

106TH CONGRESS  
2D SESSION

# S. 3186

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

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, SEPTEMBER 22), 2000

Mr. GRASSLEY (for himself, Mr. TORRICELLI, Mr. HATCH, and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, 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,*

3 **SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-**  
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Bankruptcy Reform Act of 2000”.

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

Sec. 100. Short title; references; table of contents.

### TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.

- Sec. 102. Dismissal or conversion.
- Sec. 103. Sense of Congress and study.
- Sec. 104. Notice of alternatives.
- Sec. 105. Debtor financial management training test program.
- Sec. 106. Credit counseling.
- Sec. 107. Schedules of reasonable and necessary expenses.

## TITLE II—ENHANCED CONSUMER PROTECTION

### Subtitle A—Penalties for Abusive Creditor Practices

- Sec. 201. Promotion of alternative dispute resolution.
- Sec. 202. Effect of discharge.
- Sec. 203. Discouraging abuse of reaffirmation practices.

### Subtitle B—Priority Child Support

- Sec. 211. Definition of domestic support obligation.
- Sec. 212. Priorities for claims for domestic support obligations.
- Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 216. Continued liability of property.
- Sec. 217. Protection of domestic support claims against preferential transfer motions.
- Sec. 218. Disposable income defined.
- Sec. 219. Collection of child support.
- Sec. 220. Nondischargeability of certain educational benefits and loans.

### Subtitle C—Other Consumer Protections

- Sec. 221. Amendments to discourage abusive bankruptcy filings.
- Sec. 222. Sense of Congress.
- Sec. 223. Additional amendments to title 11, United States Code.
- Sec. 224. Protection of retirement savings in bankruptcy.
- Sec. 225. Protection of education savings in bankruptcy.
- Sec. 226. Definitions.
- Sec. 227. Restrictions on debt relief agencies.
- Sec. 228. Disclosures.
- Sec. 229. Requirements for debt relief agencies.
- Sec. 230. GAO study.

## TITLE III—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 301. Reinforcement of the fresh start.
- Sec. 302. Discouraging bad faith repeat filings.
- Sec. 303. Curbing abusive filings.
- Sec. 304. Debtor retention of personal property security.
- Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec. 306. Giving secured creditors fair treatment in chapter 13.
- Sec. 307. Domiciliary requirements for exemptions.
- Sec. 308. Residency requirement for homestead exemption.
- Sec. 309. Protecting secured creditors in chapter 13 cases.

- Sec. 310. Limitation on luxury goods.
- Sec. 311. Automatic stay.
- Sec. 312. Extension of period between bankruptcy discharges.
- Sec. 313. Definition of household goods and antiques.
- Sec. 314. Debt incurred to pay nondischargeable debts.
- Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
- Sec. 316. Dismissal for failure to timely file schedules or provide required information.
- Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 320. Prompt relief from stay in individual cases.
- Sec. 321. Chapter 11 cases filed by individuals.
- Sec. 322. Limitation.
- Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
- Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
- Sec. 325. United States trustee program filing fee increase.
- Sec. 326. Sharing of compensation.
- Sec. 327. Fair valuation of collateral.
- Sec. 328. Defaults based on nonmonetary obligations.

#### TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

##### Subtitle A—General Business Bankruptcy Provisions

- Sec. 401. Adequate protection for investors.
- Sec. 402. Meetings of creditors and equity security holders.
- Sec. 403. Protection of refinancing of security interest.
- Sec. 404. Executory contracts and unexpired leases.
- Sec. 405. Creditors and equity security holders committees.
- Sec. 406. Amendment to section 546 of title 11, United States Code.
- Sec. 407. Amendments to section 330(a) of title 11, United States Code.
- Sec. 408. Postpetition disclosure and solicitation.
- Sec. 409. Preferences.
- Sec. 410. Venue of certain proceedings.
- Sec. 411. Period for filing plan under chapter 11.
- Sec. 412. Fees arising from certain ownership interests.
- Sec. 413. Creditor representation at first meeting of creditors.
- Sec. 414. Definition of disinterested person.
- Sec. 415. Factors for compensation of professional persons.
- Sec. 416. Appointment of elected trustee.
- Sec. 417. Utility service.
- Sec. 418. Bankruptcy fees.
- Sec. 419. More complete information regarding assets of the estate.

##### Subtitle B—Small Business Bankruptcy Provisions

- Sec. 431. Flexible rules for disclosure statement and plan.
- Sec. 432. Definitions.
- Sec. 433. Standard form disclosure statement and plan.
- Sec. 434. Uniform national reporting requirements.
- Sec. 435. Uniform reporting rules and forms for small business cases.
- Sec. 436. Duties in small business cases.

- Sec. 437. Plan filing and confirmation deadlines.
- Sec. 438. Plan confirmation deadline.
- Sec. 439. Duties of the United States trustee.
- Sec. 440. Scheduling conferences.
- Sec. 441. Serial filer provisions.
- Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
- Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
- Sec. 444. Payment of interest.
- Sec. 445. Priority for administrative expenses.

#### TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

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

#### TITLE VI—BANKRUPTCY DATA

- Sec. 601. Improved bankruptcy statistics.
- Sec. 602. Uniform rules for the collection of bankruptcy data.
- Sec. 603. Audit procedures.
- Sec. 604. Sense of Congress regarding availability of bankruptcy data.

#### TITLE VII—BANKRUPTCY TAX PROVISIONS

- Sec. 701. Treatment of certain liens.
- Sec. 702. Treatment of fuel tax claims.
- Sec. 703. Notice of request for a determination of taxes.
- Sec. 704. Rate of interest on tax claims.
- Sec. 705. Priority of tax claims.
- Sec. 706. Priority property taxes incurred.
- Sec. 707. No discharge of fraudulent taxes in chapter 13.
- Sec. 708. No discharge of fraudulent taxes in chapter 11.
- Sec. 709. Stay of tax proceedings limited to prepetition taxes.
- Sec. 710. Periodic payment of taxes in chapter 11 cases.
- Sec. 711. Avoidance of statutory tax liens prohibited.
- Sec. 712. Payment of taxes in the conduct of business.
- Sec. 713. Tardily filed priority tax claims.
- Sec. 714. Income tax returns prepared by tax authorities.
- Sec. 715. Discharge of the estate's liability for unpaid taxes.
- Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
- Sec. 717. Standards for tax disclosure.
- Sec. 718. Setoff of tax refunds.
- Sec. 719. Special provisions related to the treatment of State and local taxes.
- Sec. 720. Dismissal for failure to timely file tax returns.

#### TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
- Sec. 802. Other amendments to titles 11 and 28, United States Code.

#### TITLE IX—FINANCIAL CONTRACT PROVISIONS

- Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.

- Sec. 902. Authority of the corporation with respect to failed and failing institutions.
- Sec. 903. Amendments relating to transfers of qualified financial contracts.
- Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 905. Clarifying amendment relating to master agreements.
- Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 907. Bankruptcy Code amendments.
- Sec. 908. Recordkeeping requirements.
- Sec. 909. Exemptions from contemporaneous execution requirement.
- Sec. 910. Damage measure.
- Sec. 911. SIPC stay.
- Sec. 912. Asset-backed securitizations.
- Sec. 913. Effective date; application of amendments.

#### TITLE X—PROTECTION OF FAMILY FARMERS

- Sec. 1001. Permanent reenactment of chapter 12.
- Sec. 1002. Debt limit increase.
- Sec. 1003. Certain claims owed to governmental units.

#### TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

- Sec. 1101. Definitions.
- Sec. 1102. Disposal of patient records.
- Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
- Sec. 1104. Appointment of ombudsman to act as patient advocate.
- Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
- Sec. 1106. Exclusion from program participation not subject to automatic stay.

#### TITLE XII—TECHNICAL AMENDMENTS

- Sec. 1201. Definitions.
- Sec. 1202. Adjustment of dollar amounts.
- Sec. 1203. Extension of time.
- Sec. 1204. Technical amendments.
- Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 1206. Limitation on compensation of professional persons.
- Sec. 1207. Effect of conversion.
- Sec. 1208. Allowance of administrative expenses.
- Sec. 1209. Exceptions to discharge.
- Sec. 1210. Effect of discharge.
- Sec. 1211. Protection against discriminatory treatment.
- Sec. 1212. Property of the estate.
- Sec. 1213. Preferences.
- Sec. 1214. Postpetition transactions.
- Sec. 1215. Disposition of property of the estate.
- Sec. 1216. General provisions.
- Sec. 1217. Abandonment of railroad line.
- Sec. 1218. Contents of plan.
- Sec. 1219. Discharge under chapter 12.
- Sec. 1220. Bankruptcy cases and proceedings.
- Sec. 1221. Knowing disregard of bankruptcy law or rule.
- Sec. 1222. Transfers made by nonprofit charitable corporations.

- Sec. 1223. Protection of valid purchase money security interests.
- Sec. 1224. Extensions.
- Sec. 1225. Bankruptcy judgeships.
- Sec. 1226. Compensating trustees.
- Sec. 1227. Amendment to section 362 of title 11, United States Code.
- Sec. 1228. Judicial education.
- Sec. 1229. Reclamation.
- Sec. 1230. Providing requested tax documents to the court.
- Sec. 1231. Encouraging creditworthiness.
- Sec. 1232. Property no longer subject to redemption.
- Sec. 1233. Trustees.
- Sec. 1234. Bankruptcy forms.
- Sec. 1235. Expedited appeals of bankruptcy cases to courts of appeals.
- Sec. 1236. Exemptions.

#### TITLE XIII—CONSUMER CREDIT DISCLOSURE

- Sec. 1301. Enhanced disclosures under an open end credit plan.
- Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
- Sec. 1303. Disclosures related to “introductory rates”.
- Sec. 1304. Internet-based credit card solicitations.
- Sec. 1305. Disclosures related to late payment deadlines and penalties.
- Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
- Sec. 1307. Dual use debit card.
- Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 1309. Clarification of clear and conspicuous.
- Sec. 1310. Enforcement of certain foreign judgments barred.

#### TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

- Sec. 1401. Effective date; application of amendments.

# 1           **TITLE I—NEEDS-BASED** 2           **BANKRUPTCY**

## 3   **SEC. 101. CONVERSION.**

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

## 6   **SEC. 102. DISMISSAL OR CONVERSION.**

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

9                   (1) by striking the section heading and insert-  
10   ing the following:

1 **“§ 707. Dismissal of a case or conversion to a case**  
 2 **under chapter 11 or 13”;**

3 and

4 (2) in subsection (b)—

5 (A) by inserting “(1)” after “(b)”;

6 (B) in paragraph (1), as redesignated by  
 7 subparagraph (A) of this paragraph—

8 (i) in the first sentence—

9 (I) by striking “but not at the re-  
 10 quest or suggestion of” and inserting  
 11 “trustee, bankruptcy administrator,  
 12 or”;

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

18 (III) by striking “a substantial  
 19 abuse” and inserting “an abuse”; and

20 (ii) by striking the next to last sen-  
 21 tence; and

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

23 “(2)(A)(i) In considering under paragraph (1) wheth-  
 24 er the granting of relief would be an abuse of the provi-  
 25 sions of this chapter, the court shall presume abuse exists  
 26 if the debtor’s current monthly income reduced by the

1 amounts determined under clauses (ii), (iii), and (iv), and  
2 multiplied by 60 is not less than the lesser of—

3 “(I) 25 percent of the debtor’s nonpriority un-  
4 secured claims in the case, or \$6,000, whichever is  
5 greater; or

6 “(II) \$10,000.

7 “(ii)(I) The debtor’s monthly expenses shall be the  
8 debtor’s applicable monthly expense amounts specified  
9 under the National Standards and Local Standards, and  
10 the debtor’s actual monthly expenses for the categories  
11 specified as Other Necessary Expenses issued by the In-  
12 ternal Revenue Service for the area in which the debtor  
13 resides, as in effect on the date of the entry of the order  
14 for relief, for the debtor, the dependents of the debtor,  
15 and the spouse of the debtor in a joint case, if the spouse  
16 is not otherwise a dependent. Notwithstanding any other  
17 provision of this clause, the monthly expenses of the debt-  
18 or shall not include any payments for debts. In addition,  
19 the debtor’s monthly expenses shall include the debtor’s  
20 reasonably necessary expenses incurred to maintain the  
21 safety of the debtor and the family of the debtor from fam-  
22 ily violence as identified under section 309 of the Family  
23 Violence Prevention and Services Act (42 U.S.C. 10408),  
24 or other applicable Federal law. The expenses included in  
25 the debtor’s monthly expenses described in the preceding



1 sentence shall be kept confidential by the court. In addi-  
2 tion, if it is demonstrated that it is reasonable and nec-  
3 essary, the debtor's monthly expenses may also include an  
4 additional allowance for food and clothing of up to 5 per-  
5 cent of the food and clothing categories as specified by  
6 the National Standards issued by the Internal Revenue  
7 Service.

8       “(II) In addition, the debtor's monthly expenses may  
9 include, if applicable, the continuation of actual expenses  
10 paid by the debtor that are reasonable and necessary for  
11 care and support of an elderly, chronically ill, or disabled  
12 household member or member of the debtor's immediate  
13 family (including parents, grandparents, and siblings of  
14 the debtor, the dependents of the debtor, and the spouse  
15 of the debtor in a joint case) who is not a dependent and  
16 who is unable to pay for such reasonable and necessary  
17 expenses.

18       “(III) In addition, for a debtor eligible for chapter  
19 13, the debtor's monthly expenses may include the actual  
20 administrative expenses of administering a chapter 13  
21 plan for the district in which the debtor resides, up to an  
22 amount of 10 percent of the projected plan payments, as  
23 determined under schedules issued by the Executive Office  
24 for United States Trustees.

1       “(IV) In addition, the debtor’s monthly expenses may  
2 include the actual expenses for each dependent child under  
3 the age of 18 years up to \$1,500 per year per child to  
4 attend a private elementary or secondary school, if the  
5 debtor provides documentation of such expenses and a de-  
6 tailed explanation of why such expenses are reasonable  
7 and necessary.

8       “(iii) The debtor’s average monthly payments on ac-  
9 count of secured debts shall be calculated as—

10           “(I) the sum of—

11                   “(aa) the total of all amounts scheduled as  
12 contractually due to secured creditors in each  
13 month of the 60 months following the date of  
14 the petition; and

15                   “(bb) any additional payments to secured  
16 creditors necessary for the debtor, in filing a  
17 plan under chapter 13 of this title, to maintain  
18 possession of the debtor’s primary residence,  
19 motor vehicle, or other property necessary for  
20 the support of the debtor and the debtor’s de-  
21 pendents, that serves as collateral for secured  
22 debts; divided by

23           “(II) 60.

1       “(iv) The debtor’s expenses for payment of all pri-  
2       ority claims (including priority child support and alimony  
3       claims) shall be calculated as—

4               “(I) the total amount of debts entitled to pri-  
5       ority; divided by

6               “(II) 60.

7       “(B)(i) In any proceeding brought under this sub-  
8       section, the presumption of abuse may only be rebutted  
9       by demonstrating special circumstances that justify addi-  
10      tional expenses or adjustments of current monthly income  
11      for which there is no reasonable alternative.

12       “(ii) In order to establish special circumstances, the  
13      debtor shall be required to—

14               “(I) itemize each additional expense or adjust-  
15      ment of income; and

16               “(II) provide—

17                       “(aa) documentation for such expense or  
18                       adjustment to income; and

19                       “(bb) a detailed explanation of the special  
20                       circumstances that make such expenses or ad-  
21                       justment to income necessary and reasonable.

22       “(iii) The debtor shall attest under oath to the accu-  
23      racy of any information provided to demonstrate that ad-  
24      ditional expenses or adjustments to income are required.

1       “(iv) The presumption of abuse may only be rebutted  
2 if the additional expenses or adjustments to income re-  
3 ferred to in clause (i) cause the product of the debtor’s  
4 current monthly income reduced by the amounts deter-  
5 mined under clauses (ii), (iii), and (iv) of subparagraph  
6 (A) when multiplied by 60 to be less than the lesser of—

7               “(I) 25 percent of the debtor’s nonpriority un-  
8               secured claims, or \$6,000, whichever is greater; or

9               “(II) \$10,000.

10       “(C) As part of the schedule of current income and  
11 expenditures required under section 521, the debtor shall  
12 include a statement of the debtor’s current monthly in-  
13 come, and the calculations that determine whether a pre-  
14 sumption arises under subparagraph (A)(i), that shows  
15 how each such amount is calculated.

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

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

23               “(B) the totality of the circumstances (includ-  
24               ing whether the debtor seeks to reject a personal  
25               services contract and the financial need for such re-

1       jection as sought by the debtor) of the debtor’s fi-  
2       nancial situation demonstrates abuse.

3       “(4)(A) The court shall order the counsel for the  
4       debtor to reimburse the trustee for all reasonable costs  
5       in prosecuting a motion brought under section 707(b), in-  
6       cluding reasonable attorneys’ fees, if—

7               “(i) a trustee appointed under section 586(a)(1)  
8       of title 28 or from a panel of private trustees main-  
9       tained by the bankruptcy administrator brings a mo-  
10      tion for dismissal or conversion under this sub-  
11      section; and

12             “(ii) the court—

13               “(I) grants that motion; and

14               “(II) finds that the action of the counsel  
15      for the debtor in filing under this chapter vio-  
16      lated rule 9011 of the Federal Rules of Bank-  
17      ruptcy Procedure.

18      “(B) If the court finds that the attorney for the debt-  
19      or violated rule 9011 of the Federal Rules of Bankruptcy  
20      Procedure, at a minimum, the court shall order—

21             “(i) the assessment of an appropriate civil pen-  
22      alty against the counsel for the debtor; and

23             “(ii) the payment of the civil penalty to the  
24      trustee, the United States trustee, or the bankruptcy  
25      administrator.

1       “(C) In the case of a petition, pleading, or written  
2 motion, the signature of an attorney shall constitute a cer-  
3 tification that the attorney has—

4           “(i) performed a reasonable investigation into  
5 the circumstances that gave rise to the petition,  
6 pleading, or written motion; and

7           “(ii) determined that the petition, pleading, or  
8 written motion—

9               “(I) is well grounded in fact; and

10               “(II) is warranted by existing law or a  
11 good faith argument for the extension, modi-  
12 fication, or reversal of existing law and does not  
13 constitute an abuse under paragraph (1).

14       “(D) The signature of an attorney on the petition  
15 shall constitute a certification that the attorney has no  
16 knowledge after an inquiry that the information in the  
17 schedules filed with such petition is incorrect.

18       “(5)(A) Except as provided in subparagraph (B) and  
19 subject to paragraph (6), the court may award a debtor  
20 all reasonable costs (including reasonable attorneys’ fees)  
21 in contesting a motion brought by a party in interest  
22 (other than a trustee, United States trustee, or bank-  
23 ruptcy administrator) under this subsection if—

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

25           “(ii) the court finds that—

1           “(I) the position of the party that brought  
2           the motion violated rule 9011 of the Federal  
3           Rules of Bankruptcy Procedure; or

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

8           “(B) A small business that has a claim of an aggre-  
9           gate amount less than \$1,000 shall not be subject to sub-  
10          paragraph (A)(ii)(I).

11          “(C) For purposes of this paragraph—

12           “(i) the term ‘small business’ means an unin-  
13           corporated business, partnership, corporation, asso-  
14           ciation, or organization that—

15           “(I) has less than 25 full-time employees  
16           as determined on the date the motion is filed;  
17           and

18           “(II) is engaged in commercial or business  
19           activity; and

20           “(ii) the number of employees of a wholly  
21           owned subsidiary of a corporation includes the em-  
22           ployees of—

23           “(I) a parent corporation; and

24           “(II) any other subsidiary corporation of  
25           the parent corporation.

1       “(6) Only the judge, United States trustee, or bank-  
2 ruptcy administrator may bring a motion under section  
3 707(b), if the current monthly income of the debtor, or  
4 in a joint case, the debtor and the debtor’s spouse, as of  
5 the date of the order for relief, when multiplied by 12,  
6 is equal to or less than—

7           “(A) in the case of a debtor in a household of  
8 1 person, the median family income of the applicable  
9 State for 1 earner last reported by the Bureau of  
10 the Census;

11           “(B) in the case of a debtor in a household of  
12 2, 3, or 4 individuals, the highest median family in-  
13 come of the applicable State for a family of the same  
14 number or fewer individuals last reported by the Bu-  
15 reau of the Census; or

16           “(C) in the case of a debtor in a household ex-  
17 ceeding 4 individuals, the highest median family in-  
18 come of the applicable State for a family of 4 or  
19 fewer individuals last reported by the Bureau of the  
20 Census, plus \$525 per month for each individual in  
21 excess of 4.

22       “(7) No judge, United States trustee, panel trustee,  
23 bankruptcy administrator or other party in interest may  
24 bring a motion under paragraph (2), if the current month-  
25 ly 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 equal to or less than—

3 “(A) in the case of a debtor in a household of  
4 1 person, the median family income of the applicable  
5 State for 1 earner last reported by the Bureau of  
6 the Census;

7 “(B) in the case of a debtor in a household of  
8 2, 3, or 4 individuals, the highest median family in-  
9 come of the applicable State for a family of the same  
10 number or fewer individuals last reported by the Bu-  
11 reau of the Census; or

12 “(C) in the case of a debtor in a household ex-  
13 ceeding 4 individuals, the highest median family in-  
14 come of the applicable State for a family of 4 or  
15 fewer individuals last reported by the Bureau of the  
16 Census, plus \$525 per month for each individual in  
17 excess of 4.”.

18 (b) DEFINITION.—Section 101 of title 11, United  
19 States Code, is amended by inserting after paragraph (10)  
20 the following:

21 “(10A) ‘current monthly income’—

22 “(A) means the average monthly income  
23 from all sources which the debtor, or in a joint  
24 case, the debtor and the debtor’s spouse, receive  
25 without regard to whether the income is taxable

1 income, derived during the 6-month period pre-  
2 ceding the date of determination; and

3 “(B) includes any amount paid by any en-  
4 tity other than the debtor (or, in a joint case,  
5 the debtor and the debtor’s spouse), on a reg-  
6 ular basis to the household expenses of the  
7 debtor or the debtor’s dependents (and, in a  
8 joint case, the debtor’s spouse if not otherwise  
9 a dependent), but excludes benefits received  
10 under the Social Security Act and payments to  
11 victims of war crimes or crimes against human-  
12 ity on account of their status as victims of such  
13 crimes;”.

14 (c) UNITED STATES TRUSTEE AND BANKRUPTCY  
15 ADMINISTRATOR DUTIES.—Section 704 of title 11, United  
16 States Code, is amended—

17 (1) by inserting “(a)” before “The trustee  
18 shall—”; and

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

20 “(b)(1) With respect to an individual debtor under  
21 this chapter—

22 “(A) the United States trustee or bankruptcy  
23 administrator shall review all materials filed by the  
24 debtor and, not later than 10 days after the date of  
25 the first meeting of creditors, file with the court a

1 statement as to whether the debtor’s case would be  
2 presumed to be an abuse under section 707(b); and

3 “(B) not later than 5 days after receiving a  
4 statement under subparagraph (A), the court shall  
5 provide a copy of the statement to all creditors.

6 “(2) The United States trustee or bankruptcy admin-  
7 istrator shall, not later than 30 days after the date of fil-  
8 ing a statement under paragraph (1), either file a motion  
9 to dismiss or convert under section 707(b) or file a state-  
10 ment setting forth the reasons the United States trustee  
11 or bankruptcy administrator does not believe that such a  
12 motion would be appropriate, if the United States trustee  
13 or bankruptcy administrator determines that the debtor’s  
14 case should be presumed to be an abuse under section  
15 707(b) and the product of the debtor’s current monthly  
16 income, multiplied by 12 is not less than—

17 “(A) in the case of a debtor in a household of  
18 1 person, the median family income of the applicable  
19 State for 1 earner last reported by the Bureau of  
20 the Census; or

21 “(B) in the case of a debtor in a household of  
22 2 or more individuals, the highest median family in-  
23 come of the applicable State for a family of the same  
24 number or fewer individuals last reported by the Bu-  
25 reau of the Census.

1       “(3) In any case in which a motion to dismiss or con-  
2 vert, or a statement is required to be filed by this sub-  
3 section, the United States trustee or bankruptcy adminis-  
4 trator may decline to file a motion to dismiss or convert  
5 pursuant to section 704(b)(2) if the product of the debt-  
6 or’s current monthly income multiplied by 12 exceeds 100  
7 percent, but does not exceed 150 percent of—

8               “(A)(i) in the case of a debtor in a household  
9 of 1 person, the median family income of the appli-  
10 cable State for 1 earner last reported by the Bureau  
11 of the Census; or

12               “(ii) in the case of a debtor in a household of  
13 2 or more individuals, the highest median family in-  
14 come of the applicable State for a family of the same  
15 number or fewer individuals last reported by the Bu-  
16 reau of the Census; and

17               “(B) the product of the debtor’s current month-  
18 ly income, reduced by the amounts determined under  
19 section 707(b)(2)(A)(ii) (except for the amount cal-  
20 culated under the other necessary expenses standard  
21 issued by the Internal Revenue Service) and clauses  
22 (iii) and (iv) of section 707(b)(2)(A), multiplied by  
23 60 is less than the lesser of—

1           “(i) 25 percent of the debtor’s nonpriority  
2           unsecured claims in the case or \$6,000, which-  
3           ever is greater; or

4           “(ii) \$10,000.”.

5           (d) NOTICE.—Section 342 of title 11, United States  
6 Code, is amended by adding at the end the following:

7           “(d) In an individual case under chapter 7 in which  
8 the presumption of abuse is triggered under section  
9 707(b), the clerk shall give written notice to all creditors  
10 not later than 10 days after the date of the filing of the  
11 petition that the presumption of abuse has been trig-  
12 gered.”.

13           (e) NONLIMITATION OF INFORMATION.—Nothing in  
14 this title shall limit the ability of a creditor to provide in-  
15 formation to a judge (except for information commu-  
16 nicated ex parte, unless otherwise permitted by applicable  
17 law), United States trustee, bankruptcy administrator or  
18 trustee.

19           (f) DISMISSAL FOR CERTAIN CRIMES.—Section 707  
20 of title 11, United States Code, as amended by this sec-  
21 tion, is amended by adding at the end the following:

22           “(c)(1) In this subsection—

23           “(A) the term ‘crime of violence’ has the mean-  
24           ing given that term in section 16 of title 18; and

1           “(B) the term ‘drug trafficking crime’ has the  
2           meaning given that term in section 924(c)(2) of title  
3           18.

4           “(2) Except as provided in paragraph (3), after no-  
5           tice and a hearing, the court, on a motion by the victim  
6           of a crime of violence or a drug trafficking crime, may  
7           when it is in the best interest of the victims dismiss a  
8           voluntary case filed by an individual debtor under this  
9           chapter if that individual was convicted of that crime.

10          “(3) The court may not dismiss a case under para-  
11          graph (2) if the debtor establishes by a preponderance of  
12          the evidence that the filing of a case under this chapter  
13          is necessary to satisfy a claim for a domestic support obli-  
14          gation.”.

15          (g) CONFIRMATION OF PLAN.—Section 1325(a) of  
16          title 11, United States Code, is amended—

17                 (1) in paragraph (5), by striking “and” at the  
18                 end;

19                 (2) in paragraph (6), by striking the period and  
20                 inserting a semicolon; and

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

22                         “(7) the action of the debtor in filing the peti-  
23                         tion was in good faith;”.

1 (h) APPLICABILITY OF MEANS TEST TO CHAPTER  
2 13.—Section 1325(b) of title 11, United States Code, is  
3 amended—

4 (1) in paragraph (1)(B), by inserting “to unse-  
5 cured creditors” after “to make payments”; and

6 (2) by striking paragraph (2) and inserting the  
7 following:

8 “(2) For purposes of this subsection, the term  
9 ‘disposable income’ means current monthly income  
10 received by the debtor (other than child support pay-  
11 ments, foster care payments, or disability payments  
12 for a dependent child made in accordance with appli-  
13 cable nonbankruptcy law to the extent reasonably  
14 necessary to be expended for such child) less  
15 amounts reasonably necessary to be expended—

16 “(A) for the maintenance or support of the  
17 debtor or a dependent of the debtor or for a do-  
18 mestic support obligation that first becomes  
19 payable after the date the petition is filed and  
20 for charitable contributions (that meet the defi-  
21 nition of ‘charitable contribution’ under section  
22 548(d)(3) to a qualified religious or charitable  
23 entity or organization (as that term is defined  
24 in section 548(d)(4)) in an amount not to ex-  
25 ceed 15 percent of gross income of the debtor

1 for the year in which the contributions are  
2 made; and

3 “(B) if the debtor is engaged in business,  
4 for the payment of expenditures necessary for  
5 the continuation, preservation, and operation of  
6 such business.

7 “(3) Amounts reasonably necessary to be ex-  
8 pended under paragraph (2) shall be determined in  
9 accordance with subparagraphs (A) and (B) of sec-  
10 tion 707(b)(2), if the debtor has current monthly in-  
11 come, when multiplied by 12, greater than—

12 “(A) in the case of a debtor in a household  
13 of 1 person, the median family income of the  
14 applicable State for 1 earner last reported by  
15 the Bureau of the Census;

16 “(B) in the case of a debtor in a household  
17 of 2, 3, or 4 individuals, the highest median  
18 family income of the applicable State for a fam-  
19 ily of the same number or fewer individuals last  
20 reported by the Bureau of the Census; or

21 “(C) in the case of a debtor in a household  
22 exceeding 4 individuals, the highest median  
23 family income of the applicable State for a fam-  
24 ily of 4 or fewer individuals last reported by the



1 Bureau of the Census, plus \$525 per month for  
2 each individual in excess of 4.”.

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

“707. Dismissal of a case or conversion to a case under chapter 11 or 13.”.

7 **SEC. 103. SENSE OF CONGRESS AND STUDY.**

8 (a) SENSE OF CONGRESS.—It is the sense of Con-  
9 gress that the Secretary of the Treasury has the authority  
10 to alter the Internal Revenue Service standards estab-  
11 lished to set guidelines for repayment plans as needed to  
12 accommodate their use under section 707(b) of title 11,  
13 United States Code.

14 (b) STUDY.—

15 (1) IN GENERAL.—Not later than 2 years after  
16 the date of enactment of this Act, the Director of  
17 the Executive Office for United States Trustees shall  
18 submit a report to the Committee on the Judiciary  
19 of the Senate and the Committee on the Judiciary  
20 of the House of Representatives containing the find-  
21 ings of the Director regarding the utilization of In-  
22 ternal Revenue Service standards for determining—

23 (A) the current monthly expenses of a  
24 debtor under section 707(b) of title 11, United  
25 States Code; and

1 (B) the impact that the application of such  
2 standards has had on debtors and on the bank-  
3 ruptey courts.

4 (2) RECOMMENDATION.—The report under  
5 paragraph (1) may include recommendations for  
6 amendments to title 11, United States Code, that  
7 are consistent with the findings of the Director  
8 under paragraph (1).

9 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

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

16 “(1) a brief description of—

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

20 “(B) the types of services available from  
21 credit counseling agencies; and

22 “(2) statements specifying that—

23 “(A) a person who knowingly and fraudu-  
24 lently conceals assets or makes a false oath or  
25 statement under penalty of perjury in connec-

1           tion with a bankruptcy case shall be subject to  
2           fine, imprisonment, or both; and

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

6 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**  
7                   **TEST PROGRAM.**

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

20           (b) TEST.—

21                   (1) SELECTION OF DISTRICTS.—The Director  
22 shall select 6 judicial districts of the United States  
23 in which to test the effectiveness of the financial  
24 management training curriculum and materials de-  
25 veloped under subsection (a).

1           (2) USE.—For an 18-month period beginning  
2 not later than 270 days after the date of enactment  
3 of this Act, such curriculum and materials shall be,  
4 for the 6 judicial districts selected under paragraph  
5 (1), used as the instructional course concerning per-  
6 sonal financial management for purposes of section  
7 111 of title 11, United States Code.

8           (c) EVALUATION.—

9           (1) IN GENERAL.—During the 18-month period  
10 referred to in subsection (b), the Director shall  
11 evaluate the effectiveness of—

12                   (A) the financial management training cur-  
13 riculum and materials developed under sub-  
14 section (a); and

15                   (B) a sample of existing consumer edu-  
16 cation programs such as those described in the  
17 Report of the National Bankruptcy Review  
18 Commission (October 20, 1997) that are rep-  
19 resentative of consumer education programs  
20 carried out by the credit industry, by trustees  
21 serving under chapter 13 of title 11, United  
22 States Code, and by consumer counseling  
23 groups.

24           (2) REPORT.—Not later than 3 months after  
25 concluding such evaluation, the Director shall sub-

1       mit a report to the Speaker of the House of Rep-  
2       resentatives and the President pro tempore of the  
3       Senate, for referral to the appropriate committees of  
4       the Congress, containing the findings of the Director  
5       regarding the effectiveness of such curriculum, such  
6       materials, and such programs and their costs.

7       **SEC. 106. CREDIT COUNSELING.**

8       (a) WHO MAY BE A DEBTOR.—Section 109 of title  
9       11, United States Code, is amended by adding at the end  
10      the following:

11       “(h)(1) Subject to paragraphs (2) and (3), and not-  
12      withstanding any other provision of this section, an indi-  
13      vidual may not be a debtor under this title unless that  
14      individual has, during the 180-day period preceding the  
15      date of filing of the petition of that individual, received  
16      from an approved nonprofit budget and credit counseling  
17      agency described in section 111(a) an individual or group  
18      briefing (including a briefing conducted by telephone or  
19      on the Internet) that outlined the opportunities for avail-  
20      able credit counseling and assisted that individual in per-  
21      forming a related budget analysis.

22       “(2)(A) Paragraph (1) shall not apply with respect  
23      to a debtor who resides in a district for which the United  
24      States trustee or bankruptcy administrator of the bank-  
25      ruptcy court of that district determines that the approved

1 nonprofit budget and credit counseling agencies for that  
2 district are not reasonably able to provide adequate serv-  
3 ices to the additional individuals who would otherwise seek  
4 credit counseling from that agency by reason of the re-  
5 quirements of paragraph (1).

6       “(B) Each United States trustee or bankruptcy ad-  
7 ministrator that makes a determination described in sub-  
8 paragraph (A) shall review that determination not later  
9 than 1 year after the date of that determination, and not  
10 less frequently than every year thereafter. Notwith-  
11 standing the preceding sentence, a nonprofit budget and  
12 credit counseling service may be disapproved by the  
13 United States trustee or bankruptcy administrator at any  
14 time.

15       “(3)(A) Subject to subparagraph (B), the require-  
16 ments of paragraph (1) shall not apply with respect to  
17 a debtor who submits to the court a certification that—

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

20               “(ii) states that the debtor requested credit  
21 counseling services from an approved nonprofit  
22 budget and credit counseling agency, but was unable  
23 to obtain the services referred to in paragraph (1)  
24 during the 5-day period beginning on the date on  
25 which the debtor made that request; and

1           “(iii) is satisfactory to the court.

2           “(B) With respect to a debtor, an exemption under  
3 subparagraph (A) shall cease to apply to that debtor on  
4 the date on which the debtor meets the requirements of  
5 paragraph (1), but in no case may the exemption apply  
6 to that debtor after the date that is 30 days after the debt-  
7 or files a petition, except that the court, for cause, may  
8 order an additional 15 days.”.

9           (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
10 11, United States Code, is amended—

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

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

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

16           “(11) after the filing of the petition, the debtor  
17 failed to complete an instructional course concerning  
18 personal financial management described in section  
19 111.

20           “(12)(A) Paragraph (11) shall not apply with  
21 respect to a debtor who resides in a district for  
22 which the United States trustee or bankruptcy ad-  
23 ministrator of that district determines that the ap-  
24 proved instructional courses are not adequate to

1 service the additional individuals required to com-  
2 plete such instructional courses under this section.

3 “(B) Each United States trustee or bankruptcy  
4 administrator that makes a determination described  
5 in subparagraph (A) shall review that determination  
6 not later than 1 year after the date of that deter-  
7 mination, and not less frequently than every year  
8 thereafter.”.

9 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
10 11, United States Code, is amended by adding at the end  
11 the following:

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

16 “(h) Subsection (g) shall not apply with respect to  
17 a debtor who resides in a district for which the United  
18 States trustee or bankruptcy administrator of the bank-  
19 ruptcy court of that district determines that the approved  
20 instructional courses are not adequate to service the addi-  
21 tional individuals who would be required to complete the  
22 instructional course by reason of the requirements of this  
23 section.

24 “(i) Each United States trustee or bankruptcy ad-  
25 ministrator that makes a determination described in sub-



1 section (h) shall review that determination not later than  
2 1 year after the date of that determination, and not less  
3 frequently than every year thereafter.”.

4 (d) DEBTOR’S DUTIES.—Section 521 of title 11,  
5 United States Code, is amended—

6 (1) by inserting “(a)” before “The debtor  
7 shall—”; and

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

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

11 “(1) a certificate from the approved nonprofit  
12 budget and credit counseling agency that provided  
13 the debtor services under section 109(h) describing  
14 the services provided to the debtor; and

15 “(2) a copy of the debt repayment plan, if any,  
16 developed under section 109(h) through the ap-  
17 proved nonprofit budget and credit counseling agen-  
18 cy referred to in paragraph (1).”.

19 (e) GENERAL PROVISIONS.—

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

1 **“§ 111. Credit counseling services; financial manage-**  
2 **ment instructional courses**

3 “(a) The clerk of each district shall maintain a pub-  
4 licly available list of—

5 “(1) credit counseling agencies that provide 1  
6 or more programs described in section 109(h) cur-  
7 rently approved by the United States trustee or the  
8 bankruptcy administrator for the district, as applica-  
9 ble; and

10 “(2) instructional courses concerning personal  
11 financial management currently approved by the  
12 United States trustee or the bankruptcy adminis-  
13 trator for the district, as applicable.

14 “(b) The United States trustee or bankruptcy admin-  
15 istrator shall only approve a credit counseling agency or  
16 instructional course concerning personal financial manage-  
17 ment as follows:

18 “(1) The United States trustee or bankruptcy  
19 administrator shall have thoroughly reviewed the  
20 qualifications of the credit counseling agency or of  
21 the provider of the instructional course under the  
22 standards set forth in this section, and the programs  
23 or instructional courses which will be offered by such  
24 agency or provider, and may require an agency or  
25 provider of an instructional course which has sought

1 approval to provide information with respect to such  
2 review.

3 “(2) The United States trustee or bankruptcy  
4 administrator shall have determined that the credit  
5 counseling agency or course of instruction fully sat-  
6 isfies the applicable standards set forth in this sec-  
7 tion.

8 “(3) When an agency or course of instruction  
9 is initially approved, such approval shall be for a  
10 probationary period not to exceed 6 months. An  
11 agency or course of instruction is initially approved  
12 if it did not appear on the approved list for the dis-  
13 trict under subsection (a) immediately prior to ap-  
14 proval.

15 “(4) At the conclusion of the probationary pe-  
16 riod under paragraph (3), the United States trustee  
17 or bankruptcy administrator may only approve for  
18 an additional 1-year period, and for successive 1-  
19 year periods thereafter, any agency or course of in-  
20 struction which has demonstrated during the proba-  
21 tionary or subsequent period that such agency or  
22 course of instruction—

23 “(A) has met the standards set forth under  
24 this section during such period; and

1           “(B) can satisfy such standards in the fu-  
2           ture.

3           “(5) Not later than 30 days after any final de-  
4           cision under paragraph (4), that occurs either after  
5           the expiration of the initial probationary period, or  
6           after any 2-year period thereafter, an interested per-  
7           son may seek judicial review of such decision in the  
8           appropriate United States District Court.

9           “(c)(1) The United States trustee or bankruptcy ad-  
10          ministrators shall only approve a credit counseling agency  
11          that demonstrates that it will provide qualified counselors,  
12          maintain adequate provision for safekeeping and payment  
13          of client funds, provide adequate counseling with respect  
14          to client credit problems, and deal responsibly and effec-  
15          tively with other matters as relate to the quality, effective-  
16          ness, and financial security of such programs.

17          “(2) To be approved by the United States trustee or  
18          bankruptcy administrator, a credit counseling agency  
19          shall, at a minimum—

20                 “(A) be a nonprofit budget and credit coun-  
21                 seling agency, the majority of the board of directors  
22                 of which—

23                         “(i) are not employed by the agency; and

1           “(ii) will not directly or indirectly benefit  
2           financially from the outcome of a credit coun-  
3           seling session;

4           “(B) if a fee is charged for counseling services,  
5           charge a reasonable fee, and provide services without  
6           regard to ability to pay the fee;

7           “(C) provide for safekeeping and payment of  
8           client funds, including an annual audit of the trust  
9           accounts and appropriate employee bonding;

10          “(D) provide full disclosures to clients, includ-  
11          ing funding sources, counselor qualifications, pos-  
12          sible impact on credit reports, and any costs of such  
13          program that will be paid by the debtor and how  
14          such costs will be paid;

15          “(E) provide adequate counseling with respect  
16          to client credit problems that includes an analysis of  
17          their current situation, what brought them to that  
18          financial status, and how they can develop a plan to  
19          handle the problem without incurring negative amor-  
20          tization of their debts;

21          “(F) provide trained counselors who receive no  
22          commissions or bonuses based on the counseling ses-  
23          sion outcome, and who have adequate experience,  
24          and have been adequately trained to provide coun-  
25          seling services to individuals in financial difficulty,

1 including the matters described in subparagraph  
2 (E);

3 “(G) demonstrate adequate experience and  
4 background in providing credit counseling; and

5 “(H) have adequate financial resources to pro-  
6 vide continuing support services for budgeting plans  
7 over the life of any repayment plan.

8 “(d) The United States trustee or bankruptcy admin-  
9 istrator shall only approve an instructional course con-  
10 cerning personal financial management—

11 “(1) for an initial probationary period under  
12 subsection (b)(3) if the course will provide at a  
13 minimum—

14 “(A) trained personnel with adequate expe-  
15 rience and training in providing effective in-  
16 struction and services;

17 “(B) learning materials and teaching  
18 methodologies designed to assist debtors in un-  
19 derstanding personal financial management and  
20 that are consistent with stated objectives di-  
21 rectly related to the goals of such course of in-  
22 struction;

23 “(C) adequate facilities situated in reason-  
24 ably convenient locations at which such course  
25 of instruction is offered, except that such facili-

1           ties may include the provision of such course of  
2           instruction or program by telephone or through  
3           the Internet, if the course of instruction or pro-  
4           gram is effective; and

5           “(D) the preparation and retention of rea-  
6           sonable records (which shall include the debt-  
7           or’s bankruptcy case number) to permit evalua-  
8           tion of the effectiveness of such course of in-  
9           struction or program, including any evaluation  
10          of satisfaction of course of instruction or pro-  
11          gram requirements for each debtor attending  
12          such course of instruction or program, which  
13          shall be available for inspection and evaluation  
14          by the Executive Office for United States  
15          Trustees, the United States trustee, bankruptcy  
16          administrator, or chief bankruptcy judge for the  
17          district in which such course of instruction or  
18          program is offered; and

19          “(2) for any 1-year period if the provider there-  
20          of has demonstrated that the course meets the  
21          standards of paragraph (1) and, in addition—

22                 “(A) has been effective in assisting a sub-  
23                 stantial number of debtors to understand per-  
24                 sonal financial management; and

1           “(B) is otherwise likely to increase sub-  
2           stantially debtor understanding of personal fi-  
3           nancial management.

4           “(e) The District Court may, at any time, investigate  
5 the qualifications of a credit counseling agency referred  
6 to in subsection (a), and request production of documents  
7 to ensure the integrity and effectiveness of such credit  
8 counseling agencies. The District Court may, at any time,  
9 remove from the approved list under subsection (a) a cred-  
10 it counseling agency upon finding such agency does not  
11 meet the qualifications of subsection (b).

12          “(f) The United States trustee or bankruptcy admin-  
13 istrator shall notify the clerk that a credit counseling  
14 agency or an instructional course is no longer approved,  
15 in which case the clerk shall remove it from the list main-  
16 tained under subsection (a).

17          “(g)(1) No credit counseling service may provide to  
18 a credit reporting agency information concerning whether  
19 an individual debtor has received or sought instruction  
20 concerning personal financial management from the credit  
21 counseling service.

22          “(2) A credit counseling service that willfully or neg-  
23 ligently fails to comply with any requirement under this  
24 title with respect to a debtor shall be liable for damages  
25 in an amount equal to the sum of—





1 Act, issue schedules of reasonable and necessary adminis-  
 2 trative expenses of administering a chapter 13 plan for  
 3 each judicial district of the United States.

4 **TITLE II—ENHANCED**  
 5 **CONSUMER PROTECTION**  
 6 **Subtitle A—Penalties for Abusive**  
 7 **Creditor Practices**

8 **SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**  
 9 **TION.**

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

13 “(k)(1) The court, on the motion of the debtor and  
 14 after a hearing, may reduce a claim filed under this sec-  
 15 tion based in whole on unsecured consumer debts by not  
 16 more than 20 percent of the claim, if—

17 “(A) the claim was filed by a creditor who un-  
 18 reasonably refused to negotiate a reasonable alter-  
 19 native repayment schedule proposed by an approved  
 20 credit counseling agency described in section 111  
 21 acting on behalf of the debtor;

22 “(B) the offer of the debtor under subpara-  
 23 graph (A)—

24 “(i) was made at least 60 days before the  
 25 filing of the petition; and

1           “(ii) provided for payment of at least 60  
2           percent of the amount of the debt over a period  
3           not to exceed the repayment period of the loan,  
4           or a reasonable extension thereof; and

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

7           “(2) The debtor shall have the burden of proving, by  
8           clear and convincing evidence, that—

9           “(A) the creditor unreasonably refused to con-  
10          sider the debtor’s proposal; and

11          “(B) the proposed alternative repayment sched-  
12          ule was made prior to expiration of the 60-day pe-  
13          riod specified in paragraph (1)(B)(i).”.

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

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

21          **SEC. 202. EFFECT OF DISCHARGE.**

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

24          “(i) The willful failure of a creditor to credit pay-  
25          ments received under a plan confirmed under this title (in-

1 cluding a plan of reorganization confirmed under chapter  
 2 11 of this title), unless the plan is dismissed, in default,  
 3 or the creditor has not received payments required to be  
 4 made under the plan in the manner required by the plan  
 5 (including crediting the amounts required under the plan),  
 6 shall constitute a violation of an injunction under sub-  
 7 section (a)(2) if the act of the creditor to collect and fail-  
 8 ure to credit payments in the manner required by the plan  
 9 caused material injury to the debtor.

10 “(j) Subsection (a)(2) does not operate as an injunc-  
 11 tion against an act by a creditor that is the holder of a  
 12 secured claim, if—

13 “(1) such creditor retains a security interest in  
 14 real property that is the principal residence of the  
 15 debtor;

16 “(2) such act is in the ordinary course of busi-  
 17 ness between the creditor and the debtor; and

18 “(3) such act is limited to seeking or obtaining  
 19 periodic payments associated with a valid security  
 20 interest in lieu of pursuit of in rem relief to enforce  
 21 the lien.”.

22 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**  
 23 **PRACTICES.**

24 (a) IN GENERAL.—Section 524 of title 11, United  
 25 States Code, as amended by this Act, is amended—

1           (1) in subsection (c), by striking paragraph (2)  
2           and inserting the following:

3           “(2) the debtor received the disclosures de-  
4           scribed in subsection (k) at or before the time at  
5           which the debtor signed the agreement;”;

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

7           “(k)(1) The disclosures required under subsection  
8           (c)(2) shall consist of the disclosure statement described  
9           in paragraph (3), completed as required in that para-  
10          graph, together with the agreement, statement, declara-  
11          tion, motion and order described, respectively, in para-  
12          graphs (4) through (8), and shall be the only disclosures  
13          required in connection with the reaffirmation.

14          “(2) Disclosures made under paragraph (1) shall be  
15          made clearly and conspicuously and in writing. The terms  
16          ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall  
17          be disclosed more conspicuously than other terms, data or  
18          information provided in connection with this disclosure,  
19          except that the phrases ‘Before agreeing to reaffirm a  
20          debt, review these important disclosures’ and ‘Summary  
21          of Reaffirmation Agreement’ may be equally conspicuous.  
22          Disclosures may be made in a different order and may  
23          use terminology different from that set forth in para-  
24          graphs (2) through (8), except that the terms ‘Amount

1 Reaffirmed’ and ‘Annual Percentage Rate’ must be used  
2 where indicated.

3 “(3) The disclosure statement required under this  
4 paragraph shall consist of the following:

5 “(A) The statement: ‘Part A: Before agreeing  
6 to reaffirm a debt, review these important disclo-  
7 sures.’;

8 “(B) Under the heading ‘Summary of Reaffir-  
9 mation Agreement’, the statement: ‘This Summary  
10 is made pursuant to the requirements of the Bank-  
11 ruptcy Code’;

12 “(C) The ‘Amount Reaffirmed’, using that  
13 term, which shall be—

14 “(i) the total amount which the debtor  
15 agrees to reaffirm, and

16 “(ii) the total of any other fees or cost ac-  
17 crued as of the date of the disclosure statement.

18 “(D) In conjunction with the disclosure of the  
19 ‘Amount Reaffirmed’, the statements—

20 “(i) ‘The amount of debt you have agreed  
21 to reaffirm’; and

22 “(ii) ‘Your credit agreement may obligate  
23 you to pay additional amounts which may come  
24 due after the date of this disclosure. Consult  
25 your credit agreement.’.

1           “(E) The ‘Annual Percentage Rate’, using that  
2 term, which shall be disclosed as—

3           “(i) if, at the time the petition is filed, the  
4 debt is open end credit as defined under the  
5 Truth in Lending Act (15 U.S.C. 1601 et seq.),  
6 then—

7           “(I) the annual percentage rate deter-  
8 mined under paragraphs (5) and (6) of  
9 section 127(b) of the Truth in Lending Act  
10 (15 U.S.C. 1637(b)(5) and (6)), as appli-  
11 cable, as disclosed to the debtor in the  
12 most recent periodic statement prior to the  
13 agreement or, if no such periodic state-  
14 ment has been provided the debtor during  
15 the prior 6 months, the annual percentage  
16 rate as it would have been so disclosed at  
17 the time the disclosure statement is given  
18 the debtor, or to the extent this annual  
19 percentage rate is not readily available or  
20 not applicable, then

21           “(II) the simple interest rate applica-  
22 ble to the amount reaffirmed as of the date  
23 the disclosure statement is given to the  
24 debtor, or if different simple interest rates  
25 apply to different balances, the simple in-

1           terest rate applicable to each such balance,  
2           identifying the amount of each such bal-  
3           ance included in the amount reaffirmed, or

4           “(III) if the entity making the disclo-  
5           sure elects, to disclose the annual percent-  
6           age rate under subclause (I) and the sim-  
7           ple interest rate under subclause (II);

8           “(ii) if, at the time the petition is filed, the  
9           debt is closed end credit as defined under the  
10          Truth in Lending Act (15 U.S.C. 1601 et seq.),  
11          then—

12           “(I) the annual percentage rate under  
13           section 128(a)(4) of the Truth in Lending  
14           Act (15 U.S.C. 1638(a)(4)), as disclosed to  
15           the debtor in the most recent disclosure  
16           statement given the debtor prior to the re-  
17           affirmation agreement with respect to the  
18           debt, or, if no such disclosure statement  
19           was provided the debtor, the annual per-  
20           centage rate as it would have been so dis-  
21           closed at the time the disclosure statement  
22           is given the debtor, or to the extent this  
23           annual percentage rate is not readily avail-  
24           able or not applicable, then



1           “(II) the simple interest rate applica-  
2           ble to the amount reaffirmed as of the date  
3           the disclosure statement is given the debt-  
4           or, or if different simple interest rates  
5           apply to different balances, the simple in-  
6           terest rate applicable to each such balance,  
7           identifying the amount of such balance in-  
8           cluded in the amount reaffirmed, or

9           “(III) if the entity making the disclo-  
10          sure elects, to disclose the annual percent-  
11          age rate under (I) and the simple interest  
12          rate under (II).

13          “(F) If the underlying debt transaction was dis-  
14          closed as a variable rate transaction on the most re-  
15          cent disclosure given under the Truth in Lending  
16          Act (15 U.S.C. 1601 et seq.), by stating ‘The inter-  
17          est rate on your loan may be a variable interest rate  
18          which changes from time to time, so that the annual  
19          percentage rate disclosed here may be higher or  
20          lower.’.

21          “(G) If the debt is secured by a security inter-  
22          est which has not been waived in whole or in part  
23          or determined to be void by a final order of the  
24          court at the time of the disclosure, by disclosing that  
25          a security interest or lien in goods or property is as-

1       serted over some or all of the obligations you are re-  
2       affirming and listing the items and their original  
3       purchase price that are subject to the asserted secu-  
4       rity interest, or if not a purchase-money security in-  
5       terest then listing by items or types and the original  
6       amount of the loan.

7               “(H) At the election of the creditor, a state-  
8       ment of the repayment schedule using 1 or a com-  
9       bination of the following—

10               “(i) by making the statement: ‘Your first  
11       payment in the amount of \$\_\_\_\_\_ is due on  
12       \_\_\_\_\_ but the future payment amount may be  
13       different. Consult your reaffirmation or credit  
14       agreement, as applicable.’, and stating the  
15       amount of the first payment and the due date  
16       of that payment in the places provided;

17               “(ii) by making the statement: ‘Your pay-  
18       ment schedule will be.’, and describing the re-  
19       payment schedule with the number, amount and  
20       due dates or period of payments scheduled to  
21       repay the obligations reaffirmed to the extent  
22       then known by the disclosing party; or

23               “(iii) by describing the debtor’s repayment  
24       obligations with reasonable specificity to the ex-  
25       tent then known by the disclosing party.

1           “(I) The following statement: ‘Note: When this  
2 disclosure refers to what a creditor ‘may’ do, it does  
3 not use the word ‘may’ to give the creditor specific  
4 permission. The word ‘may’ is used to tell you what  
5 might occur if the law permits the creditor to take  
6 the action. If you have questions about your reaffir-  
7 mation or what the law requires, talk to the attorney  
8 who helped you negotiate this agreement. If you  
9 don’t have an attorney helping you, the judge will  
10 explain the effect of your reaffirmation when the re-  
11 affirmation hearing is held.’.

12           “(J)(i) The following additional statements:

13           “‘Reaffirming a debt is a serious financial decision.  
14 The law requires you to take certain steps to make sure  
15 the decision is in your best interest. If these steps are not  
16 completed, the reaffirmation agreement is not effective,  
17 even though you have signed it.

18           “‘1. Read the disclosures in this Part A care-  
19 fully. Consider the decision to reaffirm carefully.  
20 Then, if you want to reaffirm, sign the reaffirmation  
21 agreement in Part B (or you may use a separate  
22 agreement you and your creditor agree on).

23           “‘2. Complete and sign Part D and be sure you  
24 can afford to make the payments you are agreeing  
25 to make and have received a copy of the disclosure

1 statement and a completed and signed reaffirmation  
2 agreement.

3 “3. If you were represented by an attorney  
4 during the negotiation of the reaffirmation agree-  
5 ment, the attorney must have signed the certification  
6 in Part C.

7 “4. If you were not represented by an attorney  
8 during the negotiation of the reaffirmation agree-  
9 ment, you must have completed and signed Part E.

10 “5. The original of this disclosure must be  
11 filed with the court by you or your creditor. If a sep-  
12 arate reaffirmation agreement (other than the one in  
13 Part B) has been signed, it must be attached.

14 “6. If you were represented by an attorney  
15 during the negotiation of the reaffirmation agree-  
16 ment, your reaffirmation agreement becomes effec-  
17 tive upon filing with the court unless the reaffirma-  
18 tion is presumed to be an undue hardship as ex-  
19 plained in Part D.

20 “7. If you were not represented by an attorney  
21 during the negotiation of the reaffirmation agree-  
22 ment, it will not be effective unless the court ap-  
23 proves it. The court will notify you of the hearing on  
24 your reaffirmation agreement. You must attend this  
25 hearing in bankruptcy court where the judge will re-

1 view your agreement. The bankruptcy court must  
2 approve the agreement as consistent with your best  
3 interests, except that no court approval is required  
4 if the agreement is for a consumer debt secured by  
5 a mortgage, deed of trust, security deed or other lien  
6 on your real property, like your home.

7 “Your right to rescind a reaffirmation. You may re-  
8 scind (cancel) your reaffirmation at any time before the  
9 bankruptcy court enters a discharge order or within 60  
10 days after the agreement is filed with the court, whichever  
11 is longer. To rescind or cancel, you must notify the cred-  
12 itor that the agreement is canceled.

13 “What are your obligations if you reaffirm the debt?  
14 A reaffirmed debt remains your personal legal obligation.  
15 It is not discharged in your bankruptcy. That means that  
16 if you default on your reaffirmed debt after your bank-  
17 ruptcy is over, your creditor may be able to take your  
18 property or your wages. Otherwise, your obligations will  
19 be determined by the reaffirmation agreement which may  
20 have changed the terms of the original agreement. For ex-  
21 ample, if you are reaffirming an open end credit agree-  
22 ment, the creditor may be permitted by that agreement  
23 or applicable law to change the terms of the agreement  
24 in the future under certain conditions.

1       “‘Are you required to enter into a reaffirmation  
2 agreement by any law? No, you are not required to reaffirm  
3 a debt by any law. Only agree to reaffirm a debt if  
4 it is in your best interest. Be sure you can afford the payments  
5 you agree to make.

6       “‘What if your creditor has a security interest or  
7 lien? Your bankruptcy discharge does not eliminate any  
8 lien on your property. A “lien” is often referred to as a  
9 security interest, deed of trust, mortgage or security deed.  
10 Even if you do not reaffirm and your personal liability  
11 on the debt is discharged, because of the lien your creditor  
12 may still have the right to take the security property if  
13 you do not pay the debt or default on it. If the lien is  
14 on an item of personal property that is exempt under your  
15 State’s law or that the trustee has abandoned, you may  
16 be able to redeem the item rather than reaffirm the debt.  
17 To redeem, you make a single payment to the creditor  
18 equal to the current value of the security property, as  
19 agreed by the parties or determined by the court.’.

20               “(ii) In the case of a reaffirmation under subsection  
21               (m)(2), numbered paragraph 6 in the disclosures  
22               required by clause (i) of this subparagraph  
23               shall read as follows:

24               “‘6. If you were represented by an attorney  
25               during the negotiation of the reaffirmation agree-



1           “‘Signature of Debtor’s Attorney:           Date:’.

2           “(B) In the case of reaffirmations in which a pre-  
3           sumption of undue hardship has been established, the cer-  
4           tification shall state that in the opinion of the attorney,  
5           the debtor is able to make the payment.

6           “(C) In the case of a reaffirmation agreement under  
7           subsection (m)(2), subparagraph (B) is not applicable.

8           “(6)(A) The statement in support of reaffirmation  
9           agreement, which the debtor shall sign and date prior to  
10          filing with the court, shall consist of the following:

11          “‘Part D: Debtor’s Statement in Support of Reaffir-  
12          mation Agreement.

13          “‘1. I believe this agreement will not impose an  
14          undue hardship on my dependents or me. I can afford to  
15          make the payments on the reaffirmed debt because my  
16          monthly income (take home pay plus any other income re-  
17          ceived) is \$\_\_\_\_\_, and my actual current monthly ex-  
18          penses including monthly payments on post-bankruptcy  
19          debt and other reaffirmation agreements total \$\_\_\_\_\_,  
20          leaving \$\_\_\_\_\_ to make the required payments on this  
21          reaffirmed debt. I understand that if my income less my  
22          monthly expenses does not leave enough to make the pay-  
23          ments, this reaffirmation agreement is presumed to be an  
24          undue hardship on me and must be reviewed by the court.  
25          However, this presumption may be overcome if I explain



1 to the satisfaction of the court how I can afford to make  
2 the payments here: \_\_\_\_\_.

3 “‘2. I received a copy of the Reaffirmation Disclosure  
4 Statement in Part A and a completed and signed reaffir-  
5 mation agreement.’.

6 “(B) Where the debtor is represented by counsel and  
7 is reaffirming a debt owed to a creditor defined in section  
8 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C.  
9 461(b)(1)(A)(iv)), the statement of support of the reaffir-  
10 mation agreement, which the debtor shall sign and date  
11 prior to filing with the court, shall consist of the following:

12 “‘I believe this agreement is in my financial interest.  
13 I can afford to make the payments on the reaffirmed debt.  
14 I received a copy of the Reaffirmation Disclosure State-  
15 ment in Part A and a completed and signed reaffirmation  
16 agreement.’

17 “(7) The motion, which may be used if approval of  
18 the agreement by the court is required in order for it to  
19 be effective and shall be signed and dated by the moving  
20 party, shall consist of the following:

21 “‘Part E: Motion for Court Approval (To be com-  
22 pleted only where debtor is not represented by an attor-  
23 ney.). I (we), the debtor, affirm the following to be true  
24 and correct:

1        “I am not represented by an attorney in connection  
2 with this reaffirmation agreement.

3        “I believe this agreement is in my best interest  
4 based on the income and expenses I have disclosed in my  
5 Statement in Support of this reaffirmation agreement  
6 above, and because (provide any additional relevant rea-  
7 sons the court should consider):

8        “‘Therefore, I ask the court for an order approving  
9 this reaffirmation agreement.’.

10       “(8) The court order, which may be used to approve  
11 a reaffirmation, shall consist of the following:

12        “‘Court Order: The court grants the debtor’s motion  
13 and approves the reaffirmation agreement described  
14 above.’.

15       “(9) Subsection (a)(2) does not operate as an injunc-  
16 tion against an act by a creditor that is the holder of a  
17 secured claim, if—

18               “(A) such creditor retains a security interest in  
19 real property that is the debtor’s principal residence;

20               “(B) such act is in the ordinary course of busi-  
21 ness between the creditor and the debtor; and

22               “(C) such act is limited to seeking or obtaining  
23 periodic payments associated with a valid security  
24 interest in lieu of pursuit of in rem relief to enforce  
25 the lien.

1 “(l) Notwithstanding any other provision of this title:

2 “(1) A creditor may accept payments from a  
3 debtor before and after the filing of a reaffirmation  
4 agreement with the court.

5 “(2) A creditor may accept payments from a  
6 debtor under a reaffirmation agreement which the  
7 creditor believes in good faith to be effective.

8 “(3) The requirements of subsections (c)(2) and  
9 (k) shall be satisfied if disclosures required under  
10 those subsections are given in good faith.

11 “(m)(1) Until 60 days after a reaffirmation agree-  
12 ment is filed with the court (or such additional period as  
13 the court, after notice and hearing and for cause, orders  
14 before the expiration of such period), it shall be presumed  
15 that the reaffirmation agreement is an undue hardship on  
16 the debtor if the debtor’s monthly income less the debtor’s  
17 monthly expenses as shown on the debtor’s completed and  
18 signed statement in support of the reaffirmation agree-  
19 ment required under subsection (k)(6)(A) is less than the  
20 scheduled payments on the reaffirmed debt. This pre-  
21 sumption shall be reviewed by the court. The presumption  
22 may be rebutted in writing by the debtor if the statement  
23 includes an explanation which identifies additional sources  
24 of funds to make the payments as agreed upon under the  
25 terms of the reaffirmation agreement. If the presumption

1 is not rebutted to the satisfaction of the court, the court  
 2 may disapprove the agreement. No agreement shall be dis-  
 3 approved without notice and hearing to the debtor and  
 4 creditor and such hearing shall be concluded before the  
 5 entry of the debtor’s discharge.

6 “(2) This subsection does not apply to reaffirmation  
 7 agreements where the creditor is a credit union, as defined  
 8 in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12  
 9 U.S.C. 461(b)(1)(A)(iv)).”.

10 (b) LAW ENFORCEMENT.—

11 (1) IN GENERAL.—Chapter 9 of title 18, United  
 12 States Code, is amended by adding at the end the  
 13 following:

14 **“§ 158. Designation of United States attorneys and**  
 15 **agents of the Federal Bureau of Inves-**  
 16 **tigation to address abusive reaffirma-**  
 17 **tions of debt and materially fraudulent**  
 18 **statements in bankruptcy schedules**

19 “(a) IN GENERAL.—The Attorney General of the  
 20 United States shall designate the individuals described in  
 21 subsection (b) to have primary responsibility in carrying  
 22 out enforcement activities in addressing violations of sec-  
 23 tion 152 or 157 relating to abusive reaffirmations of debt.  
 24 In addition to addressing the violations referred to in the  
 25 preceding sentence, the individuals described under sub-

1 section (b) shall address violations of section 152 or 157  
2 relating to materially fraudulent statements in bankruptcy  
3 schedules that are intentionally false or intentionally mis-  
4 leading.

5 “(b) UNITED STATES DISTRICT ATTORNEYS AND  
6 AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION—

7 The individuals referred to in subsection (a) are—

8 “(1) a United States attorney for each judicial  
9 district of the United States; and

10 “(2) an agent of the Federal Bureau of Inves-  
11 tigation (within the meaning of section 3107) for  
12 each field office of the Federal Bureau of Investiga-  
13 tion.

14 “(c) BANKRUPTCY INVESTIGATIONS.—Each United  
15 States attorney designated under this section shall, in ad-  
16 dition to any other responsibilities, have primary responsi-  
17 bility for carrying out the duties of a United States attor-  
18 ney under section 3057.

19 “(d) BANKRUPTCY PROCEDURES.—The bankruptcy  
20 courts shall establish procedures for referring any case  
21 which may contain a materially fraudulent statement in  
22 a bankruptcy schedule to the individuals designated under  
23 this section.”.

1           (2) CLERICAL AMENDMENT.—The analysis for  
2           chapter 9 of title 18, United States Code, is amend-  
3           ed by adding at the end the following:

“158. Designation of United States attorneys and agents of the Federal Bureau  
of Investigation to address abusive reaffirmations of debt and  
materially fraudulent statements in bankruptcy schedules.”.

## 4   **Subtitle B—Priority Child Support**

### 5   **SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-** 6                                   **TION.**

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

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

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

12           “(14A) ‘domestic support obligation’ means a  
13   debt that accrues before or after the entry of an  
14   order for relief under this title, including interest  
15   that accrues on that debt as provided under applica-  
16   ble nonbankruptcy law notwithstanding any other  
17   provision of this title, that is—

18                           “(A) owed to or recoverable by—

19                                   “(i) a spouse, former spouse, or child  
20   of the debtor or such child’s parent, legal  
21   guardian, or responsible relative; or

22                                   “(ii) a governmental unit;

23                           “(B) in the nature of alimony, mainte-  
24   nance, or support (including assistance provided

1 by a governmental unit) of such spouse, former  
2 spouse, or child of the debtor or such child's  
3 parent, without regard to whether such debt is  
4 expressly so designated;

5 “(C) established or subject to establish-  
6 ment before or after entry of an order for relief  
7 under this title, by reason of applicable provi-  
8 sions of—

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

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

12 “(iii) a determination made in accord-  
13 ance with applicable nonbankruptcy law by  
14 a governmental unit; and

15 “(D) not assigned to a nongovernmental  
16 entity, unless that obligation is assigned volun-  
17 tarily by the spouse, former spouse, child, or  
18 parent, legal guardian, or responsible relative of  
19 the child for the purpose of collecting the  
20 debt;”.

21 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
22 **PORT OBLIGATIONS.**

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

25 (1) by striking paragraph (7);

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

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

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

7           (5) in paragraph (4), as redesignated—

8           (A) by striking “Third” and inserting  
9           “Fourth”; and

10          (B) by striking the semicolon at the end  
11          and inserting a period;

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

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

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

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

20           “(1) First:

21           “(A) Allowed unsecured claims for domes-  
22           tic support obligations that, as of the date of  
23           the filing of the petition, are owed to or recover-  
24           able by a spouse, former spouse, or child of the  
25           debtor, or the parent, legal guardian, or respon-



1           sible relative of such child, without regard to  
2           whether the claim is filed by such person or is  
3           filed by a governmental unit on behalf of that  
4           person, on the condition that funds received  
5           under this paragraph by a governmental unit  
6           under this title after the date of filing of the pe-  
7           tition shall be applied and distributed in accord-  
8           ance with applicable nonbankruptcy law.

9           “(B) Subject to claims under subpara-  
10          graph (A), allowed unsecured claims for domes-  
11          tic support obligations that, as of the date the  
12          petition was filed are assigned by a spouse,  
13          former spouse, child of the debtor, or such  
14          child’s parent, legal guardian, or responsible  
15          relative to a governmental unit (unless such ob-  
16          ligation is assigned voluntarily by the spouse,  
17          former spouse, child, parent, legal guardian, or  
18          responsible relative of the child for the purpose  
19          of collecting the debt) or are owed directly to or  
20          recoverable by a government unit under applica-  
21          ble nonbankruptcy law, on the condition that  
22          funds received under this paragraph by a gov-  
23          ernmental unit under this title after the date of  
24          filing of the petition be applied and distributed

1           in accordance with applicable nonbankruptcy  
2           law.”.

3 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
4                   **DISCHARGE IN CASES INVOLVING DOMESTIC**  
5                   **SUPPORT OBLIGATIONS.**

6           Title 11, United States Code, is amended—

7           (1) in section 1129(a), by adding at the end the  
8           following:

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

15          (2) in section 1208(c)—

16                (A) in paragraph (8), by striking “or” at  
17                the end;

18                (B) in paragraph (9), by striking the pe-  
19                riod at the end and inserting “; and”; and

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

21                “(10) failure of the debtor to pay any domestic  
22                support obligation that first becomes payable after  
23                the date on which the petition is filed.”;

24          (3) in section 1222(a)—

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

3 (B) in paragraph (3), by striking the pe-  
4 riod at the end and inserting “; and”; and

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

6 “(4) notwithstanding any other provision of this  
7 section, a plan may provide for less than full pay-  
8 ment of all amounts owed for a claim entitled to pri-  
9 ority under section 507(a)(1)(B) only if the plan  
10 provides that all of the debtor’s projected disposable  
11 income for a 5-year period, beginning on the date  
12 that the first payment is due under the plan, will be  
13 applied to make payments under the plan.”;

14 (4) in section 1222(b)—

15 (A) by redesignating paragraph (11) as  
16 paragraph (12); and

17 (B) by inserting after paragraph (10) the  
18 following:

19 “(11) provide for the payment of interest accru-  
20 ing after the date of the filing of the petition on un-  
21 secured claims that are nondischargeable under sec-  
22 tion 1328(a), except that such interest may be paid  
23 only to the extent that the debtor has disposable in-  
24 come available to pay such interest after making  
25 provision for full payment of all allowed claims;”;

1 (5) in section 1225(a)—

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

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

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

7 “(7) 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 for such obligation that  
11 first become payable after the date on which the pe-  
12 tition is filed.”;

13 (6) in section 1228(a), in the matter preceding  
14 paragraph (1), by inserting “, and in the case of a  
15 debtor who is required by a judicial or administra-  
16 tive order to pay a domestic support obligation, after  
17 such debtor certifies that all amounts payable under  
18 such order or statute that are due on or before the  
19 date of the certification (including amounts due be-  
20 fore the petition was filed, but only to the extent  
21 provided for in the plan) have been paid” after  
22 “completion by the debtor of all payments under the  
23 plan”;

24 (7) in section 1307(c)—

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

3 (B) in paragraph (10), by striking the pe-  
4 riod at the end and inserting “; or”; and

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

6 “(11) failure of the debtor to pay any domestic  
7 support obligation that first becomes payable after  
8 the date on which the petition is filed.”;

9 (8) in section 1322(a)—

10 (A) in paragraph (2), by striking “and” at  
11 the end;

12 (B) in paragraph (3), by striking the pe-  
13 riod at the end and inserting “; and”; and

14 (C) by adding in the end the following:

15 “(4) notwithstanding any other provision of this  
16 section, a plan may provide for less than full pay-  
17 ment of all amounts owed for a claim entitled to pri-  
18 ority under section 507(a)(1)(B) only if the plan  
19 provides that all of the debtor’s projected disposable  
20 income for a 5-year period beginning on the date  
21 that the first payment is due under the plan will be  
22 applied to make payments under the plan.”;

23 (9) in section 1322(b)—

24 (A) in paragraph (9), by striking “; and”  
25 and inserting a semicolon;

1 (B) by redesignating paragraph (10) as  
2 paragraph (11); and

3 (C) inserting after paragraph (9) the fol-  
4 lowing:

5 “(10) provide for the payment of interest accru-  
6 ing after the date of the filing of the petition on un-  
7 secured claims that are nondischargeable under sec-  
8 tion 1328(a), except that such interest may be paid  
9 only to the extent that the debtor has disposable in-  
10 come available to pay such interest after making  
11 provision for full payment of all allowed claims;  
12 and”;

13 (10) in section 1325(a) (as amended by this  
14 Act), by adding at the end the following:

15 “(8) the debtor is required by a judicial or ad-  
16 ministrative order or statute to pay a domestic sup-  
17 port obligation, the debtor has paid all amounts pay-  
18 able under such order or statute for such obligation  
19 that first becomes payable after the date on which  
20 the petition is filed; and”;

21 (11) in section 1328(a), in the matter preceding  
22 paragraph (1), by inserting “, and in the case of a  
23 debtor who is required by a judicial or administra-  
24 tive order to pay a domestic support obligation, after  
25 such debtor certifies that all amounts payable under

1 such order or statute that are due on or before the  
 2 date of the certification (including amounts due be-  
 3 fore the petition was filed, but only to the extent  
 4 provided for in the plan) have been paid” after  
 5 “completion by the debtor of all payments under the  
 6 plan”.

7 **SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
 8 **SUPPORT OBLIGATION PROCEEDINGS.**

9 Section 362(b) of title 11, United States Code, is  
 10 amended by striking paragraph (2) and inserting the fol-  
 11 lowing:

12 “(2) under subsection (a)—

13 “(A) of the commencement or continuation  
 14 of a civil action or proceeding—

15 “(i) for the establishment of paternity;

16 “(ii) for the establishment or modi-  
 17 fication of an order for domestic support  
 18 obligations;

19 “(iii) concerning child custody or visi-  
 20 tation;

21 “(iv) for the dissolution of a marriage,  
 22 except to the extent that such proceeding  
 23 seeks to determine the division of property  
 24 that is property of the estate; or

25 “(v) regarding domestic violence;

1           “(B) the collection of a domestic support  
2 obligation from property that is not property of  
3 the estate;

4           “(C) with respect to the withholding of in-  
5 come that is property of the estate or property  
6 of the debtor for payment of a domestic support  
7 obligation under a judicial or administrative  
8 order;

9           “(D) the withholding, suspension, or re-  
10 striction of drivers’ licenses, professional and  
11 occupational licenses, and recreational licenses  
12 under State law, as specified in section  
13 466(a)(16) of the Social Security Act (42  
14 U.S.C. 666(a)(16));

15           “(E) the reporting of overdue support  
16 owed by a parent to any consumer reporting  
17 agency as specified in section 466(a)(7) of the  
18 Social Security Act (42 U.S.C. 666(a)(7));

19           “(F) the interception of tax refunds, as  
20 specified in sections 464 and 466(a)(3) of the  
21 Social Security Act (42 U.S.C. 664 and  
22 666(a)(3)) or under an analogous State law; or

23           “(G) the enforcement of medical obliga-  
24 tions as specified under title IV of the Social  
25 Security Act (42 U.S.C. 601 et seq.);”.



1 **SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**  
2 **ALIMONY, MAINTENANCE, AND SUPPORT.**

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

5 (1) in subsection (a)—

6 (A) by striking paragraph (5) and insert-  
7 ing the following:

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

9 (B) in paragraph (15)—

10 (i) by inserting “to a spouse, former  
11 spouse, or child of the debtor and” before  
12 “not of the kind”;

13 (ii) by inserting “or” after “court of  
14 record,”; and

15 (iii) by striking “unless—” and all  
16 that follows through the end of the para-  
17 graph and inserting a semicolon; and

18 (C) by striking paragraph (18); and

19 (2) in subsection (c), by striking “(6), or (15)”  
20 each place it appears and inserting “or (6)”.

21 **SEC. 216. CONTINUED LIABILITY OF PROPERTY.**

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

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

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

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

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

12 **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
13                           **AGAINST PREFERENTIAL TRANSFER MO-**  
14                           **TIONS.**

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

17           “(7) to the extent such transfer was a bona fide  
18           payment of a debt for a domestic support obliga-  
19           tion;”.

20 **SEC. 218. DISPOSABLE INCOME DEFINED.**

21           (a) CONFIRMATION OF PLAN UNDER CHAPTER 12.—  
22           Section 1225(b)(2)(A) of title 11, United States Code, is  
23           amended by inserting “or for a domestic support obliga-  
24           tion that first becomes payable after the date on which  
25           the petition is filed” after “dependent of the debtor”.

1 (b) CONFIRMATION OF PLAN UNDER CHAPTER 13.—  
2 Section 1325(b)(2)(A) of title 11, United States Code, is  
3 amended by inserting “or for a domestic support obliga-  
4 tion that first becomes payable after the date on which  
5 the petition is filed” after “dependent of the debtor”.

6 **SEC. 219. COLLECTION OF CHILD SUPPORT.**

7 (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-  
8 tion 704 of title 11, United States Code, as amended by  
9 this Act, is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (8), by striking “and” at  
12 the end;

13 (B) in paragraph (9), by striking the pe-  
14 riod and inserting a semicolon; and

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

16 “(10) if, with respect to an individual debtor,  
17 there is a claim for a domestic support obligation,  
18 provide the applicable notification specified in sub-  
19 section (c); and”; and

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

21 “(c)(1) In any case described in subsection (a)(10),  
22 the trustee shall—

23 “(A)(i) notify in writing the holder of the claim  
24 of the right of that holder to use the services of a  
25 State child support enforcement agency established

1 under sections 464 and 466 of the Social Security  
2 Act (42 U.S.C. 664, 666) for the State in which the  
3 holder resides for assistance in collecting child sup-  
4 port during and after the bankruptcy procedures;

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

8 “(iii) include in the notice an explanation of the  
9 rights of the holder of the claim to payment of the  
10 claim under this chapter; and

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

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

17 “(iii) at such time as the debtor is granted a  
18 discharge under section 727, notify the holder of  
19 that claim and the State child support agency of the  
20 State in which that holder resides of—

21 “(I) the granting of the discharge;

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

24 “(III) the last recent known name and ad-  
25 dress of the debtor’s employer; and

1           “(IV) with respect to the debtor’s case, the  
2           name of each creditor that holds a claim that—

3                   “(aa) is not discharged under para-  
4                   graph (2), (4), or (14A) of section 523(a);  
5                   or

6                   “(bb) was reaffirmed by the debtor  
7                   under section 524(c).

8           “(2)(A) A holder of a claim or a State child support  
9           agency may request from a creditor described in para-  
10          graph (1)(B)(iii)(IV) the last known address of the debtor.

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

16          (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—  
17          Section 1106 of title 11, United States Code, is  
18          amended—

19                  (1) in subsection (a)—

20                          (A) in paragraph (6), by striking “and” at  
21                          the end;

22                          (B) in paragraph (7), by striking the pe-  
23                          riod and inserting “; and”; and

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

1           “(8) if, with respect to an individual debtor,  
2           there is a claim for a domestic support obligation,  
3           provide the applicable notification specified in sub-  
4           section (c).”; and

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

6           “(c)(1) In any case described in subsection (a)(7), the  
7           trustee shall—

8           “(A)(i) notify in writing the holder of the claim  
9           of the right of that holder to use the services of a  
10           State child support enforcement agency established  
11           under sections 464 and 466 of the Social Security  
12           Act (42 U.S.C. 664, 666) for the State in which the  
13           holder resides; and

14           “(ii) include in the notice under this paragraph  
15           the address and telephone number of the child sup-  
16           port enforcement agency; and

17           “(B)(i) notify, in writing, the State child sup-  
18           port agency (of the State in which the holder of the  
19           claim resides) of the claim;

20           “(ii) include in the notice under this paragraph  
21           the name, address, and telephone number of the  
22           holder of the claim; and

23           “(iii) at such time as the debtor is granted a  
24           discharge under section 1141, notify the holder of

1 the claim and the State child support agency of the  
2 State in which that holder resides of—

3 “(I) the granting of the discharge;

4 “(II) the last recent known address of the  
5 debtor;

6 “(III) the last recent known name and ad-  
7 dress of the debtor’s employer; and

8 “(IV) with respect to the debtor’s case, the  
9 name of each creditor that holds a claim that—

10 “(aa) is not discharged under para-  
11 graph (2), (3), or (14) of section 523(a);

12 or

13 “(bb) was reaffirmed by the debtor  
14 under section 524(c).

15 “(2)(A) A holder of a claim or a State child support  
16 agency may request from a creditor described in para-  
17 graph (1)(B)(iii)(IV) the last known address of the debtor.

18 “(B) Notwithstanding any other provision of law, a  
19 creditor that makes a disclosure of a last known address  
20 of a debtor in connection with a request made under sub-  
21 paragraph (A) shall not be liable to the debtor or any  
22 other person by reason of making that disclosure.”.

23 (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—  
24 Section 1202 of title 11, United States Code, is  
25 amended—

1 (1) in subsection (b)—

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

4 (B) in paragraph (5), by striking the pe-  
5 riod and inserting “; and”; and

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

7 “(6) if, with respect to an individual debtor,  
8 there is a claim for a domestic support obligation,  
9 provide the applicable notification specified in sub-  
10 section (c).”; and

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

12 “(c)(1) In any case described in subsection (b)(6), the  
13 trustee shall—

14 “(A)(i) notify in writing the holder of the claim  
15 of the right of that holder to use the services of a  
16 State child support enforcement agency established  
17 under sections 464 and 466 of the Social Security  
18 Act (42 U.S.C. 664, 666) for the State in which the  
19 holder resides; and

20 “(ii) include in the notice under this paragraph  
21 the address and telephone number of the child sup-  
22 port enforcement agency; and

23 “(B)(i) notify, in writing, the State child sup-  
24 port agency (of the State in which the holder of the  
25 claim resides) of the claim;



1           “(ii) include in the notice under this paragraph  
2           the name, address, and telephone number of the  
3           holder of the claim; and

4           “(iii) at such time as the debtor is granted a  
5           discharge under section 1228, notify the holder of  
6           the claim and the State child support agency of the  
7           State in which that holder resides of—

8                   “(I) the granting of the discharge;

9                   “(II) the last recent known address of the  
10           debtor;

11                   “(III) the last recent known name and ad-  
12           dress of the debtor’s employer; and

13                   “(IV) with respect to the debtor’s case, the  
14           name of each creditor that holds a claim that—

15                           “(aa) is not discharged under para-  
16                           graph (2), (4), or (14) of section 523(a);

17                           or

18                           “(bb) was reaffirmed by the debtor  
19                           under section 524(c).

20           “(2)(A) A holder of a claim or a State child support  
21           agency may request from a creditor described in para-  
22           graph (1)(B)(iii)(IV) the last known address of the debtor.

23           “(B) Notwithstanding any other provision of law, a  
24           creditor that makes a disclosure of a last known address  
25           of a debtor in connection with a request made under sub-

1 paragraph (A) shall not be liable to the debtor or any  
2 other person by reason of making that disclosure.”.

3 (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—  
4 Section 1302 of title 11, United States Code, is  
5 amended—

6 (1) in subsection (b)—

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

9 (B) in paragraph (5), by striking the pe-  
10 riod and inserting “; and”; and

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

12 “(6) if, with respect to an individual debtor,  
13 there is a claim for a domestic support obligation,  
14 provide the applicable notification specified in sub-  
15 section (d).”; and

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

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

19 “(A)(i) notify in writing the holder of the claim  
20 of the right of that holder to use the services of a  
21 State child support enforcement agency established  
22 under sections 464 and 466 of the Social Security  
23 Act (42 U.S.C. 664, 666) for the State in which the  
24 holder resides; and

1           “(ii) include in the notice under this paragraph  
2 the address and telephone number of the child sup-  
3 port enforcement agency; and

4           “(B)(i) notify in writing the State child support  
5 agency of the State in which the holder of the claim  
6 resides of the claim;

7           “(ii) include in the notice under this paragraph  
8 the name, address, and telephone number of the  
9 holder of the claim; and

10           “(iii) at such time as the debtor is granted a  
11 discharge under section 1328, notify the holder of  
12 the claim and the State child support agency of the  
13 State in which that holder resides of—

14                   “(I) the granting of the discharge;

15                   “(II) the last recent known address of the  
16 debtor;

17                   “(III) the last recent known name and ad-  
18 dress of the debtor’s employer; and

19                   “(IV) with respect to the debtor’s case, the  
20 name of each creditor that holds a claim that—

21                           “(aa) is not discharged under para-  
22 graph (2), (4), or (14) of section 523(a);

23                           or

24                           “(bb) was reaffirmed by the debtor  
25 under section 524(c).



1           “(B) any other educational loan that is a  
2           qualified education loan, as that term is defined  
3           in section 221(e)(1) of the Internal Revenue  
4           Code of 1986, incurred by an individual debt-  
5           or;”.

## 6           **Subtitle C—Other Consumer** 7           **Protections**

### 8   **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-** 9           **RUPTCY FILINGS.**

10          Section 110 of title 11, United States Code, is  
11   amended—

12           (1) in subsection (a)(1), by striking “a person,  
13           other than an attorney or an employee of an attor-  
14           ney” and inserting “the attorney for the debtor or  
15           an employee of such attorney under the direct super-  
16           vision of such attorney”;

17           (2) in subsection (b)—

18           (A) in paragraph (1), by adding at the end  
19           the following: “If a bankruptcy petition pre-  
20           parer is not an individual, then an officer, prin-  
21           cipal, responsible person, or partner of the pre-  
22           parer shall be required to—

23           “(A) sign the document for filing; and

1           “(B) print on the document the name and ad-  
2           dress of that officer, principal, responsible person or  
3           partner.”; and

4                       (B) by striking paragraph (2) and insert-  
5           ing the following:

6           “(2)(A) Before preparing any document for filing or  
7           accepting any fees from a debtor, the bankruptcy petition  
8           preparer shall provide to the debtor a written notice to  
9           debtors concerning bankruptcy petition preparers, which  
10          shall be on an official form issued by the Judicial Con-  
11          ference of the United States.

12          “(B) The notice under subparagraph (A)—

13               “(i) shall inform the debtor in simple language  
14               that a bankruptcy petition preparer is not an attor-  
15               ney and may not practice law or give legal advice;

16               “(ii) may contain a description of examples of  
17               legal advice that a bankruptcy petition preparer is  
18               not authorized to give, in addition to any advice that  
19               the preparer may not give by reason of subsection  
20               (e)(2); and

21               “(iii) shall—

22                       “(I) be signed by—

23                               “(aa) the debtor; and

24                               “(bb) the bankruptcy petition pre-  
25                               parer, under penalty of perjury; and

1           “(II) be filed with any document for fil-  
2           ing.”;

3           (3) in subsection (c)—

4           (A) in paragraph (2)—

5           (i) by striking “(2) For purposes” and  
6           inserting “(2)(A) Subject to subparagraph  
7           (B), for purposes”; and

8           (ii) by adding at the end the fol-  
9           lowing:

10          “(B) If a bankruptcy petition preparer is not an indi-  
11          vidual, the identifying number of the bankruptcy petition  
12          preparer shall be the Social Security account number of  
13          the officer, principal, responsible person, or partner of the  
14          preparer.”; and

15                 (B) by striking paragraph (3);

16          (4) in subsection (d)—

17                 (A) by striking “(d)(1)” and inserting  
18                 “(d)”; and

19                 (B) by striking paragraph (2);

20          (5) in subsection (e)—

21                 (A) by striking paragraph (2); and

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

23          “(2)(A) A bankruptcy petition preparer may not offer  
24          a potential bankruptcy debtor any legal advice, including  
25          any legal advice described in subparagraph (B).

- 1       “(B) The legal advice referred to in subparagraph  
2 (A) includes advising the debtor—  
3           “(i) whether—  
4               “(I) to file a petition under this title; or  
5               “(II) commencing a case under chapter 7,  
6           11, 12, or 13 is appropriate;  
7           “(ii) whether the debtor’s debts will be elimi-  
8           nated or discharged in a case under this title;  
9           “(iii) whether the debtor will be able to retain  
10          the debtor’s home, car, or other property after com-  
11          mencing a case under this title;  
12          “(iv) concerning—  
13               “(I) the tax consequences of a case  
14               brought under this title; or  
15               “(II) the dischargeability of tax claims;  
16          “(v) whether the debtor may or should promise  
17          to repay debts to a creditor or enter into a reaffir-  
18          mation agreement with a creditor to reaffirm a debt;  
19          “(vi) concerning how to characterize the nature  
20          of the debtor’s interests in property or the debtor’s  
21          debts; or  
22          “(vii) concerning bankruptcy procedures and  
23          rights.”;  
24          (6) in subsection (f)—



1 (A) by striking “(f)(1)” and inserting  
2 “(f)”; and

3 (B) by striking paragraph (2);  
4 (7) in subsection (g)—

5 (A) by striking “(g)(1)” and inserting  
6 “(g)”; and

7 (B) by striking paragraph (2);  
8 (8) in subsection (h)—

9 (A) by redesignating paragraphs (1)  
10 through (4) as paragraphs (2) through (5), re-  
11 spectively;

12 (B) by inserting before paragraph (2), as  
13 redesignated, the following:

14 “(1) The Supreme Court may promulgate rules under  
15 section 2075 of title 28, or the Judicial Conference of the  
16 United States may prescribe guidelines, for setting a max-  
17 imum allowable fee chargeable by a bankruptcy petition  
18 preparer. A bankruptcy petition preparer shall notify the  
19 debtor of any such maximum amount before preparing any  
20 document for filing for a debtor or accepting any fee from  
21 the debtor.”;

22 (C) in paragraph (2), as redesignated—

23 (i) by striking “Within 10 days after  
24 the date of filing a petition, a bankruptcy

1 petition preparer shall file a” and inserting  
2 “A”;

3 (ii) by inserting “by the bankruptcy  
4 petition preparer shall be filed together  
5 with the petition,” after “perjury”; and

6 (iii) by adding at the end the fol-  
7 lowing: “If rules or guidelines setting a  
8 maximum fee for services have been pro-  
9 mulgated or prescribed under paragraph  
10 (1), the declaration under this paragraph  
11 shall include a certification that the bank-  
12 ruptcy petition preparer complied with the  
13 notification requirement under paragraph  
14 (1).”;

15 (D) by striking paragraph (3), as redesign-  
16 nated, and inserting the following:

17 “(3)(A) The court shall disallow and order the  
18 immediate turnover to the bankruptcy trustee any  
19 fee referred to in paragraph (2) found to be in ex-  
20 cess of the value of any services—

21 “(i) rendered by the preparer during the  
22 12-month period immediately preceding the  
23 date of filing of the petition; or

1           “(ii) found to be in violation of any rule or  
2           guideline promulgated or prescribed under  
3           paragraph (1).

4           “(B) All fees charged by a bankruptcy petition  
5           preparer may be forfeited in any case in which the  
6           bankruptcy petition preparer fails to comply with  
7           this subsection or subsection (b), (c), (d), (e), (f), or  
8           (g).

9           “(C) An individual may exempt any funds re-  
10          covered under this paragraph under section  
11          522(b).”; and

12          (E) in paragraph (4), as redesignated, by  
13          striking “or the United States trustee” and in-  
14          serting “the United States trustee, the bank-  
15          ruptcy administrator, or the court, on the ini-  
16          tiative of the court,”;

17          (9) in subsection (i)(1), by striking the matter  
18          preceding subparagraph (A) and inserting the fol-  
19          lowing:

20          “(i)(1) If a bankruptcy petition preparer violates this  
21          section or commits any act that the court finds to be  
22          fraudulent, unfair, or deceptive, on motion of the debtor,  
23          trustee, United States trustee, or bankruptcy adminis-  
24          trator, and after the court holds a hearing with respect

1 to that violation or act, the court shall order the bank-  
2 ruptcy petition preparer to pay to the debtor—”;

3 (10) in subsection (j)—

4 (A) in paragraph (2)—

5 (i) in subparagraph (A)(i)(I), by strik-  
6 ing “a violation of which subjects a person  
7 to criminal penalty”;

8 (ii) in subparagraph (B)—

9 (I) by striking “or has not paid  
10 a penalty” and inserting “has not  
11 paid a penalty”; and

12 (II) by inserting “or failed to dis-  
13 gorge all fees ordered by the court”  
14 after “a penalty imposed under this  
15 section,”;

16 (B) by redesignating paragraph (3) as  
17 paragraph (4); and

18 (C) by inserting after paragraph (2) the  
19 following:

20 “(3) The court, as part of its contempt power, may  
21 enjoin a bankruptcy petition preparer that has failed to  
22 comply with a previous order issued under this section.  
23 The injunction under this paragraph may be issued upon  
24 motion of the court, the trustee, the United States trustee,  
25 or the bankruptcy administrator.”; and

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

2 “(1)(1) A bankruptcy petition preparer who fails to  
3 comply with any provision of subsection (b), (c), (d), (e),  
4 (f), (g), or (h) may be fined not more than \$500 for each  
5 such failure.

6 “(2) The court shall triple the amount of a fine as-  
7 sessed under paragraph (1) in any case in which the court  
8 finds that a bankruptcy petition preparer—

9 “(A) advised the debtor to exclude assets or in-  
10 come that should have been included on applicable  
11 schedules;

12 “(B) advised the debtor to use a false Social  
13 Security account number;

14 “(C) failed to inform the debtor that the debtor  
15 was filing for relief under this title; or

16 “(D) prepared a document for filing in a man-  
17 ner that failed to disclose the identity of the pre-  
18 parer.

19 “(3) The debtor, the trustee, a creditor, the United  
20 States trustee, or the bankruptcy administrator may file  
21 a motion for an order imposing a fine on the bankruptcy  
22 petition preparer for each violation of this section.

23 “(4)(A) Fines imposed under this subsection in judi-  
24 cial districts served by United States trustees shall be paid  
25 to the United States trustee, who shall deposit an amount

1 equal to such fines in a special account of the United  
2 States Trustee System Fund referred to in section  
3 586(e)(2) of title 28. Amounts deposited under this sub-  
4 paragraph shall be available to fund the enforcement of  
5 this section on a national basis.

6 “(B) Fines imposed under this subsection in judicial  
7 districts served by bankruptcy administrators shall be de-  
8 posited as offsetting receipts to the fund established under  
9 section 1931 of title 28, and shall remain available until  
10 expended to reimburse any appropriation for the amount  
11 paid out of such appropriation for expenses of the oper-  
12 ation and maintenance of the courts of the United  
13 States.”.

14 **SEC. 222. SENSE OF CONGRESS.**

15 It is the sense of Congress that States should develop  
16 curricula relating to the subject of personal finance, de-  
17 signed for use in elementary and secondary schools.

18 **SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**

19 **STATES CODE.**

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

22 “(10) Tenth, allowed claims for death or per-  
23 sonal injuries resulting from the operation of a  
24 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. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
4                   **RUPTCY.**

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

7           (1) in subsection (b)—

8               (A) in paragraph (2)—

9                   (i) in subparagraph (A), by striking  
10                   “and” at the end;

11                   (ii) in subparagraph (B), by striking  
12                   the period at the end and inserting “;  
13                   and”;

14                   (iii) by adding at the end the fol-  
15                   lowing:

16                   “(C) retirement funds to the extent that those  
17                   funds are in a fund or account that is exempt from  
18                   taxation under section 401, 403, 408, 408A, 414,  
19                   457, or 501(a) of the Internal Revenue Code of  
20                   1986.”; and

21                   (iv) by striking “(2)(A) any property”  
22                   and inserting:

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

24                   “(A) any property”;

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) by striking “(b) Notwithstanding” and  
8 inserting “(b)(1) Notwithstanding”;

9 (D) by striking “paragraph (2)” each place  
10 it appears and inserting “paragraph (3)”;

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

13 (F) by striking “Such property is—”; and

14 (G) by adding at the end the following:

15 “(4) For purposes of paragraph (3)(C) and sub-  
16 section (d)(12), the following shall apply:

17 “(A) If the retirement funds are in a retirement  
18 fund that has received a favorable determination  
19 under section 7805 of the Internal Revenue Code of  
20 1986, and that determination is in effect as of the  
21 date of the commencement of the case under section  
22 301, 302, or 303 of this title, those funds shall be  
23 presumed to be exempt from the estate.

24 “(B) If the retirement funds are in a retirement  
25 fund that has not received a favorable determination



1 under such section 7805, those funds are exempt  
2 from the estate if the debtor demonstrates that—

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

6 “(ii)(I) the retirement fund is in substan-  
7 tial compliance with the applicable requirements  
8 of the Internal Revenue Code of 1986; or

9 “(II) the retirement fund fails to be in  
10 substantial compliance with the applicable re-  
11 quirements of the Internal Revenue Code of  
12 1986 and the debtor is not materially respon-  
13 sible for that failure.

14 “(C) A direct transfer of retirement funds from  
15 1 fund or account that is exempt from taxation  
16 under section 401, 403, 408, 408A, 414, 457, or  
17 501(a) of the Internal Revenue Code of 1986, under  
18 section 401(a)(31) of the Internal Revenue Code of  
19 1986, or otherwise, shall not cease to qualify for ex-  
20 emption under paragraph (3)(C) or subsection  
21 (d)(12) by reason of that direct transfer.

22 “(D)(i) Any distribution that qualifies as an eli-  
23 gible rollover distribution within the meaning of sec-  
24 tion 402(c) of the Internal Revenue Code of 1986 or  
25 that is described in clause (ii) shall not cease to

1 qualify for exemption under paragraph (3)(C) or  
2 subsection (d)(12) by reason of that distribution.

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

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

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

13 (2) in subsection (d)—

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

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

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

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

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

1           (2) in paragraph (18), by striking the period  
2           and inserting a semicolon;

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

5           “(19) under subsection (a), of withholding of  
6           income from a debtor’s wages and collection of  
7           amounts withheld, under the debtor’s agreement au-  
8           thorizing that withholding and collection for the ben-  
9           efit of a pension, profit-sharing, stock bonus, or  
10          other plan established under section 401, 403, 408,  
11          408A, 414, 457, or 501(a) of the Internal Revenue  
12          Code of 1986, that is sponsored by the employer of  
13          the debtor, or an affiliate, successor, or predecessor  
14          of such employer—

15                 “(A) to the extent that the amounts with-  
16                 held and collected are used solely for payments  
17                 relating to a loan from a plan that satisfies the  
18                 requirements of section 408(b)(1) of the Em-  
19                 ployee Retirement Income Security Act of 1974  
20                 or is subject to section 72(p) of the Internal  
21                 Revenue Code of 1986; or

22                 “(B) in the case of a loan from a thrift  
23                 savings plan described in subchapter III of  
24                 chapter 84 of title 5, that satisfies the require-  
25                 ments of section 8433(g) of such title;” and

1           (4) by adding at the end of the flush material  
2           at the end of the subsection, the following: “Nothing  
3           in paragraph (19) may be construed to provide that  
4           any loan made under a governmental plan under  
5           section 414(d), or a contract or account under sec-  
6           tion 403(b) of the Internal Revenue Code of 1986  
7           constitutes a claim or a debt under this title.”.

8           (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of  
9           title 11, United States Code, as amended by this Act, is  
10          amended by adding at the end the following:

11           “(18) owed to a pension, profit-sharing, stock  
12          bonus, or other plan established under section 401,  
13          403, 408, 408A, 414, 457, or 501(c) of the Internal  
14          Revenue Code of 1986, under—

15           “(A) a loan permitted under section  
16          408(b)(1) of the Employee Retirement Income  
17          Security Act of 1974, or subject to section  
18          72(p) of the Internal Revenue Code of 1986; or

19           “(B) a loan from the thrift savings plan  
20          described in subchapter III of chapter 84 of  
21          title 5, that satisfies the requirements of section  
22          8433(g) of such title.

23          Nothing in paragraph (18) may be construed to pro-  
24          vide that any loan made under a governmental plan  
25          under section 414(d), or a contract or account under

1 section 403(b), of the Internal Revenue Code of  
2 1986 constitutes a claim or a debt under this title.”.

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

6 “(f) A plan may not materially alter the terms of a  
7 loan described in section 362(b)(19) and any amounts re-  
8 quired to repay such loan shall not constitute ‘disposable  
9 income’ under section 1325.”.

10 (e) ASSET LIMITATION.—Section 522 of title 11,  
11 United States Code, is amended by adding at the end the  
12 following:

13 “(n) For assets in individual retirement accounts de-  
14 scribed in section 408 or 408A of the Internal Revenue  
15 Code of 1986, other than a simplified employee pension  
16 under section 408(k) of that Code or a simple retirement  
17 account under section 408(p) of that Code, the aggregate  
18 value of such assets exempted under this section, without  
19 regard to amounts attributable to rollover contributions  
20 under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and  
21 403(b)(8) of the Internal Revenue Code of 1986, and  
22 earnings thereon, shall not exceed \$1,000,000 (which  
23 amount shall be adjusted as provided in section 104 of  
24 this title) in a case filed by an individual debtor, except

1 that such amount may be increased if the interests of jus-  
2 tice so require.”.

3 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**  
4 **RUPTCY.**

5 (a) **EXCLUSIONS.**—Section 541 of title 11, United  
6 States Code, is amended—

7 (1) in subsection (b)—

8 (A) in paragraph (4), by striking “or” at  
9 the end;

10 (B) by redesignating paragraph (5) as  
11 paragraph (10); and

12 (C) by inserting after paragraph (4) the  
13 following:

14 “(5) funds placed in an education individual re-  
15 tirement account (as defined in section 530(b)(1) of  
16 the Internal Revenue Code of 1986) not later than  
17 365 days before the date of filing of the petition,  
18 but—

19 “(A) only if the designated beneficiary of  
20 such account was a son, daughter, stepson,  
21 stepdaughter, grandchild, or step-grandchild of  
22 the debtor for the taxable year for which funds  
23 were placed in such account;

24 “(B) only to the extent that such funds—

1           “(i) are not pledged or promised to  
2           any entity in connection with any extension  
3           of credit; and

4           “(ii) are not excess contributions (as  
5           described in section 4973(e) of the Internal  
6           Revenue Code of 1986); and

7           “(C) in the case of funds placed in all such  
8           accounts having the same designated bene-  
9           ficiary not earlier than 720 days nor later than  
10          365 days before such date, only so much of  
11          such funds as does not exceed \$5,000;

12          “(6) funds used to purchase a tuition credit or  
13          certificate or contributed to an account in accord-  
14          ance with section 529(b)(1)(A) of the Internal Rev-  
15          enue Code of 1986 under a qualified State tuition  
16          program (as defined in section 529(b)(1) of such  
17          Code) not later than 365 days before the date of fil-  
18          ing of the petition, but—

19                 “(A) only if the designated beneficiary of  
20                 the amounts paid or contributed to such tuition  
21                 program was a son, daughter, stepson, step-  
22                 daughter, grandchild, or step-grandchild of the  
23                 debtor for the taxable year for which funds  
24                 were paid or contributed;

1           “(B) with respect to the aggregate amount  
2           paid or contributed to such program having the  
3           same designated beneficiary, only so much of  
4           such amount as does not exceed the total con-  
5           tributions permitted under section 529(b)(7) of  
6           such Code with respect to such beneficiary, as  
7           adjusted beginning on the date of the filing of  
8           the petition by the annual increase or decrease  
9           (rounded to the nearest tenth of 1 percent) in  
10          the education expenditure category of the Con-  
11          sumer Price Index prepared by the Department  
12          of Labor; and

13           “(C) in the case of funds paid or contrib-  
14          uted to such program having the same des-  
15          ignated beneficiary not earlier than 720 days  
16          nor later than 365 days before such date, only  
17          so much of such funds as does not exceed  
18          \$5,000;” and

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

20          “(e) In determining whether any of the relationships  
21          specified in paragraph (5)(A) or (6)(A) of subsection (b)  
22          exists, a legally adopted child of an individual (and a child  
23          who is a member of an individual’s household, if placed  
24          with such individual by an authorized placement agency  
25          for legal adoption by such individual), or a foster child



1 of an individual (if such child has as the child's principal  
2 place of abode the home of the debtor and is a member  
3 of the debtor's household) shall be treated as a child of  
4 such individual by blood.”.

5 (b) DEBTOR'S DUTIES.—Section 521 of title 11,  
6 United States Code, as amended by this Act, is amended  
7 by adding at the end the following:

8 “(c) In addition to meeting the requirements under  
9 subsection (a), a debtor shall file with the court a record  
10 of any interest that a debtor has in an education individual  
11 retirement account (as defined in section 530(b)(1) of the  
12 Internal Revenue Code of 1986) or under a qualified State  
13 tuition program (as defined in section 529(b)(1) of such  
14 Code).”.

15 **SEC. 226. DEFINITIONS.**

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

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

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

23 (2) by inserting after paragraph (4) the fol-  
24 lowing:

1           “(4A) ‘bankruptcy assistance’ means any goods  
2           or services sold or otherwise provided to an assisted  
3           person with the express or implied purpose of pro-  
4           viding information, advice, counsel, document prepa-  
5           ration, or filing, or attendance at a creditors’ meet-  
6           ing or appearing in a proceeding on behalf of an-  
7           other or providing legal representation with respect  
8           to a case or proceeding under this title;”;

9           (3) by inserting after paragraph (12) the fol-  
10          lowing:

11          “(12A) ‘debt relief agency’ means any person  
12          who provides any bankruptcy assistance to an as-  
13          sisted person in return for the payment of money or  
14          other valuable consideration, or who is a bankruptcy  
15          petition preparer under section 110, but does not  
16          include—

17                 “(A) any person that is an officer, director,  
18                 employee or agent of that person;

19                 “(B) a nonprofit organization which is ex-  
20                 empt from taxation under section 501(c)(3) of  
21                 the Internal Revenue Code of 1986;

22                 “(C) a creditor of the person, to the extent  
23                 that the creditor is assisting the person to re-  
24                 structure any debt owed by the person to the  
25                 creditor;

1           “(D) a depository institution (as defined in  
 2           section 3 of the Federal Deposit Insurance Act)  
 3           or any Federal credit union or State credit  
 4           union (as those terms are defined in section  
 5           101 of the Federal Credit Union Act), or any  
 6           affiliate or subsidiary of such a depository insti-  
 7           tution or credit union; or

8           “(E) an author, publisher, distributor, or  
 9           seller of works subject to copyright protection  
 10          under title 17, when acting in such capacity.”.

11          (b) CONFORMING AMENDMENT.—Section 104(b)(1)  
 12          of title 11, United States Code, is amended by inserting  
 13          “101(3),” after “sections”.

14          **SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

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

18          **“§ 526. Restrictions on debt relief agencies**

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

20                         “(1) fail to perform any service that such agen-  
 21                         cy informed an assisted person or prospective as-  
 22                         sisted person it would provide in connection with a  
 23                         case or proceeding under this title;

24                         “(2) make any statement, or counsel or advise  
 25                         any assisted person or prospective assisted person to

1 make a statement in a document filed in a case or  
2 proceeding under this title, that is untrue and mis-  
3 leading, or that upon the exercise of reasonable care,  
4 should have been known by such agency to be untrue  
5 or misleading;

6 “(3) misrepresent to any assisted person or pro-  
7 spective assisted person, directly or indirectly, af-  
8 firmatively or by material omission, with respect  
9 to—

10 “(i) the services that such agency will pro-  
11 vide to such person; or

12 “(ii) the benefits and risks that may result  
13 if such person becomes a debtor in a case under  
14 this title; or

15 “(4) advise an assisted person or prospective  
16 assisted person to incur more debt in contemplation  
17 of such person filing a case under this title or to pay  
18 an attorney or bankruptcy petition preparer fee or  
19 charge for services performed as part of preparing  
20 for or representing a debtor in a case under this  
21 title.

22 “(b) Any waiver by any assisted person of any protec-  
23 tion or right provided under this section shall not be en-  
24 forceable against the debtor by any Federal or State court

1 or any other person, but may be enforced against a debt  
2 relief agency.

3 “(c)(1) Any contract for bankruptcy assistance be-  
4 tween a debt relief agency and an assisted person that  
5 does not comply with the material requirements of this  
6 section, section 527, or section 528 shall be void and may  
7 not be enforced by any Federal or State court or by any  
8 other person, other than such assisted person.

9 “(2) Any debt relief agency shall be liable to an as-  
10 sisted person in the amount of any fees or charges in con-  
11 nection with providing bankruptcy assistance to such per-  
12 son that such debt relief agency has received, for actual  
13 damages, and for reasonable attorneys’ fees and costs if  
14 such agency is found, after notice and hearing, to have—

15 “(A) intentionally or negligently failed to com-  
16 ply with any provision of this section, section 527,  
17 or section 528 with respect to a case or proceeding  
18 under this title for such assisted person;

19 “(B) provided bankruptcy assistance to an as-  
20 sisted person in a case or proceeding under this title  
21 that is dismissed or converted to a case under an-  
22 other chapter of this title because of such agency’s  
23 intentional or negligent failure to file any required  
24 document including those specified in section 521; or

1           “(C) intentionally or negligently disregarded the  
2           material requirements of this title or the Federal  
3           Rules of Bankruptcy Procedure applicable to such  
4           agency.

5           “(3) In addition to such other remedies as are pro-  
6           vided under State law, whenever the chief law enforcement  
7           officer of a State, or an official or agency designated by  
8           a State, has reason to believe that any person has violated  
9           or is violating this section, the State—

10           “(A) may bring an action to enjoin such viola-  
11           tion;

12           “(B) may bring an action on behalf of its resi-  
13           dents to recover the actual damages of assisted per-  
14           sons arising from such violation, including any liabil-  
15           ity under paragraph (2); and

16           “(C) in the case of any successful action under  
17           subparagraph (A) or (B), shall be awarded the costs  
18           of the action and reasonable attorney fees as deter-  
19           mined by the court.

20           “(4) The United States District Court for any district  
21           located in the State shall have concurrent jurisdiction of  
22           any action under subparagraph (A) or (B) of paragraph  
23           (3).

24           “(5) Notwithstanding any other provision of Federal  
25           law and in addition to any other remedy provided under

1 Federal or State law, if the court, on its own motion or  
2 on motion of the United States trustee or the debtor, finds  
3 that a person intentionally violated this section, or en-  
4 gaged in a clear and consistent pattern or practice of vio-  
5 lating this section, the court may—

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

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

9           “(d) No provision of this section, section 527, or sec-  
10 tion 528 shall—

11           “(1) annul, alter, affect, or exempt any person  
12 subject to such sections from complying with any  
13 law of any State except to the extent that such law  
14 is inconsistent with those sections, and then only to  
15 the extent of the inconsistency; or

16           “(2) be deemed to limit or curtail the authority  
17 or ability—

18           “(A) of a State or subdivision or instru-  
19 mentality thereof, to determine and enforce  
20 qualifications for the practice of law under the  
21 laws of that State; or

22           “(B) of a Federal court to determine and  
23 enforce the qualifications for the practice of law  
24 before that court.”.

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

“526. Debt relief enforcement.”.

5 **SEC. 228. DISCLOSURES.**

6 (a) DISCLOSURES.—Subchapter II of chapter 5 of  
 7 title 11, United States Code, as amended by this Act, is  
 8 amended by adding at the end the following:

9 **“§ 527. Disclosures**

10 “(a) A debt relief agency providing bankruptcy assist-  
 11 ance to an assisted person shall provide—

12 “(1) the written notice required under section  
 13 342(b)(1) of this title; and

14 “(2) to the extent not covered in the written no-  
 15 tice described in paragraph (1), and not later than  
 16 3 business days after the first date on which a debt  
 17 relief agency first offers to provide any bankruptcy  
 18 assistance services to an assisted person, a clear and  
 19 conspicuous written notice advising assisted persons  
 20 that—

21 “(A) all information that the assisted per-  
 22 son is required to provide with a petition and  
 23 thereafter during a case under this title is re-  
 24 quired to be complete, accurate, and truthful;



1           “(B) all assets and all liabilities are re-  
2           quired to be completely and accurately disclosed  
3           in the documents filed to commence the case,  
4           and the replacement value of each asset as de-  
5           fined in section 506 of this title must be stated  
6           in those documents where requested after rea-  
7           sonable inquiry to establish such value;

8           “(C) current monthly income, the amounts  
9           specified in section 707(b)(2), and, in a case  
10          under chapter 13, disposable income (deter-  
11          mined in accordance with section 707(b)(2)),  
12          are required to be stated after reasonable in-  
13          quiry; and

14          “(D) information that an assisted person  
15          provides during their case may be audited pur-  
16          suant to this title, and that failure to provide  
17          such information may result in dismissal of the  
18          proceeding under this title or other sanction in-  
19          cluding, in some instances, criminal sanctions.

20          “(b) A debt relief agency providing bankruptcy assist-  
21          ance to an assisted person shall provide each assisted per-  
22          son at the same time as the notices required under sub-  
23          section (a)(1) with the following statement, to the extent  
24          applicable, or one substantially similar. The statement  
25          shall be clear and conspicuous and shall be in a single

1 document separate from other documents or notices pro-  
2 vided to the assisted person:

3       “‘IMPORTANT INFORMATION ABOUT BANK-  
4 RUPTCY ASSISTANCE SERVICES FROM AN AT-  
5 TORNEY OR BANKRUPTCY PETITION PRE-  
6 PARER.

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

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

21       “‘Before filing a bankruptcy case, either you or your  
22 attorney should analyze your eligibility for different forms  
23 of debt relief made available by the Bankruptcy Code and  
24 which form of relief is most likely to be beneficial for you.  
25 Be sure you understand the relief you can obtain and its

1 limitations. To file a bankruptcy case, documents called  
2 a Petition, Schedules and Statement of Financial Affairs,  
3 as well as in some cases a Statement of Intention need  
4 to be prepared correctly and filed with the bankruptcy  
5 court. You will have to pay a filing fee to the bankruptcy  
6 court. Once your case starts, you will have to attend the  
7 required first meeting of creditors where you may be ques-  
8 tioned by a court official called a ‘trustee’ and by credi-  
9 tors.

10       “‘If you choose to file a chapter 7 case, you may  
11 be asked by a creditor to reaffirm a debt. You may want  
12 help deciding whether to do so and a creditor is not per-  
13 mitted to coerce you into reaffirming your debts.

14       “‘If you choose to file a chapter 13 case in which  
15 you repay your creditors what you can afford over 3 to  
16 5 years, you may also want help with preparing your chap-  
17 ter 13 plan and with the confirmation hearing on your  
18 plan which will be before a bankruptcy judge.

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

23       “‘Your bankruptcy case may also involve litigation.  
24 You are generally permitted to represent yourself in litiga-

1 tion in bankruptcy court, but only attorneys, not bank-  
2 ruptcy petition preparers, can give you legal advice.’.

3       “(c) Except to the extent the debt relief agency pro-  
4 vides the required information itself after reasonably dili-  
5 gent inquiry of the assisted person or others so as to ob-  
6 tain such information reasonably accurately for inclusion  
7 on the petition, schedules or statement of financial affairs,  
8 a debt relief agency providing bankruptcy assistance to an  
9 assisted person, to the extent permitted by nonbankruptcy  
10 law, shall provide each assisted person at the time re-  
11 quired for the notice required under subsection (a)(1) rea-  
12 sonably sufficient information (which shall be provided in  
13 a clear and conspicuous writing) to the assisted person  
14 on how to provide all the information the assisted person  
15 is required to provide under this title pursuant to section  
16 521, including—

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

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

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

4           “(d) A debt relief agency shall maintain a copy of  
5           the notices required under subsection (a) of this section  
6           for 2 years after the date on which the notice is given  
7           the assisted person.”.

8           (b) CONFORMING AMENDMENT.—The table of sec-  
9           tions for chapter 5 of title 11, United States Code, as  
10          amended by this Act, is amended by inserting after the  
11          item relating to section 526 the following:

“527. Disclosures.”.

12          **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

13          (a) ENFORCEMENT.—Subchapter II of chapter 5 of  
14          title 11, United States Code, as amended by this Act, is  
15          amended by adding at the end the following:

16          **“§ 528. Requirements for debt relief agencies**

17          “(a) A debt relief agency shall—

18                  “(1) not later than 5 business days after the  
19                  first date such agency provides any bankruptcy as-  
20                  sistance services to an assisted person, but prior to  
21                  such assisted person’s petition under this title being  
22                  filed, execute a written contract with such assisted  
23                  person that explains clearly and conspicuously—

24                          “(A) the services such agency will provide  
25                          to such assisted person; and

1           “(B) the fees or charges for such services  
2           for such services, and the terms of payment;

3           “(2) provide the assisted person with a copy of  
4           the fully executed and completed contract;

5           “(3) clearly and conspicuously disclose in any  
6           advertisement of bankruptcy assistance services or of  
7           the benefits of bankruptcy directed to the general  
8           public (whether in general media, seminars or spe-  
9           cific mailings, telephonic or electronic messages, or  
10          otherwise) that the services or benefits are with re-  
11          spect to bankruptcy relief under this title; and

12          “(4) clearly and conspicuously using the fol-  
13          lowing statement: ‘We are a debt relief agency. We  
14          help people file for bankruptcy relief under the  
15          Bankruptcy Code.’ or a substantially similar state-  
16          ment.

17          “(b)(1) An advertisement of bankruptcy assistance  
18          services or of the benefits of bankruptcy directed to the  
19          general public includes—

20                 “(A) descriptions of bankruptcy assistance in  
21                 connection with a chapter 13 plan whether or not  
22                 chapter 13 is specifically mentioned in such adver-  
23                 tisement; and

24                 “(B) statements such as ‘federally supervised  
25                 repayment plan’ or ‘Federal debt restructuring help’

1 or other similar statements that could lead a reason-  
 2 able consumer to believe that debt counseling was  
 3 being offered when in fact the services were directed  
 4 to providing bankruptcy assistance with a chapter  
 5 13 plan or other form of bankruptcy relief under  
 6 this title.

7 “(2) An advertisement, directed to the general public,  
 8 indicating that the debt relief agency provides assistance  
 9 with respect to credit defaults, mortgage foreclosures, evic-  
 10 tion proceedings, excessive debt, debt collection pressure,  
 11 or inability to pay any consumer debt shall—

12 “(A) disclose clearly and conspicuously in such  
 13 advertisement that the assistance may involve bank-  
 14 ruptcy relief under this title; and

15 “(B) include the following statement: ‘We are a  
 16 debt relief agency. We help people file for bank-  
 17 ruptcy relief under the Bankruptcy Code,’ or a sub-  
 18 stantially similar statement.”.

19 (b) CONFORMING AMENDMENT.—The table of sec-  
 20 tions for chapter 5 of title 11, United States Code, as  
 21 amended by this Act, is amended by inserting after the  
 22 item relating to section 527, the following:

“528. Debtor’s bill of rights.”.

23 **SEC. 230. GAO STUDY.**

24 (a) STUDY.—Not later than 270 days after the date  
 25 of enactment of this Act, the Comptroller General of the

1 United States shall conduct a study of the feasibility, ef-  
2 fectiveness, and cost of requiring trustees appointed under  
3 title 11, United States Code, or the bankruptcy courts,  
4 to provide to the Office of Child Support Enforcement  
5 promptly after the commencement of cases by individual  
6 debtors under such title, the names and social security  
7 numbers of such debtors for the purposes of allowing such  
8 Office to determine whether such debtors have out-  
9 standing obligations for child support (as determined on  
10 the basis of information in the Federal Case Registry or  
11 other national database).

12 (b) REPORT.—Not later than 300 days after the date  
13 of enactment of this Act, the Comptroller General shall  
14 submit to the President pro tempore of the Senate and  
15 the Speaker of the House of Representatives a report con-  
16 taining the results of the study required by subsection (a).

17 **TITLE III—DISCOURAGING**  
18 **BANKRUPTCY ABUSE**

19 **SEC. 301. REINFORCEMENT OF THE FRESH START.**

20 Section 523(a)(17) of title 11, United States Code,  
21 is amended—

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



1           (2) by striking “section 1915(b) or (f)” and in-  
2           serting “subsection (b) or (f)(2) of section 1915”,  
3           and

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

6 **SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

7           Section 362(e) of title 11, United States Code, is  
8           amended—

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

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

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

14               “(3) if a single or joint case is filed by or  
15               against an individual debtor under chapter 7, 11, or  
16               13, and if a single or joint case of the debtor was  
17               pending within the preceding 1-year period but was  
18               dismissed, other than a case refiled under a chapter  
19               other than chapter 7 after dismissal under section  
20               707(b)—

21                       “(A) the stay under subsection (a) with re-  
22                       spect to any action taken with respect to a debt  
23                       or property securing such debt or with respect  
24                       to any lease shall terminate with respect to the

1 debtor on the 30th day after the filing of the  
2 later case;

3 “(B) upon motion by a party in interest  
4 for continuation of the automatic stay and upon  
5 notice and a hearing, the court may extend the  
6 stay in particular cases as to any or all credi-  
7 tors (subject to such conditions or limitations  
8 as the court may then impose) after notice and  
9 a hearing completed before the expiration of the  
10 30-day period only if the party in interest dem-  
11 onstrates that the filing of the later case is in  
12 good faith as to the creditors to be stayed; and

13 “(C) for purposes of subparagraph (B), a  
14 case is presumptively filed not in good faith  
15 (but such presumption may be rebutted by clear  
16 and convincing evidence to the contrary)—

17 “(i) as to all creditors, if—

18 “(I) more than 1 previous case  
19 under any of chapter 7, 11, or 13 in  
20 which the individual was a debtor was  
21 pending within the preceding 1-year  
22 period;

23 “(II) a previous case under any  
24 of chapter 7, 11, or 13 in which the  
25 individual was a debtor was dismissed

1 within such 1-year period, after the  
2 debtor failed to—

3 “(aa) file or amend the peti-  
4 tion or other documents as re-  
5 quired by this title or the court  
6 without substantial excuse (but  
7 mere inadvertence or negligence  
8 shall not be a substantial excuse  
9 unless the dismissal was caused  
10 by the negligence of the debtor’s  
11 attorney);

12 “(bb) provide adequate pro-  
13 tection as ordered by the court;  
14 or

15 “(cc) perform the terms of a  
16 plan confirmed by the court; or

17 “(III) there has not been a sub-  
18 stantial change in the financial or per-  
19 sonal affairs of the debtor since the  
20 dismissal of the next most previous  
21 case under chapter 7, 11, or 13 or  
22 any other reason to conclude that the  
23 later case will be concluded—

24 “(aa) if a case under chap-  
25 ter 7, with a discharge; or

1                   “(bb) if a case under chap-  
2                   ter 11 or 13, with a confirmed  
3                   plan which will be fully per-  
4                   formed; and

5                   “(ii) as to any creditor that com-  
6                   menced an action under subsection (d) in  
7                   a previous case in which the individual was  
8                   a debtor if, as of the date of dismissal of  
9                   such case, that action was still pending or  
10                  had been resolved by terminating, condi-  
11                  tioning, or limiting the stay as to actions  
12                  of such creditor; and

13                  “(4)(A)(i) if a single or joint case is filed by or  
14                  against an individual debtor under this title, and if  
15                  2 or more single or joint cases of the debtor were  
16                  pending within the previous year but were dismissed,  
17                  other than a case refiled under section 707(b), the  
18                  stay under subsection (a) shall not go into effect  
19                  upon the filing of the later case; and

20                  “(ii) on request of a party in interest, the court  
21                  shall promptly enter an order confirming that no  
22                  stay is in effect;

23                  “(B) if, within 30 days after the filing of the  
24                  later case, a party in interest requests the court may  
25                  order the stay to take effect in the case as to any

1 or all creditors (subject to such conditions or limita-  
2 tions as the court may impose), after notice and  
3 hearing, only if the party in interest demonstrates  
4 that the filing of the later case is in good faith as  
5 to the creditors to be stayed;

6 “(C) a stay imposed under subparagraph (B)  
7 shall be effective on the date of entry of the order  
8 allowing the stay to go into effect; and

9 “(D) for purposes of subparagraph (B), a case  
10 is presumptively not filed in good faith (but such  
11 presumption may be rebutted by clear and con-  
12 vincing evidence to the contrary)—

13 “(i) as to all creditors if—

14 “(I) 2 or more previous cases under  
15 this title in which the individual was a  
16 debtor were pending within the 1-year pe-  
17 riod;

18 “(II) a previous case under this title  
19 in which the individual was a debtor was  
20 dismissed within the time period stated in  
21 this paragraph after the debtor failed to  
22 file or amend the petition or other docu-  
23 ments as required by this title or the court  
24 without substantial excuse (but mere inad-  
25 vertence or negligence shall not be sub-

1           stantial excuse unless the dismissal was  
2           caused by the negligence of the debtor’s at-  
3           torney), failed to pay adequate protection  
4           as ordered by the court, or failed to per-  
5           form the terms of a plan confirmed by the  
6           court; or

7           “(III) there has not been a substan-  
8           tial change in the financial or personal af-  
9           fairs of the debtor since the dismissal of  
10          the next most previous case under this  
11          title, or any other reason to conclude that  
12          the later case will not be concluded, if a  
13          case under chapter 7, with a discharge,  
14          and if a case under chapter 11 or 13, with  
15          a confirmed plan that will be fully per-  
16          formed; or

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

1 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

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

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

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

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

15 “(A) transfer of all or part ownership of,  
16 or other interest in, the real property without  
17 the consent of the secured creditor or court ap-  
18 proval; or

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

21 If recorded in compliance with applicable State laws gov-  
22 erning notices of interests or liens in real property, an  
23 order entered under this subsection shall be binding in any  
24 other case under this title purporting to affect the real  
25 property filed not later than 2 years after the date of entry  
26 of such order by the court, except that a debtor in a subse-

1 quent case may move for relief from such order based  
2 upon changed circumstances or for good cause shown,  
3 after notice and a hearing. Any Federal, State, or local  
4 governmental unit that accepts notices of interests or liens  
5 in real property shall accept any certified copy of an order  
6 described in this subsection for indexing and recording.”.

7 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
8 United States Code, is amended by inserting after para-  
9 graph (19), as added by this Act, the following:

10 “(20) under subsection (a), of any act to en-  
11 force any lien against or security interest in real  
12 property following the entry of an order under sec-  
13 tion 362(d)(4) as to that property in any prior bank-  
14 ruptcy case for a period of 2 years after entry of  
15 such an order, except that the debtor, in a subse-  
16 quent case, may move the court for relief from such  
17 order based upon changed circumstances or for  
18 other good cause shown, after notice and a hearing;

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

22 “(A) if the debtor is ineligible under sec-  
23 tion 109(g) to be a debtor in a bankruptcy case;  
24 or





1 with respect to the claim secured by such prop-  
2 erty; or

3 “(B) redeems such property from the secu-  
4 rity interest pursuant to section 722 of this  
5 title.

6 If the debtor fails to so act within the 45-day period re-  
7 ferred to in paragraph (6), the stay under section 362(a)  
8 of this title is terminated with respect to the personal  
9 property of the estate or of the debtor which is affected,  
10 such property shall no longer be property of the estate,  
11 and the creditor may take whatever action as to such prop-  
12 erty as is permitted by applicable nonbankruptcy law, un-  
13 less the court determines on the motion of the trustee  
14 brought before the expiration of such 45-day period, and  
15 after notice and a hearing, that such property is of con-  
16 sequential value or benefit to the estate, orders appro-  
17 priate adequate protection of the creditor’s interest, and  
18 orders the debtor to deliver any collateral in the debtor’s  
19 possession to the trustee.”; and

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

1 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
2 **DEBTOR DOES NOT COMPLETE INTENDED**  
3 **SURRENDER OF CONSUMER DEBT COLLAT-**  
4 **ERAL.**

5 Title 11, United States Code, is amended—

6 (1) in section 362—

7 (A) in subsection (e), by striking “(e), and  
8 (f)” inserting “(e), (f), and (h)”;

9 (B) by redesignating subsection (h) as sub-  
10 section (k); and

11 (C) by inserting after subsection (g) the  
12 following:

13 “(h)(1) In an individual case under chapter 7, 11,  
14 or 13, the stay provided by subsection (a) is terminated  
15 with respect to personal property of the estate or of the  
16 debtor securing in whole or in part a claim, or subject  
17 to an unexpired lease, and such personal property shall  
18 no longer be property of the estate if the debtor fails with-  
19 in the applicable time set by section 521(a)(2) of this  
20 title—

21 “(A) to file timely any statement of intention  
22 required under section 521(a)(2) of this title with  
23 respect to that property or to indicate in that state-  
24 ment that the debtor will either surrender the prop-  
25 erty or retain it and, if retaining it, either redeem  
26 the property pursuant to section 722 of this title, re-

1 affirm the debt it secures pursuant to section 524(c)  
2 of this title, or assume the unexpired lease pursuant  
3 to section 365(p) of this title if the trustee does not  
4 do so, as applicable; and

5 “(B) to take timely the action specified in that  
6 statement of intention, as it may be amended before  
7 expiration of the period for taking action, unless the  
8 statement of intention specifies reaffirmation and  
9 the creditor refuses to reaffirm on the original con-  
10 tract terms.

11 “(2) Paragraph (1) does not apply if the court deter-  
12 mines, on the motion of the trustee filed before the expira-  
13 tion of the applicable time set by section 521(a)(2), after  
14 notice and a hearing, that such property is of consequen-  
15 tial value or benefit to the estate, and orders appropriate  
16 adequate protection of the creditor’s interest, and orders  
17 the debtor to deliver any collateral in the debtor’s posses-  
18 sion to the trustee. If the court does not so determine,  
19 the stay provided by subsection (a) shall terminate upon  
20 the conclusion of the proceeding on the motion.”; and

21 (2) in section 521—

22 (A) in subsection (a)(2), as so designated  
23 by this Act, by striking “consumer”;

24 (B) in subsection (a)(2)(B), as so des-  
25 ignated by this Act—

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

6 (ii) by striking “forty-five day” and  
7 inserting “30-day”;

8 (C) in subsection (a)(2)(C), as so des-  
9 ignated by this Act, by inserting “, except as  
10 provided in section 362(h) of this title” before  
11 the semicolon; and

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

13 “(d) If the debtor fails timely to take the action speci-  
14 fied in subsection (a)(6) of this section, or in paragraphs  
15 (1) and (2) of section 362(h) of this title, with respect  
16 to property which a lessor or bailor owns and has leased,  
17 rented, or bailed to the debtor or as to which a creditor  
18 holds a security interest not otherwise voidable under sec-  
19 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-  
20 ing in this title shall prevent or limit the operation of a  
21 provision in the underlying lease or agreement which has  
22 the effect of placing the debtor in default under such lease  
23 or agreement by reason of the occurrence, pendency, or  
24 existence of a proceeding under this title or the insolvency  
25 of the debtor. Nothing in this subsection shall be deemed

1 to justify limiting such a provision in any other cir-  
 2 cumstance.”.

3 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

4 **IN CHAPTER 13.**

5 (a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title  
 6 11, United States Code, is amended to read as follows:

7 “(i) the plan provides that—

8 “(I) the holder of such claim retain  
 9 the lien securing such claim until the ear-  
 10 lier of—

11 “(aa) the payment of the under-  
 12 lying debt determined under nonbank-  
 13 ruptcy law; or

14 “(bb) discharge under section  
 15 1328; and

16 “(II) if the case under this chapter is  
 17 dismissed or converted without completion  
 18 of the plan, such lien shall also be retained  
 19 by such holder to the extent recognized by  
 20 applicable nonbankruptcy law; and”.

21 (b) RESTORING THE FOUNDATION FOR SECURED  
 22 CREDIT.—Section 1325(a) of title 11, United States Code,  
 23 is amended by adding at the end the following flush sen-  
 24 tence:

1 “For purposes of paragraph (5), section 506 shall not  
2 apply to a claim described in that paragraph if the creditor  
3 has a purchase money security interest securing the debt  
4 that is the subject of the claim, the debt was incurred  
5 within the 5-year period preceding the filing of the peti-  
6 tion, and the collateral for that debt consists of a motor  
7 vehicle (as defined in section 30102 of title 49) acquired  
8 for the personal use of the debtor, or if collateral for that  
9 debt consists of any other thing of value, if the debt was  
10 incurred during the 1-year period preceding that filing.”.

11 (c) DEFINITIONS.—Section 101 of title 11, United  
12 States Code, as amended by this Act, is amended—

13 (1) by inserting after paragraph (13) the fol-  
14 lowing:

15 “(13A) ‘debtor’s principal residence’—

16 “(A) means a residential structure, includ-  
17 ing incidental property, without regard to  
18 whether that structure is attached to real prop-  
19 erty; and

20 “(B) includes an individual condominium  
21 or cooperative unit, a mobile or manufactured  
22 home, or trailer;” and

23 (2) by inserting after paragraph (27), the fol-  
24 lowing:

1           “(27A) ‘incidental property’ means, with re-  
2           spect to a debtor’s principal residence—

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

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

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

11 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

12           Section 522(b)(3)(A) of title 11, United States Code,  
13 as so designated by this Act, is amended—

14                   (1) by striking “180 days” and inserting “730  
15           days”; and

16                   (2) by striking “, or for a longer portion of  
17           such 180-day period than in any other place” and  
18           inserting “or if the debtor’s domicile has not been  
19           located at a single State for such 730-day period,  
20           the place in which the debtor’s domicile was located  
21           for 180 days immediately preceding the 730-day pe-  
22           riod or for a longer portion of such 180-day period  
23           than in any other place”.



1 **SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EX-**  
2 **EMPTION.**

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

5 (1) in subsection (b)(3)(A), as so designated by  
6 this Act, by inserting “subject to subsections (o) and  
7 (p),” before “any property”; and

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

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

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

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

16 “(3) a burial plot for the debtor or a dependent  
17 of the debtor;

18 shall be reduced to the extent that such value is attrib-  
19 utable to any portion of any property that the debtor dis-  
20 posed of in the 7-year period ending on the date of the  
21 filing of the petition with the intent to hinder, delay, or  
22 defraud a creditor and that the debtor could not exempt,  
23 or that portion that the debtor could not exempt, under  
24 subsection (b), if on such date the debtor had held the  
25 property so disposed of.”.

1 **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**  
2 **13 CASES.**

3 (a) STOPPING ABUSIVE CONVERSIONS FROM CHAP-  
4 TER 13.—Section 348(f)(1) of title 11, United States  
5 Code, is amended—

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

8 (2) in subparagraph (B)—

9 (A) by striking “in the converted case,  
10 with allowed secured claims” and inserting  
11 “only in a case converted to a case under chap-  
12 ter 11 or 12, but not in a case converted to a  
13 case under chapter 7, with allowed secured  
14 claims in cases under chapters 11 and 12”; and

15 (B) by striking the period and inserting “;  
16 and”; and

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

18 “(C) with respect to cases converted from chap-  
19 ter 13—

20 “(i) the claim of any creditor holding secu-  
21 rity as of the date of the petition shall continue  
22 to be secured by that security unless the full  
23 amount of such claim determined under appli-  
24 cable nonbankruptcy law has been paid in full  
25 as of the date of conversion, notwithstanding  
26 any valuation or determination of the amount

1 of an allowed secured claim made for the pur-  
2 poses of the chapter 13 proceeding; and

3 “(ii) unless a prebankruptcy default has  
4 been fully cured under the plan at the time of  
5 conversion, in any proceeding under this title or  
6 otherwise, the default shall have the effect given  
7 under applicable nonbankruptcy law.”.

8 (b) GIVING DEBTORS THE ABILITY TO KEEP  
9 LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section  
10 365 of title 11, United States Code, is amended by adding  
11 at the end the following:

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

16 “(2)(A) In the case of an individual under chapter  
17 7, the debtor may notify the creditor in writing that the  
18 debtor desires to assume the lease. Upon being so notified,  
19 the creditor may, at its option, notify the debtor that it  
20 is willing to have the lease assumed by the debtor and  
21 may condition such assumption on cure of any outstanding  
22 default on terms set by the contract.

23 “(B) If, not later than 30 days after notice is pro-  
24 vided under subparagraph (A), the debtor notifies the les-  
25 sor in writing that the lease is assumed, the liability under

1 the lease will be assumed by the debtor and not by the  
2 estate.

3 “(C) The stay under section 362 and the injunction  
4 under section 524(a)(2) shall not be violated by notifica-  
5 tion of the debtor and negotiation of cure under this sub-  
6 section.

7 “(3) In a case under chapter 11 in which the debtor  
8 is an individual and in a case under chapter 13, if the  
9 debtor is the lessee with respect to personal property and  
10 the lease is not assumed in the plan confirmed by the  
11 court, the lease is deemed rejected as of the conclusion  
12 of the hearing on confirmation. If the lease is rejected,  
13 the stay under section 362 and any stay under section  
14 1301 is automatically terminated with respect to the prop-  
15 erty subject to the lease.”.

16 (c) ADEQUATE PROTECTION OF LESSORS AND PUR-  
17 CHASE MONEY SECURED CREDITORS.—

18 (1) CONFIRMATION OF PLAN.—Section  
19 1325(a)(5)(B) of title 11, United States Code, is  
20 amended—

21 (A) in clause (i), by striking “and” at the  
22 end;

23 (B) in clause (ii), by striking “or” at the  
24 end and inserting “and”; and

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

1 “(iii) if—

2 “(I) property to be distributed  
3 pursuant to this subsection is in the  
4 form of periodic payments, such pay-  
5 ments shall be in equal monthly  
6 amounts; and

7 “(II) the holder of the claim is  
8 secured by personal property, the  
9 amount of such payments shall not be  
10 less than an amount sufficient to pro-  
11 vide to the holder of such claim ade-  
12 quate protection during the period of  
13 the plan; or”.

14 (2) PAYMENTS.—Section 1326(a) of title 11,  
15 United States Code, is amended to read as follows:

16 “(a)(1) Unless the court orders otherwise, the debtor  
17 shall commence making payments not later than 30 days  
18 after the date of the filing of the plan or the order for  
19 relief, whichever is earlier, in the amount—

20 “(A) proposed by the plan to the trustee;

21 “(B) scheduled in a lease of personal property  
22 directly to the lessor for that portion of the obliga-  
23 tion that becomes due after the order for relief, re-  
24 ducing the payments under subparagraph (A) by the  
25 amount so paid and providing the trustee with evi-

1        dence of such payment, including the amount and  
2        date of payment; and

3            “(C) that provides adequate protection directly  
4        to a creditor holding an allowed claim secured by  
5        personal property to the extent the claim is attrib-  
6        utable to the purchase of such property by the debt-  
7        or for that portion of the obligation that becomes  
8        due after the order for relief, reducing the payments  
9        under subparagraph (A) by the amount so paid and  
10       providing the trustee with evidence of such payment,  
11       including the amount and date of payment.

12       “(2) A payment made under paragraph (1)(A) shall  
13       be retained by the trustee until confirmation or denial of  
14       confirmation. If a plan is confirmed, the trustee shall dis-  
15       tribute any such payment in accordance with the plan as  
16       soon as is practicable. If a plan is not confirmed, the trust-  
17       ee shall return any such payments not previously paid and  
18       not yet due and owing to creditors pursuant to paragraph  
19       (3) to the debtor, after deducting any unpaid claim al-  
20       lowed under section 503(b).

21       “(3) Subject to section 363, the court may, upon no-  
22       tice and a hearing, modify, increase, or reduce the pay-  
23       ments required under this subsection pending confirma-  
24       tion of a plan.

1       “(4) Not later than 60 days after the date of filing  
2 of a case under this chapter, a debtor retaining possession  
3 of personal property subject to a lease or securing a claim  
4 attributable in whole or in part to the purchase price of  
5 such property shall provide the lessor or secured creditor  
6 reasonable evidence of the maintenance of any required  
7 insurance coverage with respect to the use or ownership  
8 of such property and continue to do so for so long as the  
9 debtor retains possession of such property.”.

10 **SEC. 310. LIMITATION ON LUXURY GOODS.**

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

13               “(C)(i) for purposes of subparagraph (A)—

14                       “(I) consumer debts owed to a single cred-  
15                       itor and aggregating more than \$250 for luxury  
16                       goods or services incurred by an individual  
17                       debtor on or within 90 days before the order for  
18                       relief under this title are presumed to be non-  
19                       dischargeable; and

20                       “(II) cash advances aggregating more than  
21                       \$750 that are extensions of consumer credit  
22                       under an open end credit plan obtained by an  
23                       individual debtor on or within 70 days before  
24                       the order for relief under this title, are pre-  
25                       sumed to be nondischargeable; and

1 “(ii) for purposes of this subparagraph—

2 “(I) the term ‘extension of credit under an  
3 open end credit plan’ means an extension of  
4 credit under an open end credit plan, within the  
5 meaning of the Consumer Credit Protection Act  
6 (15 U.S.C. 1601 et seq.);

7 “(II) the term ‘open end credit plan’ has  
8 the meaning given that term under section 103  
9 of Consumer Credit Protection Act (15 U.S.C.  
10 1602); and

11 “(III) the term ‘luxury goods or services’  
12 does not include goods or services reasonably  
13 necessary for the support or maintenance of the  
14 debtor or a dependent of the debtor.”.

15 **SEC. 311. AUTOMATIC STAY.**

16 Section 362(b) of title 11, United States Code, is  
17 amended by inserting after paragraph (21), as added by  
18 this Act, the following:

19 “(22) under subsection (a)(3), of the continu-  
20 ation of any eviction, unlawful detainer action, or  
21 similar proceeding by a lessor against a debtor in-  
22 volving residential real property in which the debtor  
23 resides as a tenant under a rental agreement;

24 “(23) under subsection (a)(3), of the com-  
25 mencement of any eviction, unlawful detainer action,



1 or similar proceeding by a lessor against a debtor in-  
2 volving residential real property in which the debtor  
3 resides as a tenant under a rental agreement that  
4 has terminated under the lease agreement or appli-  
5 cable State law;

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

9 “(25) under subsection (a) of any transfer that  
10 is not avoidable under section 544 and that is not  
11 avoidable under section 549;”.

12 **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**  
13 **DISCHARGES.**

14 Title 11, United States Code, is amended—

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

17 (2) in section 1328, by inserting after sub-  
18 section (e) the following:

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

1 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**  
2 **TIQUES.**

3 (a) DEFINITION.—Section 522(f) of title 11, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 “(4)(A) Subject to subparagraph (B), for purposes  
7 of paragraph (1)(B), the term ‘household goods’ means—

8 “(i) clothing;

9 “(ii) furniture;

10 “(iii) appliances;

11 “(iv) 1 radio;

12 “(v) 1 television;

13 “(vi) 1 VCR;

14 “(vii) linens;

15 “(viii) china;

16 “(ix) crockery;

17 “(x) kitchenware;

18 “(xi) educational materials and educational  
19 equipment primarily for the use of minor dependent  
20 children of the debtor, but only 1 personal computer  
21 only if used primarily for the education or entertain-  
22 ment of such minor children;

23 “(xii) medical equipment and supplies;

24 “(xiii) furniture exclusively for the use of minor  
25 children, or elderly or disabled dependents of the  
26 debtor; and

1           “(xiv) personal effects (including the toys and  
2           hobby equipment of minor dependent children and  
3           wedding rings) of the debtor and the dependents of  
4           the debtor.

5           “(B) The term ‘household goods’ does not include—

6           “(i) works of art (unless by or of the debtor or  
7           the dependents of the debtor);

8           “(ii) electronic entertainment equipment (except  
9           1 television, 1 radio, and 1 VCR);

10           “(iii) items acquired as antiques;

11           “(iv) jewelry (except wedding rings); and

12           “(v) a computer (except as otherwise provided  
13           for in this section), motor vehicle (including a trac-  
14           tor or lawn tractor), boat, or a motorized rec-  
15           reational device, conveyance, vehicle, watercraft, or  
16           aircraft.”.

17           (b) STUDY.—Not later than 2 years after the date  
18           of enactment of this Act, the Director of the Executive  
19           Office for United States Trustees shall submit a report  
20           to the Committee on the Judiciary of the Senate and the  
21           Committee on the Judiciary of the House of Representa-  
22           tives containing its findings regarding utilization of the  
23           definition of household goods, as defined in section  
24           522(f)(4) of title 11, United States Code, as added by this  
25           section, with respect to the avoidance of nonpossessory,

1 nonpurchase money security interests in household goods  
2 under section 522(f)(1)(B) of title 11, United States Code,  
3 and the impact that section 522(f)(4) of that title, as  
4 added by this section, has had on debtors and on the bank-  
5 ruptcy courts. Such report may include recommendations  
6 for amendments to section 522(f)(4) of title 11, United  
7 States Code, consistent with the Director's findings.

8 **SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE**  
9 **DEBTS.**

10 (a) IN GENERAL.—Section 523(a) of title 11, United  
11 States Code, is amended by inserting after paragraph (14)  
12 the following:

13 “(14A) incurred to pay a tax to a governmental  
14 unit, other than the United States, that would be  
15 nondischargeable under paragraph (1);”.

16 (b) DISCHARGE UNDER CHAPTER 13.—Section  
17 1328(a) of title 11, United States Code, is amended by  
18 striking paragraphs (1) through (3) and inserting the fol-  
19 lowing:

20 “(1) provided for under section 1322(b)(5);

21 “(2) of the kind specified in paragraph (2), (3),  
22 (4), (5), (8), or (9) of section 523(a);

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



1       ruptcy law by sending any such communication with-  
2       in such 90-day period and if the creditor supplied  
3       the debtor in the last 2 communications with the  
4       current account number of the debtor and the ad-  
5       dress at which the creditor wishes to receive cor-  
6       respondence, then the debtor shall send any notice  
7       required under this title to the address provided by  
8       the creditor and such notice shall include the ac-  
9       count number.”; and

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

11       “(e) At any time, a creditor, in a case of an individual  
12 debtor under chapter 7 or 13, may file with the court and  
13 serve on the debtor a notice of the address to be used to  
14 notify the creditor in that case. Five days after receipt  
15 of such notice, if the court or the debtor is required to  
16 give the creditor notice, such notice shall be given at that  
17 address.

18       “(f) An entity may file with the court a notice stating  
19 its address for notice in cases under chapters 7 and 13.  
20 After 30 days following the filing of such notice, any notice  
21 in any case filed under chapter 7 or 13 given by the court  
22 shall be to that address unless specific notice is given  
23 under subsection (e) with respect to a particular case.

24       “(g)(1) Notice given to a creditor other than as pro-  
25 vided in this section shall not be effective notice until that

1 notice has been brought to the attention of the creditor.  
2 If the creditor designates a person or department to be  
3 responsible for receiving notices concerning bankruptcy  
4 cases and establishes reasonable procedures so that bank-  
5 ruptcy notices received by the creditor are to be delivered  
6 to such department or person, notice shall not be consid-  
7 ered to have been brought to the attention of the creditor  
8 until received by such person or department.

9 “(2) No sanction under section 362(k) or any other  
10 sanction that a court may impose on account of violations  
11 of the stay under section 362(a) or failure to comply with  
12 section 542 or 543 may be imposed on any action of the  
13 creditor unless the action takes place after the creditor  
14 has received notice of the commencement of the case effec-  
15 tive under this section.”.

16 (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
17 United States Code, as amended by this Act, is  
18 amended—

19 (1) in subsection (a), as so designated by this  
20 Act, by striking paragraph (1) and inserting the fol-  
21 lowing:

22 “(1) file—

23 “(A) a list of creditors; and

24 “(B) unless the court orders otherwise—

1 “(i) a schedule of assets and liabil-  
2 ities;

3 “(ii) a schedule of current income and  
4 current expenditures;

5 “(iii) a statement of the debtor’s fi-  
6 nancial affairs and, if applicable, a  
7 certificate—

8 “(I) of an attorney whose name  
9 is on the petition as the attorney for  
10 the debtor or any bankruptcy petition  
11 preparer signing the petition under  
12 section 110(b)(1) indicating that such  
13 attorney or bankruptcy petition pre-  
14 parer delivered to the debtor any no-  
15 tice required by section 342(b); or

16 “(II) if no attorney for the debt-  
17 or is indicated and no bankruptcy pe-  
18 tition preparer signed the petition, of  
19 the debtor that such notice was ob-  
20 tained and read by the debtor;

21 “(iv) copies of all payment advices or  
22 other evidence of payment, if any, received  
23 by the debtor from any employer of the  
24 debtor in the period 60 days before the fil-  
25 ing of the petition;



1           “(v) a statement of the amount of  
2           monthly net income, itemized to show how  
3           the amount is calculated; and

4           “(vi) a statement disclosing any rea-  
5           sonably anticipated increase in income or  
6           expenditures over the 12-month period fol-  
7           lowing the date of filing;” and

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

9           “(e)(1) At any time, a creditor, in the case of an indi-  
10          vidual under chapter 7 or 13, may file with the court no-  
11          tice that the creditor requests the petition, schedules, and  
12          a statement of affairs filed by the debtor in the case, and  
13          the court shall make those documents available to the  
14          creditor who requests those documents.

15          “(2)(A) The debtor shall provide either a tax return  
16          or transcript at the election of the debtor, for the latest  
17          taxable period prior to filing for which a tax return has  
18          been or should have been filed, to the trustee, not later  
19          than 7 days before the date first set for the first meeting  
20          of creditors, or the case shall be dismissed, unless the  
21          debtor demonstrates that the failure to file a return as  
22          required is due to circumstances beyond the control of the  
23          debtor.

24          “(B) If a creditor has requested a tax return or tran-  
25          script referred to in subparagraph (A), the debtor shall

1 provide such tax return or transcript to the requesting  
2 creditor at the time the debtor provides the tax return or  
3 transcript to the trustee, or the case shall be dismissed,  
4 unless the debtor demonstrates that the debtor is unable  
5 to provide such information due to circumstances beyond  
6 the control of the debtor.

7 “(3)(A) At any time, a creditor in a case under chap-  
8 ter 13 may file with the court notice that the creditor re-  
9 quests the plan filed by the debtor in the case.

10 “(B) The court shall make such plan available to the  
11 creditor who request such plan—

12 “(i) at a reasonable cost; and

13 “(ii) not later than 5 days after such request.

14 “(f) An individual debtor in a case under chapter 7,  
15 11, or 13 shall file with the court at the request of any  
16 party in interest—

17 “(1) at the time filed with the taxing authority,  
18 all tax returns required under applicable law, includ-  
19 ing any schedules or attachments, with respect to  
20 the period from the commencement of the case until  
21 such time as the case is closed;

22 “(2) at the time filed with the taxing authority,  
23 all tax returns required under applicable law, includ-  
24 ing any schedules or attachments, that were not  
25 filed with the taxing authority when the schedules

1 under subsection (a)(1) were filed with respect to  
2 the period that is 3 years before the order of 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 income and expenditures in the pre-  
9 ceding tax year and monthly income, that shows how  
10 the amounts are calculated—

11 “(A) beginning on the date that is the  
12 later of 90 days after the close of the debtor’s  
13 tax year or 1 year after the order for relief, un-  
14 less a plan has been confirmed; and

15 “(B) thereafter, on or before the date that  
16 is 45 days before each anniversary of the con-  
17 firmation of the plan until the case is closed.

18 “(g)(1) A statement referred to in subsection (f)(4)  
19 shall disclose—

20 “(A) the amount and sources of income of the  
21 debtor;

22 “(B) the identity of any person responsible with  
23 the debtor for the support of any dependent of the  
24 debtor; and

1           “(C) the identity of any person who contrib-  
2           uted, and the amount contributed, to the household  
3           in which the debtor resides.

4           “(2) The tax returns, amendments, and statement of  
5           income and expenditures described in subsection (e)(2)(A)  
6           and subsection (f) shall be available to the United States  
7           trustee, any bankruptcy administrator, any trustee, and  
8           any party in interest for inspection and copying, subject  
9           to the requirements of subsection (h).

10          “(h)(1) Not later than 180 days after the date of en-  
11          actment of the Bankruptcy Reform Act of 2000, the Di-  
12          rector of the Administrative Office of the United States  
13          Courts shall establish procedures for safeguarding the con-  
14          fidentiality of any tax information required to be provided  
15          under this section.

16          “(2) The procedures under paragraph (1) shall in-  
17          clude restrictions on creditor access to tax information  
18          that is required to be provided under this section.

19          “(3) Not later than 1 year and 180 days after the  
20          date of enactment of the Bankruptcy Reform Act of 2000,  
21          the Director of the Administrative Office of the United  
22          States Courts shall prepare and submit to Congress a re-  
23          port that—

24                 “(A) assesses the effectiveness of the proce-  
25                 dures under paragraph (1); and

1           “(B) if appropriate, includes proposed legisla-  
2           tion to—

3                   “(i) further protect the confidentiality of  
4                   tax information; and

5                   “(ii) provide penalties for the improper use  
6                   by any person of the tax information required  
7                   to be provided under this section.

8           “(i) If requested by the United States trustee or a  
9           trustee serving in the case, the debtor shall provide—

10                   “(1) a document that establishes the identity of  
11                   the debtor, including a driver’s license, passport, or  
12                   other document that contains a photograph of the  
13                   debtor; and

14                   “(2) such other personal identifying information  
15                   relating to the debtor that establishes the identity of  
16                   the debtor.”.

17 **SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
18 **ULES OR PROVIDE REQUIRED INFORMATION.**

19           Section 521 of title 11, United States Code, as  
20           amended by this Act, is amended by adding at the end  
21           the following:

22                   “(j)(1) Notwithstanding section 707(a), and subject  
23                   to paragraph (2), if an individual debtor in a voluntary  
24                   case under chapter 7 or 13 fails to file all of the informa-  
25                   tion required under subsection (a)(1) within 45 days after

1 the filing of the petition commencing the case, the case  
2 shall be automatically dismissed effective on the 46th day  
3 after the filing of the petition.

4 “(2) With respect to a case described in paragraph  
5 (1), any party in interest may request the court to enter  
6 an order dismissing the case. If requested, the court shall  
7 enter an order of dismissal not later than 5 days after  
8 such request.

9 “(3) Upon request of the debtor made within 45 days  
10 after the filing of the petition commencing a case de-  
11 scribed in paragraph (1), the court may allow the debtor  
12 an additional period of not to exceed 45 days to file the  
13 information required under subsection (a)(1) if the court  
14 finds justification for extending the period for the filing.”.

15 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
16 **CONFIRMATION OF THE PLAN.**

17 Section 1324 of title 11, United States Code, is  
18 amended—

19 (1) by striking “After” and inserting the fol-  
20 lowing:

21 “(a) Except as provided in subsection (b) and after”;

22 and

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

24 “(b) The hearing on confirmation of the plan may  
25 be held not earlier than 20 days and not later than 45

1 days after the date of the meeting of creditors under sec-  
2 tion 341(a).”.

3 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**

4 **IN CERTAIN CASES.**

5 Title 11, United States Code, is amended—

6 (1) by amending section 1322(d) to read as fol-  
7 lows:

8 “(d)(1) If the current monthly income of the debtor  
9 and the debtor’s spouse combined, when multiplied by 12,  
10 is not less than—

11 “(A) in the case of a debtor in a household of  
12 1 person, the median family income of the applicable  
13 State for 1 earner last reported by the Bureau of  
14 the Census;

15 “(B) in the case of a debtor in a household of  
16 2, 3, or 4 individuals, the highest median family in-  
17 come of the applicable State for a family of the same  
18 number or fewer individuals last reported by the Bu-  
19 reau of the Census; or

20 “(C) in the case of a debtor in a household ex-  
21 ceeding 4 individuals, the highest median family in-  
22 come of the applicable State for a family of 4 or  
23 fewer individuals last reported by the Bureau of the  
24 Census, plus \$525 per month for each individual in  
25 excess of 4,

1 the plan may not provide for payments over a period that  
2 is longer than 5 years.

3 “(2) If the current monthly income of the debtor and  
4 the debtor’s spouse combined, when multiplied by 12, is  
5 less than—

6 “(A) in the case of a debtor in a household of  
7 1 person, the median family income of the applicable  
8 State for 1 earner last reported by the Bureau of  
9 the Census;

10 “(B) in the case of a debtor in a household of  
11 2, 3, or 4 individuals, the highest median family in-  
12 come of the applicable State for a family of the same  
13 number or fewer individuals last reported by the Bu-  
14 reau of the Census; or

15 “(C) in the case of a debtor in a household ex-  
16 ceeding 4 individuals, the highest median family in-  
17 come of the applicable State for a family of 4 or  
18 fewer individuals last reported by the Bureau of the  
19 Census, plus \$525 per month for each individual in  
20 excess of 4,

21 the plan may not provide for payments over a period that  
22 is longer than 3 years, unless the court, for cause, ap-  
23 proves a longer period, but the court may not approve a  
24 period that is longer than 5 years.”;



1           (2) in section 1325(b)(1)(B), by striking  
2           “three-year period” and inserting “applicable com-  
3           mitment period”; and

4           (3) in section 1325(b), as amended by this Act,  
5           by adding at the end the following:

6           “(4) For purposes of this subsection, the ‘applicable com-  
7           mitment period’—

8                   “(A) subject to subparagraph (B), shall be—

9                           “(i) 3 years; or

10                           “(ii) not less than 5 years, if the current  
11                           monthly income of the debtor and the debtor’s  
12                           spouse combined, when multiplied by 12, is not  
13                           less than—

14                                   “(I) in the case of a debtor in a  
15                                   household of 1 person, the median family  
16                                   income of the applicable State for 1 earner  
17                                   last reported by the Bureau of the Census;

18                                   “(II) in the case of a debtor in a  
19                                   household of 2, 3, or 4 individuals, the  
20                                   highest median family income of the appli-  
21                                   cable State for a family of the same num-  
22                                   ber or fewer individuals last reported by  
23                                   the Bureau of the Census; or

24                                   “(III) in the case of a debtor in a  
25                                   household exceeding 4 individuals, the

1 highest median family income of the appli-  
2 cable State for a family of 4 or fewer indi-  
3 viduals last reported by the Bureau of the  
4 Census, plus \$525 per month for each in-  
5 dividual in excess of 4; and

6 “(B) may be less than 3 or 5 years, whichever  
7 is applicable under subparagraph (A), but only if the  
8 plan provides for payment in full of all allowed unse-  
9 cured claims over a shorter period.”; and

10 (4) in section 1329(c), by striking “three  
11 years” and inserting “the applicable commitment pe-  
12 riod under section 1325(b)(1)(B)”.

13 **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**  
14 **RULE 9011 OF THE FEDERAL RULES OF BANK-**  
15 **RUPTCY PROCEDURE.**

16 It is the sense of Congress that rule 9011 of the Fed-  
17 eral Rules of Bankruptcy Procedure (11 U.S.C. App.)  
18 should be modified to include a requirement that all docu-  
19 ments (including schedules), signed and unsigned, sub-  
20 mitted to the court or to a trustee by debtors who rep-  
21 resent themselves and debtors who are represented by an  
22 attorney be submitted only after the debtor or the debtor’s  
23 attorney has made reasonable inquiry to verify that the  
24 information contained in such documents is—

25 (1) well grounded in fact; and

1           (2) warranted by existing law or a good-faith  
2           argument for the extension, modification, or reversal  
3           of existing law.

4 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
5 **CASES.**

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

8           (1) by inserting “(1)” after “(e)”; and

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

10          “(2) Notwithstanding paragraph (1), in the case of  
11 an individual filing under chapter 7, 11, or 13, the stay  
12 under subsection (a) shall terminate on the date that is  
13 60 days after a request is made by a party in interest  
14 under subsection (d), unless—

15           “(A) a final decision is rendered by the court  
16 during the 60-day period beginning on the date of  
17 the request; or

18           “(B) that 60-day period is extended—

19           “(i) by agreement of all parties in interest;

20           or

21           “(ii) by the court for such specific period  
22 of time as the court finds is required for good  
23 cause, as described in findings made by the  
24 court.”.

1 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

2 (a) PROPERTY OF THE ESTATE.—

3 (1) IN GENERAL.—Subchapter I of chapter 11  
4 of title 11, United States Code, is amended by add-  
5 ing at the end the following:

6 **“§ 1115. Property of the estate**

7 “(a) In a case concerning an individual debtor, prop-  
8 erty of the estate includes, in addition to the property  
9 specified in section 541—

10 “(1) all property of the kind specified in section  
11 541 that the debtor acquires after the commence-  
12 ment of the case but before the case is closed, dis-  
13 missed, or converted to a case under chapter 7, 12,  
14 or 13, whichever occurs first; and

15 “(2) earnings from services performed by the  
16 debtor after the commencement of the case but be-  
17 fore the case is closed, dismissed, or converted to a  
18 case under chapter 7, 12, or 13, whichever occurs  
19 first.”.

20 “(b) Except as provided in section 1104 or a con-  
21 firmed plan or order confirming a plan, the debtor shall  
22 remain in possession of all property of the estate.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions for chapter 11 of title 11, United States Code,

1 is amended by adding at the end of the matter relat-  
2 ing to subchapter I the following:

“1115. Property of the estate.”.

3 (b) CONTENTS OF PLAN.—Section 1123(a) of title  
4 11, United States Code, is amended—

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

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

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

10 “(8) in a case concerning an individual, provide  
11 for the payment to creditors through the plan of all  
12 or such portion of earnings from personal services  
13 performed by the debtor after the commencement of  
14 the case or other future income of the debtor as is  
15 necessary for the execution of the plan.”.

16 (c) CONFIRMATION OF PLAN.—

17 (1) REQUIREMENTS RELATING TO VALUE OF  
18 PROPERTY.—Section 1129(a) of title 11, United  
19 States Code, is amended by adding at the end the  
20 following:

21 “(15) In a case concerning an individual in  
22 which the holder of an allowed unsecured claim ob-  
23 jects to the confirmation of the plan—

24 “(A) the value of the property to be dis-  
25 tributed under the plan on account of such

1 claim is, as of the effective date of the plan, not  
2 less than the amount of such claim; or

3 “(B) the value of the property to be dis-  
4 tributed under the plan is not less than the  
5 debtor’s projected disposable income (as that  
6 term is defined in section 1325(b)(2)) to be re-  
7 ceived during the 5-year period beginning on  
8 the date that the first payment is due under the  
9 plan, or during the term of the plan, whichever  
10 is longer.”.

11 (2) REQUIREMENT RELATING TO INTERESTS IN  
12 PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,  
13 United States Code, is amended by inserting before  
14 the period at the end the following: “, except that  
15 in a case concerning an individual, the debtor may  
16 retain property included in the estate under section  
17 1115, subject to the requirements of subsection  
18 (a)(14)”.

19 (d) EFFECT OF CONFIRMATION—Section 1141(d) of  
20 title 11, United States Code, is amended—

21 (1) in paragraph (2), by striking “The con-  
22 firmation of a plan does not discharge an individual  
23 debtor” and inserting “A discharge under this chap-  
24 ter does not discharge a debtor”; and

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

1 “(5) In a case concerning an individual—

2 “(A) except as otherwise ordered for cause  
3 shown, the discharge is not effective until completion  
4 of all payments under the plan; and

5 “(B) at any time after the confirmation of the  
6 plan and after notice and a hearing, the court may  
7 grant a discharge to a debtor that has not completed  
8 payments under the plan only if—

9 “(i) for each allowed unsecured claim, the  
10 value, as of the effective date of the plan, of  
11 property actually distributed under the plan on  
12 account of that claim is not less than the  
13 amount that would have been paid on such  
14 claim if the estate of the debtor had been liq-  
15 uidated under chapter 7 of this title on such  
16 date; and

17 “(ii) modification of the plan under 1127  
18 of this title is not practicable.”.

19 (e) MODIFICATION OF PLAN.—Section 1127 of title  
20 11, United States Code, is amended by adding at the end  
21 the following:

22 “(e) In a case concerning an individual, the plan may  
23 be modified at any time after confirmation of the plan but  
24 before the completion of payments under the plan, whether  
25 or not the plan has been substantially consummated, upon

1 request of the debtor, the trustee, the United States trust-  
2 ee, or the holder of an allowed unsecured claim, to—

3 “(1) increase or reduce the amount of payments  
4 on claims of a particular class provided for by the  
5 plan;

6 “(2) extend or reduce the time period for such  
7 payments; or

8 “(3) alter the amount of the distribution to a  
9 creditor whose claim is provided for by the plan to  
10 the extent necessary to take account of any payment  
11 of such claim made other than under the plan.

12 “(f)(1) Sections 1121 through 1128 of this title and  
13 the requirements of section 1129 of this title apply to any  
14 modification under subsection (a).

15 “(2) The plan, as modified, shall become the plan  
16 only after there has been disclosure under section 1125,  
17 as the court may direct, notice and a hearing, and such  
18 modification is approved.”.

19 **SEC. 322. LIMITATION.**

20 (a) EXEMPTIONS.—Section 522 of title 11, United  
21 States Code, as amended by this Act, is amended by add-  
22 ing at the end the following:

23 “(p)(1) Except as provided in paragraph (2) of this  
24 subsection and sections 544 and 548 of this title, as a  
25 result of electing under subsection (b)(3)(A) to exempt



1 property under State or local law, a debtor may not ex-  
2 empt any amount of interest that was acquired by the  
3 debtor during the 2-year period preceding the filing of the  
4 petition which exceeds in the aggregate \$100,000 in value  
5 in—

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

8           “(B) a cooperative that owns property that the  
9           debtor or a dependent of the debtor uses as a resi-  
10          dence; or

11          “(C) a burial plot for the debtor or a dependent  
12          of the debtor.

13          “(2)(A) The limitation under paragraph (1) shall not  
14          apply to an exemption claimed under subsection (b)(3)(A)  
15          by a family farmer for the principal residence of that  
16          farmer.

17          “(B) For purposes of paragraph (1), any amount of  
18          such interest does not include any interest transferred  
19          from a debtor’s previous principal residence (which was  
20          acquired prior to the beginning of the 2-year period) into  
21          the debtor’s current principal residence, where the debt-  
22          or’s previous and current residences are located in the  
23          same State.”.

24          (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section  
25          104(b) of title 11, United States Code, is amended—

1 (1) in paragraph (1), by striking “522(d),” and  
2 inserting “522(d), 522(n), 522(p),”; and

3 (2) in paragraph (3), by striking “522(d),” and  
4 inserting “522(d), 522(n), 522(p),”.

5 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
6 **PANT CONTRIBUTIONS AND OTHER PROP-**  
7 **ERTY FROM THE ESTATE.**

8 (a) IN GENERAL.—Section 541(b) of title 11, United  
9 States Code, is amended by inserting after paragraph (6),  
10 as added by this Act, the following:

11 “(7) any amount—

12 “(A) withheld by an employer from the  
13 wages of employees for payment as contribu-  
14 tions to—

15 “(i) an employee benefit plan subject  
16 to title I of the Employee Retirement In-  
17 come Security Act of 1974 (29 U.S.C.  
18 1001 et seq.) or under an employee benefit  
19 plan which is a governmental plan under  
20 section 414(d) of the Internal Revenue  
21 Code of 1986, a deferred compensation  
22 plan under section 457 of the Internal  
23 Revenue Code of 1986, or a tax-deferred  
24 annuity under section 403(b) of the Inter-  
25 nal Revenue Code of 1986, except that

1 amount shall not constitute disposable in-  
2 come, as defined in section 1325(b)(2) of  
3 this title; or

4 “(ii) a health insurance plan regulated  
5 by State law whether or not subject to  
6 such title; or

7 “(B) received by the employer from em-  
8 ployees for payment as contributions to—

9 “(i) an employee benefit plan subject  
10 to title I of the Employee Retirement In-  
11 come Security Act of 1974 (29 U.S.C.  
12 1001 et seq.) or under an employee benefit  
13 plan which is a governmental plan under  
14 section 414(d) of the Internal Revenue  
15 Code of 1986, a deferred compensation  
16 plan under section 457 of the Internal  
17 Revenue Code of 1986, or a tax-deferred  
18 annuity under section 403(b) of the Inter-  
19 nal Revenue Code of 1986, except that  
20 amount shall not constitute disposable in-  
21 come, as defined in section 1325(b)(2) of  
22 this title; or

23 “(ii) a health insurance plan regulated  
24 by State law whether or not subject to  
25 such title;”.

1 (b) APPLICATION OF AMENDMENT.—The amend-  
2 ments made by this section shall not apply to cases com-  
3 menced under title 11, United States Code, before the ex-  
4 piration of the 180-day period beginning on the date of  
5 enactment of this Act.

6 **SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLV-**  
7 **ING BANKRUPTCY PROFESSIONALS.**

8 (a) IN GENERAL.—Section 1334 of title 28, United  
9 States Code, is amended—

10 (1) in subsection (b), by striking “Notwith-  
11 standing” and inserting “Except as provided in sub-  
12 section (e)(2), and notwithstanding”; and

13 (2) by striking subsection (e) and inserting the  
14 following:

15 “(e) The district court in which a case under title  
16 11 is commenced or is pending shall have exclusive  
17 jurisdiction—

18 “(1) of all the property, wherever located, of the  
19 debtor as of the date of commencement of such case,  
20 and of property of the estate; and

21 “(2) over all claims or causes of action that in-  
22 volve construction of section 327 of title 11, United  
23 States Code, or rules relating to disclosure require-  
24 ments under section 327.”.

1 (b) APPLICABILITY.—This section shall only apply to  
2 cases filed after the date of enactment of this Act.

3 **SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE**  
4 **INCREASE.**

5 (a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11,  
6 UNITED STATES CODE.—Section 1930(a) of title 28,  
7 United States Code, is amended by striking paragraph (1)  
8 and inserting the following:

9 “(1) For a case commenced—

10 “(A) under chapter 7 of title 11, \$160; or

11 “(B) under chapter 13 of title 11, \$150.”.

12 (b) UNITED STATES TRUSTEE SYSTEM FUND.—Sec-  
13 tion 589a(b) of title 28, United States Code, is amended—

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

16 “(1)(A) 40.63 percent of the fees collected  
17 under section 1930(a)(1)(A) of this title in cases  
18 commenced under chapter 7 of title 11; and

19 “(B) 70.00 percent of the fees collected under  
20 section 1930(a)(1)(B) of this title in cases com-  
21 menced under chapter 13 of title 11;”;

22 (2) in paragraph (2), by striking “one-half”  
23 and inserting “three-fourths”; and

24 (3) in paragraph (4), by striking “one-half”  
25 and inserting “100 percent”.

1           (c) COLLECTION AND DEPOSIT OF MISCELLANEOUS  
2 BANKRUPTCY FEES.—Section 406(b) of the Judiciary Ap-  
3 propriations Act, 1990 (28 U.S.C. 1931 note) is amended  
4 by striking “pursuant to 28 U.S.C. section 1930(b) and  
5 30.76 per centum of the fees hereafter collected under 28  
6 U.S.C. section 1930(a)(1) and 25 percent of the fees here-  
7 after collected under 28 U.S.C. section 1930(a)(3) shall  
8 be deposited as offsetting receipts to the fund established  
9 under 28 U.S.C. section 1931” and inserting “under sec-  
10 tion 1930(b) of title 28, United States Code, and 31.25  
11 percent of the fees collected under section 1930(a)(1)(A)  
12 of that title, 30.00 percent of the fees collected under sec-  
13 tion 1930(a)(1)(B) of that title, and 25 percent of the fees  
14 collected under section 1930(a)(3) of that title shall be  
15 deposited as offsetting receipts to the fund established  
16 under section 1931 of that title”.

17 **SEC. 326. SHARING OF COMPENSATION.**

18           Section 504 of title 11, United States Code, is  
19 amended by adding at the end the following:

20           “(c) This section shall not apply with respect to shar-  
21 ing, or agreeing to share, compensation with a bona fide  
22 public service attorney referral program that operates in  
23 accordance with non-Federal law regulating attorney re-  
24 ferral services and with rules of professional responsibility  
25 applicable to attorney acceptance of referrals.”.

1 **SEC. 327. FAIR VALUATION OF COLLATERAL.**

2 Section 506(a) of title 11, United States Code, is  
3 amended by—

4 (1) inserting “(1)” after “(a)”; and

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

6 “(2) In the case of an individual debtor under chap-  
7 ters 7 and 13, such value with respect to personal property  
8 securing an allowed claim shall be determined based on  
9 the replacement value of such property as of the date of  
10 filing the petition without deduction for costs of sale or  
11 marketing. With respect to property acquired for personal,  
12 family, or household purpose, replacement value shall  
13 mean the price a retail merchant would charge for prop-  
14 erty of that kind considering the age and condition of the  
15 property at the time value is determined.”.

16 **SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
17 **TIONS.**

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

21 (1) in subsection (b)—

22 (A) in paragraph (1)(A), by striking the  
23 semicolon at the end and inserting the fol-  
24 lowing: “other than a default that is a breach  
25 of a provision relating to the satisfaction of any  
26 provision (other than a penalty rate or penalty

1 provision) relating to a default arising from any  
2 failure to perform nonmonetary obligations  
3 under an unexpired lease of real property, if it  
4 is impossible for the trustee to cure such de-  
5 fault by performing nonmonetary acts at and  
6 after the time of assumption, except that if  
7 such default arises from a failure to operate in  
8 accordance with a nonresidential real property  
9 lease, then such default shall be cured by per-  
10 formance at and after the time of assumption  
11 in accordance with such lease, and pecuniary  
12 losses resulting from such default shall be com-  
13 pensated in accordance with the provisions of  
14 paragraph (b)(1);” and

15 (B) in paragraph (2)(D), by striking “pen-  
16 alty rate or provision” and inserting “penalty  
17 rate or penalty provision”;

18 (2) in subsection (c)—

19 (A) in paragraph (2), by inserting “or” at  
20 the end;

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

23 (C) by striking paragraph (4);

24 (3) in subsection (d)—



1 (A) by striking paragraphs (5) through  
2 (9); and

3 (B) by redesignating paragraph (10) as  
4 paragraph (5); and

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

8 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-  
9 tion 1124(2) of title 11, United States Code, is  
10 amended—

11 (1) in subparagraph (A), by inserting “or of a  
12 kind that section 365(b)(2) of this title expressly  
13 does not require to be cured” before the semicolon  
14 at the end;

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

17 (3) by redesignating subparagraph (D) as sub-  
18 paragraph (E); and

19 (4) by inserting after subparagraph (C) the fol-  
20 lowing:

21 “(D) if such claim or such interest arises  
22 from any failure to perform a nonmonetary ob-  
23 ligation, other than a default arising from fail-  
24 ure to operate a non-residential real property  
25 lease subject to section 365(b)(1)(A), com-

1           pensates the holder of such claim or such inter-  
 2           est (other than the debtor or an insider) for any  
 3           actual pecuniary loss incurred by such holder as  
 4           a result of such failure; and”.

5 **TITLE IV—GENERAL AND SMALL**  
 6 **BUSINESS BANKRUPTCY PRO-**  
 7 **VISIONS**

8 **Subtitle A—General Business**  
 9 **Bankruptcy Provisions**

10 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

11           (a) DEFINITION.—Section 101 of title 11, United  
 12 States Code, as amended by this Act, is amended by in-  
 13 serting after paragraph (48) the following:

14           “(48A) ‘securities self regulatory organization’  
 15           means either a securities association registered with  
 16           the Securities and Exchange Commission under sec-  
 17           tion 15A of the Securities Exchange Act of 1934 (15  
 18           U.S.C. 78o–3) or a national securities exchange reg-  
 19           istered with the Securities and Exchange Commis-  
 20           sion under section 6 of the Securities Exchange Act  
 21           of 1934 (15 U.S.C. 78f);”.

22           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
 23 United States Code, is amended by inserting after para-  
 24 graph (25), as added by this Act, the following:

25           “(26) under subsection (a), of—

1           “(A) the commencement or continuation of  
2           an investigation or action by a securities self  
3           regulatory organization to enforce such organi-  
4           zation’s regulatory power;

5           “(B) the enforcement of an order or deci-  
6           sion, other than for monetary sanctions, ob-  
7           tained in an action by the securities self regu-  
8           latory organization to enforce such organiza-  
9           tion’s regulatory power; or

10           “(C) any act taken by the securities self  
11           regulatory organization to delist, delete, or  
12           refuse to permit quotation of any stock that  
13           does not meet applicable regulatory require-  
14           ments;”.

15 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
16 **HOLDERS.**

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

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

1 **SEC. 403. 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 each amended by strik-  
5 ing “10” each place it appears and inserting “30”.

6 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**  
7 **LEASES.**

8 (a) IN GENERAL.—Section 365(d)(4) of title 11,  
9 United States Code, is amended to read as follows:

10 “(4)(A) Subject to subparagraph (B), in any case  
11 under any chapter of 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 that nonresidential real property to the  
15 lessor, if the trustee does not assume or reject the unex-  
16 pired lease by the earlier 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), prior to the expiration of the  
23 120-day period, for 90 days upon motion of the trustee  
24 or lessor for cause.

1       “(ii) If the court grants an extension under clause  
2 (i), the court may grant a subsequent extension only upon  
3 prior written consent of the lessor in each instance.”.

4       (b) EXCEPTION.—Section 365(f)(1) of title 11,  
5 United States Code, is amended by striking “subsection”  
6 the first place it appears and inserting “subsections (b)  
7 and”.

8 **SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS**  
9 **COMMITTEES.**

10       (a) APPOINTMENT.—Section 1102(a) of title 11,  
11 United States Code, is amended by adding at the end the  
12 following:

13       “(4) On request of a party in interest and after notice  
14 and a hearing, the court may order the United States  
15 trustee to change the membership of a committee ap-  
16 pointed under this subsection, if the court determines that  
17 the change is necessary to ensure adequate representation  
18 of creditors or equity security holders. The court may  
19 order the United States trustee to increase the number  
20 of members of a committee to include a creditor that is  
21 a small business concern (as described in section 3(a)(1)  
22 of the Small Business Act (15 U.S.C. 632(a)(1))), if the  
23 court determines that the creditor holds claims (of the  
24 kind represented by the committee) the aggregate amount

1 of which, in comparison to the annual gross revenue of  
2 that creditor, is disproportionately large.”.

3 (b) INFORMATION.—Section 1102(b) of title 11,  
4 United States Code, is amended by adding at the end the  
5 following:

6 “(3) A committee appointed under subsection (a)  
7 shall—

8 “(A) provide access to information for creditors  
9 who—

10 “(i) hold claims of the kind represented by  
11 that committee; and

12 “(ii) are not appointed to the committee;

13 “(B) solicit and receive comments from the  
14 creditors described in subparagraph (A); and

15 “(C) be subject to a court order that compels  
16 any additional report or disclosure to be made to the  
17 creditors described in subparagraph (A).”.

18 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**

19 **UNITED STATES CODE.**

20 Section 546 of title 11, United States Code, is  
21 amended—

22 (1) by redesignating the second subsection des-  
23 igned as subsection (g) (as added by section  
24 222(a) of Public Law 103–394) as subsection (i);  
25 and

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

2 “(j)(1) Notwithstanding paragraphs (2) and (3) of  
3 section 545, the trustee may not avoid a warehouseman’s  
4 lien for storage, transportation, or other costs incidental  
5 to the storage and handling of goods.

6 “(2) The prohibition under paragraph (1) shall be ap-  
7 plied in a manner consistent with any applicable State  
8 statute that is similar to section 7–209 of the Uniform  
9 Commercial Code, as in effect on the date of enactment  
10 of the Bankruptcy Reform Act of 2000, or any successor  
11 thereto.”.

12 **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**  
13 **UNITED STATES CODE.**

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

16 (1) in paragraph (3)—

17 (A) by striking “(A) In” and inserting  
18 “In”; and

19 (B) by inserting “to an examiner, trustee  
20 under chapter 11, or professional person” after  
21 “awarded”; and

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

23 “(7) In determining the amount of reasonable  
24 compensation to be awarded to a trustee, the court

1 shall treat such compensation as a commission,  
2 based on section 326 of this title.”.

3 **SEC. 408. 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. 409. PREFERENCES.**

13 Section 547(e) of title 11, United States Code, is  
14 amended—

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

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 (8), by striking the period at  
2           the end and inserting “; or”; and

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

4           “(9) if, in a case filed by a debtor whose debts  
5           are not primarily consumer debts, the aggregate  
6           value of all property that constitutes or is affected  
7           by such transfer is less than \$5,000.”.

8   **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

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

12   **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

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

15                 (1) by striking “On” and inserting “(1) Subject  
16                 to paragraph (2), on”; and

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

18                 “(2)(A) The 120-day period specified in paragraph  
19                 (1) may not be extended beyond a date that is 18 months  
20                 after the date of the order for relief under this chapter.

21                 “(B) The 180-day period specified in paragraph (1)  
22                 may not be extended beyond a date that is 20 months after  
23                 the date of the order for relief under this chapter.”.

1 **SEC. 412. 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. 413. CREDITOR REPRESENTATION AT FIRST MEETING**  
18 **OF CREDITORS.**

19 Section 341(e) of title 11, United States Code, is  
20 amended by inserting at the end the following: “Notwith-  
21 standing any local court rule, provision of a State constitu-  
22 tion, any other Federal or State law that is not a bank-  
23 ruptcy law, or other requirement that representation at  
24 the meeting of creditors under subsection (a) be by an at-  
25 torney, a creditor holding a consumer debt or any rep-  
26 resentative of the creditor (which may include an entity

1 or an employee of an entity and may be a representative  
2 for more than 1 creditor) shall be permitted to appear at  
3 and participate in the meeting of creditors in a case under  
4 chapter 7 or 13, either alone or in conjunction with an  
5 attorney for the creditor. Nothing in this subsection shall  
6 be construed to require any creditor to be represented by  
7 an attorney at any meeting of creditors.”.

8 **SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

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

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

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

15 “(B) is not and was not, within 2 years be-  
16 fore the date of the filing of the petition, a di-  
17 rector, officer, or employee of the debtor; and

18 “(C) does not have an interest materially  
19 adverse to the interest of the estate or of any  
20 class of creditors or equity security holders, by  
21 reason of any direct or indirect relationship to,  
22 connection with, or interest in, the debtor, or  
23 for any other reason;”.

1 **SEC. 415. FACTORS FOR COMPENSATION OF PROFES-**  
2 **SIONAL PERSONS.**

3 Section 330(a)(3) of title 11, United States Code, as  
4 amended by this Act, is amended—

5 (1) in subparagraph (D), by striking “and” at  
6 the end;

7 (2) by redesignating subparagraph (E) as sub-  
8 paragraph (F); and

9 (3) by inserting after subparagraph (D) the fol-  
10 lowing:

11 “(E) with respect to a professional person,  
12 whether the person is board certified or other-  
13 wise has demonstrated skill and experience in  
14 the bankruptcy field; and”.

15 **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

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

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

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

20 “(2)(A) If an eligible, disinterested trustee is elected  
21 at a meeting of creditors under paragraph (1), the United  
22 States trustee shall file a report certifying that election.

23 “(B) Upon the filing of a report under subparagraph  
24 (A)—

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           “(C) In the case of any dispute arising out of an elec-  
7 tion described in subparagraph (A), the court shall resolve  
8 the dispute.”.

9 **SEC. 417. UTILITY SERVICE.**

10          Section 366 of title 11, United States Code, is  
11 amended—

12           (1) in subsection (a), by striking “subsection  
13 (b)” and inserting “subsections (b) and (c)”; and

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

15           “(c)(1)(A) For purposes of this subsection, the term  
16 ‘assurance of payment’ means—

17           “(i) a cash deposit;

18           “(ii) a letter of credit;

19           “(iii) a certificate of deposit;

20           “(iv) a surety bond;

21           “(v) a prepayment of utility consumption; or

22           “(vi) another form of security that is mutually  
23 agreed on between the utility and the debtor or the  
24 trustee.

1       “(B) For purposes of this subsection an administra-  
2 tive expense priority shall not constitute an assurance of  
3 payment.

4       “(2) Subject to paragraphs (3) through (5), with re-  
5 spect to a case filed under chapter 11, a utility referred  
6 to in subsection (a) may alter, refuse, or discontinue util-  
7 ity service, if during the 30-day period beginning on the  
8 date of filing of the petition, the utility does not receive  
9 from the debtor or the trustee adequate assurance of pay-  
10 ment for utility service that is satisfactory to the utility.

11       “(3)(A) On request of a party in interest and after  
12 notice and a hearing, the court may order modification  
13 of the amount of an assurance of payment under para-  
14 graph (2).

15       “(B) In making a determination under this para-  
16 graph whether an assurance of payment is adequate, the  
17 court may not consider—

18               “(i) the absence of security before the date of  
19 filing of the petition;

20               “(ii) the payment by the debtor of charges for  
21 utility service in a timely manner before the date of  
22 filing of the petition; or

23               “(iii) the availability of an administrative ex-  
24 pense priority.

1       “(4) Notwithstanding any other provision of law, with  
2 respect to a case subject to this subsection, a utility may  
3 recover or set off against a security deposit provided to  
4 the utility by the debtor before the date of filing of the  
5 petition without notice or order of the court.”.

6 **SEC. 418. BANKRUPTCY FEES.**

7       Section 1930 of title 28, United States Code, is  
8 amended—

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

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

13       “(f)(1) Under the procedures prescribed by the Judi-  
14 cial Conference of the United States, the district court or  
15 the bankruptcy court may waive the filing fee in a case  
16 under chapter 7 of title 11 for an individual if the court  
17 determines that such debtor has income less than 150 per-  
18 cent of the income official poverty line (as defined by the  
19 Office of Management and Budget, and revised annually  
20 in accordance with section 673(2) of the Omnibus Budget  
21 Reconciliation Act of 1981) applicable to a family of the  
22 size involved and is unable to pay that fee in installments.  
23 For purposes of this paragraph, the term “filing fee”  
24 means the filing required by subsection (a), or any other  
25 fee prescribed by the Judicial Conference under sub-

1 sections (b) and (c) that is payable to the clerk upon the  
2 commencement of a case under chapter 7.

3 “(2) The district court or the bankruptcy court may  
4 waive for such debtors other fees prescribed under sub-  
5 sections (b) and (c).

6 “(3) This subsection does not restrict the district  
7 court or the bankruptcy court from waiving, in accordance  
8 with Judicial Conference policy, fees prescribed under this  
9 section for other debtors and creditors.”.

10 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**  
11 **SETS OF THE ESTATE.**

12 (a) IN GENERAL.—

13 (1) DISCLOSURE.—The Advisory Committee on  
14 Bankruptcy Rules of the Judicial Conference of the  
15 United States, after consideration of the views of the  
16 Director of the Executive Office for United States  
17 Trustees, shall propose for adoption amended Fed-  
18 eral Rules of Bankruptcy Procedure and Official  
19 Bankruptcy Forms directing debtors under chapter  
20 11 of title 11, United States Code, to disclose the  
21 information described in paragraph (2) by filing and  
22 serving periodic financial and other reports designed  
23 to provide such information.

24 (2) INFORMATION.—The information referred  
25 to in paragraph (1) is the value, operations, and



1 profitability of any closely held corporation, partner-  
2 ship, or of any other entity in which the debtor holds  
3 a substantial or controlling interest.

4 (b) PURPOSE.—The purpose of the rules and reports  
5 under subsection (a) shall be to assist parties in interest  
6 taking steps to ensure that the debtor’s interest in any  
7 entity referred to in subsection (a)(2) is used for the pay-  
8 ment of allowed claims against debtor.

9 **Subtitle B—Small Business**  
10 **Bankruptcy Provisions**

11 **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**  
12 **AND PLAN.**

13 Section 1125 of title 11, United States Code, is  
14 amended—

15 (1) in subsection (a)(1), by inserting before the  
16 semicolon “and in determining whether a disclosure  
17 statement provides adequate information, the court  
18 shall consider the complexity of the case, the benefit  
19 of additional information to creditors and other par-  
20 ties in interest, and the cost of providing additional  
21 information”; and

22 (2) by striking subsection (f), and inserting the  
23 following:

24 “(f) Notwithstanding subsection (b), in a small busi-  
25 ness case—

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

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

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

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

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

13 **SEC. 432. DEFINITIONS.**

14 (a) DEFINITIONS.—Section 101 of title 11, United  
15 States Code, as amended by this Act, is amended by striking  
16 paragraph (51C) and 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;

4           “(51D) ‘small business debtor’—

5           “(A) subject to subparagraph (B), means a  
6 person engaged in commercial or business ac-  
7 tivities (including any affiliate of such person  
8 that is also a debtor under this title and exclud-  
9 ing a person whose primary activity is the busi-  
10 ness of owning or operating real property or ac-  
11 tivities incidental thereto) that has aggregate  
12 noncontingent, liquidated secured and unse-  
13 cured debts as of the date of the petition or the  
14 order for relief in an amount not more than  
15 \$3,000,000 (excluding debts owed to 1 or more  
16 affiliates or insiders) for a case in which the  
17 United States trustee has not appointed under  
18 section 1102(a)(1) a committee of unsecured  
19 creditors or where the court has determined  
20 that the committee of unsecured creditors is not  
21 sufficiently active and representative to provide  
22 effective oversight of the debtor; and

23           “(B) does not include any member of a  
24 group of affiliated debtors that has aggregate  
25 noncontingent liquidated secured and unsecured

1 debts in an amount greater than \$3,000,000  
2 (excluding debt owed to 1 or more affiliates or  
3 insiders);”.

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

7 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**  
8 **PLAN.**

9 Within a reasonable period of time after the date of  
10 enactment of this Act, the Advisory Committee on Bank-  
11 ruptcy Rules of the Judicial Conference of the United  
12 States shall propose for adoption standard form disclosure  
13 statements and plans of reorganization for small business  
14 debtors (as defined in section 101 of title 11, United  
15 States Code, as amended by this Act), designed to achieve  
16 a practical balance between—

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

20 (2) economy and simplicity for debtors.

21 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**  
22 **MENTS.**

23 (a) REPORTING REQUIRED.—

1           (1) IN GENERAL.—Chapter 3 of title 11, United  
2           States Code, is amended by inserting after section  
3           307 the following:

4           **“§ 308. Debtor reporting requirements**

5           “(a) For purposes of this section, the term ‘profit-  
6           ability’ means, with respect to a debtor, the amount of  
7           money that the debtor has earned or lost during current  
8           and recent fiscal periods.

9           “(b) A small business debtor shall file periodic finan-  
10          cial and other reports containing information including—

11                 “(1) the debtor’s profitability;

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

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

17                 “(4)(A) whether the debtor is—

18                         “(i) in compliance in all material respects  
19                         with postpetition requirements imposed by this  
20                         title and the Federal Rules of Bankruptcy Pro-  
21                         cedure; and

22                         “(ii) timely filing tax returns and other re-  
23                         quired government filings and paying taxes and  
24                         other administrative claims when due;

1           “(B) if the debtor is not in compliance with the  
2 requirements referred to in subparagraph (A)(i) or  
3 filing tax returns and other required government fil-  
4 ings and making the payments referred to in sub-  
5 paragraph (A)(ii), what the failures are and how, at  
6 what cost, and when the debtor intends to remedy  
7 such failures; and

8           “(C) such other matters as are in the best in-  
9 terests of the debtor and creditors, and in the public  
10 interest in fair and efficient procedures under chap-  
11 ter 11 of this title.”.

12           (2) CLERICAL AMENDMENT.—The table of sec-  
13 tions for chapter 3 of title 11, United States Code,  
14 is amended by inserting after the item relating to  
15 section 307 the following:

“308. Debtor reporting requirements.”.

16           (b) EFFECTIVE DATE.—The amendments made by  
17 subsection (a) shall take effect 60 days after the date on  
18 which rules are prescribed under section 2075 of title 28,  
19 United States Code, to establish forms to be used to com-  
20 ply with section 308 of title 11, United States Code, as  
21 added by subsection (a).

22 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**  
23 **SMALL BUSINESS CASES.**

24           (a) PROPOSAL OF RULES AND FORMS.—The Advi-  
25 sory Committee on Bankruptcy Rules of the Judicial Con-

1 ference of the United States shall propose for adoption  
2 amended Federal Rules of Bankruptcy Procedure and Of-  
3 ficial Bankruptcy Forms to be used by small business  
4 debtors to file periodic financial and other reports con-  
5 taining information, including information relating to—

6 (1) the debtor's profitability;

7 (2) the debtor's cash receipts and disburse-  
8 ments; and

9 (3) whether the debtor is timely filing tax re-  
10 turns and paying taxes and other administrative  
11 claims when due.

12 (b) PURPOSE.—The rules and forms proposed under  
13 subsection (a) shall be designed to achieve a practical bal-  
14 ance among—

15 (1) the reasonable needs of the bankruptcy  
16 court, the United States trustee, creditors, and other  
17 parties in interest for reasonably complete informa-  
18 tion;

19 (2) the small business debtor's interest that re-  
20 quired reports be easy and inexpensive to complete;  
21 and

22 (3) the interest of all parties that the required  
23 reports help the small business debtor to understand  
24 the small business debtor's financial condition and  
25 plan the small business debtor's future.

1 **SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

2 (a) DUTIES IN CHAPTER 11 CASES.—Subchapter I  
3 of title 11, United States Code, as amended by this Act,  
4 is amended by adding at the end the following:

5 **“§ 1116. Duties of trustee or debtor in possession in**  
6 **small business cases**

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

10 “(1) append to the voluntary petition or, in an  
11 involuntary case, file not later than 7 days after the  
12 date of the order for relief—

13 “(A) its most recent balance sheet, state-  
14 ment of operations, cash-flow statement, Fed-  
15 eral income tax return; or

16 “(B) a statement made under penalty of  
17 perjury that no balance sheet, statement of op-  
18 erations, or cash-flow statement has been pre-  
19 pared and no Federal tax return has been filed;

20 “(2) attend, through its senior management  
21 personnel and counsel, meetings scheduled by the  
22 court or the United States trustee, including initial  
23 debtor interviews, scheduling conferences, and meet-  
24 ings of creditors convened under section 341 unless  
25 the court waives that requirement after notice and



1 hearing, upon a finding of extraordinary and com-  
2 pelling circumstances;

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), maintain in-  
13 surance customary and appropriate to the industry;

14 “(6)(A) timely file tax returns and other re-  
15 quired government filings; and

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

20 “(7) allow the United States trustee, or a des-  
21 ignated representative of the United States trustee,  
22 to inspect the debtor’s business premises, books, and  
23 records at reasonable times, after reasonable prior  
24 written notice, unless notice is waived by the debt-  
25 or.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for chapter 11 of title 11, United States Code, is amended  
 3 by adding at the end of the matter relating to subchapter  
 4 I the following:

“1116. Duties of trustee or debtor in possession in small business cases.”.

5 **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

6 Section 1121 of title 11, United States Code, is  
 7 amended by striking subsection (e) and inserting the fol-  
 8 lowing:

9 “(e) In a small business case—

10 “(1) only the debtor may file a plan until after  
 11 180 days after the date of the order for relief, unless  
 12 that period is—

13 “(A) extended as provided by this sub-  
 14 section, after notice and hearing; or

15 “(B) the court, for cause, orders otherwise;  
 16 “(2) the plan, and any necessary disclosure  
 17 statement, shall be filed not later than 300 days  
 18 after the date of the order for relief; and

19 “(3) the time periods specified in paragraphs  
 20 (1) and (2), and the time fixed in section 1129(e),  
 21 within which the plan shall be confirmed, may be ex-  
 22 tended only if—

23 “(A) the debtor, after providing notice to  
 24 parties in interest (including the United States  
 25 trustee), demonstrates by a preponderance of

1 the evidence that it is more likely than not that  
2 the court will confirm a plan within a reason-  
3 able period of time;

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

6 “(C) the order extending time is signed be-  
7 fore the existing deadline has expired.”.

8 **SEC. 438. PLAN CONFIRMATION DEADLINE.**

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

11 “(e) In a small business case, the plan shall be con-  
12 firmed not later than 175 days after the date of the order  
13 for relief, unless such 175-day period is extended as pro-  
14 vided in section 1121(e)(3).”.

15 **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

16 Section 586(a) of title 28, United States Code, is  
17 amended—

18 (1) in paragraph (3)—

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

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

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

1           “(H) in small business cases (as defined in  
2           section 101 of title 11), performing the addi-  
3           tional duties specified in title 11 pertaining to  
4           such cases; and”;

5           (2) in paragraph (5), by striking “and” at the  
6           end;

7           (3) in paragraph (6), by striking the period at  
8           the end and inserting a semicolon; and

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

10          “(7) in each of such small business cases—

11           “(A) conduct an initial debtor interview as  
12           soon as practicable after the entry of order for  
13           relief but before the first meeting scheduled  
14           under section 341(a) of title 11, at which time  
15           the United States trustee shall—

16           “(i) begin to investigate the debtor’s  
17           viability;

18           “(ii) inquire about the debtor’s busi-  
19           ness plan;

20           “(iii) explain the debtor’s obligations  
21           to file monthly operating reports and other  
22           required reports;

23           “(iv) attempt to develop an agreed  
24           scheduling order; and

1                   “(v) inform the debtor of other obliga-  
2                   tions;

3                   “(B) if determined to be appropriate and  
4                   advisable, visit the appropriate business prem-  
5                   ises of the debtor and ascertain the state of the  
6                   debtor’s books and records and verify that the  
7                   debtor has filed its tax returns; and

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

12                  “(8) in any case in which the United States  
13                  trustee finds material grounds for any relief under  
14                  section 1112 of title 11, the United States trustee  
15                  shall apply promptly after making that finding to  
16                  the court for relief.”.

17 **SEC. 440. SCHEDULING CONFERENCES.**

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

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

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

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

4 **SEC. 441. SERIAL FILER PROVISIONS.**

5           Section 362 of title 11, United States Code, as  
6           amended by this Act is amended—

7           (1) in subsection (k), as redesignated by this  
8           Act—

9                   (A) by striking “An” and inserting “(1)  
10           Except as provided in paragraph (2), an”; and

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

12           “(2) If such violation is based on an action taken by  
13           an entity in the good faith belief that subsection (h) ap-  
14           plies to the debtor, the recovery under paragraph (1) of  
15           this subsection against such entity shall be limited to ac-  
16           tual damages.”; and

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

18           “(1)(1) Except as provided in paragraph (2) of this  
19           subsection, the provisions of subsection (a) do not apply  
20           in a case in which the debtor—

21                   “(A) is a debtor in a small business case pend-  
22           ing at the time the petition is filed;

23                   “(B) was a debtor in a small business case that  
24           was dismissed for any reason by an order that be-  
25           came final in the 2-year period ending on the date

1 of the order for relief entered with respect to the pe-  
2 tition;

3 “(C) was a debtor in a small business case in  
4 which a plan was confirmed in the 2-year period  
5 ending on the date of the order for relief entered  
6 with respect to the petition; or

7 “(D) is an entity that has succeeded to sub-  
8 stantially all of the assets or business of a small  
9 business debtor described in subparagraph (A), (B),  
10 or (C).

11 “(2) This subsection does not apply—

12 “(A) to an involuntary case involving no collu-  
13 sion by the debtor with creditors; or

14 “(B) to the filing of a petition if—

15 “(i) the debtor proves by a preponderance  
16 of the evidence that the filing of that petition  
17 resulted from circumstances beyond the control  
18 of the debtor not foreseeable at the time the  
19 case then pending was filed; and

20 “(ii) it is more likely than not that the  
21 court will confirm a feasible plan, but not a liq-  
22 uidating plan, within a reasonable period of  
23 time.”.

1 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
2 **VERSION AND APPOINTMENT OF TRUSTEE.**

3 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-  
4 VERSION.—Section 1112 of title 11, United States Code,  
5 is amended by striking subsection (b) and inserting the  
6 following:

7 “(b)(1) Except as provided in paragraph (2) of this  
8 subsection, subsection (c) of this section, and section  
9 1104(a)(3), on request of a party in interest, and after  
10 notice and a hearing, the court shall convert a case under  
11 this chapter to a case under chapter 7 or dismiss a case  
12 under this chapter, whichever is in the best interest of  
13 creditors and the estate, if the movant establishes cause.

14 “(2) The relief provided in paragraph (1) shall not  
15 be granted if the debtor or another party in interest ob-  
16 jects and establishes by a preponderance of the evidence  
17 that—

18 “(A) a plan with a reasonable possibility of  
19 being confirmed will be filed within a reasonable pe-  
20 riod of time; and

21 “(B) the grounds include an act or omission of  
22 the debtor—

23 “(i) for which there exists a reasonable  
24 justification for the act or omission; and

25 “(ii) that will be cured within a reasonable  
26 period of time fixed by the court.



1       “(3) The court shall commence the hearing on any  
2 motion under this subsection not later than 30 days after  
3 filing of the motion, and shall decide the motion not later  
4 than 15 days after commencement of the hearing, unless  
5 the movant expressly consents to a continuance for a spe-  
6 cific period of time or compelling circumstances prevent  
7 the court from meeting the time limits established by this  
8 paragraph.

9       “(4) For purposes of this subsection, the term ‘cause’  
10 includes—

11           “(A) substantial or continuing loss to or dimi-  
12 nution of the estate;

13           “(B) gross mismanagement of the estate;

14           “(C) failure to maintain appropriate insurance  
15 that poses a risk to the estate or to the public;

16           “(D) unauthorized use of cash collateral harm-  
17 ful to 1 or more creditors;

18           “(E) failure to comply with an order of the  
19 court;

20           “(F) repeated failure timely to satisfy any filing  
21 or reporting requirement established by this title or  
22 by any rule applicable to a case under this chapter;

23           “(G) failure to attend the meeting of creditors  
24 convened under section 341(a) or an examination or-

1       dered under rule 2004 of the Federal Rules of  
2       Bankruptcy Procedure;

3               “(H) failure timely to provide information or  
4       attend meetings reasonably requested by the United  
5       States trustee or the bankruptcy administrator;

6               “(I) failure timely to pay taxes due after the  
7       date of the order for relief or to file tax returns due  
8       after the order for relief;

9               “(J) failure to file a disclosure statement, or to  
10      file or confirm a plan, within the time fixed by this  
11      title or by order of the court;

12              “(K) failure to pay any fees or charges required  
13      under chapter 123 of title 28;

14              “(L) revocation of an order of confirmation  
15      under section 1144;

16              “(M) inability to effectuate substantial con-  
17      summation of a confirmed plan;

18              “(N) material default by the debtor with re-  
19      spect to a confirmed plan;

20              “(O) termination of a confirmed plan by reason  
21      of the occurrence of a condition specified in the plan;  
22      and

23              “(P) failure of the debtor to pay any domestic  
24      support obligation that first becomes payable after  
25      the date on which the petition is filed.

1       “(5) The court shall commence the hearing on any  
2 motion under this subsection not later than 30 days after  
3 filing of the motion, and shall decide the motion not later  
4 than 15 days after commencement of the hearing, unless  
5 the movant expressly consents to a continuance for a spe-  
6 cific period of time or compelling circumstances prevent  
7 the court from meeting the time limits established by this  
8 paragraph.”.

9       (b) **ADDITIONAL GROUNDS FOR APPOINTMENT OF**  
10 **TRUSTEE.**—Section 1104(a) of title 11, United States  
11 Code, is amended—

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

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

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

17           “(3) if grounds exist to convert or dismiss the  
18 case under section 1112, but the court determines  
19 that the appointment of a trustee or an examiner is  
20 in the best interests of creditors and the estate.”.

21 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**  
22 **STATES CODE, WITH RESPECT TO SMALL**  
23 **BUSINESSES.**

24       Not later than 2 years after the date of enactment  
25 of this Act, the Administrator of the Small Business Ad-

1 ministration, in consultation with the Attorney General,  
2 the Director of the Administrative Office of United States  
3 Trustees, and the Director of the Administrative Office  
4 of the United States Courts, shall—

5 (1) conduct a study to determine—

6 (A) the internal and external factors that  
7 cause small businesses, especially sole propri-  
8 etorships, to become debtors in cases under title  
9 11, United States Code, and that cause certain  
10 small businesses to successfully complete cases  
11 under chapter 11 of such title; and

12 (B) how Federal laws relating to bank-  
13 ruptcy may be made more effective and efficient  
14 in assisting small businesses to remain viable;  
15 and

16 (2) submit to the President pro tempore of the  
17 Senate and the Speaker of the House of Representa-  
18 tives a report summarizing that study.

19 **SEC. 444. PAYMENT OF INTEREST.**

20 Section 362(d)(3) of title 11, United States Code, is  
21 amended—

22 (1) by inserting “or 30 days after the court de-  
23 termines that the debtor is subject to this para-  
24 graph, whichever is later” after “90-day period”;  
25 and

1           (2) by striking subparagraph (B) and inserting  
2           the following:

3                   “(B) the debtor has commenced monthly  
4           payments that—

5                           “(i) may, in the debtor’s sole discre-  
6                           tion, notwithstanding section 363(c)(2), be  
7                           made from rents or other income generated  
8                           before or after the commencement of the  
9                           case by or from the property to each cred-  
10                           itor whose claim is secured by such real es-  
11                           tate (other than a claim secured by a judg-  
12                           ment lien or by an unmatured statutory  
13                           lien); and

14                           “(ii) are in an amount equal to inter-  
15                           est at the then applicable nondefault con-  
16                           tract rate of interest on the value of the  
17                           creditor’s interest in the real estate; or”.

18 **SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

19           Section 503(b) of title 11, United States Code, is  
20           amended—

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

23                   (2) in paragraph (6), by striking the period at  
24           the end and inserting a semicolon; and

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

1           “(7) with respect to a nonresidential real prop-  
2           erty lease previously assumed under section 365,  
3           and subsequently rejected, a sum equal to all mone-  
4           etary obligations due, excluding those arising from or  
5           relating to a failure to operate or penalty provisions,  
6           for the period of 2 years following the later of the  
7           rejection date or the date of actual turnover of the  
8           premises, without reduction or setoff for any reason  
9           whatsoever except for sums actually received or to be  
10          received from a nondebtor, and the claim for remain-  
11          ing sums due for the balance of the term of the lease  
12          shall be a claim under section 502(b)(6);”.

13                           **TITLE V—MUNICIPAL**  
14                           **BANKRUPTCY PROVISIONS**

15   **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
16                           **TION.**

17           (a) **TECHNICAL AMENDMENT RELATING TO MUNICI-**  
18   **PALITIES.**—Section 921(d) of title 11, United States  
19   Code, is amended by inserting “notwithstanding section  
20   301(b)” before the period at the end.

21           (b) **CONFORMING AMENDMENT.**—Section 301 of title  
22   11, United States Code, is amended—

23                   (1) by inserting “(a)” before “A voluntary”;  
24                   and



1 “(b) The Director shall—

2 “(1) compile the statistics referred to in sub-  
3 section (a);

4 “(2) make the statistics available to the public;  
5 and

6 “(3) not later than October 31, 2002, and an-  
7 nually thereafter, prepare, and submit to Congress a  
8 report concerning the information collected under  
9 subsection (a) that contains an analysis of the infor-  
10 mation.

11 “(c) The compilation required under subsection (b)  
12 shall—

13 “(1) be itemized, by chapter, with respect to  
14 title 11;

15 “(2) be presented in the aggregate and for each  
16 district; and

17 “(3) include information concerning—

18 “(A) the total assets and total liabilities of  
19 the debtors described in subsection (a), and in  
20 each category of assets and liabilities, as re-  
21 ported in the schedules prescribed pursuant to  
22 section 2075 of this title and filed by those  
23 debtors;

24 “(B) the current monthly income, average  
25 income, and average expenses of those debtors



1 as reported on the schedules and statements  
2 that each such debtor files under sections 521  
3 and 1322 of title 11;

4 “(C) the aggregate amount of debt dis-  
5 charged in the reporting period, determined as  
6 the difference between the total amount of debt  
7 and obligations of a debtor reported on the  
8 schedules and the amount of such debt reported  
9 in categories which are predominantly non-  
10 dischargeable;

11 “(D) the average period of time between  
12 the filing of the petition and the closing of the  
13 case;

14 “(E) for the reporting period—

15 “(i) the number of cases in which a  
16 reaffirmation was filed; and

17 “(ii)(I) the total number of reaffirma-  
18 tions filed;

19 “(II) of those cases in which a reaffir-  
20 mation was filed, the number of cases in  
21 which the debtor was not represented by  
22 an attorney; and

23 “(III) of those cases in which a reaf-  
24 firmation was filed, the number of cases in

1           which the reaffirmation was approved by  
2           the court;

3           “(F) with respect to cases filed under  
4           chapter 13 of title 11, for the reporting  
5           period—

6                   “(i)(I) the number of cases in which a  
7                   final order was entered determining the  
8                   value of property securing a claim in an  
9                   amount less than the amount of the claim;  
10                  and

11                   “(II) the number of final orders deter-  
12                   mining the value of property securing a  
13                   claim issued;

14                   “(ii) the number of cases dismissed,  
15                   the number of cases dismissed for failure  
16                   to make payments under the plan, the  
17                   number of cases refiled after dismissal,  
18                   and the number of cases in which the plan  
19                   was completed, separately itemized with re-  
20                   spect to the number of modifications made  
21                   before completion of the plan, if any; and

22                   “(iii) the number of cases in which  
23                   the debtor filed another case during the 6-  
24                   year period preceding the filing;

1           “(G) the number of cases in which credi-  
 2           tors were fined for misconduct and any amount  
 3           of punitive damages awarded by the court for  
 4           creditor misconduct; and

5           “(H) the number of cases in which sanc-  
 6           tions under rule 9011 of the Federal Rules of  
 7           Bankruptcy Procedure were imposed against  
 8           debtor’s counsel or damages awarded under  
 9           such Rule.”.

10       (b) CLERICAL AMENDMENT.—The table of sections  
 11 for chapter 6 of title 28, United States Code, is amended  
 12 by adding at the end the following:

“159. Bankruptcy statistics.”.

13       (c) EFFECTIVE DATE.—The amendments made by  
 14 this section shall take effect 18 months after the date of  
 15 enactment of this Act.

16 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**  
 17 **RUPTCY DATA.**

18       (a) AMENDMENT.—Chapter 39 of title 28, United  
 19 States Code, is amended by adding at the end the fol-  
 20 lowing:

21 **“§ 589b. Bankruptcy data**

22       “(a) RULES.—The Attorney General shall, within a  
 23 reasonable time after the effective date of this section,  
 24 issue rules requiring uniform forms for (and from time  
 25 to time thereafter to appropriately modify and approve)—

1           “(1) final reports by trustees in cases under  
2 chapters 7, 12, and 13 of title 11; and

3           “(2) periodic reports by debtors in possession or  
4 trustees, as the case may be, in cases under chapter  
5 11 of title 11.

6           “(b) REPORTS.—Each report referred to in sub-  
7 section (a) shall be designed (and the requirements as to  
8 place and manner of filing shall be established) so as to  
9 facilitate compilation of data and maximum possible ac-  
10 cess of the public, both by physical inspection at one or  
11 more central filing locations, and by electronic access  
12 through the Internet or other appropriate media.

13           “(c) REQUIRED INFORMATION.—The information re-  
14 quired to be filed in the reports referred to in subsection  
15 (b) shall be that which is in the best interests of debtors  
16 and creditors, and in the public interest in reasonable and  
17 adequate information to evaluate the efficiency and practi-  
18 cality of the Federal bankruptcy system. In issuing rules  
19 proposing the forms referred to in subsection (a), the At-  
20 torney General shall strike the best achievable practical  
21 balance between—

22           “(1) the reasonable needs of the public for in-  
23 formation about the operational results of the Fed-  
24 eral bankruptcy system;

1           “(2) economy, simplicity, and lack of undue  
2           burden on persons with a duty to file reports; and

3           “(3) appropriate privacy concerns and safe-  
4           guards.

5           “(d) FINAL REPORTS.—Final reports proposed for  
6           adoption by trustees under chapters 7, 12, and 13 of title  
7           11 shall, in addition to such other matters as are required  
8           by law or as the Attorney General in the discretion of the  
9           Attorney General, shall propose, include with respect to  
10          a case under such title—

11           “(1) information about the length of time the  
12          case was pending;

13           “(2) assets abandoned;

14           “(3) assets exempted;

15           “(4) receipts and disbursements of the estate;

16           “(5) expenses of administration, including for  
17          use under section 707(b), actual costs of admin-  
18          istering cases under chapter 13 of title 11;

19           “(6) claims asserted;

20           “(7) claims allowed; and

21           “(8) distributions to claimants and claims dis-  
22          charged without payment,

23          in each case by appropriate category and, in cases under  
24          chapters 12 and 13 of title 11, date of confirmation of

1 the plan, each modification thereto, and defaults by the  
2 debtor in performance under the plan.

3 “(e) PERIODIC REPORTS.—Periodic reports proposed  
4 for adoption by trustees or debtors in possession under  
5 chapter 11 of title 11 shall, in addition to such other mat-  
6 ters as are required by law or as the Attorney General,  
7 in the discretion of the Attorney General, shall propose,  
8 include—

9 “(1) information about the standard industry  
10 classification, published by the Department of Com-  
11 merce, for the businesses conducted by the debtor;

12 “(2) length of time the case has been pending;

13 “(3) number of full-time employees as of the  
14 date of the order for relief and at the end of each  
15 reporting period since the case was filed;

16 “(4) cash receipts, cash disbursements and  
17 profitability of the debtor for the most recent period  
18 and cumulatively since the date of the order for re-  
19 lief;

20 “(5) compliance with title 11, whether or not  
21 tax returns and tax payments since the date of the  
22 order for relief have been timely filed and made;

23 “(6) all professional fees approved by the court  
24 in the case for the most recent period and cumula-  
25 tively since the date of the order for relief (sepa-

1 rately reported, for the professional fees incurred by  
 2 or on behalf of the debtor, between those that would  
 3 have been incurred absent a bankruptcy case and  
 4 those not); and

5 “(7) plans of reorganization filed and confirmed  
 6 and, with respect thereto, by class, the recoveries of  
 7 the holders, expressed in aggregate dollar values  
 8 and, in the case of claims, as a percentage of total  
 9 claims of the class allowed.”.

10 (b) CLERICAL AMENDMENT.—The table of sections  
 11 at the beginning of chapter 39 of title 28, United States  
 12 Code, is amended by adding at the end the following:

“589b. Bankruptcy data.”.

13 **SEC. 603. AUDIT PROCEDURES.**

14 (a) IN GENERAL.—

15 (1) ESTABLISHMENT OF PROCEDURES.—The  
 16 Attorney General (in judicial districts served by  
 17 United States trustees) and the Judicial Conference  
 18 of the United States (in judicial districts served by  
 19 bankruptcy administrators) shall establish proce-  
 20 dures to determine the accuracy, veracity, and com-  
 21 pleteness of petitions, schedules, and other informa-  
 22 tion which the debtor is required to provide under  
 23 sections 521 and 1322 of title 11, and, if applicable,  
 24 section 111 of title 11, in individual cases filed  
 25 under chapter 7 or 13 of such title. Such audits

1 shall be in accordance with generally accepted audit-  
2 ing standards and performed by independent cer-  
3 tified public accountants or independent licensed  
4 public accountants, provided that the Attorney Gen-  
5 eral and the Judicial Conference, as appropriate,  
6 may develop alternative auditing standards not later  
7 than 2 years after the date of enactment of this Act.

8 (2) PROCEDURES.—Those procedures required  
9 by paragraph (1) shall—

10 (A) establish a method of selecting appro-  
11 priate qualified persons to contract to perform  
12 those audits;

13 (B) establish a method of randomly select-  
14 ing cases to be audited, except that not less  
15 than 1 out of every 250 cases in each Federal  
16 judicial district shall be selected for audit;

17 (C) require audits for schedules of income  
18 and expenses which reflect greater than average  
19 variances from the statistical norm of the dis-  
20 trict in which the schedules were filed if those  
21 variances occur by reason of higher income or  
22 higher expenses than the statistical norm of the  
23 district in which the schedules were filed; and

24 (D) establish procedures for providing, not  
25 less frequently than annually, public informa-



1           tion concerning the aggregate results of such  
2           audits including the percentage of cases, by dis-  
3           trict, in which a material misstatement of in-  
4           come or expenditures is reported.

5           (b) AMENDMENTS.—Section 586 of title 28, United  
6 States Code, is amended—

7           (1) in subsection (a), by striking paragraph (6)  
8           and inserting the following:

9           “(6) make such reports as the Attorney General  
10          directs, including the results of audits performed  
11          under section 603(a) of the Bankruptcy Reform Act  
12          of 2000; and”;

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

14          “(f)(1) The United States trustee for each district is  
15          authorized to contract with auditors to perform audits in  
16          cases designated by the United States trustee, in accord-  
17          ance with the procedures established under section 603(a)  
18          of the Bankruptcy Reform Act of 2000.

19          “(2)(A) The report of each audit referred to in para-  
20          graph (1) shall be filed with the court and transmitted  
21          to the United States trustee. Each report shall clearly and  
22          conspicuously specify any material misstatement of income  
23          or expenditures or of assets identified by the person per-  
24          forming the audit. In any case in which a material  
25          misstatement of income or expenditures or of assets has

1 been reported, the clerk of the bankruptcy court shall give  
2 notice of the misstatement to the creditors in the case.

3 “(B) If a material misstatement of income or expend-  
4 itures or of assets is reported, the United States trustee  
5 shall—

6 “(i) report the material misstatement, if appro-  
7 priate, to the United States Attorney pursuant to  
8 section 3057 of title 18; and

9 “(ii) if advisable, take appropriate action, in-  
10 cluding but not limited to commencing an adversary  
11 proceeding to revoke the debtor’s discharge pursuant  
12 to section 727(d) of title 11.”.

13 (c) AMENDMENTS TO SECTION 521 OF TITLE 11,  
14 U.S.C.—Section 521(a) of title 11, United States Code,  
15 as so designated by this Act, is amended in each of para-  
16 graphs (3) and (4) by inserting “or an auditor appointed  
17 under section 586(f) of title 28” after “serving in the  
18 case”.

19 (d) AMENDMENTS TO SECTION 727 OF TITLE 11,  
20 U.S.C.—Section 727(d) of title 11, United States Code,  
21 is amended—

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

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

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

2 “(4) the debtor has failed to explain  
3 satisfactorily—

4 “(A) a material misstatement in an audit  
5 referred to in section 586(f) of title 28; or

6 “(B) a failure to make available for inspec-  
7 tion all necessary accounts, papers, documents,  
8 financial records, files, and all other papers,  
9 things, or property belonging to the debtor that  
10 are requested for an audit referred to in section  
11 586(f) of title 28.”.

12 (e) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect 18 months after the date of  
14 enactment of this Act.

15 **SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**  
16 **OF BANKRUPTCY DATA.**

17 It is the sense of Congress that—

18 (1) the national policy of the United States  
19 should be that all data held by bankruptcy clerks in  
20 electronic form, to the extent such data reflects only  
21 public records (as defined in section 107 of title 11,  
22 United States Code), should be released in a usable  
23 electronic form in bulk to the public, subject to such  
24 appropriate privacy concerns and safeguards as Con-

1       gress and the Judicial Conference of the United  
2       States may determine; and

3               (2) there should be established a bankruptcy  
4       data system in which—

5                       (A) a single set of data definitions and  
6       forms are used to collect data nationwide; and

7                       (B) data for any particular bankruptcy  
8       case are aggregated in the same electronic  
9       record.

## 10       **TITLE VII—BANKRUPTCY TAX** 11       **PROVISIONS**

### 12       **SEC. 701. TREATMENT OF CERTAIN LIENS.**

13       (a) TREATMENT OF CERTAIN LIENS.—Section 724  
14       of title 11, United States Code, is amended—

15               (1) in subsection (b), in the matter preceding  
16       paragraph (1), by inserting “(other than to the ex-  
17       tent that there is a properly perfected unavoidable  
18       tax lien arising in connection with an ad valorem tax  
19       on real or personal property of the estate)” after  
20       “under this title”;

21               (2) in subsection (b)(2), by inserting “(except  
22       that such expenses, other than claims for wages, sal-  
23       aries, or commissions which arise after the filing of  
24       a petition, shall be limited to expenses incurred  
25       under chapter 7 of this title and shall not include ex-

1       penses incurred under chapter 11 of this title)” after  
2       “507(a)(1)”;

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

4       “(e) Before subordinating a tax lien on real or per-  
5       sonal property of the estate, the trustee shall—

6               “(1) exhaust the unencumbered assets of the  
7       estate; and

8               “(2) in a manner consistent with section  
9       506(c), recover from property securing an allowed  
10       secured claim the reasonable, necessary costs and  
11       expenses of preserving or disposing of that property.

12       “(f) Notwithstanding the exclusion of ad valorem tax  
13       liens under this section and subject to the requirements  
14       of subsection (e), the following may be paid from property  
15       of the estate which secures a tax lien, or the proceeds of  
16       such property:

17               “(1) Claims for wages, salaries, and commis-  
18       sions that are entitled to priority under section  
19       507(a)(4).

20               “(2) Claims for contributions to an employee  
21       benefit plan entitled to priority under section  
22       507(a)(5).”.

23       (b) DETERMINATION OF TAX LIABILITY.—Section  
24       505(a)(2) of title 11, United States Code, is amended—



1 (1) in the first sentence, by inserting “at the  
2 address and in the manner designated in paragraph  
3 (1)” after “determination of such tax”;

4 (2) by striking “(1) upon payment” and insert-  
5 ing “(A) upon payment”;

6 (3) by striking “(A) such governmental unit”  
7 and inserting “(i) such governmental unit”;

8 (4) by striking “(B) such governmental unit”  
9 and inserting “(ii) such governmental unit”;

10 (5) by striking “(2) upon payment” and insert-  
11 ing “(B) upon payment”;

12 (6) by striking “(3) upon payment” and insert-  
13 ing “(C) upon payment”;

14 (7) by striking “(b)” and inserting “(2)”; and

15 (8) by inserting before paragraph (2), as so  
16 designated, the following:

17 “(b)(1)(A) The clerk of each district shall maintain  
18 a listing under which a Federal, State, or local govern-  
19 mental unit responsible for the collection of taxes within  
20 the district may—

21 “(i) designate an address for service of requests  
22 under this subsection; and

23 “(ii) describe where further information con-  
24 cerning additional requirements for filing such re-  
25 quests may be found.

1       “(B) If a governmental unit referred to in subpara-  
2 graph (A) does not designate an address and provide that  
3 address to the clerk under that subparagraph, any request  
4 made under this subsection may be served at the address  
5 for the filing of a tax return or protest with the appro-  
6 priate taxing authority of that governmental unit.”.

7 **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

8       (a) IN GENERAL.—Subchapter I of chapter 5 of title  
9 11, United States Code, is amended by adding at the end  
10 the following:

11 **“§ 511. Rate of interest on tax claims**

12       “(a) If any provision of this title requires the pay-  
13 ment of interest on a tax claim or on an administrative  
14 expense tax, or the payment of interest to enable a creditor  
15 to receive the present value of the allowed amount of a  
16 tax claim, the rate of interest shall be the rate determined  
17 under applicable nonbankruptcy law.

18       “(b) In the case of taxes paid under a confirmed plan  
19 under this title, the rate of interest shall be determined  
20 as of the calendar month in which the plan is confirmed.”.

21       (b) CLERICAL AMENDMENT.—The table of sections  
22 for chapter 5 of title 11, United States Code, is amended  
23 by inserting after the item relating to section 510 the fol-  
24 lowing:

“511. Rate of interest on tax claims.”.



1 **SEC. 705. PRIORITY OF TAX CLAIMS.**

2 Section 507(a)(8) of title 11, United States Code, is  
3 amended—

4 (1) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by  
6 inserting “for a taxable year ending on or be-  
7 fore the date of filing of the petition” after  
8 “gross receipts”;

9 (B) in clause (i), by striking “for a taxable  
10 year ending on or before the date of filing of  
11 the petition”; and

12 (C) by striking clause (ii) and inserting the  
13 following:

14 “(ii) assessed within 240 days before  
15 the date of the filing of the petition, exclu-  
16 sive of—

17 “(I) any time during which an  
18 offer in compromise with respect to  
19 that tax was pending or in effect dur-  
20 ing that 240-day period, plus 30 days;  
21 and

22 “(II) any time during which a  
23 stay of proceedings against collections  
24 was in effect in a prior case under  
25 this title during that 240-day period;  
26 plus 90 days.”; and

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

2 “An otherwise applicable time period specified in  
3 this paragraph shall be suspended for (i) any period  
4 during which a governmental unit is prohibited  
5 under applicable nonbankruptcy law from collecting  
6 a tax as a result of a request by the debtor for a  
7 hearing and an appeal of any collection action taken  
8 or proposed against the debtor, plus 90 days; plus  
9 (ii) any time during which the stay of proceedings  
10 was in effect in a prior case under this title or dur-  
11 ing which collection was precluded by the existence  
12 of 1 or more confirmed plans under this title, plus  
13 90 days.”.

14 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

15 Section 507(a)(8)(B) of title 11, United States Code,  
16 is amended by striking “assessed” and inserting “in-  
17 curred”.

18 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**

19 **TER 13.**

20 Section 1328(a)(2) of title 11, United States Code,  
21 as amended by section 314 of this Act, is amended by  
22 striking “paragraph” and inserting “section 507(a)(8)(C)  
23 or in paragraph (1)(B), (1)(C),”.

1 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
2 **TER 11.**

3 Section 1141(d) of title 11, United States Code, as  
4 amended by this Act, is amended by adding at the end  
5 the following:

6 “(6) Notwithstanding paragraph (1), the confirma-  
7 tion of a plan does not discharge a debtor that is a cor-  
8 poration from any debt described in section 523(a)(2) or  
9 for a tax or customs duty with respect to which the  
10 debtor—

11 “(A) made a fraudulent return; or

12 “(B) willfully attempted in any manner to  
13 evade or defeat that tax or duty.”.

14 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**  
15 **PREPETITION TAXES.**

16 Section 362(a)(8) of title 11, United States Code, is  
17 amended by striking “the debtor” and inserting “a cor-  
18 porate debtor’s tax liability for a taxable period the bank-  
19 ruptcy court may determine or concerning an individual  
20 debtor’s tax liability for a taxable period ending before the  
21 order for relief under this title”.

22 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**  
23 **CASES.**

24 Section 1129(a)(9) of title 11, United States Code,  
25 is amended—

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

3           (2) in subparagraph (C), by striking “deferred  
4 cash payments,” and all that follows through the  
5 end of the subparagraph, and inserting “regular in-  
6 stallment payments in cash—

7                   “(i) of a total value, as of the effective  
8 date of the plan, equal to the allowed  
9 amount of such claim;

10                   “(ii) over a period ending not later  
11 than 5 years after the date of the entry of  
12 the order for relief under section 301, 302,  
13 or 303; and

14                   “(iii) in a manner not less favorable  
15 than the most favored nonpriority unse-  
16 cured claim provided for in the plan (other  
17 than cash payments made to a class of  
18 creditors under section 1122(b)); and”;  
19 and

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

21                   “(D) with respect to a secured claim which  
22 would otherwise meet the description of an un-  
23 secured claim of a governmental unit under sec-  
24 tion 507(a)(8), but for the secured status of  
25 that claim, the holder of that claim will receive

1 on account of that claim, cash payments, in the  
2 same manner and over the same period, as pre-  
3 scribed in subparagraph (C).”.

4 **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
5 **ITED.**

6 Section 545(2) of title 11, United States Code, is  
7 amended by inserting before the semicolon at the end the  
8 following: “, except in any case in which a purchaser is  
9 a purchaser described in section 6323 of the Internal Rev-  
10 enue Code of 1986, or in any other similar provision of  
11 State or local law”.

12 **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
13 **NESS.**

14 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
15 title 28, United States Code, is amended—

16 (1) by inserting “(a)” before “Any”; and

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

18 “(b) A tax under subsection (a) shall be paid on or  
19 before the due date of the tax under applicable nonbank-  
20 ruptcy law, unless—

21 “(1) the tax is a property tax secured by a lien  
22 against property that is abandoned within a reason-  
23 able period of time after the lien attaches by the  
24 trustee of a bankruptcy estate under section 554 of  
25 title 11; or

1           “(2) payment of the tax is excused under a spe-  
2           cific provision of title 11.

3           “(c) In a case pending under chapter 7 of title 11,  
4           payment of a tax may be deferred until final distribution  
5           is made under section 726 of title 11, if—

6           “(1) the tax was not incurred by a trustee duly  
7           appointed under chapter 7 of title 11; or

8           “(2) before the due date of the tax, an order of  
9           the court makes a finding of probable insufficiency  
10          of funds of the estate to pay in full the administra-  
11          tive expenses allowed under section 503(b) of title  
12          11 that have the same priority in distribution under  
13          section 726(b) of title 11 as the priority of that  
14          tax.”.

15          (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
16          Section 503(b)(1)(B)(i) of title 11, United States Code,  
17          is amended by inserting “whether secured or unsecured,  
18          including property taxes for which liability is in rem, in  
19          personam, or both,” before “except”.

20          (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE  
21          EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of  
22          title 11, United States Code, is amended—

23                 (1) in subparagraph (B), by striking “and” at  
24                 the end;

1           (2) in subparagraph (C), by adding “and” at  
2           the end; and

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

4           “(D) notwithstanding the requirements of sub-  
5           section (a), a governmental unit shall not be re-  
6           quired to file a request for the payment of an ex-  
7           pense described in subparagraph (B) or (C), as a  
8           condition of its being an allowed administrative ex-  
9           pense;”.

10          (d) PAYMENT OF TAXES AND FEES AS SECURED  
11 CLAIMS.—Section 506 of title 11, United States Code, is  
12 amended—

13           (1) in subsection (b), by inserting “or State  
14           statute” after “agreement”; and

15           (2) in subsection (c), by inserting “, including  
16           the payment of all ad valorem property taxes with  
17           respect to the property” before the period at the  
18           end.

19 **SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

20          Section 726(a)(1) of title 11, United States Code, is  
21 amended by striking “before the date on which the trustee  
22 commences distribution under this section;” and inserting  
23 the following: “on or before the earlier of—

1           “(A) the date that is 10 days after the  
2 mailing to creditors of the summary of the  
3 trustee’s final report; or

4           “(B) the date on which the trustee com-  
5 mences final distribution under this section;”.

6 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**  
7 **THORITIES.**

8           Section 523(a) of title 11, United States Code, as  
9 amended by this Act, is amended—

10           (1) in paragraph (1)(B)—

11               (A) in the matter preceding clause (i), by  
12 inserting “or equivalent report or notice,” after  
13 “a return,”;

14               (B) in clause (i), by inserting “or given”  
15 after “filed”; and

16               (C) in clause (ii)—

17                   (i) by inserting “or given” after  
18 “filed”; and

19                   (ii) by inserting “, report, or notice”  
20 after “return”; and

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

22 “For purposes of this subsection, the term ‘return’ means  
23 a return that satisfies the requirements of applicable non-  
24 bankruptcy law (including applicable filing requirements).

25 Such term includes a return prepared pursuant to section



1 6020(a) of the Internal Revenue Code of 1986, or similar  
2 State or local law, or a written stipulation to a judgment  
3 or a final order entered by a nonbankruptcy tribunal, but  
4 does not include a return made pursuant to section  
5 6020(b) of the Internal Revenue Code of 1986, or a simi-  
6 lar State or local law.”.

7 **SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
8 **PAID TAXES.**

9 Section 505(b)(2) of title 11, United States Code, as  
10 amended by this Act, is amended by inserting “the es-  
11 tate,” after “misrepresentation,”.

12 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
13 **FIRM CHAPTER 13 PLANS.**

14 (a) **FILING OF PREPETITION TAX RETURNS RE-**  
15 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of  
16 title 11, United States Code, as amended by this Act, is  
17 amended by adding at the end the following:

18 “(9) the debtor has filed all applicable Federal,  
19 State, and local tax returns as required by section  
20 1308.”.

21 (b) **ADDITIONAL TIME PERMITTED FOR FILING TAX**  
22 **RETURNS.**—

23 (1) **IN GENERAL.**—Subchapter I of chapter 13  
24 of title 11, United States Code, is amended by add-  
25 ing at the end the following:

1 **“§ 1308. Filing of prepetition tax returns**

2       “(a) Not later than the day before the date on which  
3 the meeting of the creditors is first scheduled to be held  
4 under section 341(a), if the debtor was required to file  
5 a tax return under applicable nonbankruptcy law, the  
6 debtor shall file with appropriate tax authorities all tax  
7 returns for all taxable periods ending during the 4-year  
8 period ending on the date of the filing of the petition.

9       “(b)(1) Subject to paragraph (2), if the tax returns  
10 required by subsection (a) have not been filed by the date  
11 on which the meeting of creditors is first scheduled to be  
12 held under section 341(a), the trustee may hold open that  
13 meeting for a reasonable period of time to allow the debtor  
14 an additional period of time to file any unfiled returns,  
15 but such additional period of time shall not extend  
16 beyond—

17               “(A) for any return that is past due as of the  
18 date of the filing of the petition, the date that is 120  
19 days after the date of that meeting; or

20               “(B) for any return that is not past due as of  
21 the date of the filing of the petition, the later of—

22                       “(i) the date that is 120 days after the  
23 date of that meeting; or

24                       “(ii) the date on which the return is due  
25 under the last automatic extension of time for  
26 filing that return to which the debtor is enti-

1           tled, and for which request is timely made, in  
2           accordance with applicable nonbankruptcy law.

3           “(2) Upon notice and hearing, and order entered be-  
4 fore the tolling of any applicable filing period determined  
5 under this subsection, if the debtor demonstrates by a pre-  
6 ponderance of the evidence that the failure to file a return  
7 as required under this subsection is attributable to cir-  
8 cumstances beyond the control of the debtor, the court  
9 may extend the filing period established by the trustee  
10 under this subsection for—

11           “(A) a period of not more than 30 days for re-  
12 turns described in paragraph (1); and

13           “(B) a period not to extend after the applicable  
14 extended due date for a return described in para-  
15 graph (2).

16           “(c) For purposes of this section, the term ‘return’  
17 includes a return prepared pursuant to subsection (a) or  
18 (b) of section 6020 of the Internal Revenue Code of 1986,  
19 or a similar State or local law, or a written stipulation  
20 to a judgment or a final order entered by a nonbankruptcy  
21 tribunal.”.

22           (2) CONFORMING AMENDMENT.—The table of  
23 sections at the beginning of chapter 13 of title 11,  
24 United States Code, is amended by inserting after  
25 the 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 a tax return  
9 under section 1308, on request of a party in interest or  
10 the United States trustee and after notice and a hearing,  
11 the court shall dismiss a case or convert a case under this  
12 chapter to a case under chapter 7 of this title, whichever  
13 is in the best interest of the creditors and the estate.”.

14           (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
15 title 11, United States Code, is amended by inserting be-  
16 fore the period at the end the following “, and except that  
17 in a case under chapter 13, a claim of a governmental  
18 unit for a tax with respect to a return filed under section  
19 1308 shall be timely if the claim is filed on or before the  
20 date that is 60 days after the date on which such return  
21 was filed as required”.

22           (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
23 CONFIRMATION.—It is the sense of Congress that the Ad-  
24 visory Committee on Bankruptcy Rules of the Judicial  
25 Conference of the United States should, as soon as prac-

1 ticable after the date of enactment of this Act, propose  
2 for adoption amended Federal Rules of Bankruptcy Proce-  
3 dure which provide that—

4           (1) notwithstanding the provisions of Rule  
5           3015(f), in cases under chapter 13 of title 11,  
6           United States Code, an objection to the confirmation  
7           of a plan filed by a governmental unit on or before  
8           the date that is 60 days after the date on which the  
9           debtor files all tax returns required under sections  
10          1308 and 1325(a)(7) of title 11, United States  
11          Code, shall be treated for all purposes as if such ob-  
12          jection had been timely filed before such confirma-  
13          tion; and

14           (2) in addition to the provisions of Rule 3007,  
15          in a case under chapter 13 of title 11, United States  
16          Code, no objection to a tax with respect to which a  
17          return is required to be filed under section 1308 of  
18          title 11, United States Code, shall be filed until such  
19          return has been filed as required.

20 **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

21          Section 1125(a)(1) of title 11, United States Code,  
22 is amended—

23           (1) by inserting “including a discussion of the  
24          potential material Federal tax consequences of the  
25          plan to the debtor, any successor to the debtor, and

1 a hypothetical investor typical of the holders of  
2 claims or interests in the case,” after “records”; and

3 (2) by striking “a hypothetical reasonable inves-  
4 tor typical of holders of claims or interests” and in-  
5 serting “such a hypothetical investor”.

6 **SEC. 718. SETOFF OF TAX REFUNDS.**

7 Section 362(b) of title 11, United States Code, is  
8 amended by inserting after paragraph (26), as added by  
9 this Act, the following:

10 “(27) under subsection (a), of the setoff under  
11 applicable nonbankruptcy law of an income tax re-  
12 fund, by a governmental unit, with respect to a tax-  
13 able period that ended before the order for relief  
14 against an income tax liability for a taxable period  
15 that also ended before the order for relief, except  
16 that in any case in which the setoff of an income tax  
17 refund is not permitted under applicable nonbank-  
18 ruptcy law because of a pending action to determine  
19 the amount or legality of a tax liability, the govern-  
20 mental unit may hold the refund pending the resolu-  
21 tion of the action, unless the court, upon motion of  
22 the trustee and after notice and hearing, grants the  
23 taxing authority adequate protection (within the  
24 meaning of section 361) for the secured claim of  
25 that authority in the setoff under section 506(a);”.

1 **SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREAT-**  
2 **MENT OF STATE AND LOCAL TAXES.**

3 (a) IN GENERAL.—Section 346 of title 11, United  
4 States Code, is amended to read as follows:

5 **“§ 346. Special provisions related to the treatment of**  
6 **state and local taxes**

7 “(a) Whenever the Internal Revenue Code of 1986  
8 provides that a separate taxable estate or entity is created  
9 in a case concerning a debtor under this title, and the in-  
10 come, gain, loss, deductions, and credits of such estate  
11 shall be taxed to or claimed by the estate, a separate tax-  
12 able estate is also created for purposes of any State and  
13 local law imposing a tax on or measured by income and  
14 such income, gain, loss, deductions, and credits shall be  
15 taxed to or claimed by the estate and may not be taxed  
16 to or claimed by the debtor. The preceding sentence shall  
17 not apply if the case is dismissed. The trustee shall make  
18 tax returns of income required under any such State or  
19 local law.

20 “(b) Whenever the Internal Revenue Code of 1986  
21 provides that no separate taxable estate shall be created  
22 in a case concerning a debtor under this title, and the in-  
23 come, gain, loss, deductions, and credits of an estate shall  
24 be taxed to or claimed by the debtor, such income, gain,  
25 loss, deductions, and credits shall be taxed to or claimed  
26 by the debtor under a State or local law imposing a tax

1 on or measured by income and may not be taxed to or  
2 claimed by the estate. The trustee shall make such tax  
3 returns of income of corporations and of partnerships as  
4 are required under any State or local law, but with respect  
5 to partnerships, shall make said returns only to the extent  
6 such returns are also required to be made under such  
7 Code. The estate shall be liable for any tax imposed on  
8 such corporation or partnership, but not for any tax im-  
9 posed on partners or members.

10       “(c) With respect to a partnership or any entity treat-  
11 ed as a partnership under a State or local law imposing  
12 a tax on or measured by income that is a debtor in a case  
13 under this title, any gain or loss resulting from a distribu-  
14 tion of property from such partnership, or any distributive  
15 share of any income, gain, loss, deduction, or credit of a  
16 partner or member that is distributed, or considered dis-  
17 tributed, from such partnership, after the commencement  
18 of the case, is gain, loss, income, deduction, or credit, as  
19 the case may be, of the partner or member, and if such  
20 partner or member is a debtor in a case under this title,  
21 shall be subject to tax in accordance with subsection (a)  
22 or (b).

23       “(d) For purposes of any State or local law imposing  
24 a tax on or measured by income, the taxable period of  
25 a debtor in a case under this title shall terminate only



1 if and to the extent that the taxable period of such debtor  
2 terminates under the Internal Revenue Code of 1986.

3       “(e) The estate in any case described in subsection  
4 (a) shall use the same accounting method as the debtor  
5 used immediately before the commencement of the case,  
6 if such method of accounting complies with applicable non-  
7 bankruptcy tax law.

8       “(f) For purposes of any State or local law imposing  
9 a tax on or measured by income, a transfer of property  
10 from the debtor to the estate or from the estate to the  
11 debtor shall not be treated as a disposition for purposes  
12 of any provision assigning tax consequences to a disposi-  
13 tion, except to the extent that such transfer is treated as  
14 a disposition under the Internal Revenue Code of 1986.

15       “(g) Whenever a tax is imposed pursuant to a State  
16 or local law imposing a tax on or measured by income pur-  
17 suant to subsection (a) or (b), such tax shall be imposed  
18 at rates generally applicable to the same types of entities  
19 under such State or local law.

20       “(h) The trustee shall withhold from any payment of  
21 claims for wages, salaries, commissions, dividends, inter-  
22 est, or other payments, or collect, any amount required  
23 to be withheld or collected under applicable State or local  
24 tax law, and shall pay such withheld or collected amount  
25 to the appropriate governmental unit at the time and in

1 the manner required by such tax law, and with the same  
2 priority as the claim from which such amount was with-  
3 held or collected was paid.

4 “(i)(1) To the extent that any State or local law im-  
5 posing a tax on or measured by income provides for the  
6 carryover of any tax attribute from one taxable period to  
7 a subsequent taxable period, the estate shall succeed to  
8 such tax attribute in any case in which such estate is sub-  
9 ject to tax under subsection (a).

10 “(2) After such a case is closed or dismissed, the  
11 debtor shall succeed to any tax attribute to which the es-  
12 tate succeeded under paragraph (1) to the extent con-  
13 sistent with the Internal Revenue Code of 1986.

14 “(3) The estate may carry back any loss or tax at-  
15 tribute to a taxable period of the debtor that ended before  
16 the order for relief under this title to the extent that—

17 “(A) applicable State or local tax law provides  
18 for a carryback in the case of the debtor; and

19 “(B) the same or a similar tax attribute may be  
20 carried back by the estate to such a taxable period  
21 of the debtor under the Internal Revenue Code of  
22 1986.

23 “(j)(1) For purposes of any State or local law impos-  
24 ing a tax on or measured by income, income is not realized  
25 by the estate, the debtor, or a successor to the debtor by

1 reason of discharge of indebtedness in a case under this  
2 title, except to the extent, if any, that such income is sub-  
3 ject to tax under the Internal Revenue Code of 1986.

4 “(2) Whenever the Internal Revenue Code of 1986  
5 provides that the amount excluded from gross income in  
6 respect of the discharge of indebtedness in a case under  
7 this title shall be applied to reduce the tax attributes of  
8 the debtor or the estate, a similar reduction shall be made  
9 under any State or local law imposing a tax on or meas-  
10 ured by income to the extent such State or local law recog-  
11 nizes such attributes. Such State or local law may also  
12 provide for the reduction of other attributes to the extent  
13 that the full amount of income from the discharge of in-  
14 debtedness has not been applied.

15 “(k)(1) Except as provided in this section and section  
16 505, the time and manner of filing tax returns and the  
17 items of income, gain, loss, deduction, and credit of any  
18 taxpayer shall be determined under applicable nonbank-  
19 ruptcy law.

20 “(2) For Federal tax purposes, the provisions of this  
21 section are subject to the Internal Revenue Code of 1986  
22 and other applicable Federal nonbankruptcy law.”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 728 of title 11, United States Code,  
25 is repealed.

1           (2) Section 1146 of title 11, United States  
2 Code, is amended—

3           (A) by striking subsections (a) and (b);  
4 and

5           (B) by redesignating subsections (c) and  
6 (d) as subsections (a) and (b), respectively.

7           (3) Section 1231 of title 11, United States  
8 Code, is amended—

9           (A) by striking subsections (a) and (b);  
10 and

11           (B) by redesignating subsections (c) and  
12 (d) as subsections (a) and (b), respectively.

13 **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX**  
14 **RETURNS.**

15       Section 521 of title 11, United States Code, as  
16 amended by this Act, is amended by adding at the end  
17 the following:

18       “(k)(1) Notwithstanding any other provision of this  
19 title, if the debtor fails to file a tax return that becomes  
20 due after the commencement of the case or to properly  
21 obtain an extension of the due date for filing such return,  
22 the taxing authority may request that the court enter an  
23 order converting or dismissing the case.

24       “(2) If the debtor does not file the required return  
25 or obtain the extension referred to in paragraph (1) within

1 90 days after a request is filed by the taxing authority  
 2 under that paragraph, the court shall convert or dismiss  
 3 the case, whichever is in the best interests of creditors and  
 4 the estate.”.

5 **TITLE VIII—ANCILLARY AND**  
 6 **OTHER CROSS-BORDER CASES**

7 **SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
 8 **UNITED STATES CODE.**

9 (a) IN GENERAL.—Title 11, United States Code, is  
 10 amended by inserting after chapter 13 the following:

11 **“CHAPTER 15—ANCILLARY AND OTHER**  
 12 **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.

“1516. Presumptions concerning recognition.

“1517. Order granting recognition.

“1518. Subsequent information.

- “1519. Relief that may be granted upon filing petition for recognition.
- “1520. Effects of recognition of a foreign main proceeding.
- “1521. Relief that may be granted upon recognition.
- “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;

13               “(2) greater legal certainty for trade and in-  
14 vestment;

1           “(3) fair and efficient administration of cross-  
2 border insolvencies that protects the interests of all  
3 creditors, and other interested entities, including the  
4 debtor;

5           “(4) protection and maximization of the value  
6 of the debtor’s assets; and

7           “(5) facilitation of the rescue of financially  
8 troubled businesses, thereby protecting investment  
9 and preserving employment.

10          “(b) This chapter applies where—

11           “(1) assistance is sought in the United States  
12 by a foreign court or a foreign representative in con-  
13 nection with a foreign proceeding;

14           “(2) assistance is sought in a foreign country in  
15 connection with a case under this title;

16           “(3) a foreign proceeding and a case under this  
17 title with respect to the same debtor are taking place  
18 concurrently; or

19           “(4) creditors or other interested persons in a  
20 foreign country have an interest in requesting the  
21 commencement of, or participating in, a case or pro-  
22 ceeding under this title.

23          “(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 section 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 of 1970, a stock-  
11 broker subject to subchapter III of chapter 7 of this  
12 title, or a commodity broker subject to subchapter  
13 IV of 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;

17           “(7) ‘recognition’ means the entry of an order  
18           granting recognition of a foreign main proceeding or  
19           foreign nonmain proceeding under this chapter; and

20           “(8) ‘within the territorial jurisdiction of the  
21           United States’, when used with reference to property  
22           of a debtor, refers to tangible property located with-  
23           in the territory of the United States and intangible  
24           property deemed under applicable nonbankruptcy  
25           law to be located within that territory, including any

1 property subject to attachment or garnishment that  
2 may properly be seized or garnished by an action in  
3 a Federal or State court in the United States.

4 **“§ 1503. International obligations of the United States**

5 “To the extent that this chapter conflicts with an ob-  
6 ligation of the United States arising out of any treaty or  
7 other form of agreement to which it is a party with one  
8 or more other countries, the requirements of the treaty  
9 or agreement prevail.

10 **“§ 1504. Commencement of ancillary case**

11 “A case under this chapter is commenced by the filing  
12 of a petition for recognition of a foreign proceeding under  
13 section 1515.

14 **“§ 1505. Authorization to act in a foreign country**

15 “A trustee or another entity (including an examiner)  
16 may be authorized by the court to act in a foreign country  
17 on behalf of an estate created under section 541. An entity  
18 authorized to act under this section may act in any way  
19 permitted by the applicable foreign law.

20 **“§ 1506. Public policy exception**

21 “Nothing in this chapter prevents the court from re-  
22 fusing to take an action governed by this chapter if the  
23 action would be manifestly contrary to the public policy  
24 of the United States.

1 **“§ 1507. Additional assistance**

2       “(a) Subject to the specific limitations stated else-  
3 where in this chapter the court, if recognition is granted,  
4 may provide additional assistance to a foreign representa-  
5 tive under this title or under other laws of the United  
6 States.

7       “(b) In determining whether to provide additional as-  
8 sistance under this title or under other laws of the United  
9 States, the court shall consider whether such additional  
10 assistance, consistent with the principles of comity, will  
11 reasonably assure—

12               “(1) just treatment of all holders of claims  
13 against or interests in the debtor’s property;

14               “(2) protection of claim holders in the United  
15 States against prejudice and inconvenience in the  
16 processing of claims in such foreign proceeding;

17               “(3) prevention of preferential or fraudulent  
18 dispositions of property of the debtor;

19               “(4) distribution of proceeds of the debtor’s  
20 property substantially in accordance with the order  
21 prescribed by this title; and

22               “(5) if appropriate, the provision of an oppor-  
23 tunity for a fresh start for the individual that such  
24 foreign proceeding concerns.

1 **“§ 1508. Interpretation**

2 “In interpreting this chapter, the court shall consider  
3 its international origin, and the need to promote an appli-  
4 cation of this chapter that is consistent with the applica-  
5 tion of similar statutes adopted by foreign jurisdictions.

6 **“SUBCHAPTER II—ACCESS OF FOREIGN REP-**  
7 **RESENTATIVES AND CREDITORS TO THE**  
8 **COURT**

9 **“§ 1509. Right of direct access**

10 “(a) A foreign representative may commence a case  
11 under section 1504 by filing directly with the court a peti-  
12 tion for recognition of a foreign proceeding under section  
13 1515.

14 “(b) If the court grants recognition under section  
15 1515, and subject to any limitations that the court may  
16 impose consistent with the policy of this chapter—

17 “(1) the foreign representative has the capacity  
18 to sue and be sued in a court in the United States;

19 “(2) the foreign representative may apply di-  
20 rectly to a court in the United States for appropriate  
21 relief in that court; and

22 “(3) a court in the United States shall grant  
23 comity or cooperation to the foreign representative.

24 “(c) A request for comity or cooperation by a foreign  
25 representative in a court in the United States other than  
26 the court which granted recognition shall be accompanied

1 by a certified copy of an order granting recognition under  
2 section 1517.

3 “(d) If the court denies recognition under this chap-  
4 ter, the court may issue any appropriate order necessary  
5 to prevent the foreign representative from obtaining com-  
6 ity or cooperation from courts in the United States.

7 “(e) Whether or not the court grants recognition, and  
8 subject to sections 306 and 1510, a foreign representative  
9 is subject to applicable nonbankruptcy law.

10 “(f) Notwithstanding any other provision of this sec-  
11 tion, the failure of a foreign representative to commence  
12 a case or to obtain recognition under this chapter does  
13 not affect any right the foreign representative may have  
14 to sue in a court in the United States to collect or recover  
15 a claim which is the property of the debtor.

16 **“§ 1510. Limited jurisdiction**

17 “The sole fact that a foreign representative files a  
18 petition under section 1515 does not subject the foreign  
19 representative to the jurisdiction of any court in the  
20 United States for any other purpose.

21 **“§ 1511. Commencement of case under section 301 or**

22 **303**

23 “(a) Upon recognition, a foreign representative may  
24 commence—

25 “(1) an involuntary case under section 303; or

1           “(2) a voluntary case under section 301 or 302,  
2           if the foreign proceeding is a foreign main pro-  
3           ceeding.

4           “(b) The petition commencing a case under sub-  
5           section (a) must be accompanied by a certified copy of  
6           an order granting recognition. The court where the peti-  
7           tion for recognition has been filed must be advised of the  
8           foreign representative’s intent to commence a case under  
9           subsection (a) prior to such commencement.

10   **“§ 1512. Participation of a foreign representative in a**  
11                                   **case under this title**

12           “Upon recognition of a foreign proceeding, the for-  
13           eign representative in the recognized proceeding is entitled  
14           to participate as a party in interest in a case regarding  
15           the debtor under this title.

16   **“§ 1513. Access of foreign creditors to a case under**  
17                                   **this title**

18           “(a) Foreign creditors have the same rights regarding  
19           the commencement of, and participation in, a case under  
20           this title as domestic creditors.

21           “(b)(1) Subsection (a) does not change or codify  
22           present law as to the priority of claims under section 507  
23           or 726 of this title, except that the claim of a foreign cred-  
24           itor under those sections shall not be given a lower priority  
25           than that of general unsecured claims without priority

1 solely because the holder of such claim is a foreign cred-  
2 itor.

3 “(2)(A) Subsection (a) and paragraph (1) do not  
4 change or codify present law as to the allowability of for-  
5 eign revenue claims or other foreign public law claims in  
6 a proceeding under this title.

7 “(B) Allowance and priority as to a foreign tax claim  
8 or other foreign public law claim shall be governed by any  
9 applicable tax treaty of the United States, under the con-  
10 ditions and circumstances specified therein.

11 **“§ 1514. Notification to foreign creditors concerning a**  
12 **case under this title**

13 “(a) Whenever in a case under this title notice is to  
14 be given to creditors generally or to any class or category  
15 of creditors, such notice shall also be given to the known  
16 creditors generally, or to creditors in the notified class or  
17 category, that do not have addresses in the United States.  
18 The court may order that appropriate steps be taken with  
19 a view to notifying any creditor whose address is not yet  
20 known.

21 “(b) Such notification to creditors with foreign ad-  
22 dresses described in subsection (a) shall be given individ-  
23 ually, unless the court considers that, under the cir-  
24 cumstances, some other form of notification would be  
25 more appropriate. No letter or other formality is required.

1           “(c) When a notification of commencement of a case  
2 is to be given to foreign creditors, the notification shall—

3           “(1) indicate the time period for filing proofs of  
4 claim and specify the place for their filing;

5           “(2) indicate whether secured creditors need to  
6 file their proofs of claim; and

7           “(3) contain any other information required to  
8 be included in such a notification to creditors under  
9 this title and the orders of the court.

10          “(d) Any rule of procedure or order of the court as  
11 to notice or the filing of a claim shall provide such addi-  
12 tional time to creditors with foreign addresses as is rea-  
13 sonable under the circumstances.

14           “SUBCHAPTER III—RECOGNITION OF A  
15 FOREIGN PROCEEDING AND RELIEF

16          “§ 1515. **Application for recognition**

17          “(a) A foreign representative applies to the court for  
18 recognition of the foreign proceeding in which the foreign  
19 representative has been appointed by filing a petition for  
20 recognition.

21          “(b) A petition for recognition shall be accompanied  
22 by—

23           “(1) a certified copy of the decision com-  
24 mencing the foreign proceeding and appointing the  
25 foreign representative;



1           “(2) a certificate from the foreign court affirm-  
2           ing the existence of the foreign proceeding and of  
3           the appointment of the foreign representative; or

4           “(3) in the absence of evidence referred to in  
5           paragraphs (1) and (2), any other evidence accept-  
6           able to the court of the existence of the foreign pro-  
7           ceeding and of the appointment of the foreign rep-  
8           resentative.

9           “(c) A petition for recognition shall also be accom-  
10          panied by a statement identifying all foreign proceedings  
11          with respect to the debtor that are known to the foreign  
12          representative.

13          “(d) The documents referred to in paragraphs (1)  
14          and (2) of subsection (b) shall be translated into English.  
15          The court may require a translation into English of addi-  
16          tional documents.

17          **“§ 1516. Presumptions concerning recognition**

18          “(a) If the decision or certificate referred to in section  
19          1515(b) indicates that the foreign proceeding is a foreign  
20          proceeding (as defined in section 101) and that the person  
21          or body is a foreign representative (as defined in section  
22          101), the court is entitled to so presume.

23          “(b) The court is entitled to presume that documents  
24          submitted in support of the petition for recognition are  
25          authentic, whether or not they have been legalized.

1       “(c) In the absence of evidence to the contrary, the  
2 debtor’s registered office, or habitual residence in the case  
3 of an individual, is presumed to be the center of the debt-  
4 or’s main interests.

5 **“§ 1517. Order granting recognition**

6       “(a) Subject to section 1506, after notice and a hear-  
7 ing, an order recognizing a foreign proceeding shall be en-  
8 tered if—

9           “(1) the foreign proceeding for which recogni-  
10 tion is sought is a foreign main proceeding or for-  
11 eign nonmain proceeding within the meaning of sec-  
12 tion 1502;

13           “(2) the foreign representative applying for rec-  
14 ognition is a person or body as defined in section  
15 101; and

16           “(3) the petition meets the requirements of sec-  
17 tion 1515.

18       “(b) The foreign proceeding shall be recognized—

19           “(1) as a foreign main proceeding if it is taking  
20 place in the country where the debtor has the center  
21 of its main interests; or

22           “(2) as a foreign nonmain proceeding if the  
23 debtor has an establishment within the meaning of  
24 section 1502 in the foreign country where the pro-  
25 ceeding is pending.

1       “(c) A petition for recognition of a foreign proceeding  
2 shall be decided upon at the earliest possible time. Entry  
3 of an order recognizing a foreign proceeding constitutes  
4 recognition under this chapter.

5       “(d) The provisions of this subchapter do not prevent  
6 modification or termination of recognition if it is shown  
7 that the grounds for granting it were fully or partially  
8 lacking or have ceased to exist, but in considering such  
9 action the court shall give due weight to possible prejudice  
10 to parties that have relied upon the order granting rec-  
11 ognition. The case under this chapter may be closed in  
12 the manner prescribed under section 350.

13 **“§ 1518. Subsequent information**

14       “From the time of filing the petition for recognition  
15 of the foreign proceeding, the foreign representative shall  
16 file with the court promptly a notice of change of status  
17 concerning—

18               “(1) any substantial change in the status of the  
19 foreign proceeding or the status of the foreign rep-  
20 resentative’s appointment; and

21               “(2) any other foreign proceeding regarding the  
22 debtor that becomes known to the foreign represent-  
23 ative.

1 **“§ 1519. Relief that may be granted upon filing peti-**  
2 **tion for recognition**

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 granted.

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           “(3) unless the court orders otherwise, the for-  
2           eign representative may operate the debtor’s busi-  
3           ness and may exercise the rights and powers of a  
4           trustee under and to the extent provided by sections  
5           363 and 552; and

6           “(4) section 552 applies to property of the debt-  
7           or that is within the territorial jurisdiction of the  
8           United States.

9           “(b) Subsection (a) does not affect the right to com-  
10          mence an individual action or proceeding in a foreign  
11          country to the extent necessary to preserve a claim against  
12          the debtor.

13          “(c) Subsection (a) does not affect the right of a for-  
14          eign representative or an entity to file a petition com-  
15          mencing a case under this title or the right of any party  
16          to file claims or take other proper actions in such a case.

17          **“§ 1521. Relief that may be granted upon recognition**

18          “(a) Upon recognition of a foreign proceeding, wheth-  
19          er main or nonmain, where necessary to effectuate the  
20          purpose of this chapter and to protect the assets of the  
21          debtor or the interests of the creditors, the court may, at  
22          the request of the foreign representative, grant any appro-  
23          priate relief, including—

24                  “(1) staying the commencement or continuation  
25          of an individual action or proceeding concerning the

1 debtor's assets, rights, obligations or liabilities to the  
2 extent they have not been stayed under section  
3 1520(a);

4 “(2) staying execution against the debtor's as-  
5 sets to the extent it has not been stayed under sec-  
6 tion 1520(a);

7 “(3) suspending the right to transfer, encumber  
8 or otherwise dispose of any assets of the debtor to  
9 the extent this right has not been suspended under  
10 section 1520(a);

11 “(4) providing for the examination of witnesses,  
12 the taking of evidence or the delivery of information  
13 concerning the debtor's assets, affairs, rights, obliga-  
14 tions or liabilities;

15 “(5) entrusting the administration or realiza-  
16 tion of all or part of the debtor's assets within the  
17 territorial jurisdiction of the United States to the  
18 foreign representative or another person, including  
19 an examiner, authorized by the court;

20 “(6) extending relief granted under section  
21 1519(a); and

22 “(7) granting any additional relief that may be  
23 available to a trustee, except for relief available  
24 under sections 522, 544, 545, 547, 548, 550, and  
25 724(a).

1       “(b) Upon recognition of a foreign proceeding, wheth-  
2 er main or nonmain, the court may, at the request of the  
3 foreign representative, entrust the distribution of all or  
4 part of the debtor’s assets located in the United States  
5 to the foreign representative or another person, including  
6 an examiner, authorized by the court, provided that the  
7 court is satisfied that the interests of creditors in the  
8 United States are sufficiently protected.

9       “(c) In granting relief under this section to a rep-  
10 resentative of a foreign nonmain proceeding, the court  
11 must be satisfied that the relief relates to assets that,  
12 under the law of the United States, should be adminis-  
13 tered in the foreign nonmain proceeding or concerns infor-  
14 mation required in that proceeding.

15       “(d) The court may not enjoin a police or regulatory  
16 act of a governmental unit, including a criminal action or  
17 proceeding, under this section.

18       “(e) The standards, procedures, and limitations ap-  
19 plicable to an injunction shall apply to relief under para-  
20 graphs (1), (2), (3), and (6) of subsection (a).

21       “(f) The exercise of rights not subject to the stay  
22 arising under section 362(a) pursuant to paragraph (6),  
23 (7), (17), or (28) of section 362(b) or pursuant to section  
24 362(l) shall not be stayed by any order of a court or ad-  
25 ministrative agency in any proceeding under this chapter.



1 **“§ 1522. Protection of creditors and other interested**  
2 **persons**

3 “(a) The court may grant relief under section 1519  
4 or 1521, or may modify or terminate relief under sub-  
5 section (c), only if the interests of the creditors and other  
6 interested entities, including the debtor, are sufficiently  
7 protected.

8 “(b) The court may subject relief granted under sec-  
9 tion 1519 or 1521, or the operation of the debtor’s busi-  
10 ness under section 1520(a)(3) of this title, to conditions  
11 it considers appropriate, including the giving of security  
12 or the filing of a bond.

13 “(c) The court may, at the request of the foreign rep-  
14 resentative or an entity affected by relief granted under  
15 section 1519 or 1521, or at its own motion, modify or  
16 terminate such relief.

17 “(d) Section 1104(d) shall apply to the appointment  
18 of an examiner under this chapter. Any examiner shall  
19 comply with the qualification requirements imposed on a  
20 trustee by section 322.

21 **“§ 1523. Actions to avoid acts detrimental to creditors**

22 “(a) Upon recognition of a foreign proceeding, the  
23 foreign representative has standing in a case concerning  
24 the debtor pending under another chapter of this title to  
25 initiate actions under sections 522, 544, 545, 547, 548,  
26 550, 553, and 724(a).

1       “(b) When the foreign proceeding is a foreign  
2 nonmain proceeding, the court must be satisfied that an  
3 action under subsection (a) relates to assets that, under  
4 United States law, should be administered in the foreign  
5 nonmain proceeding.

6       **“§ 1524. Intervention by a foreign representative**

7       “Upon recognition of a foreign proceeding, the for-  
8 eign representative may intervene in any proceedings in  
9 a State or Federal court in the United States in which  
10 the debtor is a party.

11       “SUBCHAPTER IV—COOPERATION WITH FOR-  
12       EIGN COURTS AND FOREIGN REPRESENTA-  
13       TIVES

14       **“§ 1525. Cooperation and direct communication be-  
15                       tween the court and foreign courts or for-  
16                       eign representatives**

17       “(a) Consistent with section 1501, the court shall co-  
18 operate to the maximum extent possible with foreign  
19 courts or foreign representatives, either directly or  
20 through the trustee.

21       “(b) The court is entitled to communicate directly  
22 with, or to request information or assistance directly from,  
23 foreign courts or foreign representatives, subject to the  
24 rights of parties in interest to notice and participation.

1 **“§ 1526. Cooperation and direct communication be-**  
2 **tween the trustee and foreign courts or**  
3 **foreign representatives**

4 “(a) Consistent with section 1501, the trustee or  
5 other person, including an examiner, authorized by the  
6 court, shall, subject to the supervision of the court, cooper-  
7 ate to the maximum extent possible with foreign courts  
8 or foreign representatives.

9 “(b) The trustee or other person, including an exam-  
10 iner, authorized by the court is entitled, subject to the su-  
11 pervision of the court, to communicate directly with for-  
12 eign courts or foreign representatives.

13 **“§ 1527. Forms of cooperation**

14 “Cooperation referred to in sections 1525 and 1526  
15 may be implemented by any appropriate means,  
16 including—

17 “(1) appointment of a person or body, including  
18 an examiner, to act at the direction of the court;

19 “(2) communication of information by any  
20 means considered appropriate by the court;

21 “(3) coordination of the administration and su-  
22 pervision of the debtor’s assets and affairs;

23 “(4) approval or implementation of agreements  
24 concerning the coordination of proceedings; and

25 “(5) coordination of concurrent proceedings re-  
26 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 “If a foreign proceeding and a case under another  
21 chapter of this title are taking place concurrently regard-  
22 ing the same debtor, the court shall seek cooperation and  
23 coordination under sections 1525, 1526, and 1527, and  
24 the following shall apply:

1           “(1) If the case in the United States is taking  
2 place at the time the petition for recognition of the  
3 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) If a case in the United States under this  
11 title commences after recognition, or after the filing  
12 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 laws 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. 802. 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,  
 10 362(l), 555 through 557, and 559 through 562  
 11 apply in a case 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.—Section 101 of title 11, United  
 20 States Code, is amended by striking paragraphs (23) and  
 21 (24) and inserting the following:

22 “(23) ‘foreign proceeding’ means a collective ju-  
 23 dicial or administrative proceeding in a foreign coun-  
 24 try, including an interim proceeding, under a law re-  
 25 lating to insolvency or adjustment of debt in which



1 proceeding the assets and affairs of the debtor are  
2 subject to control or supervision by a foreign court,  
3 for the purpose of reorganization or liquidation;

4 “(24) ‘foreign representative’ means a person  
5 or body, including a person or body appointed on an  
6 interim basis, authorized in a foreign proceeding to  
7 administer the reorganization or the liquidation of  
8 the debtor’s assets or affairs or to act as a rep-  
9 resentative of the foreign proceeding;”.

10 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
11 CODE.—

12 (1) PROCEDURES.—Section 157(b)(2) of title  
13 28, United States Code, is amended—

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

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

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

19 “(P) recognition of foreign proceedings and  
20 other matters under chapter 15 of title 11.”.

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,”.

4           (4) VENUE OF CASES ANCILLARY TO FOREIGN  
 5 PROCEEDINGS.—Section 1410 of title 28, United  
 6 States Code, is amended to read as follows:

7 **“§1410. Venue of cases ancillary to foreign pro-**  
 8 **ceedings**

9           “A case under chapter 15 of title 11 may be com-  
 10 menced in the district court for the district—

11           “(1) in which the debtor has its principal place  
 12 of business or principal assets in the United States;

13           “(2) if the debtor does not have a place of busi-  
 14 ness or assets in the United States, in which there  
 15 is pending against the debtor an action or pro-  
 16 ceeding in a Federal or State court; or

17           “(3) in a case other than those specified in  
 18 paragraph (1) or (2), in which venue will be con-  
 19 sistent with the interests of justice and the conven-  
 20 ience of the parties, having regard to the relief  
 21 sought by the foreign representative.”.

22 (d) OTHER SECTIONS OF TITLE 11.—

23           (1) Section 109(b)(3) of title 11, United States  
 24 Code, is amended to read as follows:

1           “(3)(A) a foreign insurance company, engaged  
2           in such business in the United States; or

3           “(B) a foreign bank, savings bank, cooperative  
4           bank, savings and loan association, building and  
5           loan association, or credit union, that has a branch  
6           or agency (as defined in section 1(b) of the Inter-  
7           national Banking Act of 1978 (12 U.S.C. 3101) in  
8           the United States.”.

9           (2) Section 303(k) of title 11, United States  
10          Code, is repealed.

11          (3)(A) Section 304 of title 11, United States  
12          Code, is repealed.

13          (B) The table of sections at the beginning of  
14          chapter 3 of title 11, United States Code, is amend-  
15          ed by striking the item relating to section 304.

16          (C) Section 306 of title 11, United States Code,  
17          is amended by striking “, 304,” each place it ap-  
18          pears.

19          (4) Section 305(a)(2) of title 11, United States  
20          Code, is amended to read as follows:

21                 “(2)(A) a petition under section 1515 of this  
22                 title for recognition of a foreign proceeding has been  
23                 granted; and

1           “(B) the purposes of chapter 15 of this title  
2 would be best served by such dismissal or suspen-  
3 sion.”.

4           (5) Section 508 of title 11, United States Code,  
5 is amended—

6                   (A) by striking subsection (a); and

7                   (B) in subsection (b), by striking “(b)”.

8                   **TITLE IX—FINANCIAL**  
9                   **CONTRACT PROVISIONS**

10 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
11 **SERVATORS OR RECEIVERS OF INSURED DE-**  
12 **POSITORY INSTITUTIONS.**

13           (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
14 TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-  
15 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by  
16 inserting “, resolution, or order” after “any similar agree-  
17 ment that the Corporation determines by regulation”.

18           (b) DEFINITION OF SECURITIES CONTRACT.—Sec-  
19 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act  
20 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-  
21 lows:

22                           “(ii) SECURITIES CONTRACT.—The  
23 term ‘securities contract’—

24                                   “(I) means a contract for the  
25 purchase, sale, or loan of a security, a

1 certificate of deposit, a mortgage loan,  
2 or any interest in a mortgage loan, a  
3 group or index of securities, certifi-  
4 cates of deposit, or mortgage loans or  
5 interests therein (including any inter-  
6 est therein or based on the value  
7 thereof) or any option on any of the  
8 foregoing, including any option to  
9 purchase or sell any such security,  
10 certificate of deposit, loan, interest,  
11 group or index, or option;

12 “(II) does not include any pur-  
13 chase, sale, or repurchase obligation  
14 under a participation in a commercial  
15 mortgage loan unless the Corporation  
16 determines by regulation, resolution,  
17 or order to include any such agree-  
18 ment within the meaning of such  
19 term;

20 “(III) means any option entered  
21 into on a national securities exchange  
22 relating to foreign currencies;

23 “(IV) means the guarantee by or  
24 to any securities clearing agency of  
25 any settlement of cash, securities, cer-

1           tificates of deposit, mortgage loans or  
2           interests therein, group or index of se-  
3           curities, certificates of deposit, or  
4           mortgage loans or interests therein  
5           (including any interest therein or  
6           based on the value thereof) or option  
7           on any of the foregoing, including any  
8           option to purchase or sell any such se-  
9           curity, certificate of deposit, loan, in-  
10          terest, group or index or option;

11                 “(V) means any margin loan;

12                 “(VI) means any other agree-  
13           ment or transaction that is similar to  
14           any agreement or transaction referred  
15           to in this clause;

16                 “(VII) means any combination of  
17           the agreements or transactions re-  
18           ferred to in this clause;

19                 “(VIII) means any option to  
20           enter into any agreement or trans-  
21           action referred to in this clause;

22                 “(IX) means a master agreement  
23           that provides for an agreement or  
24           transaction referred to in subclause  
25           (I), (III), (IV), (V), (VI), (VII), or

1 (VIII), together with all supplements  
2 to any such master agreement, with-  
3 out regard to whether the master  
4 agreement provides for an agreement  
5 or transaction that is not a securities  
6 contract under this clause, except that  
7 the master agreement shall be consid-  
8 ered to be a securities contract under  
9 this clause only with respect to each  
10 agreement or transaction under the  
11 master agreement that is referred to  
12 in subclause (I), (III), (IV), (V), (VI),  
13 (VII), or (VIII); and

14 “(X) means any security agree-  
15 ment or arrangement or other credit  
16 enhancement related to any agree-  
17 ment or transaction referred to in this  
18 clause.”.

19 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
20 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
21 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
22 lows:

23 “(iii) COMMODITY CONTRACT.—The  
24 term ‘commodity contract’ means—

1           “(I) with respect to a futures  
2           commission merchant, a contract for  
3           the purchase or sale of a commodity  
4           for future delivery on, or subject to  
5           the rules of, a contract market or  
6           board of trade;

7           “(II) with respect to a foreign fu-  
8           tures commission merchant, a foreign  
9           future;

10          “(III) with respect to a leverage  
11          transaction merchant, a leverage  
12          transaction;

13          “(IV) with respect to a clearing  
14          organization, a contract for the pur-  
15          chase or sale of a commodity for fu-  
16          ture delivery on, or subject to the  
17          rules of, a contract market or board  
18          of trade that is cleared by such clear-  
19          ing organization, or commodity option  
20          traded on, or subject to the rules of,  
21          a contract market or board of trade  
22          that is cleared by such clearing orga-  
23          nization;

24          “(V) with respect to a commodity  
25          options dealer, a commodity option;



1           “(VI) any other agreement or  
2 transaction that is similar to any  
3 agreement or transaction referred to  
4 in this clause;

5           “(VII) any combination of the  
6 agreements or transactions referred to  
7 in this clause;

8           “(VIII) any option to enter into  
9 any agreement or transaction referred  
10 to in this clause;

11           “(IX) a master agreement that  
12 provides for an agreement or trans-  
13 action referred to in subclause (I),  
14 (II), (III), (IV), (V), (VI), (VII), or  
15 (VIII), together with all supplements  
16 to any such master agreement, with-  
17 out regard to whether the master  
18 agreement provides for an agreement  
19 or transaction that is not a com-  
20 modity contract under this clause, ex-  
21 cept that the master agreement shall  
22 be considered to be a commodity con-  
23 tract under this clause only with re-  
24 spect to each agreement or trans-  
25 action under the master agreement

1 that is referred to in subclause (I),  
2 (II), (III), (IV), (V), (VI), (VII), or  
3 (VIII); or

4 “(X) any security agreement or  
5 arrangement or other credit enhance-  
6 ment related to any agreement or  
7 transaction referred to in this  
8 clause.”.

9 (d) DEFINITION OF FORWARD CONTRACT.—Section  
10 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
11 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

12 “(iv) FORWARD CONTRACT.—The  
13 term ‘forward contract’ means—

14 “(I) a contract (other than a  
15 commodity contract) for the purchase,  
16 sale, or transfer of a commodity or  
17 any similar good, article, service,  
18 right, or interest which is presently or  
19 in the future becomes the subject of  
20 dealing in the forward contract trade,  
21 or product or byproduct thereof, with  
22 a maturity date more than 2 days  
23 after the date the contract is entered  
24 into, including, a repurchase trans-  
25 action, reverse repurchase transaction,

1 consignment, lease, swap, hedge  
2 transaction, deposit, loan, option, allo-  
3 cated transaction, unallocated trans-  
4 action, or any other similar agree-  
5 ment;

6 “(II) any combination of agree-  
7 ments or transactions referred to in  
8 subclauses (I) and (III);

9 “(III) any option to enter into  
10 any agreement or transaction referred  
11 to in subclause (I) or (II);

12 “(IV) a master agreement that  
13 provides for an agreement or trans-  
14 action referred to in subclauses (I),  
15 (II), or (III), together with all supple-  
16 ments to any such master agreement,  
17 without regard to whether the master  
18 agreement provides for an agreement  
19 or transaction that is not a forward  
20 contract under this clause, except that  
21 the master agreement shall be consid-  
22 ered to be a forward contract under  
23 this clause only with respect to each  
24 agreement or transaction under the

1 master agreement that is referred to  
2 in subclause (I), (II), or (III); or

3 “(V) any security agreement or  
4 arrangement or other credit enhance-  
5 ment related to any agreement or  
6 transaction referred to in subclause  
7 (I), (II), (III), or (IV).”.

8 (e) DEFINITION OF REPURCHASE AGREEMENT.—  
9 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance  
10 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as  
11 follows:

12 “(v) REPURCHASE AGREEMENT.—The  
13 term ‘repurchase agreement’ (which defini-  
14 tion also applies to a reverse repurchase  
15 agreement)—

16 “(I) means an agreement, includ-  
17 ing related terms, which provides for  
18 the transfer of one or more certifi-  
19 cates of deposit, mortgage-related se-  
20 curities (as such term is defined in  
21 the Securities Exchange Act of 1934),  
22 mortgage loans, interests in mortgage-  
23 related securities or mortgage loans,  
24 eligible bankers’ acceptances, qualified  
25 foreign government securities or secu-

1                    rities that are direct obligations of, or  
2                    that are fully guaranteed by, the  
3                    United States or any agency of the  
4                    United States against the transfer of  
5                    funds by the transferee of such certifi-  
6                    cates of deposit, eligible bankers' ac-  
7                    ceptances, securities, loans, or inter-  
8                    ests with a simultaneous agreement  
9                    by such transferee to transfer to the  
10                   transferor thereof certificates of de-  
11                   posit, eligible bankers' acceptances,  
12                   securities, loans, or interests as de-  
13                   scribed above, at a date certain not  
14                   later than 1 year after such transfers  
15                   or on demand, against the transfer of  
16                   funds, or any other similar agreement;

17                   “(II) does not include any repur-  
18                   chase obligation under a participation  
19                   in a commercial mortgage loan unless  
20                   the Corporation determines by regula-  
21                   tion, resolution, or order to include  
22                   any such participation within the  
23                   meaning of such term;

1           “(III) means any combination of  
2           agreements or transactions referred to  
3           in subclauses (I) and (IV);

4           “(IV) means any option to enter  
5           into any agreement or transaction re-  
6           ferred to in subclause (I) or (III);

7           “(V) means a master agreement  
8           that provides for an agreement or  
9           transaction referred to in subclause  
10          (I), (III), or (IV), together with all  
11          supplements to any such master  
12          agreement, without regard to whether  
13          the master agreement provides for an  
14          agreement or transaction that is not a  
15          repurchase agreement under this  
16          clause, except that the master agree-  
17          ment shall be considered to be a re-  
18          purchase agreement under this sub-  
19          clause only with respect to each agree-  
20          ment or transaction under the master  
21          agreement that is referred to in sub-  
22          clause (I), (III), or (IV); and

23          “(VI) means any security agree-  
24          ment or arrangement or other credit  
25          enhancement related to any agree-

1                   ment or transaction referred to in  
2                   subclause (I), (III), (IV), or (V).

3                   For purposes of this clause, the term  
4                   ‘qualified foreign government security’  
5                   means a security that is a direct obligation  
6                   of, or that is fully guaranteed by, the cen-  
7                   tral government of a member of the Orga-  
8                   nization for Economic Cooperation and  
9                   Development (as determined by regulation  
10                  or order adopted by the appropriate Fed-  
11                  eral banking authority).”.

12                  (f) DEFINITION OF SWAP AGREEMENT.—Section  
13 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12  
14 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

15                   “(vi) SWAP AGREEMENT.—The term  
16                   ‘swap agreement’ means—

17                   “(I) any agreement, including the  
18                   terms and conditions incorporated by  
19                   reference in any such agreement,  
20                   which is an interest rate swap, option,  
21                   future, or forward agreement, includ-  
22                   ing a rate floor, rate cap, rate collar,  
23                   cross-currency rate swap, and basis  
24                   swap; a spot, same day-tomorrow, to-  
25                   morrow-next, forward, or other for-

1            foreign exchange or precious metals  
2            agreement; a currency swap, option,  
3            future, or forward agreement; an equity  
4            index or equity swap, option, future,  
5            or forward agreement; a debt  
6            index or debt swap, option, future, or  
7            forward agreement; a credit spread or  
8            credit swap, option, future, or forward  
9            agreement; a commodity index or  
10           commodity swap, option, future, or  
11           forward agreement; or a weather  
12           swap, weather derivative, or weather  
13           option;

14                    “(II) any agreement or trans-  
15                    action similar to any other agreement  
16                    or transaction referred to in this  
17                    clause that is presently, or in the fu-  
18                    ture becomes, regularly entered into  
19                    in the swap market (including terms  
20                    and conditions incorporated by ref-  
21                    erence in such agreement) and that is  
22                    a forward, swap, future, or option on  
23                    one or more rates, currencies, com-  
24                    modities, equity securities or other equity  
25                    instruments, debt securities or



1 other debt instruments, or economic  
2 indices or measures of economic risk  
3 or value;

4 “(III) any combination of agree-  
5 ments or transactions referred to in  
6 this clause;

7 “(IV) any option to enter into  
8 any agreement or transaction referred  
9 to in this clause;

10 “(V) a master agreement that  
11 provides for an agreement or trans-  
12 action referred to in subclause (I),  
13 (II), (III), or (IV), together with all  
14 supplements to any such master  
15 agreement, without regard to whether  
16 the master agreement contains an  
17 agreement or transaction that is not a  
18 swap agreement under this clause, ex-  
19 cept that the master agreement shall  
20 be considered to be a swap agreement  
21 under this clause only with respect to  
22 each agreement or transaction under  
23 the master agreement that is referred  
24 to in subclause (I), (II), (III), or (IV);  
25 and

1                   “(VI) any security agreement or  
2                   arrangement or other credit enhance-  
3                   ment related to any agreements or  
4                   transactions referred to in subpara-  
5                   graph (I), (II), (III), (IV), or (V).

6                   Such term is applicable for purposes of  
7                   this title only and shall not be construed or  
8                   applied so as to challenge or affect the  
9                   characterization, definition, or treatment of  
10                  any swap agreement under any other stat-  
11                  ute, regulation, or rule, including the Secu-  
12                  rities Act of 1933, the Securities Exchange  
13                  Act of 1934, the Public Utility Holding  
14                  Company Act of 1935, the Trust Indenture  
15                  Act of 1939, the Investment Company Act  
16                  of 1940, the Investment Advisers Act of  
17                  1940, the Securities Investor Protection  
18                  Act of 1970, the Commodity Exchange  
19                  Act, and the regulations promulgated by  
20                  the Securities and Exchange Commission  
21                  or the Commodity Futures Trading Com-  
22                  mission.”.

23                  (g)       DEFINITION       OF       TRANSFER.—Section  
24       11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
25       U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

1                   “(viii) TRANSFER.—The term ‘trans-  
2                   fer’ means every mode, direct or indirect,  
3                   absolute or conditional, voluntary or invol-  
4                   untary, of disposing of or parting with  
5                   property or with an interest in property,  
6                   including retention of title as a security in-  
7                   terest and foreclosure of the depository  
8                   institutions’s equity of redemption.”.

9           (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
10 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-  
11 ance Act (12 U.S.C. 1821(e)(8)) is amended—

12                   (1) in subparagraph (A)—

13                           (A) by striking “paragraph (10)” and in-  
14                           serting “paragraphs (9) and (10)”;

15                           (B) in clause (i), by striking “to cause the  
16                           termination or liquidation” and inserting “such  
17                           person has to cause the termination, liquida-  
18                           tion, or acceleration”; and

19                           (C) by striking clause (ii) and inserting the  
20                           following:

21                                   “(ii) any right under any security  
22                                   agreement or arrangement or other credit  
23                                   enhancement related to one or more quali-  
24                                   fied financial contracts described in clause  
25                                   (i);” and

1           (2) in subparagraph (E), by striking clause (ii)  
2           and inserting the following:

3                   “(ii) any right under any security  
4                   agreement or arrangement or other credit  
5                   enhancement related to one or more quali-  
6                   fied financial contracts described in clause  
7                   (i);”.

8           (i) AVOIDANCE OF TRANSFERS.—Section  
9   11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
10 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
11 5242 of the Revised Statutes of the United States (12  
12 U.S.C. 91) or any other Federal or State law relating to  
13 the avoidance of preferential or fraudulent transfers,” be-  
14 fore “the Corporation”.

15 **SEC. 902. AUTHORITY OF THE CORPORATION WITH RE-**  
16 **SPECT TO FAILED AND FAILING INSTITU-**  
17 **TIONS.**

18           (a) IN GENERAL.—Section 11(e)(8) of the Federal  
19 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is  
20 amended—

21           (1) in subparagraph (E), by striking “other  
22           than paragraph (12) of this subsection, subsection  
23           (d)(9)” and inserting “other than subsections (d)(9)  
24           and (e)(10)”; and

1           (2) by adding at the end the following new sub-  
2 paragraphs:

3           “(F) CLARIFICATION.—No provision of law  
4 shall be construed as limiting the right or  
5 power of the Corporation, or authorizing any  
6 court or agency to limit or delay, in any man-  
7 ner, the right or power of the Corporation to  
8 transfer any qualified financial contract in ac-  
9 cordance with paragraphs (9) and (10) of this  
10 subsection or to disaffirm or repudiate any such  
11 contract in accordance with subsection (e)(1) of  
12 this section.

13           “(G) WALKAWAY CLAUSES NOT EFFEC-  
14 TIVE.—

15           “(i) IN GENERAL.—Notwithstanding  
16 the provisions of subparagraphs (A) and  
17 (E), and sections 403 and 404 of the Fed-  
18 eral Deposit Insurance Corporation Im-  
19 provement Act of 1991, no walkaway  
20 clause shall be enforceable in a qualified fi-  
21 nancial contract of an insured depository  
22 institution in default.

23           “(ii) WALKAWAY CLAUSE DEFINED.—  
24 For purposes of this subparagraph, the  
25 term ‘walkaway clause’ means a provision



1           “(A) IN GENERAL.—In making any trans-  
2           fer of assets or liabilities of a depository institu-  
3           tion in default which includes any qualified fi-  
4           nancial contract, the conservator or receiver for  
5           such depository institution shall either—

6                   “(i) transfer to one financial institu-  
7                   tion, other than a financial institution for  
8                   which a conservator, receiver, trustee in  
9                   bankruptcy, or other legal custodian has  
10                  been appointed or which is otherwise the  
11                  subject of a bankruptcy or insolvency  
12                  proceeding—

13                   “(I) all qualified financial con-  
14                   tracts between any person or any af-  
15                   filiate of such person and the deposi-  
16                   tory institution in default;

17                   “(II) all claims of such person or  
18                   any affiliate of such person against  
19                   such depository institution under any  
20                   such contract (other than any claim  
21                   which, under the terms of any such  
22                   contract, is subordinated to the claims  
23                   of general unsecured creditors of such  
24                   institution);

1                   “(III) all claims of such deposi-  
2                   tory institution against such person or  
3                   any affiliate of such person under any  
4                   such contract; and

5                   “(IV) all property securing or  
6                   any other credit enhancement for any  
7                   contract described in subclause (I) or  
8                   any claim described in subclause (II)  
9                   or (III) under any such contract; or

10                  “(ii) transfer none of the qualified fi-  
11                  nancial contracts, claims, property or other  
12                  credit enhancement referred to in clause (i)  
13                  (with respect to such person and any affil-  
14                  iate of such person).

15                  “(B) TRANSFER TO FOREIGN BANK, FOR-  
16                  EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
17                  AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
18                  STITUTION.—In transferring any qualified fi-  
19                  nancial contract and related claims and prop-  
20                  erty under subparagraph (A)(i), the conservator  
21                  or receiver for the depository institution shall  
22                  not make such transfer to a foreign bank, fi-  
23                  nancial institution organized under the laws of  
24                  a foreign country, or a branch or agency of a  
25                  foreign bank or financial institution unless,



1 under the law applicable to such bank, financial  
2 institution, branch or agency, to the qualified  
3 financial contracts, and to any netting contract,  
4 any security agreement or arrangement or other  
5 credit enhancement related to one or more  
6 qualified financial contracts, the contractual  
7 rights of the parties to such qualified financial  
8 contracts, netting contracts, security agree-  
9 ments or arrangements, or other credit en-  
10 hancements are enforceable substantially to the  
11 same extent as permitted under this section.

12 “(C) TRANSFER OF CONTRACTS SUBJECT  
13 TO THE RULES OF A CLEARING ORGANIZA-  
14 TION.—In the event that a conservator or re-  
15 ceiver transfers any qualified financial contract  
16 and related claims, property, and credit en-  
17 hancements pursuant to subparagraph (A)(i)  
18 and such contract is subject to the rules of a  
19 clearing organization, the clearing organization  
20 shall not be required to accept the transferee as  
21 a member by virtue of the transfer.

22 “(D) DEFINITION.—For purposes of this  
23 paragraph, the term ‘financial institution’  
24 means a broker or dealer, a depository institu-  
25 tion, a futures commission merchant, or any

1 other institution, as determined by the Corpora-  
2 tion by regulation to be a financial institution.”.

3 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
4 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
5 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
6 amended in the material immediately following clause (ii)  
7 by striking “the conservator” and all that follows through  
8 the period and inserting the following: “the conservator  
9 or receiver shall notify any person who is a party to any  
10 such contract of such transfer by 5:00 p.m. (eastern time)  
11 on the business day following the date of the appointment  
12 of the receiver in the case of a receivership, or the business  
13 day following such transfer in the case of a conservator-  
14 ship.”.

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  
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 that such person has  
5           to terminate, liquidate, or net such con-  
6           tract under paragraph (8)(A) of this sub-  
7           section or section 403 or 404 of the Fed-  
8           eral Deposit Insurance Corporation Im-  
9           provement Act of 1991, solely by reason of  
10          or incidental to the appointment of a re-  
11          ceiver for the depository institution (or the  
12          insolvency or financial condition of the de-  
13          pository institution for which the receiver  
14          has been appointed)—

15                 “(I) until 5:00 p.m. (eastern  
16                 time) on the business day following  
17                 the date of the appointment of the re-  
18                 ceiver; or

19                 “(II) after the person has re-  
20                 ceived notice that the contract has  
21                 been transferred pursuant to para-  
22                 graph (9)(A).

23           “(ii) CONSERVATORSHIP.—A person  
24           who is a party to a qualified financial con-  
25           tract with an insured depository institution

1           may not exercise any right that such per-  
2           son has to terminate, liquidate, or net such  
3           contract under paragraph (8)(E) of this  
4           subsection or sections 403 or 404 of the  
5           Federal Deposit Insurance Corporation  
6           Improvement Act of 1991, solely by reason  
7           of or incidental to the appointment of a  
8           conservator for the depository institution  
9           (or the insolvency or financial condition of  
10          the depository institution for which the  
11          conservator has been appointed).

12           “(iii) NOTICE.—For purposes of this  
13          paragraph, the Corporation as receiver or  
14          conservator of an insured depository insti-  
15          tution shall be deemed to have notified a  
16          person who is a party to a qualified finan-  
17          cial contract with such depository institu-  
18          tion if the Corporation has taken steps  
19          reasonably calculated to provide notice to  
20          such person by the time specified in sub-  
21          paragraph (A).

22           “(C) TREATMENT OF BRIDGE BANKS.—

23          The following institutions shall not be consid-  
24          ered to be a financial institution for which a  
25          conservator, receiver, trustee in bankruptcy, or

1 other legal custodian has been appointed or  
2 which is otherwise the subject of a bankruptcy  
3 or insolvency proceeding for purposes of para-  
4 graph (9):

5 “(i) A bridge bank.

6 “(ii) A depository institution orga-  
7 nized by the Corporation, for which a con-  
8 servator is appointed either—

9 “(I) immediately upon the orga-  
10 nization of the institution; or

11 “(II) at the time of a purchase  
12 and assumption transaction between  
13 the depository institution and the Cor-  
14 poration as receiver for a depository  
15 institution in default.”.

16 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
17 **REPUDIATION OF QUALIFIED FINANCIAL**  
18 **CONTRACTS.**

19 Section 11(e) of the Federal Deposit Insurance Act  
20 (12 U.S.C. 1821(e)) is amended—

21 (1) by redesignating paragraphs (11) through  
22 (15) as paragraphs (12) through (16), respectively;  
23 and

24 (2) by inserting after paragraph (10) the fol-  
25 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. 905. CLARIFYING AMENDMENT RELATING TO MASTER**  
19 **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. 906. 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 (2)—

21 (A) in subparagraph (A)(ii), by inserting  
22 before the semicolon “, or is exempt from such  
23 registration by order of the Securities and Ex-  
24 change Commission”; and

1 (B) in subparagraph (B), by inserting be-  
2 fore the period “or that has been granted an  
3 exemption under section 4(c)(1) of the Com-  
4 modity Exchange Act”;

5 (2) in paragraph (6)—

6 (A) by redesignating subparagraphs (B)  
7 through (D) as subparagraphs (C) through (E),  
8 respectively;

9 (B) by inserting after subparagraph (A)  
10 the following new subparagraph:

11 “(B) an uninsured national bank or an un-  
12 insured State bank that is a member of the  
13 Federal Reserve System, if the national bank or  
14 State member bank is not eligible to make ap-  
15 plication to become an insured bank under sec-  
16 tion 5 of the Federal Deposit Insurance Act;”;  
17 and

18 (C) by amending subparagraph (C) (as re-  
19 designated) to read as follows:

20 “(C) a branch or agency of a foreign bank,  
21 a foreign bank and any branch or agency of the  
22 foreign bank, or the foreign bank that estab-  
23 lished the branch or agency, as those terms are  
24 defined in section 1(b) of the International  
25 Banking Act of 1978;”;



1           (3) in paragraph (11), by inserting before the  
2           period “and any other clearing organization with  
3           which such clearing organization has a netting con-  
4           tract”;

5           (4) by amending paragraph (14)(A)(i) to read  
6           as follows:

7                         “(i) means a contract or agreement  
8                         between 2 or more financial institutions,  
9                         clearing organizations, or members that  
10                        provides for netting present or future pay-  
11                        ment obligations or payment entitlements  
12                        (including liquidation or closeout values re-  
13                        lating to such obligations or entitlements)  
14                        among the parties to the agreement; and”;  
15                        and

16           (5) by adding at the end the following new  
17           paragraph:

18                        “(15) PAYMENT.—The term ‘payment’ means a  
19                        payment of United States dollars, another currency,  
20                        or a composite currency, and a noncash delivery, in-  
21                        cluding a payment or delivery to liquidate an  
22                        unmatured obligation.”.

23           (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
24           TRACTS.—Section 403 of the Federal Deposit Insurance

1 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
2 is amended—

3 (1) by striking subsection (a) and inserting the  
4 following:

5 “(a) GENERAL RULE.—Notwithstanding any other  
6 provision of State or Federal law (other than paragraphs  
7 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
8 Deposit Insurance Act or any order authorized under sec-  
9 tion 5(b)(2) of the Securities Investor Protection Act of  
10 1970), the covered contractual payment obligations and  
11 the covered contractual payment entitlements between any  
12 2 financial institutions shall be netted in accordance with,  
13 and subject to the conditions of, the terms of any applica-  
14 ble netting contract (except as provided in section  
15 561(b)(2) of title 11, United States Code).”; and

16 (2) by adding at the end the following new sub-  
17 section:

18 “(f) ENFORCEABILITY OF SECURITY AGREE-  
19 MENTS.—The provisions of any security agreement or ar-  
20 rangement or other credit enhancement related to one or  
21 more netting contracts between any 2 financial institu-  
22 tions shall be enforceable in accordance with their terms  
23 (except as provided in section 561(b)(2) of title 11, United  
24 States Code), and shall not be stayed, avoided, or other-  
25 wise limited by any State or Federal law (other than para-

1 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
2 Federal Deposit Insurance Act and section 5(b)(2) of the  
3 Securities Investor Protection Act of 1970).”.

4 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
5 NETTING CONTRACTS.—Section 404 of the Federal De-  
6 posit Insurance Corporation Improvement Act of 1991 (12  
7 U.S.C. 4404) is amended—

8 (1) by striking subsection (a) and inserting the  
9 following:

10 “(a) GENERAL RULE.—Notwithstanding any other  
11 provision of State or Federal law (other than paragraphs  
12 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
13 Deposit Insurance Act and any order authorized under  
14 section 5(b)(2) of the Securities Investor Protection Act  
15 of 1970), the covered contractual payment obligations and  
16 the covered contractual payment entitlements of a member  
17 of a clearing organization to and from all other members  
18 of a clearing organization shall be netted in accordance  
19 with and subject to the conditions of any applicable net-  
20 ting contract (except as provided in section 561(b)(2) of  
21 title 11, United States Code).”; and

22 (2) by adding at the end the following new sub-  
23 section:

24 “(h) ENFORCEABILITY OF SECURITY AGREE-  
25 MENTS.—The provisions of any security agreement or ar-

1 rangement or other credit enhancement related to one or  
2 more netting contracts between any 2 members of a clear-  
3 ing organization shall be enforceable in accordance with  
4 their terms (except as provided in section 561(b)(2) of  
5 title 11, United States Code), and shall not be stayed,  
6 avoided, or otherwise limited by any State or Federal law  
7 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
8 tion 11(e) of the Federal Deposit Insurance Act and sec-  
9 tion 5(b)(2) of the Securities Investor Protection Act of  
10 1970).”.

11 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
12 SURED NATIONAL BANKS AND UNINSURED FEDERAL  
13 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
14 ance Corporation Improvement Act of 1991 (12 U.S.C.  
15 4401 et seq.) is amended—

16 (1) by redesignating section 407 as section 408;

17 and

18 (2) by inserting after section 406 the following

19 new section:

20 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
21 **NATIONAL BANKS AND UNINSURED FEDERAL**  
22 **BRANCHES AND AGENCIES.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-  
24 vision of law, paragraphs (8), (9), (10), and (11) of section  
25 11(e) of the Federal Deposit Insurance Act shall apply

1 to an uninsured national bank or uninsured Federal  
2 branch or Federal agency, except that for such purpose—

3 “(1) any reference to the ‘Corporation as re-  
4 ceiver’ or ‘the receiver or the Corporation’ shall refer  
5 to the receiver of an uninsured national bank or un-  
6 insured Federal branch or Federal agency appointed  
7 by the Comptroller of the Currency;

8 “(2) any reference to the ‘Corporation’ (other  
9 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
10 poration, whether acting as such or as conservator  
11 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
12 to the receiver or conservator of an uninsured na-  
13 tional bank or uninsured Federal branch or Federal  
14 agency appointed by the Comptroller of the Cur-  
15 rency; and

16 “(3) any reference to an ‘insured depository in-  
17 stitution’ or ‘depository institution’ shall refer to an  
18 uninsured national bank or an uninsured Federal  
19 branch or Federal agency.

20 “(b) LIABILITY.—The liability of a receiver or conser-  
21 vator of an uninsured national bank or uninsured Federal  
22 branch or agency shall be determined in the same manner  
23 and subject to the same limitations that apply to receivers  
24 and conservators of insured depository institutions under  
25 section 11(e) of the Federal Deposit Insurance Act.

1 “(c) REGULATORY AUTHORITY.—

2 “(1) IN GENERAL.—The Comptroller of the  
3 Currency, in consultation with the Federal Deposit  
4 Insurance Corporation, may promulgate regulations  
5 to implement this section.

6 “(2) SPECIFIC REQUIREMENT.—In promul-  
7 gating regulations to implement this section, the  
8 Comptroller of the Currency shall ensure that the  
9 regulations generally are consistent with the regula-  
10 tions and policies of the Federal Deposit Insurance  
11 Corporation adopted pursuant to the Federal De-  
12 posit Insurance Act.

13 “(d) DEFINITIONS.—For purposes of this section, the  
14 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
15 bank’ have the same meanings as in section 1(b) of the  
16 International Banking Act of 1978.”.

17 **SEC. 907. BANKRUPTCY CODE AMENDMENTS.**

18 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
19 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
20 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
21 RITIES CONTRACT.—Title 11, United States Code, is  
22 amended—

23 (1) in section 101—

24 (A) in paragraph (25)—

1 (i) by striking “means a contract”

2 and inserting “means—

3 “(A) a contract”;

4 (ii) by striking “, or any combination  
5 thereof or option thereon;” and inserting

6 “, or any other similar agreement;”; and

7 (iii) by adding at the end the fol-  
8 lowing:

9 “(B) any combination of agreements or  
10 transactions referred to in subparagraphs (A)  
11 and (C);

12 “(C) any option to enter into an agreement  
13 or transaction referred to in subparagraph (A)  
14 or (B);

15 “(D) a master agreement that provides for  
16 an agreement or transaction referred to in sub-  
17 paragraph (A), (B), or (C), together with all  
18 supplements to any such master agreement,  
19 without regard to whether such master agree-  
20 ment provides for an agreement or transaction  
21 that is not a forward contract under this para-  
22 graph, except that such master agreement shall  
23 be considered to be a forward contract under  
24 this paragraph only with respect to each agree-  
25 ment or transaction under such master agree-

1           ment that is referred to in subparagraph (A),  
2           (B), or (C); or

3           “(E) any security agreement or arrange-  
4           ment, or other credit enhancement related to  
5           any agreement or transaction referred to in  
6           subparagraph (A), (B), (C), or (D), but not to  
7           exceed the actual value of such contract on the  
8           date of the filing of the petition;”;

9           (B) in paragraph (46), by striking “on any  
10          day during the period beginning 90 days before  
11          the date of” and inserting “at any time before”;

12          (C) by amending paragraph (47) to read  
13          as follows:

14          “(47) ‘repurchase agreement’ (which definition  
15          also applies to a reverse repurchase agreement)—

16                 “(A) means—

17                         “(i) an agreement, including related  
18                         terms, which provides for the transfer of  
19                         one or more certificates of deposit, mort-  
20                         gage related securities (as defined in sec-  
21                         tion 3 of the Securities Exchange Act of  
22                         1934), mortgage loans, interests in mort-  
23                         gage related securities or mortgage loans,  
24                         eligible bankers’ acceptances, qualified for-  
25                         eign government securities (defined as a



1 security that is a direct obligation of, or  
2 that is fully guaranteed by, the central  
3 government of a member of the Organiza-  
4 tion for Economic Cooperation and Devel-  
5 opment), or securities that are direct obli-  
6 gations of, or that are fully guaranteed by,  
7 the United States or any agency of the  
8 United States against the transfer of funds  
9 by the transferee of such certificates of de-  
10 posit, eligible bankers' acceptances, securi-  
11 ties, loans, or interests, with a simulta-  
12 neous agreement by such transferee to  
13 transfer to the transferor thereof certifi-  
14 cates of deposit, eligible bankers' accept-  
15 ance, securities, loans, or interests of the  
16 kind described in this clause, at a date cer-  
17 tain not later than 1 year after such trans-  
18 fer or on demand, against the transfer of  
19 funds;

20 “(ii) any combination of agreements  
21 or transactions referred to in clauses (i)  
22 and (iii);

23 “(iii) an option to enter into an agree-  
24 ment or transaction referred to in clause  
25 (i) or (ii);

1           “(iv) a master agreement that pro-  
2           vides for an agreement or transaction re-  
3           ferred to in clause (i), (ii), or (iii), together  
4           with all supplements to any such master  
5           agreement, without regard to whether such  
6           master agreement provides for an agree-  
7           ment or transaction that is not a repur-  
8           chase agreement under this paragraph, ex-  
9           cept that such master agreement shall be  
10          considered to be a repurchase agreement  
11          under this paragraph only with respect to  
12          each agreement or transaction under the  
13          master agreement that is referred to in  
14          clause (i), (ii), or (iii); or

15          “(v) any security agreement or ar-  
16          rangement or other credit enhancement re-  
17          lated to any agreement or transaction re-  
18          ferred to in clause (i), (ii), (iii), or (iv), but  
19          not to exceed the actual value of such con-  
20          tract on the date of the filing of the peti-  
21          tion; and

22          “(B) does not include a repurchase obliga-  
23          tion under a participation in a commercial  
24          mortgage loan;”;

1 (D) in paragraph (48), by inserting “, or  
2 exempt from such registration under such sec-  
3 tion pursuant to an order of the Securities and  
4 Exchange Commission,” after “1934”; and

5 (E) by amending paragraph (53B) to read  
6 as follows:

7 “(53B) ‘swap agreement’—

8 “(A) means—

9 “(i) any agreement, including the  
10 terms and conditions incorporated by ref-  
11 erence in such agreement, which is an in-  
12 terest rate swap, option, future, or forward  
13 agreement, including—

14 “(I) a rate floor, rate cap, rate  
15 collar, cross-currency rate swap, and  
16 basis swap;

17 “(II) a spot, same day-tomorrow,  
18 tomorrow-next, forward, or other for-  
19 eign exchange or precious metals  
20 agreement;

21 “(III) a currency swap, option,  
22 future, or forward agreement;

23 “(IV) an equity index or an eq-  
24 uity swap, option, future, or forward  
25 agreement;

1           “(V) a debt index or a debt swap,  
2           option, future, or forward agreement;

3           “(VI) a credit spread or a credit  
4           swap, option, future, or forward  
5           agreement;

6           “(VII) a commodity index or a  
7           commodity swap, option, future, or  
8           forward agreement; or

9           “(VIII) a weather swap, weather  
10          derivative, or weather option;

11          “(ii) any agreement or transaction  
12          similar to any other agreement or trans-  
13          action referred to in this paragraph that—

14               “(I) is presently, or in the future  
15               becomes, regularly entered into in the  
16               swap market (including terms and  
17               conditions incorporated by reference  
18               therein); and

19               “(II) is a forward, swap, future,  
20               or option on one or more rates, cur-  
21               rencies, commodities, equity securities,  
22               or other equity instruments, debt se-  
23               curities or other debt instruments, or  
24               economic indices or measures of eco-  
25               nomic risk or value;

1           “(iii) any combination of agreements  
2           or transactions referred to in this subpara-  
3           graph;

4           “(iv) any option to enter into an  
5           agreement or transaction referred to in  
6           this subparagraph;

7           “(v) a master agreement that provides  
8           for an agreement or transaction referred to  
9           in clause (i), (ii), (iii), or (iv), together  
10          with all supplements to any such master  
11          agreement, and without regard to whether  
12          the master agreement contains an agree-  
13          ment or transaction that is not a swap  
14          agreement under this paragraph, except  
15          that the master agreement shall be consid-  
16          ered to be a swap agreement under this  
17          paragraph only with respect to each agree-  
18          ment or transaction under the master  
19          agreement that is referred to in clause (i),  
20          (ii), (iii), or (iv); or

21          “(vi) any security agreement or ar-  
22          rangement or other credit enhancement re-  
23          lated to any agreements or transactions re-  
24          ferred to in clause (i) through (v), but do  
25          not to exceed the actual value of such con-

1           tract on the date of the filing of the peti-  
2           tion; and

3           “(B) is applicable for purposes of this title  
4           only, and shall not be construed or applied so  
5           as to challenge or affect the characterization,  
6           definition, or treatment of any swap agreement  
7           under any other statute, regulation, or rule, in-  
8           cluding the Securities Act of 1933, the Securi-  
9           ties Exchange Act of 1934, the Public Utility  
10          Holding Company Act of 1935, the Trust In-  
11          denture Act of 1939, the Investment Company  
12          Act of 1940, the Investment Advisers Act of  
13          1940, the Securities Investor Protection Act of  
14          1970, the Commodity Exchange Act, and the  
15          regulations prescribed by the Securities and Ex-  
16          change Commission or the Commodity Futures  
17          Trading Commission.”;

18          (2) in section 741(7), by striking paragraph (7)  
19          and inserting the following:

20                 “(7) ‘securities contract’—

21                         “(A) means—

22                                 “(i) a contract for the purchase, sale,  
23                                 or loan of a security, a certificate of de-  
24                                 posit, a mortgage loan or any interest in a  
25                                 mortgage loan, a group or index of securi-

1 ties, certificates of deposit, or mortgage  
2 loans or interests therein (including an in-  
3 terest therein or based on the value there-  
4 of), or option on any of the foregoing, in-  
5 cluding an option to purchase or sell any  
6 such security, certificate of deposit, loan,  
7 interest, group or index, or option;

8 “(ii) any option entered into on a na-  
9 tional securities exchange relating to for-  
10 eign currencies;

11 “(iii) the guarantee by or to any secu-  
12 rities clearing agency of a settlement of  
13 cash, securities, certificates of deposit,  
14 mortgage loans or interests therein, group  
15 or index of securities, or mortgage loans or  
16 interests therein (including any interest  
17 therein or based on the value thereof), or  
18 option on any of the foregoing, including  
19 an option to purchase or sell any such se-  
20 curity, certificate of deposit, loan, interest,  
21 group or index, or option;

22 “(iv) any margin loan;

23 “(v) any other agreement or trans-  
24 action that is similar to an agreement or

1 transaction referred to in this subpara-  
2 graph;

3 “(vi) any combination of the agree-  
4 ments or transactions referred to in this  
5 subparagraph;

6 “(vii) any option to enter into any  
7 agreement or transaction referred to in  
8 this subparagraph;

9 “(viii) a master agreement that pro-  
10 vides for an agreement or transaction re-  
11 ferred to in clause (i), (ii), (iii), (iv), (v),  
12 (vi), or (vii), together with all supplements  
13 to any such master agreement, without re-  
14 gard to whether the master agreement pro-  
15 vides for an agreement or transaction that  
16 is not a securities contract under this sub-  
17 paragraph, except that such master agree-  
18 ment shall be considered to be a securities  
19 contract under this subparagraph only with  
20 respect to each agreement or transaction  
21 under such master agreement that is re-  
22 ferred to in clause (i), (ii), (iii), (iv), (v),  
23 (vi), or (vii); or

24 “(ix) any security agreement or ar-  
25 rangement or other credit enhancement,



1 related to any agreement or transaction re-  
2 ferred to in this subparagraph, but not to  
3 exceed the actual value of such contract on  
4 the date of the filing of the petition; and

5 “(B) does not include any purchase, sale,  
6 or repurchase obligation under a participation  
7 in a commercial mortgage loan.”; and

8 (3) in section 761(4)—

9 (A) by striking “or” at the end of subpara-  
10 graph (D); and

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

12 “(F) any other agreement or transaction  
13 that is similar to an agreement or transaction  
14 referred to in this paragraph;

15 “(G) any combination of the agreements or  
16 transactions referred to in this paragraph;

17 “(H) any option to enter into an agree-  
18 ment or transaction referred to in this para-  
19 graph;

20 “(I) a master agreement that provides for  
21 an agreement or transaction referred to in sub-  
22 paragraph (A), (B), (C), (D), (E), (F), (G), or  
23 (H), together with all supplements to such mas-  
24 ter agreement, without regard to whether the  
25 master agreement provides for an agreement or

1 transaction that is not a commodity contract  
2 under this paragraph, except that the master  
3 agreement shall be considered to be a com-  
4 modity contract under this paragraph only with  
5 respect to each agreement or transaction under  
6 the master agreement that is referred to in sub-  
7 paragraph (A), (B), (C), (D), (E), (F), (G), or  
8 (H); or

9 “(J) any security agreement or arrange-  
10 ment or other credit enhancement related to  
11 any agreement or transaction referred to in this  
12 paragraph, but not to exceed the actual value of  
13 such contract on the date of the filing of the pe-  
14 tition;”.

15 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
16 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
17 CHANT.—Section 101 of title 11, United States Code, is  
18 amended—

19 (1) by striking paragraph (22) and inserting  
20 the following:

21 “(22) ‘financial institution’ means—

22 “(A) a Federal reserve bank, or an entity  
23 (domestic or foreign) that is a commercial or  
24 savings bank, industrial savings bank, savings  
25 and loan association, trust company, or receiver

1 or conservator for such entity and, when any  
2 such Federal reserve bank, receiver, conservator  
3 or entity is acting as agent or custodian for a  
4 customer in connection with a securities con-  
5 tract, as defined in section 741, such customer;  
6 or

7 “(B) in connection with a securities con-  
8 tract, as defined in section 741, an investment  
9 company registered under the Investment Com-  
10 pany Act of 1940;”;

11 (2) by inserting after paragraph (22) the fol-  
12 lowing:

13 “(22A) ‘financial participant’ means an entity  
14 that, at the time it enters into a securities contract,  
15 commodity contract, or forward contract, or at the  
16 time of the filing of the petition, has one or more  
17 agreements or transactions described in paragraph  
18 (1), (2), (3), (4), (5), or (6) of section 561(a) with  
19 the debtor or any other entity (other than an affil-  
20 iate) of a total gross dollar value of not less than  
21 \$1,000,000,000 in notional or actual principal  
22 amount outstanding on any day during the previous  
23 15-month period, or has gross mark-to-market posi-  
24 tions of not less than \$100,000,000 (aggregated  
25 across counterparties) in one or more such agree-

1       ments or transactions with the debtor or any other  
2       entity (other than an affiliate) on any day during  
3       the previous 15-month period;” and

4               (3) by striking paragraph (26) and inserting  
5       the following:

6               “(26) ‘forward contract merchant’ means a  
7       Federal reserve bank, or an entity, the business of  
8       which consists in whole or in part of entering into  
9       forward contracts as or with merchants or in a com-  
10      modity, as defined or in section 761 or any similar  
11      good, article, service, right, or interest which is pres-  
12      ently or in the future becomes the subject of dealing  
13      in the forward contract trade;”.

14       (c) DEFINITION OF MASTER NETTING AGREEMENT  
15      AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
16      tion 101 of title 11, United States Code, is amended by  
17      inserting after paragraph (38) the following new para-  
18      graphs:

19               “(38A) ‘master netting agreement’—

20               “(A) means an agreement providing for  
21      the exercise of rights, including rights of net-  
22      ting, setoff, liquidation, termination, accelera-  
23      tion, or closeout, under or in connection with  
24      one or more contracts that are described in any  
25      one or more of paragraphs (1) through (5) of

1 section 561(a), or any security agreement or ar-  
2 rangement or other credit enhancement related  
3 to one or more of the foregoing; and

4 “(B) if the agreement contains provisions  
5 relating to agreements or transactions that are  
6 not contracts described in paragraphs (1)  
7 through (5) of section 561(a), shall be deemed  
8 to be a master netting agreement only with re-  
9 spect to those agreements or transactions that  
10 are described in any one or more of paragraphs  
11 (1) through (5) of section 561(a);

12 “(38B) ‘master netting agreement participant’  
13 means an entity that, at any time before the filing  
14 of the petition, is a party to an outstanding master  
15 netting agreement with the debtor;”.

16 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
17 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
18 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
19 MENTS UNDER THE AUTOMATIC-STAY.—

20 (1) IN GENERAL.—Section 362(b) of title 11,  
21 United States Code, as amended by this Act, is  
22 amended—

23 (A) in paragraph (6), by inserting “,  
24 pledged to, and under the control of,” after  
25 “held by”;

1 (B) in paragraph (7), by inserting “,  
2 pledged to, and under the control of,” after  
3 “held by”;

4 (C) by striking paragraph (17) and insert-  
5 ing the following:

6 “(17) under subsection (a), of the setoff by a  
7 swap participant of a mutual debt and claim under  
8 or in connection with one or more swap agreements  
9 that constitutes the setoff of a claim against the  
10 debtor for any payment or other transfer of property  
11 due from the debtor under or in connection with any  
12 swap agreement against any payment due to the  
13 debtor from the swap participant under or in con-  
14 nection with any swap agreement or against cash,  
15 securities, or other property held by, pledged to, and  
16 under the control of, or due from such swap partici-  
17 pant to margin, guarantee, secure, or settle any  
18 swap agreement;” and

19 (D) by inserting after paragraph (27), as  
20 added by this Act, the following new paragraph:

21 “(28) under subsection (a), of the setoff by a  
22 master netting agreement participant of a mutual  
23 debt and claim under or in connection with one or  
24 more master netting agreements or any contract or  
25 agreement subject to such agreements that con-

1       stitutes the setoff of a claim against the debtor for  
2       any payment or other transfer of property due from  
3       the debtor under or in connection with such agree-  
4       ments or any contract or agreement subject to such  
5       agreements against any payment due to the debtor  
6       from such master netting agreement participant  
7       under or in connection with such agreements or any  
8       contract or agreement subject to such agreements or  
9       against cash, securities, or other property held by,  
10      pledged to, and under the control of, or due from  
11      such master netting agreement participant to mar-  
12      gin, guarantee, secure, or settle such agreements or  
13      any contract or agreement subject to such agree-  
14      ments, to the extent that such participant is eligible  
15      to exercise such offset rights under paragraph (6),  
16      (7), or (17) for each individual contract covered by  
17      the master netting agreement in issue; or”.

18           (2) LIMITATION.—Section 362 of title 11,  
19      United States Code, as amended by this Act, is  
20      amended by adding at the end the following:

21           “(1) LIMITATION.—The exercise of rights not subject  
22      to the stay arising under subsection (a) pursuant to para-  
23      graph (6), (7), (17), or (28) of subsection (b) shall not  
24      be stayed by any order of a court or administrative agency  
25      in any proceeding under this title.”.

1 (e) LIMITATION OF AVOIDANCE POWERS UNDER  
2 MASTER NETTING AGREEMENT.—Section 546 of title 11,  
3 United States Code, as amended by this Act, is  
4 amended—

5 (1) in subsection (g) (as added by section 103  
6 of Public Law 101–311)—

7 (A) by striking “under a swap agreement”;

8 and

9 (B) by striking “in connection with a swap  
10 agreement” and inserting “under or in connec-  
11 tion with any swap agreement”; and

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

13 “(k) Notwithstanding sections 544, 545, 547,  
14 548(a)(1)(B), and 548(b) the trustee may not avoid a  
15 transfer made by or to a master netting agreement partici-  
16 pant under or in connection with any master netting  
17 agreement or any individual contract covered thereby that  
18 is made before the commencement of the case, except  
19 under section 548(a)(1)(A) and except to the extent that  
20 the trustee could otherwise avoid such a transfer made  
21 under an individual contract covered by such master net-  
22 ting agreement.”.

23 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
24 AGREEMENTS.—Section 548(d)(2) of title 11, United  
25 States Code, is amended—



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

3           (2) in subparagraph (D), by striking the period  
4           and inserting “; and”; and

5           (3) by adding at the end the following new sub-  
6           paragraph:

7           “(E) a master netting agreement participant  
8           that receives a transfer in connection with a master  
9           netting agreement or any individual contract covered  
10          thereby takes for value to the extent of such trans-  
11          fer, except that, with respect to a transfer under any  
12          individual contract covered thereby, to the extent  
13          that such master netting agreement participant oth-  
14          erwise did not take (or is otherwise not deemed to  
15          have taken) such transfer for value.”.

16          (g) TERMINATION OR ACCELERATION OF SECURITIES  
17          CONTRACTS.—Section 555 of title 11, United States Code,  
18          is amended—

19                 (1) by amending the section heading to read as  
20                 follows:

21                 “§ 555. **Contractual right to liquidate, terminate, or**  
22                         **accelerate a securities contract”;**

23                 and

1           (2) in the first sentence, by striking “liquida-  
2           tion” and inserting “liquidation, termination, or ac-  
3           celeration”.

4           (h) TERMINATION OR ACCELERATION OF COMMOD-  
5           ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
6           United States Code, is amended—

7           (1) by amending the section heading to read as  
8           follows:

9           “§ 556. **Contractual right to liquidate, terminate, or**  
10                           **accelerate a commodities contract or for-**  
11                           **ward contract”;**

12           and

13           (2) in the first sentence, by striking “liquida-  
14           tion” and inserting “liquidation, termination, or ac-  
15           celeration”.

16           (i) TERMINATION OR ACCELERATION OF REPUR-  
17           CHASE AGREEMENTS.—Section 559 of title 11, United  
18           States Code, is amended—

19           (1) by amending the section heading to read as  
20           follows:

21           “§ 559. **Contractual right to liquidate, terminate, or**  
22                           **accelerate a repurchase agreement”;**

23           and

1           (2) in the first sentence, by striking “liquida-  
2           tion” and inserting “liquidation, termination, or ac-  
3           celeration”.

4           (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
5 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
6 States Code, is amended—

7           (1) by amending the section heading to read as  
8           follows:

9           “§ 560. **Contractual right to liquidate, terminate, or**  
10           **accelerate a swap agreement**”;

11           (2) in the first sentence, by striking “termi-  
12           nation of a swap agreement” and inserting “liquida-  
13           tion, termination, or acceleration of one or more  
14           swap agreements”; and

15           (3) by striking “in connection with any swap  
16           agreement” and inserting “in connection with the  
17           termination, liquidation, or acceleration of one or  
18           more swap agreements”.

19           (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
20 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
21 ACROSS CONTRACTS.—

22           (1) IN GENERAL.—Title 11, United States  
23           Code, is amended by inserting after section 560 the  
24           following:

1 **“§ 561. Contractual right to terminate, liquidate, ac-**  
2 **celerate, or offset under a master netting**  
3 **agreement and across contracts**

4 “(a) IN GENERAL.—Subject to subsection (b), the ex-  
5 ercise of any contractual right, because of a condition of  
6 the kind specified in section 365(e)(1), to cause the termi-  
7 nation, liquidation, or acceleration of or to offset or net  
8 termination values, payment amounts, or other transfer  
9 obligations arising under or in connection with one or  
10 more (or the termination, liquidation, or acceleration of  
11 one or more)—

12 “(1) securities contracts, as defined in section  
13 741(7);

14 “(2) commodity contracts, as defined in section  
15 761(4);

16 “(3) forward contracts;

17 “(4) repurchase agreements;

18 “(5) swap agreements; or

19 “(6) master netting agreements,

20 shall not be stayed, avoided, or otherwise limited by oper-  
21 ation of any provision of this title or by any order of a  
22 court or administrative agency in any proceeding under  
23 this title.

24 “(b) EXCEPTION.—

25 “(1) IN GENERAL.—A party may exercise a  
26 contractual right described in subsection (a) to ter-

1       minate, liquidate, or accelerate only to the extent  
2       that such party could exercise such a right under  
3       section 555, 556, 559, or 560 for each individual  
4       contract covered by the master netting agreement in  
5       issue.

6               “(2) COMMODITY BROKERS.—If a debtor is a  
7       commodity broker subject to subchapter IV of chap-  
8       ter 7—

9                       “(A) a party may not net or offset an obli-  
10                      gation to the debtor arising under, or in con-  
11                      nection with, a commodity contract against any  
12                      claim arising under, or in connection with,  
13                      other instruments, contracts, or agreements  
14                      listed in subsection (a) except to the extent that  
15                      the party has positive net equity in the com-  
16                      modity accounts at the debtor, as calculated  
17                      under that subchapter IV; and

18                      “(B) another commodity broker may not  
19                      net or offset an obligation to the debtor arising  
20                      under, or in connection with, a commodity con-  
21                      tract entered into or held on behalf of a cus-  
22                      tomer of the debtor against any claim arising  
23                      under, or in connection with, other instruments,  
24                      contracts, or agreements listed in subsection  
25                      (a).

1           “(3) CONSTRUCTION.—No provision of sub-  
2 paragraph (A) or (B) of paragraph (2) shall prohibit  
3 the offset of claims and obligations that arise  
4 under—

5           “(A) a cross-margining agreement that has  
6 been approved by the Commodity Futures  
7 Trading Commission or submitted to the Com-  
8 modity Futures Trading Commission under sec-  
9 tion 5(a)(12)(A) of the Commodity Exchange  
10 Act and has been approved; or

11           “(B) any other netting agreement between  
12 a clearing organization, as defined in section  
13 761, and another entity that has been approved  
14 by the Commodity Futures Trading Commis-  
15 sion.

16           “(c) DEFINITION.—As used in this section, the term  
17 ‘contractual right’ includes a right set forth in a rule or  
18 bylaw of a national securities exchange, a national securi-  
19 ties association, or a securities clearing agency, a right  
20 set forth in a bylaw of a clearing organization or contract  
21 market or in a resolution of the governing board thereof,  
22 and a right, whether or not evidenced in writing, arising  
23 under common law, under law merchant, or by reason of  
24 normal business practice.

1       “(d) CASES ANCILLARY TO FOREIGN PRO-  
2 CEEDINGS.—Any provisions of this title relating to securi-  
3 ties contracts, commodity contracts, forward contracts, re-  
4 purchase agreements, swap agreements, or master netting  
5 agreements shall apply in a case under chapter 15 of this  
6 title, so that enforcement of contractual provisions of such  
7 contracts and agreements in accordance with their terms  
8 will not be stayed or otherwise limited by operation of any  
9 provision of this title or by order of a court in any case  
10 under this title, and to limit avoidance powers to the same  
11 extent as in a proceeding under chapter 7 or 11 of this  
12 title (such enforcement not to be limited based on the  
13 presence or absence of assets of the debtor in the United  
14 States).”.

15       (2) CONFORMING AMENDMENT.—The table of sec-  
16 tions for chapter 5 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) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
20 United States Code, is amended by inserting after section  
21 766 the following:

1 **“§ 767. Commodity broker liquidation and forward**  
 2 **contract merchants, commodity brokers,**  
 3 **stockbrokers, financial institutions, fi-**  
 4 **nancial participants, securities clearing**  
 5 **agencies, swap participants, repo partici-**  
 6 **pants, and master netting agreement par-**  
 7 **ticipants**

8 “Notwithstanding any other provision of this title,  
 9 the exercise of rights by a forward contract merchant,  
 10 commodity broker, stockbroker, financial institution, fi-  
 11 nancial participant, securities clearing agency, swap par-  
 12 ticipant, repo participant, or master netting agreement  
 13 participant under this title shall not affect the priority of  
 14 any unsecured claim it may have after the exercise of such  
 15 rights.”.

16 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
 17 United States Code, is amended by inserting after section  
 18 752 the following:

19 **“§ 753. Stockbroker liquidation and forward contract**  
 20 **merchants, commodity brokers, stock-**  
 21 **brokers, financial institutions, securities**  
 22 **clearing agencies, swap participants,**  
 23 **repo participants, and master netting**  
 24 **agreement participants**

25 “Notwithstanding any other provision of this title,  
 26 the exercise of rights by a forward contract merchant,



1 commodity broker, stockbroker, financial institution, secu-  
2 rities clearing agency, swap participant, repo participant,  
3 financial participant, or master netting agreement partici-  
4 pant under this title shall not affect the priority of any  
5 unsecured claim it may have after the exercise of such  
6 rights.”.

7 (n) SETOFF.—Section 553 of title 11, United States  
8 Code, is amended—

9 (1) in subsection (a)(3)(C), by inserting before  
10 the period the following: “(except for a setoff of a  
11 kind described in section 362(b)(6), 362(b)(7),  
12 362(b)(17), 362(b)(28), 555, 556, 559, 560, or 561  
13 of this title)”; and

14 (2) in subsection (b)(1), by striking  
15 “362(b)(14),” and inserting “362(b)(17),  
16 362(b)(28), 555, 556, 559, 560, 561”.

17 (o) SECURITIES CONTRACTS, COMMODITY CON-  
18 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
19 States Code, is amended—

20 (1) in section 362(b)(6), by striking “financial  
21 institutions,” each place such term appears and in-  
22 serting “financial institution, financial participant,”;

23 (2) in section 546(e), by inserting “financial  
24 participant,” after “financial institution,”;

1           (3) in section 548(d)(2)(B), by inserting “fi-  
2           nancial participant,” after “financial institution,”;

3           (4) in section 555—

4                 (A) by inserting “financial participant,”  
5           after “financial institution,”; and

6                 (B) by inserting before the period at the  
7           end “, a right set forth in a bylaw of a clearing  
8           organization or contract market or in a resolu-  
9           tion of the governing board thereof, and a right,  
10          whether or not in writing, arising under com-  
11          mon law, under law merchant, or by reason of  
12          normal business practice”; and

13          (5) in section 556, by inserting “, financial par-  
14          ticipant,” after “commodity broker”.

15          (p) CONFORMING AMENDMENTS.—Title 11, United  
16          States Code, is amended—

17                 (1) in the table of sections for chapter 5—

18                         (A) by amending the items relating to sec-  
19           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.”;

20                         and

21                         (B) by amending the items relating to sec-  
22           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 agreement.”;

1           and

2           (2) in the table of sections for chapter 7—

3                   (A) by inserting after the item relating to  
4           section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

5           and

6                   (B) by inserting after the item relating to  
7           section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

8   **SEC. 908. RECORDKEEPING REQUIREMENTS.**

9           Section 11(e)(8) of the Federal Deposit Insurance  
10 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the  
11 end the following new subparagraph:

12                   “(H) RECORDKEEPING REQUIREMENTS.—

13           The Corporation, in consultation with the ap-  
14 propriate Federal banking agencies, may pre-  
15 scribe regulations requiring more detailed re-  
16 cordkeeping with respect to qualified financial  
17 contracts (including market valuations) by in-  
18 sured depository institutions.”.

1 **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
2 **TION REQUIREMENT.**

3 Section 13(e)(2) of the Federal Deposit Insurance  
4 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

5 “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
6 EXECUTION REQUIREMENT.—An agreement to pro-  
7 vide for the lawful collateralization of—

8 “(A) deposits of, or other credit extension  
9 by, a Federal, State, or local governmental enti-  
10 ty, or of any depositor referred to in section  
11 11(a)(2), including an agreement to provide col-  
12 lateral in lieu of a surety bond;

13 “(B) bankruptcy estate funds pursuant to  
14 section 345(b)(2) of title 11, United States  
15 Code;

16 “(C) extensions of credit, including any  
17 overdraft, from a Federal reserve bank or Fed-  
18 eral home loan bank; or

19 “(D) one or more qualified financial con-  
20 tracts, as defined in section 11(e)(8)(D),

21 shall not be deemed invalid pursuant to paragraph  
22 (1)(B) solely because such agreement was not exe-  
23 cuted contemporaneously with the acquisition of the  
24 collateral or because of pledges, delivery, or substi-  
25 tution of the collateral made in accordance with such  
26 agreement.”.

1 **SEC. 910. DAMAGE MEASURE.**

2 (a) IN GENERAL.—Title 11, United States Code, is  
3 amended—

4 (1) by inserting after section 561, as added by  
5 this Act, the following:

6 **“§ 562. Damage measure in connection with swap**  
7 **agreements, securities contracts, forward**  
8 **contracts, commodity contracts, repur-**  
9 **chase agreements, or master netting**  
10 **agreements**

11 “If the trustee rejects a swap agreement, securities  
12 contract (as defined in section 741), forward contract,  
13 commodity contract (as defined in section 761), repur-  
14 chase agreement, or master netting agreement pursuant  
15 to section 365(a), or if a forward contract merchant,  
16 stockbroker, financial institution, securities clearing agen-  
17 cy, repo participant, financial participant, master netting  
18 agreement participant, or swap participant liquidates, ter-  
19 minates, or accelerates such contract or agreement, dam-  
20 ages shall be measured as of the earlier of—

21 “(1) the date of such rejection; or

22 “(2) the date of such liquidation, termination,  
23 or acceleration.”; and

24 (2) in the table of sections for chapter 5, by in-  
25 sserting after the item relating to section 561 (as  
26 added by this Act) the following:

“562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.

1 (b) CLAIMS ARISING FROM REJECTION.—Section  
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

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

5 “(2) A claim for damages calculated in accordance  
6 with section 562 of this title shall be allowed under sub-  
7 section (a), (b), or (c), or disallowed under subsection (d)  
8 or (e), as if such claim had arisen before the date of the  
9 filing of the petition.”.

10 **SEC. 911. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection  
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of  
16 title 11, United States Code, neither the  
17 filing of an application under subsection  
18 (a)(3) nor any order or decree obtained by  
19 SIPC from the court shall operate as a  
20 stay of any contractual rights of a creditor  
21 to liquidate, terminate, or accelerate a se-  
22 curities contract, commodity contract, for-  
23 ward contract, repurchase agreement, swap  
24 agreement, or master netting agreement,

1 as those terms are defined in sections 101  
2 and 741 of title 11, United States Code, to  
3 offset or net termination values, payment  
4 amounts, or other transfer obligations arising  
5 under or in connection with one or  
6 more of such contracts or agreements, or  
7 to foreclose on any cash collateral pledged  
8 by the debtor, whether or not with respect  
9 to one or more of such contracts or agree-  
10 ments.

11 “(ii) Notwithstanding clause (i), such  
12 application, order, or decree may operate  
13 as a stay of the foreclosure on, or disposi-  
14 tion of, securities collateral pledged by the  
15 debtor, whether or not with respect to one  
16 or more of such contracts or agreements,  
17 securities sold by the debtor under a repur-  
18 chase agreement, or securities lent under a  
19 securities lending agreement.

20 “(iii) As used in this subparagraph,  
21 the term ‘contractual right’ includes a  
22 right set forth in a rule or bylaw of a na-  
23 tional securities exchange, a national secu-  
24 rities association, or a securities clearing  
25 agency, a right set forth in a bylaw of a

1 clearing organization or contract market or  
2 in a resolution of the governing board  
3 thereof, and a right, whether or not in  
4 writing, arising under common law, under  
5 law merchant, or by reason of normal busi-  
6 ness practice.”.

7 **SEC. 912. ASSET-BACKED SECURITIZATIONS.**

8 Section 541 of title 11, United States Code, is  
9 amended—

10 (1) in subsection (b), by inserting after para-  
11 graph (7), as added by this Act, the following:

12 “(8) any eligible asset (or proceeds thereof), to  
13 the extent that such eligible asset was transferred by  
14 the debtor, before the date of commencement of the  
15 case, to an eligible entity in connection with an  
16 asset-backed securitization, except to the extent such  
17 asset (or proceeds or value thereof) may be recov-  
18 ered by the trustee under section 550 by virtue of  
19 avoidance under section 548(a);” and

20 (2) by adding at the end the following new sub-  
21 section:

22 “(f) For purposes of this section—

23 “(1) the term ‘asset-backed securitization’  
24 means a transaction in which eligible assets trans-  
25 ferred to an eligible entity are used as the source of



1 payment on securities, including, without limitation,  
2 all securities issued by governmental units, at least  
3 one class or tranche of which was rated investment  
4 grade by one or more nationally recognized securities  
5 rating organizations, when the securities were ini-  
6 tially issued by an issuer;

7 “(2) the term ‘eligible asset’ means—

8 “(A) financial assets (including interests  
9 therein and proceeds thereof), either fixed or re-  
10 volving, whether or not the same are in exist-  
11 ence as of the date of the transfer, including  
12 residential and commercial mortgage loans, con-  
13 sumer receivables, trade receivables, assets of  
14 governmental units, including payment obliga-  
15 tions relating to taxes, receipts, fines, tickets,  
16 and other sources of revenue, and lease receiv-  
17 ables, that, by their terms, convert into cash  
18 within a finite time period, plus any residual in-  
19 terest in property subject to receivables in-  
20 cluded in such financial assets plus any rights  
21 or other assets designed to assure the servicing  
22 or timely distribution of proceeds to security  
23 holders;

24 “(B) cash; and

1           “(C) securities, including without limita-  
2           tion, all securities issued by governmental units;

3           “(3) the term ‘eligible entity’ means—

4           “(A) an issuer; or

5           “(B) a trust, corporation, partnership, gov-  
6           ernmental unit, limited liability company (in-  
7           cluding a single member limited liability com-  
8           pany), or other entity engaged exclusively in the  
9           business of acquiring and transferring eligible  
10          assets directly or indirectly to an issuer and  
11          taking actions ancillary thereto;

12          “(4) the term ‘issuer’ means a trust, corpora-  
13          tion, partnership, or other entity engaged exclusively  
14          in the business of acquiring and holding eligible as-  
15          sets, issuing securities backed by eligible assets, and  
16          taking actions ancillary thereto; and

17          “(5) the term ‘transferred’ means the debtor,  
18          under a written agreement, represented and war-  
19          ranted that eligible assets were sold, contributed, or  
20          otherwise conveyed with the intention of removing  
21          them from the estate of the debtor pursuant to sub-  
22          section (b)(8) (whether or not reference is made to  
23          this title or any section hereof), irrespective and  
24          without limitation of—

1           “(A) whether the debtor directly or indi-  
2           rectly obtained or held an interest in the issuer  
3           or in any securities issued by the issuer;

4           “(B) whether the debtor had an obligation  
5           to repurchase or to service or supervise the  
6           servicing of all or any portion of such eligible  
7           assets; or

8           “(C) the characterization of such sale, con-  
9           tribution, or other conveyance for tax, account-  
10          ing, regulatory reporting, or other purposes.”.

11 **SEC. 913. EFFECTIVE DATE; APPLICATION OF AMEND-**  
12 **MENTS.**

13       (a) **EFFECTIVE DATE.**—This title shall take effect on  
14 the date of enactment of this Act.

15       (b) **APPLICATION OF AMENDMENTS.**—The amend-  
16 ments made by this title shall apply with respect to cases  
17 commenced or appointments made under any Federal or  
18 State law after the date of enactment of this Act, but shall  
19 not apply with respect to cases commenced or appoint-  
20 ments made under any Federal or State law before the  
21 date of enactment of this Act.

22           **TITLE X—PROTECTION OF**  
23           **FAMILY FARMERS**

24 **SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

25       (a) **REENACTMENT.**—



1           “(2) provide for the full payment, in deferred  
2 cash payments, of all claims entitled to priority  
3 under section 507, unless—

4           “(A) the claim is a claim owed to a govern-  
5 mental unit that arises as a result of the sale,  
6 transfer, exchange, or other disposition of any  
7 farm asset used in the debtor’s farming oper-  
8 ation, in which case the claim shall be treated  
9 as an unsecured claim that is not entitled to  
10 priority under section 507, but the debt shall be  
11 treated in such manner only if the debtor re-  
12 ceives a discharge; or

13           “(B) the holder of a particular claim  
14 agrees to a different treatment of that claim;”.

15       (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)  
16 of title 11, United States Code, as so designated by this  
17 Act, is amended by striking “a State or local governmental  
18 unit” and inserting “any governmental unit”.

## 19       **TITLE XI—HEALTH CARE AND** 20       **EMPLOYEE BENEFITS**

### 21       **SEC. 1101. DEFINITIONS.**

22       (a) HEALTH CARE BUSINESS DEFINED.—Section  
23 101 of title 11, United States Code, is amended—

24           (1) by redesignating paragraph (27A), as added  
25 by this Act, as paragraph (27B); and

1           (2) by inserting after paragraph (27) the fol-  
2           lowing:

3           “(27A) ‘health care business’—

4                   “(A) means any public or private entity  
5                   (without regard to whether that entity is orga-  
6                   nized for profit or not for profit) that is pri-  
7                   marily engaged in offering to the general public  
8                   facilities and services for—

9                           “(i) the diagnosis or treatment of in-  
10                           jury, deformity, or disease; and

11                           “(ii) surgical, drug treatment, psy-  
12                           chiatric, or obstetric care; and

13                   “(B) includes—

14                           “(i) any—

15                                   “(I) general or specialized hos-  
16                                   pital;

17                                   “(II) ancillary ambulatory, emer-  
18                                   gency, or surgical treatment facility;

19                                   “(III) hospice;

20                                   “(IV) home health agency; and

21                                   “(V) other health care institution  
22                                   that is similar to an entity referred to  
23                                   in subclause (I), (II), (III), or (IV);  
24                                   and

1                   “(ii) any long-term care facility, in-  
2                   cluding any—

3                               “(I) skilled nursing facility;

4                               “(II) intermediate care facility;

5                               “(III) assisted living facility;

6                               “(IV) home for the aged;

7                               “(V) domiciliary care facility; and

8                               “(VI) health care institution that  
9                   is related to a facility referred to in  
10                  subclause (I), (II), (III), (IV), or (V),  
11                  if that institution is primarily engaged  
12                  in offering room, board, laundry, or  
13                  personal assistance with activities of  
14                  daily living and incidentals to activi-  
15                  ties of daily living;”.

16           (b) PATIENT AND PATIENT RECORDS DEFINED.—  
17   Section 101 of title 11, United States Code, is amended  
18   by inserting after paragraph (40) the following:

19                   “(40A) ‘patient’ means any person who obtains  
20                  or receives services from a health care business;

21                   “(40B) ‘patient records’ means any written doc-  
22                  ument relating to a patient or a record recorded in  
23                  a magnetic, optical, or other form of electronic me-  
24                  dium;”.

1 (c) RULE OF CONSTRUCTION.—The amendments  
2 made by subsection (a) of this section shall not affect the  
3 interpretation of section 109(b) of title 11, United States  
4 Code.

5 **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

6 (a) IN GENERAL.—Subchapter III of chapter 3 of  
7 title 11, United States Code, is amended by adding at the  
8 end the following:

9 **“§ 351. Disposal of patient records**

10 “If a health care business commences a case under  
11 chapter 7, 9, or 11, and the trustee does not have a suffi-  
12 cient amount of funds to pay for the storage of patient  
13 records in the manner required under applicable Federal  
14 or State law, the following requirements shall apply:

15 “(1) The trustee shall—

16 “(A) promptly publish notice, in 1 or more  
17 appropriate newspapers, that if patient records  
18 are not claimed by the patient or an insurance  
19 provider (if applicable law permits the insur-  
20 ance provider to make that claim) by the date  
21 that is 365 days after the date of that notifica-  
22 tion, the trustee will destroy the patient  
23 records; and

24 “(B) during the first 180 days of the 365-  
25 day period described in subparagraph (A),



1            promptly attempt to notify directly each patient  
2            that is the subject of the patient records and  
3            appropriate insurance carrier concerning the  
4            patient records by mailing to the last known ad-  
5            dress of that patient, or a family member or  
6            contact person for that patient, and to the ap-  
7            propriate insurance carrier an appropriate no-  
8            tice regarding the claiming or disposing of pa-  
9            tient records.

10           “(2) If, after providing the notification under  
11           paragraph (1), patient records are not claimed dur-  
12           ing the 365-day period described under that para-  
13           graph, the trustee shall mail, by certified mail, at  
14           the end of such 365-day period a written request to  
15           each appropriate Federal agency to request permis-  
16           sion from that agency to deposit the patient records  
17           with that agency, except that no Federal agency is  
18           required to accept patient records under this para-  
19           graph.

20           “(3) If, following the 365-day period described  
21           in paragraph (2) and after providing the notification  
22           under paragraph (1), patient records are not claimed  
23           by a patient or insurance provider, or request is not  
24           granted by a Federal agency to deposit such records

1 with that agency, the trustee shall destroy those  
2 records by—

3 “(A) if the records are written, shredding  
4 or burning the records; or

5 “(B) if the records are magnetic, optical,  
6 or other electronic records, by otherwise de-  
7 stroying those records so that those records  
8 cannot be retrieved.”.

9 (b) CLERICAL AMENDMENT.—The table of sections  
10 for chapter 3 of title 11, United States Code, is amended  
11 by inserting after the item relating to section 350 the fol-  
12 lowing:

“351. Disposal of patient records.”.

13 **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**  
14 **OF CLOSING A HEALTH CARE BUSINESS AND**  
15 **OTHER ADMINISTRATIVE EXPENSES.**

16 Section 503(b) of title 11, United States Code, as  
17 amended by this Act, is amended by adding at the end  
18 the following:

19 “(8) the actual, necessary costs and expenses of  
20 closing a health care business incurred by a trustee  
21 or by a Federal agency (as that term is defined in  
22 section 551(1) of title 5) or a department or agency  
23 of a State or political subdivision thereof, including  
24 any cost or expense incurred—

1           “(A) in disposing of patient records in ac-  
2           cordance with section 351; or

3           “(B) in connection with transferring pa-  
4           tients from the health care business that is in  
5           the process of being closed to another health  
6           care business;

7           “(9) with respect to a nonresidential real prop-  
8           erty lease previously assumed under section 365,  
9           and subsequently rejected, a sum equal to all mone-  
10          tary obligations due, excluding those arising from or  
11          related to a failure to operate or penalty provisions,  
12          for the period of 2 years following the later of the  
13          rejection date or date of actual turnover of the  
14          premises, without reduction or setoff for any reason  
15          whatsoever except for sums actually received or to be  
16          received from a nondebtor, and the claim for remain-  
17          ing sums due for the balance of the term of the lease  
18          shall be a claim under section 502(b)(6); and”.

19 **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**  
20 **TIENT ADVOCATE.**

21           (a) IN GENERAL.—

22           (1) APPOINTMENT OF OMBUDSMAN.—Sub-  
23          chapter II of chapter 3 of title 11, United States  
24          Code, is amended by inserting after section 331 the  
25          following:

1 **“§ 332. Appointment of ombudsman**

2 “(a) IN GENERAL.—

3 “(1) AUTHORITY TO APPOINT.—Not later than  
4 30 days after a case is commenced by a health care  
5 business under chapter 7, 9, or 11, the court shall  
6 order the appointment of an ombudsman to monitor  
7 the quality of patient care to represent the interests  
8 of the patients of the health care business, unless  
9 the court finds that the appointment of the ombuds-  
10 man is not necessary for the protection of patients  
11 under the specific facts of the case.

12 “(2) QUALIFICATIONS.—If the court orders the  
13 appointment of an ombudsman, the United States  
14 trustee shall appoint 1 disinterested person, other  
15 than the United States trustee, to serve as an om-  
16 budsman, including a person who is serving as a  
17 State Long-Term Care Ombudsman appointed under  
18 title III or VII of the Older Americans Act of 1965  
19 (42 U.S.C. 3021 et seq., 3058 et seq.).

20 “(b) DUTIES.—An ombudsman appointed under sub-  
21 section (a) shall—

22 “(1) monitor the quality of patient care, to the  
23 extent necessary under the circumstances, including  
24 interviewing patients and physicians;

25 “(2) not later than 60 days after the date of  
26 appointment, and not less frequently than every 60

1 days thereafter, report to the court, at a hearing or  
2 in writing, regarding the quality of patient care at  
3 the health care business involved; and

4 “(3) if the ombudsman determines that the  
5 quality of patient care is declining significantly or is  
6 otherwise being materially compromised, notify the  
7 court by motion or written report, with notice to ap-  
8 propriate parties in interest, immediately upon mak-  
9 ing that determination.

10 “(c) CONFIDENTIALITY.—An ombudsman shall main-  
11 tain any information obtained by the ombudsman under  
12 this section that relates to patients (including information  
13 relating to patient records) as confidential information.  
14 The ombudsman may not review confidential patient  
15 records, unless the court provides prior approval, with re-  
16 strictions on the ombudsman to protect the confidentiality  
17 of patient records.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-  
19 tions for chapter 3 of title 11, United States Code,  
20 is amended by inserting after the item relating to  
21 section 331 the following:

“332. Appointment of ombudsman.”.

22 (b) COMPENSATION OF OMBUDSMAN.—Section  
23 330(a)(1) of title 11, United States Code, is amended—

1 (1) in the matter proceeding subparagraph (A),  
2 by inserting “an ombudsman appointed under sec-  
3 tion 331, or” before “a professional person”; and

4 (2) in subparagraph (A), by inserting “ombuds-  
5 man,” before “professional person”.

6 **SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**  
7 **TRANSFER PATIENTS.**

8 (a) IN GENERAL.—Section 704(a) of title 11, United  
9 States Code, as amended by this Act, is amended by add-  
10 ing at the end the following:

11 “(11) use all reasonable and best efforts to  
12 transfer patients from a health care business that is  
13 in the process of being closed to an appropriate  
14 health care business that—

15 “(A) is in the vicinity of the health care  
16 business that is closing;

17 “(B) provides the patient with services  
18 that are substantially similar to those provided  
19 by the health care business that is in the proc-  
20 ess of being closed; and

21 “(C) maintains a reasonable quality of  
22 care.”.

23 (b) CONFORMING AMENDMENT.—Section 1106(a)(1)  
24 of title 11, United States Code, is amended by striking  
25 “sections 704(2), 704(5), 704(7), 704(8), and 704(9)”

1 and inserting “paragraphs (2), (5), (7), (8), (9), and (11)  
2 of section 704(a)”.

3 **SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION**

4 **NOT SUBJECT TO AUTOMATIC STAY.**

5 Section 362(b) of title 11, United States Code, is  
6 amended by inserting after paragraph (28), as added by  
7 this Act, the following:

8 “(29) under subsection (a), of the exclusion by  
9 the Secretary of Health and Human Services of the  
10 debtor from participation in the medicare program  
11 or any other Federal health care program (as de-  
12 fined in section 1128B(f) of the Social Security Act  
13 (42 U.S.C. 1320a–7b(f)) pursuant to title XI of  
14 such Act (42 U.S.C. 1301 et seq.) or title XVIII of  
15 such Act (42 U.S.C. 1395 et seq.).”.

16 **TITLE XII—TECHNICAL**  
17 **AMENDMENTS**

18 **SEC. 1201. DEFINITIONS.**

19 Section 101 of title 11, United States Code, as  
20 amended by this Act, is amended—

21 (1) by striking “In this title—” and inserting  
22 “In this title the following definitions shall apply:”;

23 (2) in each paragraph, by inserting “The term”  
24 after the paragraph designation;

1 (3) in paragraph (35)(B), by striking “para-  
2 graphs (21B) and (33)(A)” and inserting “para-  
3 graphs (23) and (35)”;

4 (4) in each of paragraphs (35A) and (38), by  
5 striking “; and” at the end and inserting a period;

6 (5) in paragraph (51B)—

7 (A) by inserting “who is not a family farm-  
8 er” after “debtor” the first place it appears;  
9 and

10 (B) by striking “thereto having aggregate”  
11 and all that follows through the end of the  
12 paragraph;

13 (6) by striking paragraph (54) and inserting  
14 the following:

15 “(54) The term ‘transfer’ means—

16 “(A) the creation of a lien;

17 “(B) the retention of title as a security in-  
18 terest;

19 “(C) the foreclosure of a debtor’s equity of  
20 redemption; or

21 “(D) each mode, direct or indirect, abso-  
22 lute or conditional, voluntary or involuntary, of  
23 disposing of or parting with—

24 “(i) property; or

25 “(ii) an interest in property.”; and



1           (7) in each of paragraphs (1) through (35), in  
2           each of paragraphs (36) and (37), and in each of  
3           paragraphs (40) through (55), by striking the semi-  
4           colon at the end and inserting a period.

5 **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

6           Section 104 of title 11, United States Code, as  
7           amended by section 322 of this Act, is amended by insert-  
8           ing “522(f)(3),” after “522(d),” each place it appears.

9 **SEC. 1203. 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. 1204. 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. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
20                         **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
21                         **TITIONS.**

22          Section 110(j)(4) of title 11, United States Code, as  
23          so designated by this Act, is amended by striking “attor-  
24          ney’s” and inserting “attorneys’ ”.

1 **SEC. 1206. 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. 1207. EFFECT OF CONVERSION.**

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

10 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

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

14 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

15 Section 523 of title 11, United States Code, as  
16 amended by this Act, is amended—

17 (1) by transferring paragraph (15), as added by  
18 section 304(e) of Public Law 103–394 (108 Stat.  
19 4133), so as to insert such paragraph after sub-  
20 section (a)(14);

21 (2) in subsection (a)(9), by striking “motor ve-  
22 hicle” and inserting “motor vehicle, vessel, or air-  
23 craft”; and

24 (3) in subsection (e), by striking “a insured”  
25 and inserting “an insured”.

1 **SEC. 1210. EFFECT OF DISCHARGE.**

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

6 **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
7 **MENT.**

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

10 (1) in paragraph (1), by inserting “student” be-  
11 fore “grant” the second place it appears; and

12 (2) in paragraph (2), by striking “the program  
13 operated under part B, D, or E of” and inserting  
14 “any program operated under”.

15 **SEC. 1212. PROPERTY OF THE ESTATE.**

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

18 **SEC. 1213. PREFERENCES.**

19 (a) IN GENERAL.—Section 547 of title 11, United  
20 States Code, as amended by this Act, is amended—

21 (1) in subsection (b), by striking “subsection  
22 (c)” and inserting “subsections (c) and (i)”; and

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

24 “(i) If the trustee avoids under subsection (b) a  
25 transfer made between 90 days and 1 year before the date  
26 of the filing of the petition, by the debtor to an entity

1 that is not an insider for the benefit of a creditor that  
2 is an insider, such transfer shall be considered to be avoid-  
3 ed under this section only with respect to the creditor that  
4 is an insider.”.

5 (b) APPLICABILITY.—The amendments made by this  
6 section shall apply to any case that is pending or com-  
7 menced on or after the date of enactment of this Act.

8 **SEC. 1214. POSTPETITION TRANSACTIONS.**

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

11 (1) by inserting “an interest in” after “transfer  
12 of” each place it appears;

13 (2) by striking “such property” and inserting  
14 “such real property”; and

15 (3) by striking “the interest” and inserting  
16 “such interest”.

17 **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

20 **SEC. 1216. GENERAL PROVISIONS.**

21 Section 901(a) of title 11, United States Code, as  
22 amended by this Act, is amended by inserting “1123(d),”  
23 after “1123(b),”.

1 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

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

5 **SEC. 1218. CONTENTS OF PLAN.**

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

9 **SEC. 1219. DISCHARGE UNDER CHAPTER 12.**

10 Subsections (a) and (c) of section 1228 of title 11,  
11 United States Code, are amended by striking  
12 “1222(b)(10)” each place it appears and inserting  
13 “1222(b)(9)”.

14 **SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.**

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

17 (1) by striking “made under this subsection”  
18 and inserting “made under subsection (c)”; and

19 (2) by striking “This subsection” and inserting  
20 “Subsection (c) and this subsection”.

21 **SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
22 **RULE.**

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

25 (1) in the first undesignated paragraph—

1 (A) by inserting “(1) the term” before  
2 “bankruptcy”; and

3 (B) by striking the period at the end and  
4 inserting “; and”; and  
5 (2) in the second undesignated paragraph—

6 (A) by inserting “(2) the term” before  
7 “document”; and

8 (B) by striking “this title” and inserting  
9 “title 11”.

10 **SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
11 **CORPORATIONS.**

12 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
13 of title 11, United States Code, is amended by striking  
14 “only” and all that follows through the end of the sub-  
15 section and inserting “only—

16 “(1) in accordance with applicable nonbank-  
17 ruptcy law that governs the transfer of property by  
18 a corporation or trust that is not a moneyed, busi-  
19 ness, or commercial corporation or trust; and

20 “(2) to the extent not inconsistent with any re-  
21 lief granted under subsection (c), (d), (e), or (f) of  
22 section 362.”.

23 (b) CONFIRMATION OF PLAN FOR REORGANIZA-  
24 TION.—Section 1129(a) of title 11, United States Code,

1 as amended by this Act, is amended by adding at the end  
2 the following:

3           “(16) All transfers of property of the plan shall  
4           be made in accordance with any applicable provi-  
5           sions of nonbankruptcy law that govern the transfer  
6           of property by a corporation or trust that is not a  
7           moneyed, business, or commercial corporation or  
8           trust.”.

9           (c) TRANSFER OF PROPERTY.—Section 541 of title  
10 11, United States Code, as amended by this Act, is  
11 amended by adding at the end the following:

12           “(g) Notwithstanding any other provision of this title,  
13 property that is held by a debtor that is a corporation de-  
14 scribed in section 501(c)(3) of the Internal Revenue Code  
15 of 1986 and exempt from tax under section 501(a) of such  
16 Code may be transferred to an entity that is not such a  
17 corporation, but only under the same conditions as would  
18 apply if the debtor had not filed a case under this title.”.

19           (d) APPLICABILITY.—The amendments made by this  
20 section shall apply to a case pending under title 11, United  
21 States Code, on the date of enactment of this Act, or filed  
22 under that title on or after that date of enactment, except  
23 that the court shall not confirm a plan under chapter 11  
24 of title 11, United States Code, without considering  
25 whether this section would substantially affect the rights

1 of a party in interest who first acquired rights with respect  
2 to the debtor after the date of the petition. The parties  
3 who may appear and be heard in a proceeding under this  
4 section include the attorney general of the State in which  
5 the debtor is incorporated, was formed, or does business.

6 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
7 tion shall be construed to require the court in which a  
8 case under chapter 11 of title 11, United States Code, is  
9 pending to remand or refer any proceeding, issue, or con-  
10 troversy to any other court or to require the approval of  
11 any other court for the transfer of property.

12 **SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SE-**  
13 **CURITY INTERESTS.**

14 Section 547(c)(3)(B) of title 11, United States Code,  
15 is amended by striking “20” and inserting “30”.

16 **SEC. 1224. EXTENSIONS.**

17 Section 302(d)(3) of the Bankruptcy, Judges, United  
18 States Trustees, and Family Farmer Bankruptcy Act of  
19 1986 (28 U.S.C. 581 note) is amended—

20 (1) in subparagraph (A), in the matter fol-  
21 lowing clause (ii), by striking “or October 1, 2002,  
22 whichever occurs first”; and

23 (2) in subparagraph (F)—

24 (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. 1225. BANKRUPTCY JUDGESHIPS.**

14 (a) **SHORT TITLE.**—This section may be cited as the  
15 “Bankruptcy Judgeship Act of 2000”.

16 (b) **TEMPORARY JUDGESHIPS.**—

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

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

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

1           (C) One additional bankruptcy judgeship  
2 for the district of Delaware.

3           (D) Two additional bankruptcy judgeships  
4 for the southern district of Florida.

5           (E) One additional bankruptcy judgeship  
6 for the southern district of Georgia.

7           (F) Two additional bankruptcy judgeships  
8 for the district of Maryland.

9           (G) One additional bankruptcy judgeship  
10 for the eastern district of Michigan.

11          (H) One additional bankruptcy judgeship  
12 for the southern district of Mississippi.

13          (I) One additional bankruptcy judgeship  
14 for the district of New Jersey.

15          (J) One additional bankruptcy judgeship  
16 for the eastern district of New York.

17          (K) One additional bankruptcy judgeship  
18 for the northern district of New York.

19          (L) One additional bankruptcy judgeship  
20 for the southern district of New York.

21          (M) One additional bankruptcy judgeship  
22 for the eastern district of North Carolina.

23          (N) One additional bankruptcy judgeship  
24 for the eastern district of Pennsylvania.

1           (O) One additional bankruptcy judgeship  
2           for the middle district of Pennsylvania.

3           (P) One additional bankruptcy judgeship  
4           for the district of Puerto Rico.

5           (Q) One additional bankruptcy judgeship  
6           for the western district of Tennessee.

7           (R) One additional bankruptcy judgeship  
8           for the eastern district of Virginia.

9           (2) VACANCIES.—The first vacancy occurring in  
10          the office of a bankruptcy judge in each of the judi-  
11          cial districts set forth in paragraph (1) shall not be  
12          filled if the vacancy—

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

15                 (B) occurs 5 years or more after the ap-  
16                 pointment date of a bankruptcy judge ap-  
17                 pointed under paragraph (1).

18          (c) EXTENSIONS.—

19                 (1) IN GENERAL.—The temporary bankruptcy  
20          judgeship positions authorized for the northern dis-  
21          trict of Alabama, the district of Delaware, the dis-  
22          trict of Puerto Rico, the district of South Carolina,  
23          and the eastern district of Tennessee under para-  
24          graphs (1), (3), (7), (8), and (9) of section 3(a) of  
25          the Bankruptcy Judgeship Act of 1992 (28 U.S.C.

1 152 note) are extended until the first vacancy occur-  
2 ring in the office of a bankruptcy judge in the appli-  
3 cable district resulting from the death, retirement,  
4 resignation, or removal of a bankruptcy judge and  
5 occurring—

6 (A) 8 years or more after November 8,  
7 1993, with respect to the northern district of  
8 Alabama;

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

11 (C) 8 years or more after August 29,  
12 1994, with respect to the district of Puerto  
13 Rico;

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

17 (E) 8 years or more after November 23,  
18 1993, with respect to the eastern district of  
19 Tennessee.

20 (2) APPLICABILITY OF OTHER PROVISIONS.—

21 All other provisions of section 3 of the Bankruptcy  
22 Judgeship Act of 1992 (28 U.S.C. 152 note) remain  
23 applicable to temporary judgeship positions referred  
24 to in this subsection.

1 (d) TECHNICAL AMENDMENTS.—Section 152(a) of  
2 title 28, United States Code, is amended—

3 (1) in paragraph (1), by striking the first sen-  
4 tence and inserting the following: “Each bankruptcy  
5 judge to be appointed for a judicial district, as pro-  
6 vided in paragraph (2), shall be appointed by the  
7 United States court of appeals for the circuit in  
8 which such district is located.”; and

9 (2) in paragraph (2)—

10 (A) in the item relating to the middle dis-  
11 trict of Georgia, by striking “2” and inserting  
12 “3”; and

13 (B) in the collective item relating to the  
14 middle and southern districts of Georgia, by  
15 striking “Middle and Southern . . . . . 1”.

16 (e) EFFECTIVE DATE.—The amendments made by  
17 this section shall take effect on the date of enactment of  
18 this Act.

19 **SEC. 1226. COMPENSATING TRUSTEES.**

20 Section 1326 of title 11, United States Code, is  
21 amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1), by striking “and”;

24 (B) in paragraph (2), by striking the pe-  
25 riod at the end and inserting “; and”; and

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

2 “(3) if a chapter 7 trustee has been allowed  
3 compensation due to the conversion or dismissal of  
4 the debtor’s prior case pursuant to section 707(b),  
5 and some portion of that compensation remains un-  
6 paid in a case converted to this chapter or in the  
7 case dismissed under section 707(b) and refiled  
8 under this chapter, the amount of any such unpaid  
9 compensation, which shall be paid monthly—

10 “(A) by prorating such amount over the  
11 remaining duration of the plan; and

12 “(B) by monthly payments not to exceed  
13 the greater of—

14 “(i) \$25; or

15 “(ii) the amount payable to unsecured  
16 nonpriority creditors, as provided by the  
17 plan, multiplied by 5 percent, and the re-  
18 sult divided by the number of months in  
19 the plan.”; and

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

21 “(d) Notwithstanding any other provision of this  
22 title—

23 “(1) compensation referred to in subsection  
24 (b)(3) is payable and may be collected by the trustee

1 under that paragraph, even if such amount has been  
2 discharged in a prior proceeding under this title; and

3 “(2) such compensation is payable in a case  
4 under this chapter only to the extent permitted by  
5 subsection (b)(3).”.

6 **SEC. 1227. AMENDMENT TO SECTION 362 OF TITLE 11,**  
7 **UNITED STATES CODE.**

8 Section 362(b)(18) of title 11, United States Code,  
9 is amended to read as follows:

10 “(18) under subsection (a) of the creation or  
11 perfection of a statutory lien for an ad valorem  
12 property tax, or a special tax or special assessment  
13 on real property whether or not ad valorem, imposed  
14 by a governmental unit, if such tax or assessment  
15 comes due after the filing of the petition;”.

16 **SEC. 1228. JUDICIAL EDUCATION.**

17 The Director of the Federal Judicial Center, in con-  
18 sultation with the Director of the Executive Office for  
19 United States Trustees, shall develop materials and con-  
20 duct such training as may be useful to courts in imple-  
21 menting this Act and the amendments made by this Act,  
22 including the requirements relating to the means test and  
23 reaffirmations under section 707(b) of title 11, United  
24 States Code, as amended by this Act.

1 **SEC. 1229. RECLAMATION.**

2 (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-  
3 tion 546(c) of title 11, United States Code, is amended  
4 to read as follows:

5 “(c)(1) Except as provided in subsection (d) of this  
6 section and subsection (c) of section 507, and subject to  
7 the prior rights of holders of security interests in such  
8 goods or the proceeds thereof, the rights and powers of  
9 the trustee under sections 544(a), 545, 547, and 549 are  
10 subject to the right of a seller of goods that has sold goods  
11 to the debtor, in the ordinary course of such seller’s busi-  
12 ness, to reclaim such goods if the debtor has received such  
13 goods while insolvent, not later than 45 days after the date  
14 of the commencement of a case under this title, but such  
15 seller may not reclaim such goods unless such seller de-  
16 mands in writing reclamation of such goods—

17 “(A) not later than 45 days after the date of  
18 receipt of such goods by the debtor; or

19 “(B) not later than 20 days after the date of  
20 commencement of the case, if the 45-day period ex-  
21 pires after the commencement of the case.

22 “(2) If a seller of goods fails to provide notice in the  
23 manner described in paragraph (1), the seller still may  
24 assert the rights contained in section 503(b)(7).”.



1 (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of  
2 title 11, United States Code, as amended by this Act, is  
3 amended by adding at the end the following:

4 “(10) the value of any goods received by the  
5 debtor not later than 20 days after the date of com-  
6 mencement of a case under this title in which the  
7 goods have been sold to the debtor in the ordinary  
8 course of such debtor’s business.”.

9 **SEC. 1230. PROVIDING REQUESTED TAX DOCUMENTS TO**  
10 **THE COURT.**

11 (a) CHAPTER 7 CASES.—The court shall not grant  
12 a discharge in the case of an individual seeking bank-  
13 ruptcy under chapter 7 of title 11, United States Code,  
14 unless requested tax documents have been provided to the  
15 court.

16 (b) CHAPTER 11 AND CHAPTER 13 CASES.—The  
17 court shall not confirm a plan of reorganization in the case  
18 of an individual under chapter 11 or 13 of title 11, United  
19 States Code, unless requested tax documents have been  
20 filed with the court.

21 (c) DOCUMENT RETENTION.—The court shall de-  
22 stroy documents submitted in support of a bankruptcy  
23 claim not sooner than 3 years after the date of the conclu-  
24 sion of a bankruptcy case filed by an individual under  
25 chapter 7, 11, or 13 of title 11, United States Code. In

1 the event of a pending audit or enforcement action, the  
2 court may extend the time for destruction of such re-  
3 quested tax documents.

4 **SEC. 1231. ENCOURAGING CREDITWORTHINESS.**

5 (a) SENSE OF THE CONGRESS.—It is the sense of the  
6 Congress that—

7 (1) certain lenders may sometimes offer credit  
8 to consumers indiscriminately, without taking steps  
9 to ensure that consumers are capable of repaying  
10 the resulting debt, and in a manner which may en-  
11 courage certain consumers to accumulate additional  
12 debt; and

13 (2) resulting consumer debt may increasingly be  
14 a major contributing factor to consumer insolvency.

15 (b) STUDY REQUIRED.—The Board of Governors of  
16 the Federal Reserve System (hereafter in this section re-  
17 ferred to as the “Board”) shall conduct a study of—

18 (1) consumer credit industry practices of solici-  
19 ting and extending credit—

20 (A) indiscriminately;

21 (B) without taking steps to ensure that  
22 consumers are capable of repaying the resulting  
23 debt; and

24 (C) in a manner that encourages con-  
25 sumers to accumulate additional debt; and

1           (2) the effects of such practices on consumer  
2           debt and insolvency.

3           (c) REPORT AND REGULATIONS.—Not later than 12  
4           months after the date of enactment of this Act, the  
5           Board—

6           (1) shall make public a report on its findings  
7           with respect to the indiscriminate solicitation and  
8           extension of credit by the credit industry;

9           (2) may issue regulations that would require  
10          additional disclosures to consumers; and

11          (3) may take any other actions, consistent with  
12          its existing statutory authority, that the Board finds  
13          necessary to ensure responsible industrywide prac-  
14          tices and to prevent resulting consumer debt and in-  
15          solvency.

16 **SEC. 1232. PROPERTY NO LONGER SUBJECT TO REDEMP-**  
17 **TION.**

18          Section 541(b) of title 11, United States Code, is  
19          amended by inserting after paragraph (8), as added by  
20          this Act, the following:

21                 “(9) subject to subchapter III of chapter 5, any  
22          interest of the debtor in property where the debtor  
23          pledged or sold tangible personal property (other  
24          than securities or written or printed evidences of in-  
25          debtedness or title) as collateral for a loan or ad-

1 vance of money given by a person licensed under law  
2 to make such loans or advances, where—

3 “(A) the tangible personal property is in  
4 the possession of the pledgee or transferee;

5 “(B) the debtor has no obligation to repay  
6 the money, redeem the collateral, or buy back  
7 the property at a stipulated price; and

8 “(C) neither the debtor nor the trustee  
9 have exercised any right to redeem provided  
10 under the contract or State law, in a timely  
11 manner as provided under State law and sec-  
12 tion 108(b) of this title; or”.

13 **SEC. 1233. TRUSTEES.**

14 (a) **SUSPENSION AND TERMINATION OF PANEL**  
15 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of  
16 title 28, United States Code, is amended—

17 (1) by inserting “(1)” after “(d)”; and

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

19 “(2) A trustee whose appointment under subsection  
20 (a)(1) or under subsection (b) is terminated or who ceases  
21 to be assigned to cases filed under title 11, United States  
22 Code, may obtain judicial review of the final agency deci-  
23 sion by commencing an action in the United States district  
24 court for the district for which the panel to which the  
25 trustee is appointed under subsection (a)(1), or in the

1 United States district court for the district in which the  
2 trustee is appointed under subsection (b) resides, after  
3 first exhausting all available administrative remedies,  
4 which if the trustee so elects, shall also include an admin-  
5 istrative hearing on the record. Unless the trustee elects  
6 to have an administrative hearing on the record, the trust-  
7 ee shall be deemed to have exhausted all administrative  
8 remedies for purposes of this paragraph if the agency fails  
9 to make a final agency decision within 90 days after the  
10 trustee requests administrative remedies. The Attorney  
11 General shall prescribe procedures to implement this para-  
12 graph. The decision of the agency shall be affirmed by  
13 the district court unless it is unreasonable and without  
14 cause based on the administrative record before the agen-  
15 cy.”.

16 (b) EXPENSES OF STANDING TRUSTEES.—Section  
17 586(e) of title 28, United States Code, is amended by add-  
18 ing at the end the following:

19 “(3) After first exhausting all available administra-  
20 tive remedies, an individual appointed under subsection  
21 (b) may obtain judicial review of final agency action to  
22 deny a claim of actual, necessary expenses under this sub-  
23 section by commencing an action in the United States dis-  
24 trict court in the district where the individual resides. The  
25 decision of the agency shall be affirmed by the district

1 court unless it is unreasonable and without cause based  
2 upon the administrative record before the agency.

3 “(4) The Attorney General shall prescribe procedures  
4 to implement this subsection.”.

5 **SEC. 1234. BANKRUPTCY FORMS.**

6 Section 2075 of title 28, United States Code, is  
7 amended by adding at the end the following:

8 “The bankruptcy rules promulgated under this section  
9 shall prescribe a form for the statement required under  
10 section 707(b)(2)(C) of title 11 and may provide general  
11 rules on the content of such statement.”.

12 **SEC. 1235. EXPEDITED APPEALS OF BANKRUPTCY CASES**  
13 **TO COURTS OF APPEALS.**

14 (a) IN GENERAL.—Section 158 of title 28, United  
15 States Code, is amended—

16 (1) by striking subsection (d) and inserting the  
17 following:

18 “(d)(1) In a case in which the appeal is heard by the  
19 district court, the judgment, decision, order, or decree of  
20 the bankruptcy judge shall be deemed a judgment, deci-  
21 sion, order, or decree of the district court entered 31 days  
22 after such appeal is filed with the district court, unless  
23 not later than 30 days after such appeal is filed with the  
24 district court—

25 “(A) the district court—

1           “(i) files a decision on the appeal from the  
2 judgment, decision, order, or decree of the  
3 bankruptcy judge; or

4           “(ii) enters an order extending such 30-day  
5 period for cause upon motion of a party or  
6 upon the court’s own motion; or

7           “(B) all parties to the appeal file written con-  
8 sent that the district court may retain such appeal  
9 until it enters a decision.

10          “(2) For the purpose of this subsection, an appeal  
11 shall be considered filed with the district court on the date  
12 on which the notice of appeal is filed, except that in a  
13 case in which the appeal is heard by the district court be-  
14 cause a party has made an election under subsection  
15 (c)(1)(B), the appeal shall be considered filed with the dis-  
16 trict court on the date on which such election is made.

17          “(e) The courts of appeals shall have jurisdiction of  
18 appeals from—

19           “(1) all final judgments, decisions, orders, and  
20 decrees of district courts entered under subsection  
21 (a);

22           “(2) all final judgments, decisions, orders, and  
23 decrees of bankruptcy appellate panels entered under  
24 subsection (b); and

1           “(3) all judgments, decisions, orders, and de-  
2           crees of district courts entered under subsection (d)  
3           to the extent that such judgments, decisions, orders,  
4           and decrees would be reviewable by a district court  
5           under subsection (a).

6           “(f) In accordance with rules prescribed by the Su-  
7           preme Court of the United States under sections 2072  
8           through 2077, the court of appeals may, in its discretion,  
9           exercise jurisdiction over an appeal from an interlocutory  
10          judgment, decision, order, or decree under subsection  
11          (e)(3).”.

12          (b) **TECHNICAL AND CONFORMING AMENDMENTS.—**

13               (1) Section 305(e) of title 11, United States  
14               Code, is amended by striking “section 158(d)” and  
15               inserting “subsection (e) or (f) of section 158”.

16               (2) Section 1334(d) of title 28, United States  
17               Code, is amended by striking “section 158(d)” and  
18               inserting “subsection (e) or (f) of section 158”.

19               (3) Section 1452(b) of title 28, United States  
20               Code, is amended by striking “section 158(d)” and  
21               inserting “subsection (e) or (f) of section 158”.

22          **SEC. 1236. EXEMPTIONS.**

23               Section 522(g)(2) of title 11, United States Code, is  
24               amended by striking “subsection (f)(2)” and inserting  
25               “subsection (f)(1)(B)”.



1 **TITLE XIII—CONSUMER CREDIT**  
2 **DISCLOSURE**

3 **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**  
4 **CREDIT PLAN.**

5 (a) **MINIMUM PAYMENT DISCLOSURES.**—Section  
6 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))  
7 is amended by adding at the end the following:

8 “(11)(A) In the case of an open end credit plan  
9 that requires a minimum monthly payment of not  
10 more than 4 percent of the balance on which finance  
11 charges are accruing, the following statement, lo-  
12 cated on the front of the billing statement, disclosed  
13 clearly and conspicuously: ‘Minimum Payment  
14 Warning: Making only the minimum payment will  
15 increase the interest you pay and the time it takes  
16 to repay your balance. For example, making only the  
17 typical 2% minimum monthly payment on a balance  
18 of \$1,000 at an interest rate of 17% would take 88  
19 months to repay the balance in full. For an estimate  
20 of the time it would take to repay your balance,  
21 making only minimum payments, call this toll-free  
22 number: \_\_\_\_\_.’ (the blank space to be  
23 filled in by the creditor).

24 “(B) In the case of an open end credit plan  
25 that requires a minimum monthly payment of more

1 than 4 percent of the balance on which finance  
2 charges are accruing, the following statement, in a  
3 prominent location on the front of the billing state-  
4 ment, disclosed clearly and conspicuously: ‘Minimum  
5 Payment Warning: Making only the required min-  
6 imum payment will increase the interest you pay and  
7 the time it takes to repay your balance. Making a  
8 typical 5% minimum monthly payment on a balance  
9 of \$300 at an interest rate of 17% would take 24  
10 months to repay the balance in full. For an estimate  
11 of the time it would take to repay your balance,  
12 making only minimum monthly payments, call this  
13 toll-free number: \_\_\_\_\_.’ (the blank space to  
14 be filled in by the creditor).

15 “(C) Notwithstanding subparagraphs (A) and  
16 (B), in the case of a creditor with respect to which  
17 compliance with this title is enforced by the Federal  
18 Trade Commission, the following statement, in a  
19 prominent location on the front of the billing state-  
20 ment, disclosed clearly and conspicuously: ‘Minimum  
21 Payment Warning: Making only the required min-  
22 imum payment will increase the interest you pay and  
23 the time it takes to repay your balance. For exam-  
24 ple, making only the typical 5% minimum monthly  
25 payment on a balance of \$300 at an interest rate of

1 17% would take 24 months to repay the balance in  
2 full. For an estimate of the time it would take to  
3 repay your balance, making only minimum monthly  
4 payments, call the Federal Trade Commission at  
5 this toll-free number: \_\_\_\_\_.’ (the blank  
6 space to be filled in by the creditor). A creditor who  
7 is subject to this subparagraph shall not be subject  
8 to subparagraph (A) or (B).

9 “(D) Notwithstanding subparagraph (A), (B),  
10 or (C), in complying with any such subparagraph, a  
11 creditor may substitute an example based on an in-  
12 terest rate that is greater than 17 percent. Any  
13 creditor that is subject to subparagraph (B) may  
14 elect to provide the disclosure required under sub-  
15 paragraph (A) in lieu of the disclosure required  
16 under subparagraph (B).

17 “(E) The Board shall, by rule, periodically re-  
18 calculate, as necessary, the interest rate and repay-  
19 ment period under subparagraphs (A), (B), and (C).

20 “(F)(i) The toll-free telephone number disclosed  
21 by a creditor or the Federal Trade Commission  
22 under subparagraph (A), (B), or (G), as appro-  
23 priate, may be a toll-free telephone number estab-  
24 lished and maintained by the creditor or the Federal  
25 Trade Commission, as appropriate, or may be a toll-

1 free telephone number established and maintained  
2 by a third party for use by the creditor or multiple  
3 creditors or the Federal Trade Commission, as ap-  
4 propriate. The toll-free telephone number may con-  
5 nect consumers to an automated device through  
6 which consumers may obtain information described  
7 in subparagraph (A), (B), or (C), by inputting infor-  
8 mation using a touch-tone telephone or similar de-  
9 vice, if consumers whose telephones are not equipped  
10 to use such automated device are provided the op-  
11 portunity to be connected to an individual from  
12 whom the information described in subparagraph  
13 (A), (B), or (C), as applicable, may be obtained. A  
14 person that receives a request for information de-  
15 scribed in subparagraph (A), (B), or (C) from an ob-  
16 ligor through the toll-free telephone number dis-  
17 closed under subparagraph (A), (B), or (C), as ap-  
18 plicable, shall disclose in response to such request  
19 only the information set forth in the table promul-  
20 gated by the Board under subparagraph (H)(i).

21 “(ii)(I) The Board shall establish and maintain  
22 for a period not to exceed 24 months following the  
23 effective date of the Bankruptcy Reform Act of  
24 2000, a toll-free telephone number, or provide a toll-  
25 free telephone number established and maintained

1 by a third party, for use by creditors that are depos-  
2 itory institutions (as defined in section 3 of the Fed-  
3 eral Deposit Insurance Act), including a Federal  
4 credit union or State credit union (as defined in sec-  
5 tion 101 of the Federal Credit Union Act (12 U.S.C.  
6 1752)), with total assets not exceeding  
7 \$250,000,000. The toll-free telephone number may  
8 connect consumers to an automated device through  
9 which consumers may obtain information described  
10 in subparagraph (A) or (B), as applicable, by  
11 inputting information using a touch-tone telephone  
12 or similar device, if consumers whose telephones are  
13 not equipped to use such automated device are pro-  
14 vided the opportunity to be connected to an indi-  
15 vidual from whom the information described in sub-  
16 paragraph (A) or (B), as applicable, may be ob-  
17 tained. A person that receives a request for informa-  
18 tion described in subparagraph (A) or (B) from an  
19 obligor through the toll-free telephone number dis-  
20 closed under subparagraph (A) or (B), as applicable,  
21 shall disclose in response to such request only the in-  
22 formation set forth in the table promulgated by the  
23 Board under subparagraph (H)(i). The dollar  
24 amount contained in this subclause shall be adjusted

1 according to an indexing mechanism established by  
2 the Board.

3 “(II) Not later than 6 months prior to the expi-  
4 ration of the 24-month period referenced in sub-  
5 clause (I), the Board shall submit to the Committee  
6 on Banking, Housing, and Urban Affairs of the Sen-  
7 ate and the Committee on Banking and Financial  
8 Services of the House of Representatives a report on  
9 the program described in subclause (I).

10 “(G) The Federal Trade Commission shall es-  
11 tablish and maintain a toll-free number for the pur-  
12 pose of providing to consumers the information re-  
13 quired to be disclosed under subparagraph (C).

14 “(H) The Board shall—

15 “(i) establish a detailed table illustrating  
16 the approximate number of months that it  
17 would take to repay an outstanding balance if  
18 a consumer pays only the required minimum  
19 monthly payments and if no other advances are  
20 made, which table shall clearly present stand-  
21 ardized information to be used to disclose the  
22 information required to be disclosed under sub-  
23 paragraph (A), (B), or (C), as applicable;

24 “(ii) establish the table required under  
25 clause (i) by assuming—

1           “(I) a significant number of different  
2           annual percentage rates;

3           “(II) a significant number of different  
4           account balances;

5           “(III) a significant number of dif-  
6           ferent minimum payment amounts; and

7           “(IV) that only minimum monthly  
8           payments are made and no additional ex-  
9           tensions of credit are obtained; and

10          “(iii) promulgate regulations that provide  
11          instructional guidance regarding the manner in  
12          which the information contained in the table es-  
13          tablished under clause (i) should be used in re-  
14          sponding to the request of an obligor for any  
15          information required to be disclosed under sub-  
16          paragraph (A), (B), or (C).

17          “(I) The disclosure requirements of this para-  
18          graph do not apply to any charge card account, the  
19          primary purpose of which is to require payment of  
20          charges in full each month.

21          “(J) A creditor that maintains a toll-free tele-  
22          phone number for the purpose of providing cus-  
23          tomers with the actual number of months that it will  
24          take to repay the customer’s outstanding balance is

1 not subject to the requirements of subparagraph (A)  
2 or (B).

3 “(K) A creditor that maintains a toll-free tele-  
4 phone number for the purpose of providing cus-  
5 tomers with the actual number of months that it will  
6 take to repay an outstanding balance shall include  
7 the following statement on each billing statement:  
8 ‘Making only the minimum payment will increase  
9 the interest you pay and the time it takes to repay  
10 your balance. For more information, call this toll-  
11 free number: \_\_\_\_\_.’ (the blank space to be filled  
12 in by the creditor).”.

13 (b) REGULATORY IMPLEMENTATION.—

14 (1) IN GENERAL.—The Board of Governors of  
15 the Federal Reserve System (hereafter in this title  
16 referred to as the “Board”) shall promulgate regula-  
17 tions implementing the requirements of section  
18 127(b)(11) of the Truth in Lending Act, as added  
19 by subsection (a) of this section.

20 (2) EFFECTIVE DATE.—Section 127(b)(11) of  
21 the Truth in Lending Act, as added by subsection  
22 (a) of this section, and the regulations issued under  
23 paragraph (1) of this subsection shall not take effect  
24 until the later of—



1 (A) 18 months after the date of enactment  
2 of this Act; or

3 (B) 12 months after the publication of  
4 such final regulations by the Board.

5 (c) STUDY OF FINANCIAL DISCLOSURES.—

6 (1) IN GENERAL.—The Board may conduct a  
7 study to determine the types of information available  
8 to potential borrowers from consumer credit lending  
9 institutions regarding factors qualifying potential  
10 borrowers for credit, repayment requirements, and  
11 the consequences of default.

12 (2) FACTORS FOR CONSIDERATION.—In con-  
13 ducting a study under paragraph (1), the Board  
14 should, in consultation with the other Federal bank-  
15 ing agencies (as defined in section 3 of the Federal  
16 Deposit Insurance Act), the National Credit Union  
17 Administration, and the Federal Trade Commission,  
18 consider the extent to which—

19 (A) consumers, in establishing new credit  
20 arrangements, are aware of their existing pay-  
21 ment obligations, the need to consider those ob-  
22 ligations in deciding to take on new credit, and  
23 how taking on excessive credit can result in fi-  
24 nancial difficulty;

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

4 (C) consumers make only the required  
 5 minimum payment under open end credit plans;

6 (D) consumers are aware that making only  
 7 required minimum payments will increase the  
 8 cost and repayment period of an open end cred-  
 9 it obligation; and

10 (E) the availability of low minimum pay-  
 11 ment options is a cause of consumers experi-  
 12 encing financial difficulty.

13 (3) REPORT TO CONGRESS.—Findings of the  
 14 Board in connection with any study conducted under  
 15 this subsection shall be submitted to Congress. Such  
 16 report shall also include recommendations for legis-  
 17 lative initiatives, if any, of the Board, based on its  
 18 findings.

19 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
 20 **SIONS SECURED BY A DWELLING.**

21 (a) OPEN END CREDIT EXTENSIONS.—

22 (1) CREDIT APPLICATIONS.—Section  
 23 127A(a)(13) of the Truth in Lending Act (15  
 24 U.S.C. 1637a(a)(13)) is amended—

1 (A) by striking “CONSULTATION OF TAX  
2 ADVISER.—A statement that the” and inserting  
3 the following: “TAX DEDUCTIBILITY.—A state-  
4 ment that—

5 “(A) the”; and

6 (B) by striking the period at the end and  
7 inserting the following: “; and

8 “(B) in any case in which the extension of  
9 credit exceeds the fair market value (as defined  
10 under the Internal Revenue Code of 1986) of  
11 the dwelling, the interest on the portion of the  
12 credit extension that is greater than the fair  
13 market value of the dwelling is not tax deduct-  
14 ible for Federal income tax purposes.”.

15 (2) CREDIT ADVERTISEMENTS.—Section 147(b)  
16 of the Truth in Lending Act (15 U.S.C. 1665b(b))  
17 is amended—

18 (A) by striking “If any” and inserting the  
19 following:

20 “(1) IN GENERAL.—If any”; and

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

22 “(2) CREDIT IN EXCESS OF FAIR MARKET  
23 VALUE.—Each advertisement described in subsection  
24 (a) that relates to an extension of credit that may  
25 exceed the fair market value of the dwelling, and

1 which advertisement is disseminated in paper form  
2 to the public or through the Internet, as opposed  
3 to by radio or television, shall include a clear and  
4 conspicuous statement that—

5 “(A) the interest on the portion of the  
6 credit extension that is greater than the fair  
7 market value of the dwelling is not tax deduct-  
8 ible for Federal income tax purposes; and

9 “(B) the consumer should consult a tax  
10 adviser for further information regarding the  
11 deductibility of interest and charges.”.

12 (b) NON-OPEN END CREDIT EXTENSIONS.—

13 (1) CREDIT APPLICATIONS.—Section 128 of the  
14 Truth in Lending Act (15 U.S.C. 1638) is  
15 amended—

16 (A) in subsection (a), by adding at the end  
17 the following:

18 “(15) In the case of a consumer credit trans-  
19 action that is secured by the principal dwelling of  
20 the consumer, in which the extension of credit may  
21 exceed the fair market value of the dwelling, a clear  
22 and conspicuous statement that—

23 “(A) the interest on the portion of the  
24 credit extension that is greater than the fair

1 market value of the dwelling is not tax deduct-  
2 ible for Federal income tax purposes; and

3 “(B) the consumer should consult a tax  
4 adviser for further information regarding the  
5 deductibility of interest and charges.”; and

6 (B) in subsection (b), by adding at the end  
7 the following:

8 “(3) In the case of a credit transaction described in  
9 paragraph (15) of subsection (a), disclosures required by  
10 that paragraph shall be made to the consumer at the time  
11 of application for such extension of credit.”.

12 (2) CREDIT ADVERTISEMENTS.—Section 144 of  
13 the Truth in Lending Act (15 U.S.C. 1664) is  
14 amended by adding at the end the following:

15 “(e) Each advertisement to which this section applies  
16 that relates to a consumer credit transaction that is se-  
17 cured by the principal dwelling of a consumer in which  
18 the extension of credit may exceed the fair market value  
19 of the dwelling, and which advertisement is disseminated  
20 in paper form to the public or through the Internet, as  
21 opposed to by radio or television, shall clearly and con-  
22 spicuously state that—

23 “(1) the interest on the portion of the credit ex-  
24 tension that is greater than the fair market value of

1 the dwelling is not tax deductible for Federal income  
2 tax purposes; and

3 “(2) the consumer should consult a tax adviser  
4 for further information regarding the deductibility of  
5 interest and charges.”.

6 (c) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board shall promulgate  
8 regulations implementing the amendments made by  
9 this section.

10 (2) EFFECTIVE DATE.—Regulations issued  
11 under paragraph (1) shall not take effect until the  
12 later of—

13 (A) 12 months after the date of enactment  
14 of this Act; or

15 (B) 12 months after the date of publica-  
16 tion of such final regulations by the Board.

17 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**  
18 **RATES”.**

19 (a) INTRODUCTORY RATE DISCLOSURES.—Section  
20 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))  
21 is amended by adding at the end the following:

22 “(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-  
23 DUCTORY RATES’.—

24 “(A) IN GENERAL.—Except as provided in  
25 subparagraph (B), an application or solicitation

1 to open a credit card account and all pro-  
2 motional materials accompanying such applica-  
3 tion or solicitation for which a disclosure is re-  
4 quired under paragraph (1), and that offers a  
5 temporary annual percentage rate of interest,  
6 shall—

7 “(i) use the term ‘introductory’ in im-  
8 mediate proximity to each listing of the  
9 temporary annual percentage rate applica-  
10 ble to such account, which term shall ap-  
11 pear clearly and conspicuously;

12 “(ii) if the annual percentage rate of  
13 interest that will apply after the end of the  
14 temporary rate period will be a fixed rate,  
15 state in a clear and conspicuous manner in  
16 a prominent location closely proximate to  
17 the first listing of the temporary annual  
18 percentage rate (other than a listing of the  
19 temporary annual percentage rate in the  
20 tabular format described in section  
21 122(c)), the time period in which the intro-  
22 ductory period will end and the annual  
23 percentage rate that will apply after the  
24 end of the introductory period; and

1           “(iii) if the annual percentage rate  
2           that will apply after the end of the tem-  
3           porary rate period will vary in accordance  
4           with an index, state in a clear and con-  
5           spicuous manner in a prominent location  
6           closely proximate to the first listing of the  
7           temporary annual percentage rate (other  
8           than a listing in the tabular format pre-  
9           scribed by section 122(c)), the time period  
10          in which the introductory period will end  
11          and the rate that will apply after that,  
12          based on an annual percentage rate that  
13          was in effect within 60 days before the  
14          date of mailing the application or sollicita-  
15          tion.

16          “(B) EXCEPTION.—Clauses (ii) and (iii) of  
17          subparagraph (A) do not apply with respect to  
18          any listing of a temporary annual percentage  
19          rate on an envelope or other enclosure in which  
20          an application or solicitation to open a credit  
21          card account is mailed.

22          “(C) CONDITIONS FOR INTRODUCTORY  
23          RATES.—An application or solicitation to open  
24          a credit card account for which a disclosure is  
25          required under paragraph (1), and that offers a



1 temporary annual percentage rate of interest  
2 shall, if that rate of interest is revocable under  
3 any circumstance or upon any event, clearly  
4 and conspicuously disclose, in a prominent man-  
5 ner on or with such application or solicitation—

6 “(i) a general description of the cir-  
7 cumstances that may result in the revoca-  
8 tion of the temporary annual percentage  
9 rate; and

10 “(ii) if the annual percentage rate  
11 that will apply upon the revocation of the  
12 temporary annual percentage rate—

13 “(I) will be a fixed rate, the an-  
14 nual percentage rate that will apply  
15 upon the revocation of the temporary  
16 annual percentage rate; or

17 “(II) will vary in accordance with  
18 an index, the rate that will apply after  
19 the temporary rate, based on an an-  
20 nual percentage rate that was in ef-  
21 fect within 60 days before the date of  
22 mailing the application or solicitation.

23 “(D) DEFINITIONS.—In this paragraph—

24 “(i) the terms ‘temporary annual per-  
25 centage rate of interest’ and ‘temporary

1           annual percentage rate’ mean any rate of  
2           interest applicable to a credit card account  
3           for an introductory period of less than 1  
4           year, if that rate is less than an annual  
5           percentage rate that was in effect within  
6           60 days before the date of mailing the ap-  
7           plication or solicitation; and

8           “(ii) the term ‘introductory period’  
9           means the maximum time period for which  
10          the temporary annual percentage rate may  
11          be applicable.

12          “(E) RELATION TO OTHER DISCLOSURE  
13          REQUIREMENTS.—Nothing in this paragraph  
14          may be construed to supersede subsection (a) of  
15          section 122, or any disclosure required by para-  
16          graph (1) or any other provision of this sub-  
17          section.”.

18          (b) REGULATORY IMPLEMENTATION.—

19                (1) IN GENERAL.—The Board shall promulgate  
20                regulations implementing the requirements of section  
21                127(c)(6) of the Truth in Lending Act, as added by  
22                this section.

23                (2) EFFECTIVE DATE.—Section 127(c)(6) of  
24                the Truth in Lending Act, as added by this section,

1 and regulations issued under paragraph (1) of this  
2 subsection shall not take effect until the later of—

3 (A) 12 months after the date of enactment  
4 of this Act; or

5 (B) 12 months after the date of publica-  
6 tion of such final regulations by the Board.

7 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

8 (a) INTERNET-BASED APPLICATIONS AND SOLICITA-  
9 TIONS.—Section 127(c) of the Truth in Lending Act (15  
10 U.S.C. 1637(c)) is amended by adding at the end the fol-  
11 lowing:

12 “(7) INTERNET-BASED APPLICATIONS AND SO-  
13 LICITATIONS.—

14 “(A) IN GENERAL.—In any solicitation to  
15 open a credit card account for any person under  
16 an open end consumer credit plan using the  
17 Internet or other interactive computer service,  
18 the person making the solicitation shall clearly  
19 and conspicuously disclose—

20 “(i) the information described in sub-  
21 paragraphs (A) and (B) of paragraph (1);  
22 and

23 “(ii) the information described in  
24 paragraph (6).

1           “(B) FORM OF DISCLOSURE.—The disclo-  
2           sures required by subparagraph (A) shall be—

3                   “(i) readily accessible to consumers in  
4                   close proximity to the solicitation to open  
5                   a credit card account; and

6                   “(ii) updated regularly to reflect the  
7                   current policies, terms, and fee amounts  
8                   applicable to the credit card account.

9           “(C) DEFINITIONS.—For purposes of this  
10           paragraph—

11                   “(i) the term ‘Internet’ means the  
12                   international computer network of both  
13                   Federal and non-Federal interoperable  
14                   packet switched data networks; and

15                   “(ii) the term ‘interactive computer  
16                   service’ means any information service,  
17                   system, or access software provider that  
18                   provides or enables computer access by  
19                   multiple users to a computer server, in-  
20                   cluding specifically a service or system that  
21                   provides access to the Internet and such  
22                   systems operated or services offered by li-  
23                   braries or educational institutions.”.

24           (b) REGULATORY IMPLEMENTATION.—

1           (1) IN GENERAL.—The Board shall promulgate  
2 regulations implementing the requirements of section  
3 127(c)(7) of the Truth in Lending Act, as added by  
4 this section.

5           (2) EFFECTIVE DATE.—The amendment made  
6 by subsection (a) and the regulations issued under  
7 paragraph (1) of this subsection shall not take effect  
8 until the later of—

9                   (A) 12 months after the date of enactment  
10 of this Act; or

11                   (B) 12 months after the date of publica-  
12 tion of such final regulations by the Board.

13 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**  
14 **DEADLINES AND PENALTIES.**

15           (a) DISCLOSURES RELATED TO LATE PAYMENT  
16 DEADLINES AND PENALTIES.—Section 127(b) of the  
17 Truth in Lending Act (15 U.S.C. 1637(b)) is amended  
18 by adding at the end the following:

19                   “(12) If a late payment fee is to be imposed  
20 due to the failure of the obligor to make payment on  
21 or before a required payment due date, the following  
22 shall be stated clearly and conspicuously on the bill-  
23 ing statement:

1           “(A) The date on which that payment is  
2           due or, if different, the earliest date on which  
3           a late payment fee may be charged.

4           “(B) The amount of the late payment fee  
5           to be imposed if payment is made after such  
6           date.”.

7           (b) REGULATORY IMPLEMENTATION.—

8           (1) IN GENERAL.—The Board shall promulgate  
9           regulations implementing the requirements of section  
10          127(b)(12) of the Truth in Lending Act, as added  
11          by this section.

12          (2) EFFECTIVE DATE.—The amendment made  
13          by subsection (a) and regulations issued under para-  
14          graph (1) of this subsection shall not take effect  
15          until the later of—

16                  (A) 12 months after the date of enactment  
17                  of this Act; or

18                  (B) 12 months after the date of publica-  
19                  tion of such final regulations by the Board.

20       **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
21                               **URE TO INCUR FINANCE CHARGES.**

22          (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
23          URE TO INCUR FINANCE CHARGES.—Section 127 of the  
24          Truth in Lending Act (15 U.S.C. 1637) is amended by  
25          adding at the end the following:

1       “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
2 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-  
3 count under an open end consumer credit plan may not  
4 terminate an account prior to its expiration date solely be-  
5 cause the consumer has not incurred finance charges on  
6 the account. Nothing in this subsection shall prohibit a  
7 creditor from terminating an account for inactivity in 3  
8 or more consecutive months.”.

9       (b) REGULATORY IMPLEMENTATION.—

10           (1) IN GENERAL.—The Board shall promulgate  
11 regulations implementing the requirements of section  
12 127(h) of the Truth in Lending Act, as added by  
13 this section.

14           (2) EFFECTIVE DATE.—The amendment made  
15 by subsection (a) and regulations issued under para-  
16 graph (1) of this subsection shall not take effect  
17 until the later of—

18                   (A) 12 months after the date of enactment  
19 of this Act; or

20                   (B) 12 months after the date of publica-  
21 tion of such final regulations by the Board.

22 **SEC. 1307. DUAL USE DEBIT CARD.**

23       (a) REPORT.—The Board may conduct a study of,  
24 and present to Congress a report containing its analysis  
25 of, consumer protections under existing law to limit the

1 liability of consumers for unauthorized use of a debit card  
2 or similar access device. Such report, if submitted, shall  
3 include recommendations for legislative initiatives, if any,  
4 of the Board, based on its findings.

5 (b) CONSIDERATIONS.—In preparing a report under  
6 subsection (a), the Board may include—

7 (1) the extent to which section 909 of the Elec-  
8 tronic Fund Transfer Act (15 U.S.C. 1693g), as in  
9 effect at the time of the report, and the imple-  
10 menting regulations promulgated by the Board to  
11 carry out that section provide adequate unauthorized  
12 use liability protection for consumers;

13 (2) the extent to which any voluntary industry  
14 rules have enhanced or may enhance the level of pro-  
15 tection afforded consumers in connection with such  
16 unauthorized use liability; and

17 (3) whether amendments to the Electronic  
18 Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-  
19 visions to regulations promulgated by the Board to  
20 carry out that Act, are necessary to further address  
21 adequate protection for consumers concerning unau-  
22 thorized use liability.

23 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
24 **TENDED TO DEPENDENT STUDENTS.**

25 (a) STUDY.—



1           (1) IN GENERAL.—The Board shall conduct a  
2 study regarding the impact that the extension of  
3 credit described in paragraph (2) has on the rate of  
4 bankruptcy cases filed under title 11, United States  
5 Code.

6           (2) EXTENSION OF CREDIT.—The extension of  
7 credit described in this paragraph is the extension of  
8 credit to individuals who are—

9                   (A) claimed as dependents for purposes of  
10 the Internal Revenue Code of 1986; and

11                   (B) enrolled within 1 year of successfully  
12 completing all required secondary education re-  
13 quirements and on a full-time basis, in postsec-  
14 ondary educational institutions.

15           (b) REPORT.—Not later than 1 year after the date  
16 of enactment of this Act, the Board shall submit to the  
17 Senate and the House of Representatives a report summa-  
18 rizing the results of the study conducted under subsection  
19 (a).

20 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

21           (a) REGULATIONS.—Not later than 6 months after  
22 the date of enactment of this Act, the Board, in consulta-  
23 tion with the other Federal banking agencies (as defined  
24 in section 3 of the Federal Deposit Insurance Act), the  
25 National Credit Union Administration Board, and the

1 Federal Trade Commission, shall promulgate regulations  
2 to provide guidance regarding the meaning of the term  
3 “clear and conspicuous”, as used in subparagraphs (A),  
4 (B), and (C) of section 127(b)(11) and clauses (ii) and  
5 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

6 (b) EXAMPLES.—Regulations promulgated under  
7 subsection (a) shall include examples of clear and con-  
8 spicuous model disclosures for the purposes of disclosures  
9 required by the provisions of the Truth in Lending Act  
10 referred to in subsection (a).

11 (c) STANDARDS.—In promulgating regulations under  
12 this section, the Board shall ensure that the clear and con-  
13 spicuous standard required for disclosures made under the  
14 provisions of the Truth in Lending Act referred to in sub-  
15 section (a) can be implemented in a manner which results  
16 in disclosures which are reasonably understandable and  
17 designed to call attention to the nature and significance  
18 of the information in the notice.

19 **SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDG-**  
20 **MENTS BARRED.**

21 (a) IN GENERAL.—Notwithstanding any other provi-  
22 sion of law or contract, a court within the United States  
23 shall not recognize or enforce any judgment rendered in  
24 a foreign court if, by clear and convincing evidence, the  
25 court in which recognition or enforcement of the judgment

1 is sought determines that the judgment gives effect to any  
 2 purported right or interest derived, directly or indirectly,  
 3 from any fraudulent misrepresentation or fraudulent omis-  
 4 sion that occurred in the United States during the period  
 5 beginning on January 1, 1975, and ending on December  
 6 31, 1993.

7 (b) EXCEPTION.—Subsection (a) shall not prevent  
 8 recognition or enforcement of a judgment rendered in a  
 9 foreign court if the foreign tribunal rendering judgment  
 10 giving effect to the right or interest concerned determines  
 11 that no fraudulent misrepresentation or fraudulent omis-  
 12 sion described in subsection (a) occurred.

13 **TITLE XIV—GENERAL EFFEC-**  
 14 **TIVE DATE; APPLICATION OF**  
 15 **AMENDMENTS**

16 **SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMEND-**  
 17 **MENTS.**

18 (a) EFFECTIVE DATE.—Except as otherwise provided  
 19 in this Act, this Act and the amendments made by this  
 20 Act shall take effect 180 days after the date of enactment  
 21 of this Act.

22 (b) APPLICATION OF AMENDMENTS.—Except as oth-  
 23 erwise provided in this Act, the amendments made by this  
 24 Act shall not apply with respect to cases commenced under

1 title 11, United States Code, before the effective date of  
2 this Act.

○