without regard to whether  
16          the master agreement provides for an  
17          agreement or transaction that is not a  
18          repurchase agreement under this  
19          clause, except that the master agree-  
20          ment shall be considered to be a re-  
21          purchase agreement under this sub-  
22          clause only with respect to each agree-  
23          ment or transaction under the master  
24          agreement that is referred to in sub-  
25          clause (I), (III), or (IV); and

1                   “(VI) means a security agree-  
2                   ment or arrangement or other credit  
3                   enhancement related to any agree-  
4                   ment or transaction referred to in  
5                   subclause (I), (III), (IV), or (V).

6                   For purposes of this clause, the term  
7                   ‘qualified foreign government security’  
8                   means a security that is a direct obligation  
9                   of, or that is fully guaranteed by, the cen-  
10                  tral government of a member of the Orga-  
11                  nization for Economic Cooperation and  
12                  Development (as determined by regulation  
13                  or order adopted by the appropriate Fed-  
14                  eral banking authority).”.

15                  (f) DEFINITION OF SWAP AGREEMENT.—Section  
16 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
17 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

18                   “(vi) SWAP AGREEMENT.—The term  
19                   ‘swap agreement’ means—

20                   “(I) any agreement, including the  
21                   terms and conditions incorporated by  
22                   reference in any such agreement,  
23                   which is an interest rate swap, option,  
24                   future, or forward agreement, includ-  
25                   ing a rate floor, rate cap, rate collar,



1 cross-currency rate swap, and basis  
2 swap; a spot, same day-tomorrow, to-  
3 morrow-next, forward, or other for-  
4 eign exchange or precious metals  
5 agreement; a currency swap, option,  
6 future, or forward agreement; an eq-  
7 uity index or equity swap, option, fu-  
8 ture, or forward agreement; a debt  
9 index or debt swap, option, future, or  
10 forward agreement; a credit spread or  
11 credit swap, option, future, or forward  
12 agreement; a commodity index or  
13 commodity swap, option, future, or  
14 forward agreement;

15 “(II) any agreement or trans-  
16 action similar to any other agreement  
17 or transaction referred to in this  
18 clause that is presently, or in the fu-  
19 ture becomes, regularly entered into  
20 in the swap market (including terms  
21 and conditions incorporated by ref-  
22 erence in such agreement) and that is  
23 a forward, swap, future, or option on  
24 one or more rates, currencies, com-  
25 modities, equity securities or other eq-

1           uity instruments, debt securities or  
2           other debt instruments, or economic  
3           indices or measures of economic risk  
4           or value;

5           “(III) any combination of agree-  
6           ments or transactions referred to in  
7           this clause;

8           “(IV) any option to enter into  
9           any agreement or transaction referred  
10          to in this clause;

11          “(V) a master agreement that  
12          provides for an agreement or trans-  
13          action referred to in subclause (I),  
14          (II), (III), or (IV), together with all  
15          supplements to any such master  
16          agreement, without regard to whether  
17          the master agreement contains an  
18          agreement or transaction that is not a  
19          swap agreement under this clause, ex-  
20          cept that the master agreement shall  
21          be considered to be a swap agreement  
22          under this clause only with respect to  
23          each agreement or transaction under  
24          the master agreement that is referred

1 to in subclause (I), (II), (III), or (IV);  
2 and

3 “(VI) any security agreement or  
4 arrangement or other credit enhance-  
5 ment related to any agreements or  
6 transactions referred to in subpara-  
7 graph (I), (II), (III), or (IV).

8 Such term is applicable for purposes of  
9 this title only and shall not be construed or  
10 applied so as to challenge or affect the  
11 characterization, definition, or treatment of  
12 any swap agreement under any other stat-  
13 ute, regulation, or rule, including the Secu-  
14 rities Act of 1933, the Securities Exchange  
15 Act of 1934, the Public Utility Holding  
16 Company Act of 1935, the Trust Indenture  
17 Act of 1939, the Investment Company Act  
18 of 1940, the Investment Advisers Act of  
19 1940, the Securities Investor Protection  
20 Act of 1970, the Commodity Exchange  
21 Act, and the regulations promulgated by  
22 the Securities and Exchange Commission  
23 or the Commodity Futures Trading Com-  
24 mission.”.

1 (g) DEFINITION OF TRANSFER.—Section  
2 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
3 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

4 “(viii) TRANSFER.—The term ‘trans-  
5 fer’ means every mode, direct or indirect,  
6 absolute or conditional, voluntary or invol-  
7 untary, of disposing of or parting with  
8 property or with an interest in property,  
9 including retention of title as a security in-  
10 terest and foreclosure of the depository  
11 institutions’s equity of redemption.”.

12 (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
13 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-  
14 ance Act (12 U.S.C. 1821(e)(8)) is amended—

15 (1) in subparagraph (A), by striking “para-  
16 graph (10)” and inserting “paragraphs (9) and  
17 (10)”;

18 (2) in subparagraph (A)(i), by striking “to  
19 cause the termination or liquidation” and inserting  
20 “such person has to cause the termination, liquida-  
21 tion, or acceleration”;

22 (3) by amending subparagraph (A)(ii) to read  
23 as follows:

24 “(ii) any right under any security  
25 agreement or arrangement or other credit

1 enhancement related to one or more quali-  
2 fied financial contracts described in clause  
3 (i);” and

4 (4) by amending subparagraph (E)(ii) to read  
5 as follows:

6 “(ii) any right under any security  
7 agreement or arrangement or other credit  
8 enhancement related to one or more quali-  
9 fied financial contracts described in clause  
10 (i);”.

11 (i) AVOIDANCE OF TRANSFERS.—Section  
12 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
13 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
14 5242 of the Revised Statutes of the United States (12  
15 U.S.C. 91) or any other Federal or State law relating to  
16 the avoidance of preferential or fraudulent transfers,” be-  
17 fore “the Corporation”.

18 **SEC. 1002. AUTHORITY OF THE CORPORATION WITH RE-**  
19 **SPECT TO FAILED AND FAILING INSTITU-**  
20 **TIONS.**

21 (a) IN GENERAL.—Section 11(e)(8) of the Federal  
22 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is  
23 amended—

24 (1) in subparagraph (E), by striking “other  
25 than paragraph (12) of this subsection, subsection

1 (d)(9)” and inserting “other than subsections (d)(9)  
2 and (e)(10)”;

3 (2) by adding at the end the following new sub-  
4 paragraphs:

5 “(F) CLARIFICATION.—No provision of law  
6 shall be construed as limiting the right or  
7 power of the Corporation, or authorizing any  
8 court or agency to limit or delay, in any man-  
9 ner, the right or power of the Corporation to  
10 transfer any qualified financial contract in ac-  
11 cordance with paragraphs (9) and (10) of this  
12 subsection or to disaffirm or repudiate any such  
13 contract in accordance with subsection (e)(1) of  
14 this section.

15 “(G) WALKAWAY CLAUSES NOT EFFEC-  
16 TIVE.—

17 “(i) IN GENERAL.—Notwithstanding  
18 the provisions of subparagraphs (A) and  
19 (E), and sections 403 and 404 of the Fed-  
20 eral Deposit Insurance Corporation Im-  
21 provement Act of 1991, no walkaway  
22 clause shall be enforceable in a qualified fi-  
23 nancial contract of an insured depository  
24 institution in default.

1                   “(ii) WALKAWAY CLAUSE DEFINED.—  
 2                   For purposes of this subparagraph, the  
 3                   term ‘walkaway clause’ means a provision  
 4                   in a qualified financial contract that, after  
 5                   calculation of a value of a party’s position  
 6                   or an amount due to or from 1 of the par-  
 7                   ties in accordance with its terms upon ter-  
 8                   mination, liquidation, or acceleration of the  
 9                   qualified financial contract, either does not  
 10                  create a payment obligation of a party or  
 11                  extinguishes a payment obligation of a  
 12                  party in whole or in part solely because of  
 13                  such party’s status as a nondefaulting  
 14                  party.”.

15                 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 16                 Section 11(e)(12)(A) of the Federal Deposit Insurance  
 17                 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
 18                 “or the exercise of rights or powers” after “the appoint-  
 19                 ment”.

20     **SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF**  
 21                   **QUALIFIED FINANCIAL CONTRACTS.**

22                 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-  
 23                 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)  
 24                 of the Federal Deposit Insurance Act (12 U.S.C.  
 25                 1821(e)(9)) is amended to read as follows:

1           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
2 TRACTS.—

3           “(A) IN GENERAL.—In making any trans-  
4 fer of assets or liabilities of a depository institu-  
5 tion in default which includes any qualified fi-  
6 nancial contract, the conservator or receiver for  
7 such depository institution shall either—

8           “(i) transfer to one financial institu-  
9 tion, other than a financial institution for  
10 which a conservator, receiver, trustee in  
11 bankruptcy, or other legal custodian has  
12 been appointed or which is otherwise the  
13 subject of a bankruptcy or insolvency  
14 proceeding—

15           “(I) all qualified financial con-  
16 tracts between any person or any af-  
17 filiate of such person and the deposi-  
18 tory institution in default;

19           “(II) all claims of such person or  
20 any affiliate of such person against  
21 such depository institution under any  
22 such contract (other than any claim  
23 which, under the terms of any such  
24 contract, is subordinated to the claims



1 of general unsecured creditors of such  
2 institution);

3 “(III) all claims of such deposi-  
4 tory institution against such person or  
5 any affiliate of such person under any  
6 such contract; and

7 “(IV) all property securing or  
8 any other credit enhancement for any  
9 contract described in subclause (I) or  
10 any claim described in subclause (II)  
11 or (III) under any such contract; or

12 “(ii) transfer none of the qualified fi-  
13 nancial contracts, claims, property or other  
14 credit enhancement referred to in clause (i)  
15 (with respect to such person and any affil-  
16 iate of such person).

17 “(B) TRANSFER TO FOREIGN BANK, FOR-  
18 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
19 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
20 STITUTION.—In transferring any qualified fi-  
21 nancial contracts and related claims and prop-  
22 erty pursuant to subparagraph (A)(i), the con-  
23 servator or receiver for such depository institu-  
24 tion shall not make such transfer to a foreign  
25 bank, financial institution organized under the

1 laws of a foreign country, or a branch or agency  
2 of a foreign bank or financial institution unless,  
3 under the law applicable to such bank, financial  
4 institution, branch or agency, to the qualified  
5 financial contracts, and to any netting contract,  
6 any security agreement or arrangement or other  
7 credit enhancement related to one or more  
8 qualified financial contracts, the contractual  
9 rights of the parties to such qualified financial  
10 contracts, netting contracts, security agree-  
11 ments or arrangements, or other credit en-  
12 hancements are enforceable substantially to the  
13 same extent as permitted under this section.

14 “(C) TRANSFER OF CONTRACTS SUBJECT  
15 TO THE RULES OF A CLEARING ORGANIZA-  
16 TION.—In the event that a conservator or re-  
17 ceiver transfers any qualified financial contract  
18 and related claims, property and credit en-  
19 hancements pursuant to subparagraph (A)(i)  
20 and such contract is subject to the rules of a  
21 clearing organization, the clearing organization  
22 shall not be required to accept the transferee as  
23 a member by virtue of the transfer.

24 “(D) DEFINITION.—For purposes of this  
25 section, the term ‘financial institution’ means a

1 broker or dealer, a depository institution, a fu-  
2 tures commission merchant, or any other insti-  
3 tution as determined by the Corporation by reg-  
4 ulation to be a financial institution.”.

5 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
6 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
7 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
8 amended by amending the flush material following clause  
9 (ii) to read as follows: “the conservator or receiver shall  
10 notify any person who is a party to any such contract of  
11 such transfer by 5:00 p.m. (eastern time) on the business  
12 day following the date of the appointment of the receiver,  
13 in the case of a receivership, or the business day following  
14 such transfer, in the case of a conservatorship.”.

15 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF  
16 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-  
17 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further  
18 amended—

19 (1) by redesignating subparagraph (B) as sub-  
20 paragraph (D); and

21 (2) by inserting after subparagraph (A) the fol-  
22 lowing new subparagraphs:

23 “(B) CERTAIN RIGHTS NOT ENFORCE-  
24 ABLE.—

1           “(i) RECEIVERSHIP.—A person who is  
2           a party to a qualified financial contract  
3           with an insured depository institution may  
4           not exercise any right such person has to  
5           terminate, liquidate, or net such contract  
6           under paragraph (8)(A) or section 403 or  
7           404 of the Federal Deposit Insurance Cor-  
8           poration Improvement Act of 1991 solely  
9           by reason of or incidental to the appoint-  
10          ment of a receiver for the depository insti-  
11          tution (or the insolvency or financial condi-  
12          tion of the depository institution for which  
13          the receiver has been appointed)—

14                 “(I) until 5:00 p.m. (eastern  
15                 time) on the business day following  
16                 the date of the appointment of the re-  
17                 ceiver; or

18                 “(II) after the person has re-  
19                 ceived notice that the contract has  
20                 been transferred pursuant to para-  
21                 graph (9)(A).

22           “(ii) CONSERVATORSHIP.—A person  
23           who is a party to a qualified financial con-  
24           tract with an insured depository institution  
25           may not exercise any right such person has

1 to terminate, liquidate, or net such con-  
2 tract under paragraph (8)(E) or sections  
3 403 or 404 of the Federal Deposit Insur-  
4 ance Corporation Improvement Act of  
5 1991, solely by reason of or incidental to  
6 the appointment of a conservator for the  
7 depository institution (or the insolvency or  
8 financial condition of the depository insti-  
9 tution for which the conservator has been  
10 appointed).

11 “(iii) NOTICE.—For purposes of this  
12 subsection, the Corporation as receiver or  
13 conservator of an insured depository insti-  
14 tution shall be deemed to have notified a  
15 person who is a party to a qualified finan-  
16 cial contract with such depository institu-  
17 tion if the Corporation has taken steps  
18 reasonably calculated to provide notice to  
19 such person by the time specified in sub-  
20 paragraph (A) of this subsection.

21 “(C) TREATMENT OF BRIDGE BANKS.—  
22 The following institutions shall not be consid-  
23 ered a financial institution for which a conser-  
24 vator, receiver, trustee in bankruptcy, or other  
25 legal custodian has been appointed or which is

1 otherwise the subject of a bankruptcy or insol-  
2 vency proceeding for purposes of subsection  
3 (e)(9)—

4 “(i) a bridge bank; or

5 “(ii) a depository institution organized  
6 by the Corporation, for which a conser-  
7 vator is appointed either—

8 “(I) immediately upon the orga-  
9 nization of the institution; or

10 “(II) at the time of a purchase  
11 and assumption transaction between  
12 such institution and the Corporation  
13 as receiver for a depository institution  
14 in default.”.

15 **SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE**  
16 **OR REPUDIATION OF QUALIFIED FINANCIAL**  
17 **CONTRACTS.**

18 Section 11(e) of the Federal Deposit Insurance Act  
19 (12 U.S.C. 1821(e)) is further amended—

20 (1) by redesignating paragraphs (11) through  
21 (15) as paragraphs (12) through (16), respectively;  
22 and

23 (2) by inserting after paragraph (10) the fol-  
24 lowing new paragraph:

1           “(11) DISAFFIRMANCE OR REPUDIATION OF  
2 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
3 the rights of disaffirmance or repudiation of a con-  
4 servator or receiver with respect to any qualified fi-  
5 nancial contract to which an insured depository in-  
6 stitution is a party, the conservator or receiver for  
7 such institution shall either—

8           “(A) disaffirm or repudiate all qualified fi-  
9 nancial contracts between—

10           “(i) any person or any affiliate of  
11 such person; and

12           “(ii) the depository institution in de-  
13 fault; or

14           “(B) disaffirm or repudiate none of the  
15 qualified financial contracts referred to in sub-  
16 paragraph (A) (with respect to such person or  
17 any affiliate of such person).”.

18 **SEC. 1005. CLARIFYING AMENDMENT RELATING TO MAS-**  
19 **TER AGREEMENTS.**

20           Section 11(e)(8)(D)(vii) of the Federal Deposit In-  
21 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to  
22 read as follows:

23           “(vii) TREATMENT OF MASTER  
24 AGREEMENT AS ONE AGREEMENT.—Any  
25 master agreement for any contract or

1 agreement described in any preceding  
2 clause of this subparagraph (or any master  
3 agreement for such master agreement or  
4 agreements), together with all supplements  
5 to such master agreement, shall be treated  
6 as a single agreement and a single quali-  
7 fied financial contract. If a master agree-  
8 ment contains provisions relating to agree-  
9 ments or transactions that are not them-  
10 selves qualified financial contracts, the  
11 master agreement shall be deemed to be a  
12 qualified financial contract only with re-  
13 spect to those transactions that are them-  
14 selves qualified financial contracts.”.

15 **SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION**  
16 **IMPROVEMENT ACT OF 1991.**

17 (a) DEFINITIONS.—Section 402 of the Federal De-  
18 posit Insurance Corporation Improvement Act of 1991 (12  
19 U.S.C. 4402) is amended—

20 (1) in paragraph (6)—

21 (A) by redesignating subparagraphs (B)  
22 through (D) as subparagraphs (C) through (E),  
23 respectively;

24 (B) by inserting after subparagraph (A)  
25 the following new subparagraph:



1           “(B) an uninsured national bank or an un-  
2           insured State bank that is a member of the  
3           Federal Reserve System if the national bank or  
4           State member bank is not eligible to make ap-  
5           plication to become an insured bank under sec-  
6           tion 5 of the Federal Deposit Insurance Act;”;  
7           and

8           (C) by amending subparagraph (C) (as re-  
9           designated) to read as follows:

10           “(C) a branch or agency of a foreign bank,  
11           a foreign bank and any branch or agency of the  
12           foreign bank, or the foreign bank that estab-  
13           lished the branch or agency, as those terms are  
14           defined in section 1(b) of the International  
15           Banking Act of 1978;”;

16           (2) in paragraph (11), by adding before the pe-  
17           riod “and any other clearing organization with which  
18           such clearing organization has a netting contract”;

19           (3) by amending paragraph (14)(A)(i) to read  
20           as follows:

21           “(i) means a contract or agreement  
22           between two or more financial institutions,  
23           clearing organizations, or members that  
24           provides for netting present or future pay-  
25           ment obligations or payment entitlements

1 (including liquidation or closeout values re-  
2 lating to such obligations or entitlements)  
3 among the parties to the agreement; and”;  
4 and

5 (4) by adding at the end the following new  
6 paragraph:

7 “(15) PAYMENT.—The term ‘payment’ means a  
8 payment of United States dollars, another currency,  
9 or a composite currency, and a noncash delivery, in-  
10 cluding a payment or delivery to liquidate an  
11 unmatured obligation.”.

12 (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
13 TRACTS.—Section 403 of the Federal Deposit Insurance  
14 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
15 is amended—

16 (1) by amending subsection (a) to read as fol-  
17 lows:

18 “(a) GENERAL RULE.—Notwithstanding any other  
19 provision of State or Federal law (other than paragraphs  
20 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
21 Deposit Insurance Act or any order authorized under sec-  
22 tion 5(b)(2) of the Securities Investor Protection Act of  
23 1970, the covered contractual payment obligations and the  
24 covered contractual payment entitlements between any two  
25 financial institutions shall be netted in accordance with,

1 and subject to the conditions of, the terms of any applica-  
2 ble netting contract (except as provided in section  
3 561(b)(2) of title 11, United States Code).”; and

4 (2) by adding at the end the following new sub-  
5 section:

6 “(f) ENFORCEABILITY OF SECURITY AGREE-  
7 MENTS.—The provisions of any security agreement or ar-  
8 rangement or other credit enhancement related to one or  
9 more netting contracts between any two financial institu-  
10 tions shall be enforceable in accordance with their terms  
11 (except as provided in section 561(b)(2) of title 11, United  
12 States Code) and shall not be stayed, avoided, or otherwise  
13 limited by any State or Federal law (other than para-  
14 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
15 Federal Deposit Insurance Act and section 5(b)(2) of the  
16 Securities Investor Protection Act of 1970).”.

17 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
18 NETTING CONTRACTS.—Section 404 of the Federal De-  
19 posit Insurance Corporation Improvement Act of 1991 (12  
20 U.S.C. 4404) is amended—

21 (1) by amending subsection (a) to read as fol-  
22 lows:

23 “(a) GENERAL RULE.—Notwithstanding any other  
24 provision of State or Federal law (other than paragraphs  
25 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal

1 Deposit Insurance Act and any order authorized under  
2 section 5(b)(2) of the Securities Investor Protection Act  
3 of 1970, the covered contractual payment obligations and  
4 the covered contractual payment entitlements of a member  
5 of a clearing organization to and from all other members  
6 of a clearing organization shall be netted in accordance  
7 with and subject to the conditions of any applicable net-  
8 ting contract (except as provided in section 561(b)(2) of  
9 title 11, United States Code).”; and

10           (2) by adding at the end the following new sub-  
11           section:

12           “(h) ENFORCEABILITY OF SECURITY AGREE-  
13 MENTS.—The provisions of any security agreement or ar-  
14 rangement or other credit enhancement related to one or  
15 more netting contracts between any two members of a  
16 clearing organization shall be enforceable in accordance  
17 with their terms (except as provided in section 561(b)(2)  
18 of title 11, United States Code) and shall not be stayed,  
19 avoided, or otherwise limited by any State or Federal law  
20 other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
21 tion 11(e) of the Federal Deposit Insurance Act and sec-  
22 tion 5(b)(2) of the Securities Investor Protection Act of  
23 1970.”.

24           (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
25 SURED NATIONAL BANKS AND UNINSURED FEDERAL

1 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
2 ance Corporation Improvement Act of 1991 (12 U.S.C.  
3 4401 et seq.) is amended—

4 (1) by redesignating section 407 as section 408;  
5 and

6 (2) by adding after section 406 the following  
7 new section:

8 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
9 **NATIONAL BANKS AND UNINSURED FEDERAL**  
10 **BRANCHES AND AGENCIES.**

11 “(a) IN GENERAL.—Notwithstanding any other pro-  
12 vision of law, paragraphs (8), (9), (10), and (11) of section  
13 11(e) of the Federal Deposit Insurance Act shall apply  
14 to an uninsured national bank or uninsured Federal  
15 branch or Federal agency except—

16 “(1) any reference to the ‘Corporation as re-  
17 ceiver’ or ‘the receiver or the Corporation’ shall refer  
18 to the receiver of an uninsured national bank or un-  
19 insured Federal branch or Federal agency appointed  
20 by the Comptroller of the Currency;

21 “(2) any reference to the ‘Corporation’ (other  
22 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
23 poration, whether acting as such or as conservator  
24 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
25 to the receiver or conservator of an uninsured na-

1 tional bank or uninsured Federal branch or Federal  
2 agency appointed by the Comptroller of the Cur-  
3 rency; and

4 “(3) any reference to an ‘insured depository in-  
5 stitution’ or ‘depository institution’ shall refer to an  
6 uninsured national bank or an uninsured Federal  
7 branch or Federal agency.

8 “(b) LIABILITY.—The liability of a receiver or conser-  
9 vator of an uninsured national bank or uninsured Federal  
10 branch or agency shall be determined in the same manner  
11 and subject to the same limitations that apply to receivers  
12 and conservators of insured depository institutions under  
13 section 11(e) of the Federal Deposit Insurance Act.

14 “(c) REGULATORY AUTHORITY.—

15 “(1) IN GENERAL.—The Comptroller of the  
16 Currency, in consultation with the Federal Deposit  
17 Insurance Corporation, may promulgate regulations  
18 to implement this section.

19 “(2) SPECIFIC REQUIREMENT.—In promul-  
20 gating regulations to implement this section, the  
21 Comptroller of the Currency shall ensure that the  
22 regulations generally are consistent with the regula-  
23 tions and policies of the Federal Deposit Insurance  
24 Corporation adopted pursuant to the Federal De-  
25 posit Insurance Act.

1       “(d) DEFINITIONS.—For purposes of this section, the  
2 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
3 bank’ have the same meaning as in section 1(b) of the  
4 International Banking Act.”.

5 **SEC. 1007. BANKRUPTCY CODE AMENDMENTS.**

6       (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
7 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
8 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
9 RITIES CONTRACT.—Title 11, United States Code, is  
10 amended—

11           (1) in section 101—

12                   (A) in paragraph (25)—

13                           (i) by striking “means a contract”  
14                           and inserting “means—

15                           “(A) a contract”;

16                           (ii) by striking “, or any combination  
17                           thereof or option thereon;” and inserting  
18                           “, or any other similar agreement;”; and

19                           (iii) by adding at the end the fol-  
20                           lowing:

21                           “(B) any combination of agreements or  
22                           transactions referred to in subparagraphs (A)  
23                           and (C);

1           “(C) any option to enter into an agreement  
2 or transaction referred to in subparagraph (A)  
3 or (B);

4           “(D) a master agreement that provides for  
5 an agreement or transaction referred to in sub-  
6 paragraph (A), (B), or (C), together with all  
7 supplements to any such master agreement,  
8 without regard to whether such master agree-  
9 ment provides for an agreement or transaction  
10 that is not a forward contract under this para-  
11 graph, except that such master agreement shall  
12 be considered to be a forward contract under  
13 this paragraph only with respect to each agree-  
14 ment or transaction under such master agree-  
15 ment that is referred to in subparagraph (A),  
16 (B) or (C); or

17           “(E) a security agreement or arrangement,  
18 or other credit enhancement related to any  
19 agreement or transaction referred to in sub-  
20 paragraph (A), (B), (C), or (D), but not to ex-  
21 ceed the actual value of such contract, option,  
22 agreement, or transaction on the date of the fil-  
23 ing of the petition;”;

24           (B) in paragraph (46), by striking “on any  
25 day during the period beginning 90 days before



1 the date of” and replacing it with “at any time  
2 before”;

3 (C) by amending paragraph (47) to read  
4 as follows:

5 “(47) ‘repurchase agreement’ (which definition  
6 also applies to a reverse repurchase agreement)  
7 means—

8 “(i) an agreement, including related  
9 terms, which provides for the transfer of  
10 one or more certificates of deposit, mort-  
11 gage-related securities (as defined in the  
12 Securities Exchange Act of 1934), mort-  
13 gage loans, interests in mortgage-related  
14 securities or mortgage loans, eligible bank-  
15 ers’ acceptances, qualified foreign govern-  
16 ment securities; or securities that are di-  
17 rect obligations of, or that are fully guar-  
18 anteed by, the United States or any agency  
19 of the United States against the transfer  
20 of funds by the transferee of such certifi-  
21 cates of deposit, eligible bankers’ accept-  
22 ances, securities, loans, or interests; with a  
23 simultaneous agreement by such transferee  
24 to transfer to the transferor thereof certifi-  
25 cates of deposit, eligible bankers’ accept-

1           ance, securities, loans, or interests of the  
2           kind described above, at a date certain not  
3           later than 1 year after such transfer or on  
4           demand, against the transfer of funds;

5           “(ii) any combination of agreements  
6           or transactions referred to in clauses (i)  
7           and (iii);

8           “(iii) an option to enter into an agree-  
9           ment or transaction referred to in clause  
10          (i) or (ii);

11          “(iv) a master agreement that pro-  
12          vides for an agreement or transaction re-  
13          ferred to in clause (i), (ii), or (iii), together  
14          with all supplements to any such master  
15          agreement, without regard to whether such  
16          master agreement provides for an agree-  
17          ment or transaction that is not a repur-  
18          chase agreement under this paragraph, ex-  
19          cept that such master agreement shall be  
20          considered to be a repurchase agreement  
21          under this paragraph only with respect to  
22          each agreement or transaction under the  
23          master agreement that is referred to in  
24          clause (i), (ii), or (iii); or

1           “(v) a security agreement or arrange-  
2           ment or other credit enhancement related  
3           to any agreement or transaction referred  
4           to in clause (i), (ii), (iii), or (iv), but not  
5           to exceed the actual value of such contract  
6           on the date of the filing of the petition;  
7           and

8           “(B) does not include a repurchase obliga-  
9           tion under a participation in a commercial  
10          mortgage loan,

11          and, for purposes of this paragraph, the term ‘quali-  
12          fied foreign government security’ means a security  
13          that is a direct obligation of, or that is fully guaran-  
14          teed by, the central government of a member of the  
15          Organization for Economic Cooperation and Devel-  
16          opment;”;

17                 (D) in paragraph (48) by inserting “or ex-  
18                 empt from such registration under such section  
19                 pursuant to an order of the Securities and Ex-  
20                 change Commission” after “1934”; and

21                 (E) by amending paragraph (53B) to read  
22                 as follows:

23                 “(53B) ‘swap agreement’—

24                 “(A) means—

1           “(i) any agreement, including the  
2 terms and conditions incorporated by ref-  
3 erence in such agreement, which is an in-  
4 terest rate swap, option, future, or forward  
5 agreement, including a rate floor, rate cap,  
6 rate collar, cross-currency rate swap, and  
7 basis swap; a spot, same day-tomorrow, to-  
8 morrow-next, forward, or other foreign ex-  
9 change or precious metals agreement; a  
10 currency swap, option, future, or forward  
11 agreement; an equity index or an equity  
12 swap, option, future, or forward agree-  
13 ment; a debt index or a debt swap, option,  
14 future, or forward agreement; a credit  
15 spread or a credit swap, option, future, or  
16 forward agreement; or a commodity index  
17 or a commodity swap, option, future, or  
18 forward agreement;

19           “(ii) any agreement or transaction  
20 similar to any other agreement or trans-  
21 action referred to in this paragraph that—

22                   “(I) is presently, or in the future  
23 becomes, regularly entered into in the  
24 swap market (including terms and

1 conditions incorporated by reference  
2 therein); and

3 “(II) is a forward, swap, future,  
4 or option on one or more rates, cur-  
5 rencies commodities, equity securities,  
6 or other equity instruments, debt se-  
7 curities or other debt instruments, or  
8 on an economic index or measure of  
9 economic risk or value;

10 “(iii) any combination of agreements  
11 or transactions referred to in this para-  
12 graph;

13 “(iv) any option to enter into an  
14 agreement or transaction referred to in  
15 this paragraph;

16 “(v) a master agreement that provides  
17 for an agreement or transaction referred to  
18 in clause (i), (ii), (iii), or (iv), together  
19 with all supplements to any such master  
20 agreement, and without regard to whether  
21 the master agreement contains an agree-  
22 ment or transaction that is not a swap  
23 agreement under this paragraph, except  
24 that the master agreement shall be consid-  
25 ered to be a swap agreement under this

1 paragraph only with respect to each agree-  
2 ment or transaction under the master  
3 agreement that is referred to in clause (i),  
4 (ii), (iii), or (iv); or

5 “(B) any security agreement or arrange-  
6 ment or other credit enhancement related to  
7 any agreements or transactions referred to in  
8 subparagraph (A); and

9 “(C) is applicable for purposes of this title  
10 only and shall not be construed or applied so as  
11 to challenge or affect the characterization, defi-  
12 nition, or treatment of any swap agreement  
13 under any other statute, regulation, or rule, in-  
14 cluding the Securities Act of 1933, the Securi-  
15 ties Exchange Act of 1934, the Public Utility  
16 Holding Company Act of 1935, the Trust In-  
17 denture Act of 1939, the Investment Company  
18 Act of 1940, the Investment Advisers Act of  
19 1940, the Securities Investor Protection Act of  
20 1970, the Commodity Exchange Act, and the  
21 regulations prescribed by the Securities and Ex-  
22 change Commission or the Commodity Futures  
23 Trading Commission.”;

24 (2) by amending section 741(7) to read as fol-  
25 lows:

1 “(7) ‘securities contract’—

2 “(A) means—

3 “(i) a contract for the purchase, sale,  
4 or loan of a security, a certificate of de-  
5 posit, a mortgage loan or any interest in a  
6 mortgage loan, a group or index of securi-  
7 ties, certificates of deposit or mortgage  
8 loans or interests therein (including an in-  
9 terest therein or based on the value there-  
10 of), or option on any of the foregoing, in-  
11 cluding an option to purchase or sell any  
12 such security certificate of deposit, loan,  
13 interest, group or index or option;

14 “(ii) any option entered into on a na-  
15 tional securities exchange relating to for-  
16 eign currencies;

17 “(iii) the guarantee by or to any secu-  
18 rities clearing agency of a settlement of  
19 cash, securities, certificates of deposit  
20 mortgage loans or interests therein, group  
21 or index of securities, or mortgage loans or  
22 interests therein (including any interest  
23 therein or based on the value thereof), or  
24 option on any of the foregoing, including  
25 an option to purchase or sell any such se-

1           curity certificate of deposit, loan, interest,  
2           group or index or option;

3           “ (iv) any margin loan;

4           “ (v) any other agreement or trans-  
5           action that is similar to an agreement or  
6           transaction referred to in this paragraph;

7           “ (vi) any combination of the agree-  
8           ments or transactions referred to in this  
9           paragraph;

10          “ (vii) any option to enter into any  
11          agreement or transaction referred to in  
12          this paragraph;

13          “ (viii) a master agreement that pro-  
14          vides for an agreement or transaction re-  
15          ferred to in clause (i), (ii), (iii), (iv), (v),  
16          (vi), or (vii), together with all supplements  
17          to any such master agreement, without re-  
18          gard to whether the master agreement pro-  
19          vides for an agreement or transaction that  
20          is not a securities contract under this  
21          paragraph, except that such master agree-  
22          ment shall be considered to be a securities  
23          contract under this paragraph only with  
24          respect to each agreement or transaction  
25          under such master agreement that is re-



1           ferred to in clause (i), (ii), (iii), (iv), (v),  
2           (vi), or (vii); or

3           “(ix) any security agreement or ar-  
4           rangement, or other credit enhancement,  
5           related to any agreement or transaction re-  
6           ferred to in this paragraph, but not to ex-  
7           ceed the actual value of such contract on  
8           the date of the filing of the petition; and

9           “(B) does not include any purchase, sale,  
10          or repurchase obligation under a participation  
11          in a commercial mortgage loan.”; and

12          (3) in section 761(4)—

13                 (A) by striking “or” at the end of subpara-  
14                 graph (D); and

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

16                         “(F) any other agreement or transaction  
17                         that is similar to an agreement or transaction  
18                         referred to in this paragraph;

19                         “(G) any combination of the agreements or  
20                         transactions referred to in this paragraph;

21                         “(H) any option to enter into an agree-  
22                         ment or transaction referred to in this para-  
23                         graph;

24                         “(I) a master agreement that provides for  
25                         an agreement or transaction referred to in sub-

1 paragraph (A), (B), (C), (D), (E), (F), (G), or  
2 (H), together with all supplements to such mas-  
3 ter netting agreement, without regard to wheth-  
4 er the master netting agreement provides for an  
5 agreement or transaction that is not a com-  
6 modity contract under this paragraph, except  
7 that the master agreement shall be considered  
8 to be a commodity contract under this para-  
9 graph only with respect to each agreement or  
10 transaction under the master agreement that is  
11 referred to in subparagraph (A), (B), (C), (D),  
12 (E), (F), (G), or (H); or

13 “(J) a security agreement or arrangement,  
14 or other credit enhancement related to any  
15 agreement or transaction referred to in this  
16 paragraph, but not to exceed the actual value of  
17 such contract on the date of the filing of the pe-  
18 tition;”.

19 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
20 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
21 CHANT.—Section 101 of title 11, United States Code, is  
22 amended—

23 (1) by amending paragraph (22) to read as fol-  
24 lows:

25 “(22) ‘financial institution’ means—

1           “(A) a Federal reserve bank, or an entity  
2           (domestic or foreign) that is a commercial or  
3           savings bank, industrial savings bank, savings  
4           and loan association, trust company, or receiver  
5           or conservator for such entity and, when any  
6           such Federal reserve bank, receiver, conservator  
7           or entity is acting as agent or custodian for a  
8           customer in connection with a securities con-  
9           tract, as defined in section 741 of this title,  
10          such customer; or

11           “(B) in connection with a securities con-  
12          tract, as defined in section 741 of this title, an  
13          investment company registered under the In-  
14          vestment Company Act of 1940;”;

15          (2) by inserting after paragraph (22) the fol-  
16          lowing:

17           “(22A) ‘financial participant’ means an entity  
18          that, at the time it enters into a securities contract,  
19          commodity contract or forward contract, or at the  
20          time of the filing of the petition, has one or more  
21          agreements or transactions described in paragraph  
22          (1), (2), (3), (4), or (5) of section 561(a) with the  
23          debtor or any other entity (other than an affiliate)  
24          of a total gross dollar value of at least  
25          \$1,000,000,000 in notional or actual principal

1 amount outstanding on any day during the previous  
2 15-month period, or has gross mark-to-market posi-  
3 tions of at least \$100,000,000 (aggregated across  
4 counterparties) in one or more such agreement or  
5 transaction with the debtor or any other entity  
6 (other than an affiliate) on any day during the pre-  
7 vious 15-month period;” and

8 (3) by amending paragraph (26) to read as fol-  
9 lows:

10 “(26) ‘forward contract merchant’ means a  
11 Federal reserve bank, or an entity whose business  
12 consists in whole or in part of entering into forward  
13 contracts as or with merchants or in a commodity,  
14 as defined or in section 761 of this title, or any simi-  
15 lar good, article, service, right, or interest which is  
16 presently or in the future becomes the subject of  
17 dealing or in the forward contract trade;”.

18 (c) DEFINITION OF MASTER NETTING AGREEMENT  
19 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
20 tion 101 of title 11, United States Code, is amended by  
21 inserting after paragraph (38) the following new para-  
22 graphs:

23 “(38A) ‘master netting agreement’ means an  
24 agreement providing for the exercise of rights, in-  
25 cluding rights of netting, setoff, liquidation, termi-

1 nation, acceleration, or closeout, under or in connec-  
2 tion with one or more contracts that are described  
3 in any one or more of paragraphs (1) through (5)  
4 of section 561(a), or any security agreement or ar-  
5 rangement or other credit enhancement related to  
6 one or more of the foregoing. If a master netting  
7 agreement contains provisions relating to agree-  
8 ments or transactions that are not contracts de-  
9 scribed in paragraphs (1) through (5) of section  
10 561(a), the master netting agreement shall be  
11 deemed to be a master netting agreement only with  
12 respect to those agreements or transactions that are  
13 described in any one or more of the paragraphs (1)  
14 through (5) of section 561(a);

15 “(38B) ‘master netting agreement participant’  
16 means an entity that, at any time before the filing  
17 of the petition, is a party to an outstanding master  
18 netting agreement with the debtor;”.

19 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
20 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
21 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
22 MENTS UNDER THE AUTOMATIC-STAY.—

23 (1) IN GENERAL.—Section 362(b) of title 11,  
24 United States Code, as amended by sections 118,  
25 132, 136, 142, 203, and 818, is amended—

1 (A) in paragraph (6), by inserting “,  
2 pledged to, and under the control of,” after  
3 “held by”;

4 (B) in paragraph (7), by inserting “,  
5 pledged to, and under the control of,” after  
6 “held by”;

7 (C) by amending paragraph (17) to read  
8 as follows:

9 “(17) under subsection (a), of the setoff by a  
10 swap participant of a mutual debt and claim under  
11 or in connection with one or more swap agreements  
12 that constitutes the setoff of a claim against the  
13 debtor for any payment or other transfer of property  
14 due from the debtor under or in connection with any  
15 swap agreement against any payment due to the  
16 debtor from the swap participant under or in con-  
17 nection with any swap agreement or against cash,  
18 securities, or other property held by, pledged to, and  
19 under the control of, or due from such swap partici-  
20 pant to margin guarantee, secure, or settle a swap  
21 agreement;”;

22 (D) in paragraph (30) by striking “or” at  
23 the end;

24 (E) in paragraph (31) by striking the pe-  
25 riod at the end and inserting “; or”; and

1 (F) by inserting after paragraph (31) the  
2 following new paragraph:

3 “(32) under subsection (a), of the setoff by a  
4 master netting agreement participant of a mutual  
5 debt and claim under or in connection with one or  
6 more master netting agreements or any contract or  
7 agreement subject to such agreements that con-  
8 stitutes the setoff of a claim against the debtor for  
9 any payment or other transfer of property due from  
10 the debtor under or in connection with such agree-  
11 ments or any contract or agreement subject to such  
12 agreements against any payment due to the debtor  
13 from such master netting agreement participant  
14 under or in connection with such agreements or any  
15 contract or agreement subject to such agreements or  
16 against cash, securities, or other property held by,  
17 pledged or and under the control of, or due from  
18 such master netting agreement participant to mar-  
19 gin, guarantee, secure, or settle such agreements or  
20 any contract or agreement subject to such agree-  
21 ments, to the extent such participant is eligible to  
22 exercise such offset rights under paragraph (6), (7),  
23 or (17) for each individual contract covered by the  
24 master netting agreement in issue.”.

1           (2) LIMITATION.—Section 362 of title 11,  
2           United States Code, as amended by sections 120,  
3           302, and 412, is amended by adding at the end the  
4           following:

5           “(1) LIMITATION.—The exercise of rights not subject  
6           to the stay arising under subsection (a) pursuant to para-  
7           graph (6), (7), or (17), or (31) of subsection (b) shall not  
8           be stayed by any order of a court or administrative agency  
9           in any proceeding under this title.”.

10          (e) LIMITATION OF AVOIDANCE POWERS UNDER  
11          MASTER NETTING AGREEMENT.—Section 546 of title 11,  
12          United States Code, as amended by sections 207 and 302,  
13          is amended—

14                 (1) in subsection (g) (as added by section 103  
15                 of Public Law 101–311)—

16                         (A) by striking “under a swap agreement”;

17                         and

18                         (B) by striking “in connection with a swap  
19                         agreement” and inserting “under or in connec-  
20                         tion with any swap agreement”; and

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

22                 “(j) Notwithstanding sections 544, 545, 547,  
23                 548(a)(2)(B), and 548(b) of this title, the trustee may not  
24                 avoid a transfer made by or to a master netting agreement  
25                 participant under or in connection with any master netting



1 agreement or any individual contract covered thereby that  
2 is made before the commencement of the case, except  
3 under section 548(a)(1)(A) of this title, and except to the  
4 extent the trustee could otherwise avoid such a transfer  
5 made under an individual contract covered by such master  
6 netting agreement.”.

7 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
8 AGREEMENTS.—Section 548(d)(2) of title 11, United  
9 States Code, is amended—

10 (1) in subparagraph (C), by striking “and”;

11 (2) in subparagraph (D), by striking the period  
12 and inserting “; and”; and

13 (3) by adding at the end the following new sub-  
14 paragraph:

15 “(E) a master netting agreement participant  
16 that receives a transfer in connection with a master  
17 netting agreement or any individual contract covered  
18 thereby takes for value to the extent of such trans-  
19 fer, except, with respect to a transfer under any in-  
20 dividual contract covered thereby, to the extent such  
21 master netting agreement participant otherwise did  
22 not take (or is otherwise not deemed to have taken)  
23 such transfer for value.”.

1 (g) TERMINATION OR ACCELERATION OF SECURITIES  
2 CONTRACTS.—Section 555 of title 11, United States Code,  
3 is amended—

4 (1) by amending the section heading to read as  
5 follows:

6 **“§ 555. Contractual right to liquidate, terminate, or**  
7 **accelerate a securities contract”;**

8 and

9 (2) in the first sentence, by striking “liquida-  
10 tion” and inserting “liquidation, termination, or ac-  
11 celeration”.

12 (h) TERMINATION OR ACCELERATION OF COMMOD-  
13 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
14 United States Code, is amended—

15 (1) by amending the section heading to read as  
16 follows:

17 **“§ 556. Contractual right to liquidate, terminate, or**  
18 **accelerate a commodities contract or for-**  
19 **ward contract”;**

20 and

21 (2) in the first sentence, by striking “liquida-  
22 tion” and inserting “liquidation, termination, or ac-  
23 celeration”.

1 (i) TERMINATION OR ACCELERATION OF REPUR-  
2 CHASE AGREEMENTS.—Section 559 of title 11, United  
3 States Code, is amended—

4 (1) by amending the section heading to read as  
5 follows:

6 **“§ 559. Contractual right to liquidate, terminate, or**  
7 **accelerate a repurchase agreement”;**

8 and

9 (2) in the first sentence, by striking “liquida-  
10 tion” and inserting “liquidation, termination, or ac-  
11 celeration”.

12 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
13 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
14 States Code, is amended—

15 (1) by amending the section heading to read as  
16 follows:

17 **“§ 560. Contractual right to liquidate, terminate, or**  
18 **accelerate a swap agreement”;**

19 and

20 (2) in the first sentence, by striking “termi-  
21 nation of a swap agreement” and inserting “liquida-  
22 tion, termination, or acceleration of one or more  
23 swap agreements”; and

24 (3) by striking “in connection with any swap  
25 agreement” and inserting “in connection with the

1 termination, liquidation, or acceleration of one or  
2 more swap agreements”.

3 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
4 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
5 ACROSS CONTRACTS.—(1) Title 11, United States Code,  
6 is amended by inserting after section 560 the following:

7 **“§ 561. Contractual right to terminate, liquidate, ac-**  
8 **celerate, or offset under a master netting**  
9 **agreement and across contracts**

10 “(a) IN GENERAL.—Subject to subsection (b), the ex-  
11 ercise of any contractual right, because of a condition of  
12 the kind specified in section 365(e)(1), to cause the termi-  
13 nation, liquidation, or acceleration of or to offset or net  
14 termination values, payment amounts or other transfer ob-  
15 ligations arising under or in connection with one or more  
16 (or the termination, liquidation, or acceleration of one or  
17 more)—

18 “(1) securities contracts, as defined in section  
19 741(7);

20 “(2) commodity contracts, as defined in section  
21 761(4);

22 “(3) forward contracts;

23 “(4) repurchase agreements;

24 “(5) swap agreements; or

25 “(6) master netting agreements,

1 shall not be stayed, avoided, or otherwise limited by oper-  
2 ation of any provision of this title or by any order of a  
3 court or administrative agency in any proceeding under  
4 this title.

5 “(b) EXCEPTION.—

6 “(1) A party may exercise a contractual right  
7 described in subsection (a) to terminate, liquidate, or  
8 accelerate only to the extent that such party could  
9 exercise such a right under section 555, 556, 559,  
10 or 560 for each individual contract covered by the  
11 master netting agreement in issue.

12 “(2) If a debtor is a commodity broker subject  
13 to subchapter IV of chapter 7 of this title—

14 “(A) a party may not net or offset an obli-  
15 gation to the debtor arising under, or in con-  
16 nection with, a commodity contract against any  
17 claim arising under, or in connection with,  
18 other instruments, contracts, or agreements  
19 listed in subsection (a) except to the extent the  
20 party has positive net equity in the commodity  
21 accounts at the debtor, as calculated under sub-  
22 chapter IV; and

23 “(B) another commodity broker may not  
24 net or offset an obligation to the debtor arising  
25 under, or in connection with, a commodity con-

1           tract entered into or held on behalf of a cus-  
2           tomer of the debtor against any claim arising  
3           under, or in connection with, other instruments,  
4           contracts, or agreements listed in subsection  
5           (a).

6           “(c) DEFINITION.—As used in this section, the term  
7           ‘contractual right’ includes a right set forth in a rule or  
8           bylaw of a national securities exchange, a national securi-  
9           ties association, or a securities clearing agency, a right  
10          set forth in a bylaw of a clearing organization or contract  
11          market or in a resolution of the governing board thereof,  
12          and a right, whether or not evidenced in writing, arising  
13          under common law, under law merchant, or by reason of  
14          normal business practice.”.

15          (2) CONFORMING AMENDMENT.—The table of sec-  
16          tions of chapter 9 of title 11, United States Code, is  
17          amended by inserting after the item relating to section  
18          560 the following:

          “561. Contractual right to terminate, liquidate, accelerate, or offset under a  
          master netting agreement and across contracts.

19          (1) ANCILLARY PROCEEDINGS.—Section 304 of title  
20          11, United States Code, is amended by adding at the end  
21          the following:

22          “(d) Any provisions of this title relating to securities  
23          contracts, commodity contracts, forward contracts, repur-  
24          chase agreements, swap agreements, or master netting

1 agreements shall apply in a case ancillary to a foreign pro-  
2 ceeding under this section or any other section of this title,  
3 so that enforcement of contractual provisions of such con-  
4 tracts and agreements in accordance with their terms will  
5 not be stayed or otherwise limited by operation of any pro-  
6 vision of this title or by order of a court in any case under  
7 this title, and to limit avoidance powers to the same extent  
8 as in a proceeding under chapter 7 or 11 of this title (such  
9 enforcement not to be limited based on the presence or  
10 absence of assets of the debtor in the United States).”.

11 (m) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
12 United States Code, is amended by inserting after section  
13 766 the following:

14 **“§ 767. Commodity broker liquidation and forward**  
15 **contract merchants, commodity brokers,**  
16 **stockbrokers, financial institutions, secu-**  
17 **rities clearing agencies, swap partici-**  
18 **pants, repo participants, and master net-**  
19 **ting agreement participants**

20 “Notwithstanding any other provision of this title,  
21 the exercise of rights by a forward contract merchant,  
22 commodity broker, stockbroker, financial institution, secu-  
23 rities clearing agency, swap participant, repo participant,  
24 or master netting agreement participant under this title

1 shall not affect the priority of any unsecured claim it may  
2 have after the exercise of such rights.”.

3 (n) STOCKBROKER LIQUIDATIONS.—Title 11, United  
4 States Code, is amended by inserting after section 752 the  
5 following:

6 **“§ 753. Stockbroker liquidation and forward contract**  
7 **merchants, commodity brokers, stock-**  
8 **brokers, financial institutions, securities**  
9 **clearing agencies, swap participants,**  
10 **repo participants, and master netting**  
11 **agreement participants**

12 “Notwithstanding any other provision of this title,  
13 the exercise of rights by a forward contract merchant,  
14 commodity broker, stockbroker, financial institution, secu-  
15 rities clearing agency, swap participant, repo participant,  
16 financial participant, or master netting agreement partici-  
17 pant under this title shall not affect the priority of any  
18 unsecured claim it may have after the exercise of such  
19 rights.”.

20 (o) SETOFF.—Section 553 of title 11, United States  
21 Code, is amended—

22 (1) in subsection (a)(3)(C), by inserting “(ex-  
23 cept for a setoff of a kind described in section  
24 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555,



1 556, 559, 560 or 561 of this title)” before the pe-  
2 riod; and

3 (2) in subsection (b)(1), by striking  
4 “362(b)(14),” and inserting “362(b)(17),  
5 362(b)(19), 555, 556, 559, 560, 561”.

6 (p) SECURITIES CONTRACTS, COMMODITY CON-  
7 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
8 States Code, is amended—

9 (1) in section 362(b)(6), by striking “financial  
10 institutions,” each place such term appears and in-  
11 serting “financial institution, financial participant”;

12 (2) in section 546(e), by inserting “financial  
13 participant,” after “financial institution,”;

14 (3) in section 548(d)(2)(B), by inserting “fi-  
15 nancial participant,” after “financial institution,”;

16 (4) in section 555—

17 (A) by inserting “financial participant,”  
18 after “financial institution,”; and

19 (B) by inserting before the period at the  
20 end “, a right set forth in a bylaw of a clearing  
21 organization or contract market or in a resolu-  
22 tion of the governing board thereof, and a right,  
23 whether or not in writing, arising under com-  
24 mon law, under law merchant, or by reason of  
25 normal business practice”; and

1           (5) in section 556, by inserting “, financial par-  
2           ticipant” after “commodity broker”.

3           (q) CONFORMING AMENDMENTS.—Title 11, United  
4 States Code, is amended—

5           (1) in the table of sections of chapter 5—

6           (A) by amending the items relating to sec-  
7           tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-  
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-  
tract or forward contract.”;

8           and

9           (B) by amending the items relating to sec-  
10          tions 559 and 560 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 agree-  
ment.”;

11          and

12          (2) in the table of sections of chapter 7—

13          (A) by inserting after the item relating to  
14          section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-  
modity brokers, stockbrokers, financial institutions, securities  
clearing agencies, swap participants, repo participants, and  
master netting agreement participants.”;

15          and

16          (B) by inserting after the item relating to  
17          section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-  
kers, stockbrokers, financial institutions, securities clearing  
agencies, swap participants, repo participants, and master net-  
ting agreement participants.”.

1 **SEC. 1008. RECORDKEEPING REQUIREMENTS.**

2 Section 11(e)(8) of the Federal Deposit Insurance  
3 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the  
4 end the following new subparagraph:

5 “(H) RECORDKEEPING REQUIREMENTS.—  
6 The Corporation, in consultation with the ap-  
7 propriate Federal banking agencies, may pre-  
8 scribe regulations requiring more detailed rec-  
9 ordkeeping with respect to qualified financial  
10 contracts (including market valuations) by in-  
11 sured depository institutions.”.

12 **SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXE-**  
13 **CUTION REQUIREMENT.**

14 Section 13(e)(2) of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

16 “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
17 EXECUTION REQUIREMENT.—An agreement to pro-  
18 vide for the lawful collateralization of—

19 “(A) deposits of, or other credit extension  
20 by, a Federal, State, or local governmental enti-  
21 ty, or of any depositor referred to in section  
22 11(a)(2), including an agreement to provide col-  
23 lateral in lieu of a surety bond;

24 “(B) bankruptcy estate funds pursuant to  
25 section 345(b)(2) of title 11, United States  
26 Code;

1           “(C) extensions of credit, including any  
2           overdraft, from a Federal reserve bank or Fed-  
3           eral home loan bank; or

4           “(D) one or more qualified financial con-  
5           tracts, as defined in section 11(e)(8)(D),  
6           shall not be deemed invalid pursuant to paragraph  
7           (1)(B) solely because such agreement was not exe-  
8           cuted contemporaneously with the acquisition of the  
9           collateral or because of pledges, delivery, or substi-  
10          tution of the collateral made in accordance with such  
11          agreement.”.

12 **SEC. 1010. DAMAGE MEASURE.**

13          (a) Title 11, United States Code, as amended by sec-  
14          tion 1007, is amended—

15                 (1) by inserting after section 561 the following:

16 **“§ 562. Damage measure in connection with swap**  
17                         **agreements, securities contracts, forward**  
18                         **contracts, commodity contracts, repur-**  
19                         **chase agreements, or master netting**  
20                         **agreements**

21                 “If the trustee rejects a swap agreement, securities  
22          contract as defined in section 741 of this title, forward  
23          contract, commodity contract (as defined in section 761  
24          of this title) repurchase agreement, or master netting  
25          agreement pursuant to section 365(a) of this title, or if

1 a forward contract merchant, stockbroker, financial insti-  
2 tution, securities clearing agency, repo participant, finan-  
3 cial participant, master netting agreement participant, or  
4 swap participant liquidates, terminates, or accelerates  
5 such contract or agreement, damages shall be measured  
6 as of the earlier of—

7           “(1) the date of such rejection; or

8           “(2) the date of such liquidation, termination,  
9 or acceleration.”; and

10           (2) in the table of sections of chapter 5 by in-  
11 sserting after the item relating to section 561 the fol-  
12 lowing:

“562. Damage measure in connection with swap agreements, securities con-  
tracts, forward contracts, commodity contracts, repurchase  
agreements, or master netting agreements.”.

13           (b) CLAIMS ARISING FROM REJECTION.—Section  
14 502(g) of title 11, United States Code, is amended—

15           (1) by designating the existing text as para-  
16 graph (1); and

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

18           “(2) A claim for damages calculated in accordance  
19 with section 561 of this title shall be allowed under sub-  
20 section (a), (b), or (c), or disallowed under subsection (d)  
21 or (e), as if such claim had arisen before the date of the  
22 filing of the petition.”.

1 **SEC. 1011. SIPC STAY.**

2 Section 5(b)(2) of the Securities Investor Protection  
3 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
4 after subparagraph (B) the following new subparagraph:

5 “(C) EXCEPTION FROM STAY.—

6 “(i) Notwithstanding section 362 of  
7 title 11, United States Code, neither the  
8 filing of an application under subsection  
9 (a)(3) nor any order or decree obtained by  
10 Securities Investor Protection Corporation  
11 from the court shall operate as a stay of  
12 any contractual rights of a creditor to liq-  
13 uidate, terminate, or accelerate a securities  
14 contract, commodity contract, forward con-  
15 tract, repurchase agreement, swap agree-  
16 ment, or master netting agreement, each  
17 as defined in title 11, to offset or net ter-  
18 mination values, payment amounts, or  
19 other transfer obligations arising under or  
20 in connection with one or more of such  
21 contracts or agreements, or to foreclose on  
22 any cash collateral pledged by the debtor  
23 whether or not with respect to one or more  
24 of such contracts or agreements.

25 “(ii) Notwithstanding clause (i), such  
26 application, order, or decree may operate

1 as a stay of the foreclosure on securities  
2 collateral pledged by the debtor, whether  
3 or not with respect to one or more of such  
4 contracts or agreements, securities sold by  
5 the debtor under a repurchase agreement  
6 or securities lent under a securities lending  
7 agreement.

8 “(iii) As used in this section, the term  
9 ‘contractual right’ includes a right set  
10 forth in a rule or bylaw of a national secu-  
11 rities exchange, a national securities asso-  
12 ciation, or a securities clearing agency, a  
13 right set forth in a bylaw of a clearing or-  
14 ganization or contract market or in a reso-  
15 lution of the governing board thereof, and  
16 a right, whether or not in writing, arising  
17 under common law, under law merchant,  
18 or by reason of normal business practice.”.

19 **SEC. 1012. ASSET-BACKED SECURITIZATIONS.**

20 Section 541 of title 11, United States Code, as  
21 amended by section 150, is amended—

22 (1) by redesignating paragraph (5) of sub-  
23 section (b) as paragraph (6);

24 (2) by inserting after paragraph (4) of sub-  
25 section (b) the following new paragraph:

1           “(5) any eligible asset (or proceeds thereof), to  
2           the extent that such eligible asset was transferred by  
3           the debtor, before the date of commencement of the  
4           case, to an eligible entity in connection with an  
5           asset-backed securitization, except to the extent such  
6           asset (or proceeds or value thereof) may be recov-  
7           ered by the trustee under section 550 by virtue of  
8           avoidance under section 548(a);” and

9           (3) by adding at the end the following new sub-  
10          section:

11          “(e) For purposes of this section, the following defini-  
12          tions shall apply:

13                 “(1) the term ‘asset-backed securitization’  
14                 means a transaction in which eligible assets trans-  
15                 ferred to an eligible entity are used as the source of  
16                 payment on securities, the most senior of which are  
17                 rated investment grade by one or more nationally  
18                 recognized securities rating organizations, issued by  
19                 an issuer;

20                 “(2) the term ‘eligible asset’ means—

21                         “(A) financial assets (including interests  
22                         therein and proceeds thereof), either fixed or re-  
23                         volving, including residential and commercial  
24                         mortgage loans, consumer receivables, trade re-  
25                         ceivables, and lease receivables, that, by their



1 terms, convert into cash within a finite time pe-  
2 riod, plus any residual interest in property sub-  
3 ject to receivables included in such financial as-  
4 sets plus any rights or other assets designed to  
5 assure the servicing or timely distribution of  
6 proceeds to security holders;

7 “(B) cash; and

8 “(C) securities.

9 “(3) the term ‘eligible entity’ means—

10 “(A) an issuer; or

11 “(B) a trust, corporation, partnership, or  
12 other entity engaged exclusively in the business  
13 of acquiring and transferring eligible assets di-  
14 rectly or indirectly to an issuer and taking ac-  
15 tions ancillary thereto;

16 “(4) the term ‘issuer’ means a trust, corpora-  
17 tion, partnership, or other entity engaged exclusively  
18 in the business of acquiring and holding eligible as-  
19 sets, issuing securities backed by eligible assets, and  
20 taking actions ancillary thereto; and

21 “(5) the term ‘transferred’ means the debtor,  
22 pursuant to a written agreement, represented and  
23 warranted that eligible assets were sold, contributed,  
24 or otherwise conveyed with the intention of removing

1       them from the estate of the debtor pursuant to sub-  
2       section (b)(5), irrespective, without limitation of—

3               “(A) whether the debtor directly or indi-  
4               rectly obtained or held an interest in the issuer  
5               or in any securities issued by the issuer;

6               “(B) whether the debtor had an obligation  
7               to repurchase or to service or supervise the  
8               servicing of all or any portion of such eligible  
9               assets; or

10              “(C) the characterization of such sale, con-  
11              tribution, or other conveyance for tax, account-  
12              ing, regulatory reporting, or other purposes.”.

13 **SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIRE-**  
14 **MENTS.**

15       The third sentence of the third undesignated para-  
16 graph of section 16 of the Federal Reserve Act (12 U.S.C.  
17 412) is amended by striking “acceptances acquired under  
18 the provisions of section 13 of this Act” and inserting “ac-  
19 ceptances acquired under section 10A, 10B, 13, or 13A  
20 of this Act”.

21 **SEC. 1014. EFFECTIVE DATE; APPLICATION OF AMEND-**  
22 **MENTS.**

23       (a) **EFFECTIVE DATE.**—This title shall take effect on  
24 the date of the enactment of this Act.

1 (b) APPLICATION OF AMENDMENTS.—The amend-  
2 ments made by this title shall apply with respect to cases  
3 commenced or appointments made under any Federal or  
4 State law after the date of the enactment of this Act, but  
5 shall not apply with respect to cases commenced or ap-  
6 pointments made under any Federal or State law before  
7 the date of the enactment of this Act.

## 8 **TITLE XI—TECHNICAL** 9 **CORRECTIONS**

### 10 **SEC. 1101. DEFINITIONS.**

11 Section 101 of title 11, United States Code, as  
12 amended by sections 102, 105, 132, 138, 301, 302, 402,  
13 902, and 1007, is amended—

14 (1) by striking “In this title—” and inserting  
15 “In this title.”;

16 (2) in each paragraph, by inserting “The term”  
17 after the paragraph designation;

18 (3) in paragraph (35)(B), by striking “para-  
19 graphs (21B) and (33)(A)” and inserting “para-  
20 graphs (23) and (35)”;

21 (4) in each of paragraphs (35A) and (38), by  
22 striking “; and” at the end and inserting a period;

23 (5) in paragraph (51B)—

1 (A) by inserting “who is not a family farm-  
2 er” after “debtor” the first place it appears;  
3 and

4 (B) by striking “thereto having aggregate”  
5 and all that follows through the end of the  
6 paragraph;

7 (6) by amending paragraph (54) to read as fol-  
8 lows:

9 “(54) The term ‘transfer’ means—

10 “(A) the creation of a lien;

11 “(B) the retention of title as a security in-  
12 terest;

13 “(C) the foreclosure of a debtor’s equity of  
14 redemption; or

15 “(D) each mode, direct or indirect, abso-  
16 lute or conditional, voluntary or involuntary, of  
17 disposing of or parting with—

18 “(i) property; or

19 “(ii) an interest in property;”;

20 (7) in each of paragraphs (1) through (35), in  
21 each of paragraphs (36) and (37), and in each of  
22 paragraphs (40) through (55) (including paragraph  
23 (54), as amended by paragraph (6) of this section),  
24 by striking the semicolon at the end and inserting a  
25 period; and

1           (8) by redesignating paragraphs (4) through  
2           (55), including paragraph (54), as amended by para-  
3           graph (6) of this section, in entirely numerical se-  
4           quence.

5 **SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

6           Section 104 of title 11, United States Code, is  
7           amended by inserting “522(f)(3), 707(b)(5),” after  
8           “522(d),” each place it appears.

9 **SEC. 1103. EXTENSION OF TIME.**

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

13 **SEC. 1104. TECHNICAL AMENDMENTS.**

14          Title 11, United States Code, is amended—

15                 (1) in section 109(b)(2) by striking “subsection  
16                 (c) or (d) of”; and

17                 (2) in section 552(b)(1) by striking “product”  
18                 each place it appears and inserting “products”.

19 **SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
20                         **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
21                         **TITIONS.**

22          Section 110(j)(3) of title 11, United States Code, is  
23          amended by striking “attorney’s” and inserting “attor-  
24          neys’”.

1 **SEC. 1106. LIMITATION ON COMPENSATION OF PROFES-**  
2 **SIONAL PERSONS.**

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

6 **SEC. 1107. SPECIAL TAX PROVISIONS.**

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

10 **SEC. 1108. EFFECT OF CONVERSION.**

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

14 **SEC. 1109. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

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

18 **SEC. 1110. PRIORITIES.**

19 Section 507(a) of title 11, United States Code, as  
20 amended by section 323, is amended in paragraph (4), as  
21 so redesignated by section 142, by striking the semicolon  
22 at the end and inserting a period.

23 **SEC. 1111. EXEMPTIONS.**

24 Section 522(g)(2) of title 11, United States Code, is  
25 amended by striking “subsection (f)(2)” and inserting  
26 “subsection (f)(1)(B)”.

1 **SEC. 1112. EXCEPTIONS TO DISCHARGE.**

2 Section 523 of title 11, United States Code, as  
3 amended by section 146, is amended—

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

6 (2) as amended by section 304(e) of Public Law  
7 103–394 (108 Stat. 4133), in paragraph (15), by  
8 transferring such paragraph so as to insert it after  
9 paragraph (14A) of subsection (a);

10 (3) in subsection (a)(9), by inserting “,  
11 watercraft, or aircraft” after “motor vehicle”;

12 (4) in subsection (a)(15), as so redesignated by  
13 paragraph (2) of this subsection, by inserting “to a  
14 spouse, former spouse, or child of the debtor and”  
15 after “(15)”; and

16 (5) in subsection (e), by striking “a insured”  
17 and inserting “an insured”.

18 **SEC. 1113. EFFECT OF DISCHARGE.**

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

23 **SEC. 1114. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
24 **MENT.**

25 Section 525(e) of title 11, United States Code, is  
26 amended—

1 (1) in paragraph (1), by inserting “student” be-  
2 fore “grant” the second place it appears; and

3 (2) in paragraph (2), by striking “the program  
4 operated under part B, D, or E of” and inserting  
5 “any program operated under”.

6 **SEC. 1115. PROPERTY OF THE ESTATE.**

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

9 **SEC. 1116. PREFERENCES.**

10 (a) IN GENERAL.—Section 547 of title 11, United  
11 States Code, is amended—

12 (1) in subsection (b), by striking “subsection  
13 (c)” and inserting “subsections (c) and (i)”; and

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

15 “(i) If the trustee avoids under subsection (b) a  
16 transfer made between 90 days and 1 year before the date  
17 of the filing of the petition, by the debtor to an entity  
18 that is not an insider for the benefit of a creditor that  
19 is an insider, such transfer may be avoided under this sec-  
20 tion only with respect to the creditor that is an insider.”.

21 (b) APPLICABILITY.—The amendments made by this  
22 section shall apply to any case that is pending or com-  
23 menced on or after the date of the enactment of this Act.



1 **SEC. 1117. POSTPETITION TRANSACTIONS.**

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

4 (1) by inserting “an interest in” after “transfer  
5 of”;

6 (2) by striking “such property” and inserting  
7 “such real property”; and

8 (3) by striking “the interest” and inserting  
9 “such interest”.

10 **SEC. 1118. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

13 **SEC. 1119. GENERAL PROVISIONS.**

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

16 **SEC. 1120. APPOINTMENT OF ELECTED TRUSTEE.**

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

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

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

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

1           “(i) the trustee elected under paragraph (1)  
2           shall be considered to have been selected and ap-  
3           pointed for purposes of this section; and

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

6           “(B) In the case of any dispute arising out of an elec-  
7           tion under subparagraph (A), the court shall resolve the  
8           dispute.”.

9           **SEC. 1121. ABANDONMENT OF RAILROAD LINE.**

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

13          **SEC. 1122. CONTENTS OF PLAN.**

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

17          **SEC. 1123. DISCHARGE UNDER CHAPTER 12.**

18          Subsections (a) and (c) of section 1228 of title 11,  
19          United States Code, are amended by striking  
20          “1222(b)(10)” each place it appears and inserting  
21          “1222(b)(9)”.

22          **SEC. 1124. BANKRUPTCY CASES AND PROCEEDINGS.**

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

1 (1) by striking “made under this subsection”  
2 and inserting “made under subsection (c)”; and  
3 (2) by striking “This subsection” and inserting  
4 “Subsection (c) and this subsection”.

5 **SEC. 1125. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
6 **RULE.**

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

9 (1) in the first undesignated paragraph—

10 (A) by inserting “(1) the term” before  
11 “bankruptcy”; and

12 (B) by striking the period at the end and  
13 inserting “; and”; and

14 (2) in the second undesignated paragraph—

15 (A) by inserting “(2) the term” before  
16 “document”; and

17 (B) by striking “this title” and inserting  
18 “title 11”.

19 **SEC. 1126. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
20 **CORPORATIONS.**

21 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
22 of title 11, United States Code, is amended—

23 (1) by striking “only” and all that follows  
24 through the end of the subsection and inserting  
25 “only—

1           “(1) in accordance with applicable nonbank-  
2           ruptcy law that governs the transfer of property by  
3           a corporation or trust that is not a moneyed, busi-  
4           ness, or commercial corporation or trust; and

5           “(2) to the extent not inconsistent with any re-  
6           lief granted under subsection (c), (d), (e), or (f) of  
7           section 362 of this title.”.

8           (b) CONFIRMATION OF PLAN FOR REORGANIZA-  
9           TION.—Section 1129(a) of title 11, United States Code,  
10          as amended by section 140, is amended by adding at the  
11          end the following:

12           “(15) All transfers of property of the plan shall  
13           be made in accordance with any applicable provi-  
14           sions of nonbankruptcy law that govern the transfer  
15           of property by a corporation or trust that is not a  
16           moneyed, business, or commercial corporation or  
17           trust.”.

18           (c) TRANSFER OF PROPERTY.—Section 541 of title  
19          11, United States Code, as amended by section 1102, is  
20          amended by adding at the end the following:

21           “(f) Notwithstanding any other provision of this title,  
22          property that is held by a debtor that is a corporation de-  
23          scribed in section 501(c)(3) of the Internal Revenue Code  
24          of 1986 and exempt from tax under section 501(a) of such  
25          Code may be transferred to an entity that is not such a

1 corporation, but only under the same conditions as would  
2 apply if the debtor had not filed a case under this title.”.

3 (d) **APPLICABILITY.**—The amendments made by this  
4 section shall apply to a case pending under title 11, United  
5 States Code, on the date of the enactment of this Act,  
6 except that the court shall not confirm a plan under chap-  
7 ter 11 of this title without considering whether this section  
8 would substantially affect the rights of a party in interest  
9 who first acquired rights with respect to the debtor after  
10 the date of the petition. The parties who may appear and  
11 be heard in a proceeding under this section include the  
12 attorney general of the State in which the debtor is incor-  
13 porated, was formed, or does business.

14 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
15 tion shall be deemed to require the court in which a case  
16 under chapter 11 is pending to remand or refer any pro-  
17 ceeding, issue, or controversy to any other court or to re-  
18 quire the approval of any other court for the transfer of  
19 property.

20 **SEC. 1127. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
21 **URE TO INCUR FINANCE CHARGES.**

22 Section 127 of the Truth in Lending Act (15 U.S.C.  
23 1637) is amended by adding at the end the following:

24 “(i) **PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
25 **URE TO INCUR FINANCE CHARGES.**—A creditor of an ac-

1 count under an open end consumer credit plan may not  
2 terminate an account prior to its expiration date solely be-  
3 cause the consumer has not incurred finance charges on  
4 the account. Nothing in this subsection shall prohibit a  
5 creditor from terminating an account for inactivity in 3  
6 or more consecutive months.”.

7 **SEC. 1128. PROTECTION OF VALID PURCHASE MONEY SE-**  
8 **CURITY INTERESTS.**

9 Section 547(c)(3)(B) of title 11, United States Code,  
10 is amended by striking “20” and inserting “30”.

11 **SEC. 1129. TRUSTEES.**

12 (a) **SUSPENSION AND TERMINATION OF PANEL**  
13 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of  
14 title 28, United States Code, is amended—

15 (1) by inserting “(1)” after “(d)”; and

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

17 “(2) A trustee whose appointment under subsection  
18 (a)(1) or under subsection (b) is terminated or who ceases  
19 to be assigned to cases filed under title 11, United States  
20 Code, may obtain judicial review of the final agency deci-  
21 sion by commencing an action in the United States district  
22 court for the district for which the panel to which the  
23 trustee is appointed under subsection (a)(1), or in the  
24 United States district court for the district in which the  
25 trustee is appointed under subsection (b) resides, after

1 first exhausting all available administrative remedies,  
2 which if the trustee so elects, shall also include an admin-  
3 istrative hearing on the record. Unless the trustee elects  
4 to have an administrative hearing on the record, the trust-  
5 ee shall be deemed to have exhausted all administrative  
6 remedies for purposes of this paragraph if the agency fails  
7 to make a final agency decision within 90 days after the  
8 trustee requests administrative remedies. The Attorney  
9 General shall prescribe procedures to implement this para-  
10 graph. The decision of the agency shall be affirmed by  
11 the district court unless it is unreasonable and without  
12 cause based on the administrative record before the agen-  
13 cy.”.

14 (b) EXPENSES OF STANDING TRUSTEES.—Section  
15 586(e) of title 28, United States Code, is amended by add-  
16 ing at the end the following:

17 “(3) After first exhausting all available administra-  
18 tive remedies, an individual appointed under subsection  
19 (b) may obtain judicial review of final agency action to  
20 deny a claim of actual, necessary expenses under this sub-  
21 section by commencing an action in the United States dis-  
22 trict court in the district where the individual resides. The  
23 decision of the agency shall be affirmed by the district  
24 court unless it is unreasonable and without cause based  
25 upon the administrative record before the agency.

1 “(4) The Attorney General shall prescribe procedures  
2 to implement this subsection.”.

3 **TITLE XII—GENERAL EFFECTIVE**  
4 **DATE; APPLICATION OF**  
5 **AMENDMENTS**

6 **SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMEND-**  
7 **MENTS.**

8 (a) **EFFECTIVE DATE.**—Except as provided otherwise  
9 in this Act, this Act and the amendments made by this  
10 Act shall take effect 180 days after the date of the enact-  
11 ment of this Act.

12 (b) **APPLICATION OF AMENDMENTS.**—Except as oth-  
13 erwise provided in this Act, the amendments made by this  
14 Act shall not apply with respect to cases commenced under  
15 title 11, United States Code, before the effective date of  
16 this Act.

Passed the House of Representatives May 5, 1999.

Attest: JEFF TRANDAHL,  
*Clerk.*