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SENATE

{ REPORT
105-253

CONSUMER BANKRUPTCY REFORM ACT OF 1998

JULY 21, 1998.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1301]

The Committee on the Judiciary, to which was referred the bill (S. 1301) to amend provisions of title 11 and title 18, United States Code, to provide for consumer bankruptcy protection, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.

Sec. 102. Dismissal or conversion.

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

Sec. 201. Allowance of claims or interests.

Sec. 202. Exceptions to discharge.

Sec. 203. Effect of discharge.

Sec. 204. Automatic stay.

Sec. 205. Discharge.

Sec. 206. Discouraging predatory lending practices.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Sec. 301. Notice of alternatives.

Sec. 302. Fair treatment of secured creditors under chapter 13.

Sec. 303. Discouragement of bad faith repeat filings.

Sec. 304. Timely filing and confirmation of plans under chapter 13.

Sec. 305. Application of the codebtor stay only when the stay protects the debtor.

Sec. 306. Improved bankruptcy statistics.

Sec. 307. Audit procedures.

Sec. 308. Creditor representation at first meeting of creditors.

Sec. 309. Fair notice for creditors in chapter 7 and 13 cases.

Sec. 310. Stopping abusive conversions from chapter 13.

Sec. 311. Prompt relief from stay in individual cases.

Sec. 312. Dismissal for failure to timely file schedules or provide required information.

Sec. 313. Adequate time for preparation for a hearing on confirmation of the plan.

Sec. 314. Discharge under chapter 13.

Sec. 315. Nondischargeable debts.

Sec. 316. Credit extensions on the eve of bankruptcy presumed nondischargeable.

Sec. 317. Definition of household goods and antiques.

Sec. 318. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.

Sec. 319. Adequate protection of lessors and purchase money secured creditors.

Sec. 320. Limitation.

Sec. 321. Miscellaneous improvements.

Sec. 322. Bankruptcy judgeships.

Sec. 323. Preferred payment of child support in chapter 7 proceedings.

Sec. 324. Preferred payment of child support in chapter 13 proceedings.

Sec. 325. Payment of child support required to obtain a discharge in chapter 13 proceedings.

Sec. 326. Child support and alimony collection.

Sec. 327. Nondischargeability of certain debts for alimony, maintenance, and support.

Sec. 328. Enforcement of child and spousal support.

Sec. 329. Dependent child defined.

TITLE IV—TECHNICAL CORRECTIONS

Sec. 401. Definitions.

Sec. 402. Adjustment of dollar amounts.

Sec. 403. Extension of time.

Sec. 404. Who may be a debtor.

Sec. 405. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.

Sec. 406. Limitation on compensation of professional persons.

Sec. 407. Special tax provisions.

Sec. 408. Effect of conversion.

Sec. 409. Automatic stay.

Sec. 410. Amendment to table of sections.

Sec. 411. Allowance of administrative expenses.

Sec. 412. Priorities.

Sec. 413. Exemptions.

Sec. 414. Exceptions to discharge.

Sec. 415. Effect of discharge.

Sec. 416. Protection against discriminatory treatment.

Sec. 417. Property of the estate.

Sec. 418. Limitations on avoiding powers.

Sec. 419. Preferences.

Sec. 420. Postpetition transactions.

Sec. 421. Technical amendment.

Sec. 422. Setoff.

Sec. 423. Disposition of property of the estate.

Sec. 424. General provisions.

Sec. 425. Appointment of elected trustee.

Sec. 426. Abandonment of railroad line.

Sec. 427. Contents of plan.

Sec. 428. Discharge under chapter 12.

Sec. 429. Extensions.

Sec. 430. Bankruptcy cases and proceedings.

Sec. 431. Knowing disregard of bankruptcy law or rule.

Sec. 432. Effective date; application of amendments.

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

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

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—
(1) by striking the section heading and inserting the following:

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

and

(2) in subsection (b)—

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

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

(i) in the first sentence—

(I) by striking “but not” and inserting “or”;

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

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

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

“(2) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall consider whether—

“(A) under section 1325(b)(1), on the basis of the current income of the debtor, the debtor could pay an amount greater than or equal to 20 percent of unsecured claims that are not considered to be priority claims (as determined under subchapter I of chapter 5); or

“(B) the debtor filed a petition for the relief in bad faith.

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

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

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

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

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

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

“(ii) determined that the petition—

“(I) is well grounded in fact; and

“(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1) of this subsection.

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

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

“(ii) the court finds that—

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

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

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

“(5) However, a party in interest may not bring a motion under this section if the debtor and the debtor’s spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the national median household monthly income calculated on a monthly basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that

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

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

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

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

SEC. 201. ALLOWANCE OF CLAIMS OR INTERESTS.

Section 502 of title 11, United States Code, is amended by adding at the end the following:

“(k)(1) The court may award the debtor reasonable attorneys’ fees and costs if, after an objection is filed by a debtor, the court—

“(A)(i) disallows the claim; or

“(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest; and

“(B) finds the position of the party filing the claim is not substantially justified.

“(2) If the court finds that the position of a claimant under this section is not substantially justified, the court may, in addition to awarding a debtor reasonable attorneys’ fees and costs under paragraph (1), award such damages as may be required by the equities of the case.”.

SEC. 202. EXCEPTIONS TO DISCHARGE.

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

(1) in subsection (a)(2)(A), by striking “a false representation” and inserting “a material false representation upon which the defrauded person justifiably relied”; and

(2) by striking subsection (d) and inserting the following:

“(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys’ fees and costs.

“(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys’ fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

“(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

“(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

“(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

“(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

“(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

“(ii) the refusal to negotiate by the creditor involved to was not reasonable.”.

SEC. 203. EFFECT OF DISCHARGE.

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

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

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

“(1) the greater of—

“(A)(i) the amount of actual damages; multiplied by

“(ii) 3; or

“(B) \$5,000; and
 “(2) costs and attorneys’ fees.”.

SEC. 204. AUTOMATIC STAY.

Section 362(h) of title 11, United States Code, is amended to read as follows:
 “(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

“(A) actual damages; and
 “(B) reasonable costs, including attorneys’ fees.

“(2) In addition to recovering actual damages, costs, and attorneys’ fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.”.

SEC. 205. DISCHARGE.

Section 727 of title 11, United States Code, is amended—

(1) in subsection (c), by adding at the end the following:

“(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a) if—

“(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and
 “(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

“(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

“(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and
 “(ii) the refusal to negotiate by the creditor involved to was not reasonable.”; and

(2) by adding at the end the following:

“(f)(1) The court may award the debtor reasonable attorneys’ fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—

“(A) is denied; or
 “(B) is withdrawn after the debtor has replied.

“(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.”.

SEC. 206. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended—

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

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

(3) by adding at the end the following:

“(10) the claim is based on a secured debt if the creditor has failed to comply with the requirements of subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).”.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION OF THE BANKRUPTCY SYSTEM

SEC. 301. NOTICE OF ALTERNATIVES.

(a) IN GENERAL.—Section 342 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

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

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

“(2) A brief description of services that may be available to that individual from an independent nonprofit debt counseling service.

“(3)(A) The name, address, and telephone number of each nonprofit debt counseling service with an office located in the district in which the petition is filed, if any.

“(B) Any nonprofit debt counseling service described in subparagraph (A) that has registered with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in the list referred to in that clause, unless the chief bankruptcy judge of the district involved, after giving notice to the debt counseling service and the United States trustee and opportunity for a hearing, orders, for good cause, that a particular debt counseling service shall not be so listed.”.

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

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

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

“(1) file—

“(A) a list of creditors; and

“(B) unless the court orders otherwise—

“(i) a schedule of assets and liabilities;

“(ii) a schedule of current income and current expenditures;

“(iii) a statement of the debtor’s financial affairs and, if applicable, a certificate—

“(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

“(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

“(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

“(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

“(vi) a statement of the amount of projected monthly net income, itemized to show how calculated; and

“(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;”;

(3) by adding at the end the following:

“(b)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.

“(2) At any time, a creditor, in a case under chapter 13, may file with the court notice that the creditor requests the plan filed by the debtor in the case and the court shall make that plan available to the creditor who requests that plan.

“(c) An individual debtor in a case under chapter 7 or 13 shall file with the court—

“(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

“(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

“(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

“(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor’s income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

“(A) beginning on the date that is the later of 90 days after the close of the debtor’s tax year or 1 year after the order for relief, unless a plan has been confirmed; and

“(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

“(d)(1) A statement referred to in subsection (c)(4) shall disclose—

“(A) the amount and sources of income of the debtor;

“(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

“(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

“(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (e).

“(e)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

“(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

“(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

“(A) assesses the effectiveness of the procedures under paragraph (1); and

“(B) if appropriate, includes proposed legislation—

“(i) to further protect the confidentiality of tax information; and

“(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.”.

(c) TITLE 28.—Section 586(a) of title 28, United States Code, is amended—

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

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

(3) by adding at the end the following:

“(7) on or before January 1 of each calendar year, and also not later than 30 days after any change in the nonprofit debt counseling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(3) of title 11 for each district included in the region.”.

SEC. 302. FAIR TREATMENT OF SECURED CREDITORS UNDER CHAPTER 13.

(a) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking the matter preceding subparagraph (A) and inserting the following:

“(5) with respect to an allowed claim provided for by the plan that is secured under applicable nonbankruptcy law by reason of a lien on property in which the estate has an interest or is subject to a setoff under section 553—”; and

(2) by adding at the end of the subsection the following flush sentence:

“For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph.”.

(b) PAYMENT OF HOLDERS OF CLAIMS SECURED BY LIENS.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

“(B)(i) the plan provides that the holder of such claim retain the lien securing such claim until the debt that is the subject of the claim is fully paid for, as provided under the plan; and”.

(c) DETERMINATION OF SECURED STATUS.—Section 506 of title 11, United States Code, is amended by adding at the end the following:

“(e) Subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor during the 90-day period preceding the date of filing of the petition.”.

SEC. 303. DISCOURAGEMENT OF BAD FAITH REPEAT FILINGS.

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

(1) by inserting “(1)” before “Except as”;

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

(3) by striking “(2) the stay” and inserting “(B) the stay”;

(4) by striking “(A) the time” and inserting “(i) the time”;

(5) by striking “(B) the time” and inserting “(ii) the time”; and

(6) by adding at the end the following:

“(2) Except as provided in subsections (d) through (f), the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case if—

“(A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and

“(B) a single or joint case of that debtor (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)) was pending during the preceding year but was dismissed.

“(3) If a party in interest so requests, the court may extend the stay in a particular case with respect to 1 or more creditors (subject to such conditions or limitations as the court may impose) after providing notice and a hearing completed before the expiration of the 30-day period described in paragraph (2) only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

“(4) A case shall be presumed to have not been filed in good faith (except that such presumption may be rebutted by clear and convincing evidence to the contrary)—

“(A) with respect to the creditors involved, if—

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

“(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within the period specified in paragraph (2) after—

“(I) the debtor, after having received from the court a request to do so, failed to file or amend the petition or other documents as required by this title; or

“(II) the debtor, without substantial excuse, failed to perform the terms of a plan that was confirmed by the court; or

“(iii)(I) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor;

“(II) if the case is a chapter 7 case, there is no other reason to conclude that the later case will be concluded with a discharge; or

“(III) if the case is a chapter 11 or 13 case, there is not a confirmed plan that will be fully performed; and

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

“(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and the request is granted in whole or in part, the court may, in addition to making any other order under this subsection, order that the relief so granted shall be in rem either—

“(i) for a definite period of not less than 1 year; or

“(ii) indefinitely.

“(B)(i) After an order is issued under subparagraph (A), the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor.

“(ii) If an in rem order issued under subparagraph (A) so provides, the stay shall, in addition to being inapplicable to the debtor involved, not apply with respect to an entity under this title if—

“(I) the entity had reason to know of the order at the time that the entity obtained an interest in the property affected; or

“(II) the entity was notified of the commencement of the proceeding for relief from the stay, and at the time of the notification, no case in which the entity was a debtor was pending.

“(6) For purposes of this section, a case is pending during the period beginning with the issuance of the order for relief and ending at such time as the case involved is closed.”

SEC. 304. TIMELY FILING AND CONFIRMATION OF PLANS UNDER CHAPTER 13.

(a) FILING OF PLAN.—Section 1321 of title 11, United States Code, is amended to read as follows:

“§ 1321. Filing of plan

“The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.”

(b) CONFIRMATION OF HEARING.—Section 1324 of title 11, United States Code, is amended by adding at the end the following: “That hearing shall be held not later

than 45 days after the filing of the plan, unless the court, after providing notice and a hearing, orders otherwise.”.

SEC. 305. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.

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

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

(2) by adding at the end the following:

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

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

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

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

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

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

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

SEC. 306. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

“§ 159. Bankruptcy statistics

“(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the ‘Office’).

“(b) The Director shall—

“(1) compile the statistics referred to in subsection (a);

“(2) make the statistics available to the public; and

“(3) not later than October 31, 1998, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

“(c) The compilation required under subsection (b) shall—

“(1) be itemized, by chapter, with respect to title 11;

“(2) be presented in the aggregate and for each district; and

“(3) include information concerning—

“(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

“(B) the current total monthly income, projected monthly net income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;

“(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

“(D) the average period of time between the filing of the petition and the closing of the case;

“(E) for the reporting period—

“(i) the number of cases in which a reaffirmation was filed; and

“(ii)(I) the total number of reaffirmations filed;

“(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and

“(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

“(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

“(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

“(II) the number of final orders determining the value of property securing a claim issued;

“(ii) the number of cases dismissed for failure to make payments under the plan; and

“(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing; and

“(G) the extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 6 of title 28, United States Code, is amended by adding at the end the following: “159. Bankruptcy statistics.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 307. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), as amended by section 301 of this Act, by striking paragraph (6) and inserting the following:

“(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and”; and

(2) by adding at the end the following:

“(f)(1)(A) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

“(B) The audits described in subparagraph (A) shall be made in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. Those procedures shall—

“(i) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform those audits;

“(ii) establish a method of randomly selecting cases to be audited according to generally accepted auditing standards, except that not less than 1 out of every 500 cases in each Federal judicial district shall be selected for audit;

“(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

“(iv) establish procedures for—

“(I) reporting the results of those audits and any material misstatement of income, expenditures, or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate;

“(II) providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

“(III) fully funding those audits, including procedures requiring each debtor with sufficient available income or assets to contribute to the payment for those audits, as an administrative expense or otherwise.

(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things, or property belonging to the debtor as the auditor requests and that are reasonably necessary to facilitate the audit to be made available for inspection and copying.

(4)(A) The report of each audit conducted under this subsection shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1).

(B) If a material misstatement of income or expenditures or of assets is reported under subparagraph (A), a statement specifying that misstatement shall be filed with the court and the United States trustee shall—

“(i) give notice thereof to the creditors in the case; and

“(ii) in an appropriate case, in the opinion of the United States trustee, that requires investigation with respect to possible criminal violations, the United States Attorney for the district.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 308. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: “Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

SEC. 309. FAIR NOTICE FOR CREDITORS IN CHAPTER 7 AND 13 CASES.

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by striking “, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice”; and

(2) by adding at the end the following:

“(d)(1) If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor that is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include that account number in any notice to the creditor required to be given under this title.

“(2) If the creditor has specified to the debtor, in the last communication before the filing of the petition, an address at which the creditor wishes to receive correspondence regarding the debtor’s account, any notice to the creditor required to be given by the debtor under this title shall be given at such address.

“(3) For purposes of this section, the term ‘notice’ shall include—

“(A) any correspondence from the debtor to the creditor after the commencement of the case;

“(B) any statement of the debtor’s intention under section 521(a)(2);

“(C) notice of the commencement of any proceeding in the case to which the creditor is a party; and

“(D) any notice of a hearing under section 1324.

“(e)(1) At any time, a creditor, in a case of an individual under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case.

“(2) If the court or the debtor is required to give the creditor notice, not later than 5 days after receipt of the notice under paragraph (1), that notice shall be given at that address.

“(f) An entity may file with the court a notice stating its address for notice in cases under chapter 7 or 13. After the date that is 30 days following the filing of that notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

“(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor.

“(2) If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that person or department.”.

SEC. 310. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

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

(2) in subparagraph (B)—

(A) by striking “in the converted case, with allowed secured claims” and inserting “only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12”; and

(B) by striking the period and inserting “; and”; and
 (3) by adding at the end the following:
 “(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding.”.

SEC. 311. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—
 (1) by inserting “(1)” after “(e)”; and
 (2) by adding at the end the following:
 “(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—
 “(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or
 “(B) that 60-day period is extended—
 “(i) by agreement of all parties in interest; or
 “(ii) by the court for such specific period of time as the court finds is required for good cause.”.

SEC. 312. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 707 of title 11, United States Code, as amended by section 102 of this Act, is amended by adding at the end the following:
 “(c)(1) Notwithstanding subsection (a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.
 “(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after that request.
 “(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 20 days to file the information required under section 521(a)(1) if the court finds justification for extending the period for the filing.”.

SEC. 313. ADEQUATE TIME FOR PREPARATION FOR A HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, as amended by section 304 of this Act, is amended—
 (1) by striking “After” and inserting the following:
 “(a) Except as provided in subsection (b) and after”; and
 (2) by adding at the end the following:
 “(b) If not later than 5 days after receiving notice of a hearing on confirmation of the plan, a creditor objects to the confirmation of the plan, the hearing on confirmation of the plan may be held no earlier than 20 days after the first meeting of creditors under section 341(a).”.

SEC. 314. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:
 “(1) provided for under section 1322(b)(5);
 “(2) of the kind specified in paragraph (2), (4), (5), (8), or (9) of section 523(a);
 “(3) for restitution, or a criminal fine, included in a sentence on the debtor’s conviction of a crime; or
 “(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.”.

SEC. 315. NONDISCHARGEABLE DEBTS.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:
 “(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228 (a) or (b), or 1328(b), or any other provision of this subsection, except for any debt incurred to pay such a nondischargeable debt in any case in which—

“(A)(i) the debtor who paid the nondischargeable debt is a single parent who has 1 or more dependent children at the time of the order for relief; or

“(ii) there is an allowed claim for alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor payable under a judicial or administrative order to that spouse or child (but not to any other person) that was unpaid by the debtor as of the date of the petition; and

“(B) the creditor is unable to demonstrate that the debtor intentionally incurred the debt to pay the nondischargeable debt;”.

SEC. 316. CREDIT EXTENSIONS ON THE EVE OF BANKRUPTCY PRESUMED NONDISCHARGEABLE.

Section 523(a)(2) of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subparagraph (A), by striking the semicolon at the end and inserting the following: “(and, for purposes of this subparagraph, consumer debts owed in an aggregate amount greater than or equal to \$400 incurred for goods or services not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor to a single creditor that are incurred during the 90-day period preceding the date of the order for relief shall be presumed to be nondischargeable under this subparagraph); or”;

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

(3) by striking subparagraph (C).

SEC. 317. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

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

“(27A) ‘household goods’ has the meaning given that term in section 444.1(i) of title 16, of the Code of Federal Regulations (as in effect on the effective date of this paragraph), which is part of the regulations issued by the Federal Trade Commission that are commonly known as the ‘Trade Regulation Rule on Credit Practices’, except that the term shall also include any tangible personal property reasonably necessary for the maintenance or support of a dependent child;”.

SEC. 318. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

(a) **AUTOMATIC STAY.**—Section 362 of title 11, United States Code, as amended by section 303, is amended—

(1) in subsection (c)(1), in the matter preceding subparagraph (A), by striking “(e) and (f)” and inserting “(e), (f), and (h)”;

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following:

“(h) In an individual case under chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim that is in an amount greater than \$3,000, or subject to an unexpired lease with a remaining term of at least 1 year (in any case in which the debtor owes at least \$3,000 for a 1-year period), if within 30 days after the expiration of the applicable period under section 521(a)(2)—

“(1)(A) the debtor fails to timely file a statement of intention to surrender or retain the property; or

“(B) if the debtor indicates in the filing that the debtor will retain the property, the debtor fails to meet an applicable requirement to—

“(i) either—

“(I) redeem the property pursuant to section 722; or

“(II) reaffirm the debt the property secures pursuant to section 524(c); or

“(ii) assume the unexpired lease pursuant to section 365(d) if the trustee does not do so; or

“(2) the debtor fails to timely take the action specified in a statement of intention referred to in paragraph (1)(A) (as amended, if that statement is amended before expiration of the period for taking action), unless—

“(A) the statement of intention specifies reaffirmation; and

“(B) the creditor refuses to reaffirm the debt on the original contract terms for the debt.”.

(b) **DEBTOR’S DUTIES.**—Section 521(a)(2) of title 11, United States Code, as redesignated by section 301(b) of this Act, is amended—

(1) in the matter preceding subparagraph (A), by striking “consumer”; and

(2) in subparagraph (B)—

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

(B) by striking “forty-five-day period” and inserting “30-day period”; and
 (3) in subparagraph (C), by inserting “, except as provided in section 362(h)” before the semicolon.

SEC. 319. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

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

“§ 1307A. Adequate protection in chapter 13 cases

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

“(i) any lessor of personal property; and

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

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

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

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

“(I) the lessor or creditor; or

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

“(2) The payments referred to in paragraph (1)(A) shall be determined by the court.

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

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

“(B) The amount of a payment referred to in paragraph (1) shall not be less than the reasonable depreciation of the personal property described in subsection (a)(1), determined on a month-to-month basis.

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

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

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

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

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

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

SEC. 320. LIMITATION.

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

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

(2) by adding at the end the following new subsection:

“(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate \$100,000 in value in—

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

“(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

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

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

SEC. 321. MISCELLANEOUS IMPROVEMENTS.

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

“(h) Notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the ‘bankruptcy system’), through a credit counseling program (offered through credit counseling services described in section 111(a)) that has been approved by—

“(1) the United States trustee; or

“(2) the bankruptcy administrator for the district in which the petition is filed.”.

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

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

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

(3) by adding at the end the following:

“(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 that was administered or approved by—

“(A) the United States trustee; or

“(B) the bankruptcy administrator for the district in which the petition is filed.”.

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

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

“(1) the United States trustee; or

“(2) the bankruptcy administrator for the district in which the petition is filed.”.

(d) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 301(b) and 318(b) of this Act, is amended by adding at the end the following:

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

“(1) a certificate from the credit counseling service that provided the debtor services under section 109(h) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(h); and

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

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

“(i) before the filing of the petition, the debtor made a good faith attempt pursuant to section 109(h) to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and”.

(f) GENERAL PROVISIONS.—

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

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

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

“(1) the United States trustee; or

“(2) the bankruptcy administrator for the district.

“(b) The United States trustee or each bankruptcy administrator referred to in subsection (a)(1) shall—

“(1) make available to debtors who are individuals an instructional course concerning personal financial management, under the direction of the bankruptcy court; and

“(2) maintain a list of instructional courses concerning personal financial management that are operated by a private entity and that have been approved by the United States trustee or that bankruptcy administrator.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 11, United States Code, is amended by adding at the end the following: “111. Credit counseling services; financial management instructional courses.”.

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

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

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

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

“(B) includes an individual condominium or co-operative unit;”;

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

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

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

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

“(C) all replacements or additions;”.

SEC. 322. BANKRUPTCY JUDGESHIPS.

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

(b) TEMPORARY JUDGESHIPS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee

under section 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 323. PREFERRED PAYMENT OF CHILD SUPPORT IN CHAPTER 7 PROCEEDINGS.

Section 507(a) of title 11, United States Code, is amended in the matter preceding paragraph (1), by inserting “, except that, notwithstanding any other provision of this title, any expense or claim entitled to priority under paragraph (7) shall have first priority over any other expense or claim that has priority under any other provision of this subsection” before the colon.

SEC. 324. PREFERRED PAYMENT OF CHILD SUPPORT IN CHAPTER 13 PROCEEDINGS.

Section 1322(b)(1) of title 11, United States Code, is amended by striking the semicolon at the end and inserting the following: “and provide for the payment of any claim entitled to priority under section 507(a)(7) before the payment of any other claim entitled to priority under section 507(a), notwithstanding the priorities established under section 507(a).”.

SEC. 325. PAYMENT OF CHILD SUPPORT REQUIRED TO OBTAIN A DISCHARGE IN CHAPTER 13 PROCEEDINGS.

Title 11, United States Code, is amended—

(1) in section 1325(a)—

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

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

(C) by adding at the end the following:

“(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under that order for alimony, maintenance, or support that are due after the date on which the petition is filed.”; and

(2) in section 1328(a), as amended by section 314 of this Act, in the matter preceding paragraph (1), by inserting “, and with respect to a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, only after the debtor certifies as of the later of the date of that completion or the date of certification that all amounts payable under that order for alimony, maintenance, or support that are due before the date of that certification have been paid in accordance with the plan if applicable, or if the underlying debt is not treated by the plan, paid in full” after “completion by the debtor of all payments under the plan”.

SEC. 326. CHILD SUPPORT AND ALIMONY COLLECTION.

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

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

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

(3) by adding at the end the following:

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

“(20) under subsection (a) with respect to the withholding, suspension, or restriction of drivers’ licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(15) of the Social Security Act (42 U.S.C. 666(a)(15)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7)).”.

SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, as amended by section 202 of this Act, is amended—

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

“(5) to a spouse, former spouse, or child of the debtor—

“(A) for actual alimony to, maintenance for, or support of that spouse or child;

“(B) that was incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, property settlement agreement, divorce decree, other order of a court of record, or determination made in accordance with State or territorial law by a governmental unit; or

“(C) that is described in subparagraph (A) or (B) and that is assigned pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(3)), or to the Federal Government, a State, or any political subdivision of a State,

but not to the extent that the debt (other than a debt described in subparagraph (C)) is assigned to another entity, voluntarily, by operation of law, or otherwise.”; and

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

SEC. 328. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 522(c)(1) of title 11, United States Code, is amended by inserting “, except that, notwithstanding any other Federal law or State law relating to exempted property, such exempt property shall be liable for debts of a kind specified in paragraph (1) or (5) of section 523(a)” before the semicolon at the end of the paragraph.

SEC. 329. DEPENDENT CHILD DEFINED.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (14) the following:

“(14A) ‘dependent child’ means, with respect to an individual, a child who has not attained the age of 18 and who is a dependent of that individual, within the meaning of section 152 of the Internal Revenue Code;”.

TITLE IV—TECHNICAL CORRECTIONS

SEC. 401. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by section 317, is amended—

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

“(54) The term ‘transfer’ means—

 - “(A) the creation of a lien;
 - “(B) the retention of title as a security interest;
 - “(C) the foreclosure of a debtor’s equity of redemption; or
 - “(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - “(i) property; or
 - “(ii) an interest in property.”;
- (7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (56A) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and
- (8) by redesignating paragraphs (4) through (56A) in entirely numerical sequence, so as to result in numerical paragraph designations of (4) through (72), respectively.

SEC. 402. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting “522(f)(3), 707(b)(5),” after “522(d),” each place it appears.

SEC. 403. EXTENSION OF TIME.

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

SEC. 404. WHO MAY BE A DEBTOR.

Section 109(b)(2) of title 11, United States Code, is amended by striking “subsection (c) or (d) of”.

SEC. 405. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

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

SEC. 406. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

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

SEC. 407. SPECIAL TAX PROVISIONS.

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

SEC. 408. EFFECT OF CONVERSION.

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

SEC. 409. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by section 326 of this Act, is amended—

- (1) in paragraph (19), by striking “or” at the end;
- (2) in paragraph (20), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:
 - “(21) under subsection (a) of this section of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;
 - “(22) under subsection (a)(3) of this section, of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement; or
 - “(23) under subsection (a)(3) of this section, of the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated.”.

SEC. 410. AMENDMENT TO TABLE OF SECTIONS.

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

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

SEC. 411. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

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

SEC. 412. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 323 of this Act, is amended—

- (1) in paragraph (3)(B), by striking the semicolon at the end and inserting a period; and
- (2) in paragraph (7), by inserting “unsecured” after “allowed”.

SEC. 413. EXEMPTIONS.

Section 522 of title 11, United States Code, as amended by section 320 of this Act, is amended—

- (1) in subsection (f)(1)(A)(ii)(II)—
 - (A) by striking “includes a liability designated as” and inserting “is for a liability that is designated as, and is actually in the nature of,”; and
 - (B) by striking “, unless” and all that follows through “support”; and
- (2) in subsection (g)(2), by striking “subsection (f)(2)” and inserting “subsection (f)(1)(B)”.

SEC. 414. EXCEPTIONS TO DISCHARGE.

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

- (1) in subsection (a)(3), by striking “or (6)” each place it appears and inserting “(6), or (15)”;
- (2) as amended by section 304(e) of Public Law 103–394 (108 Stat. 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14) of subsection (a);
- (3) in subsection (a)(9), by inserting “, watercraft, or aircraft” after “motor vehicle”;
- (4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting “to a spouse, former spouse, or child of the debtor and” after “(15)”;
- (5) in subsection (a)(17)—
 - (A) by striking “by a court” and inserting “on a prisoner by any court”;
 - (B) by striking “section 1915 (b) or (f)” and inserting “subsection (b) or (f)(2) of section 1915”; and
 - (C) by inserting “(or a similar non-Federal law)” after “title 28” each place it appears; and
- (6) in subsection (e), by striking “a insured” and inserting “an insured”.

SEC. 415. EFFECT OF DISCHARGE.

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

SEC. 416. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

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

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

SEC. 417. PROPERTY OF THE ESTATE.

Section 541(b)(4) of title 11, United States Code, is amended—

- (1) in subparagraph (B)(ii), by inserting “365 or” before “542”; and
- (2) by adding “or” at the end.

SEC. 418. LIMITATIONS ON AVOIDING POWERS.

Section 546 of title 11, United States Code, is amended by redesignating the second subsection (g) (as added by section 222(a) of the Bankruptcy Reform Act of 1994; 108 Stat. 4129) as subsection (h).

SEC. 419. PREFERENCES.

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

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

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

SEC. 420. POSTPETITION TRANSACTIONS.

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

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

SEC. 421. TECHNICAL AMENDMENT.

Section 552(b)(1) of title 11, United States Code, is amended by striking “product” each place it appears and inserting “products”.

SEC. 422. SETOFF.

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

SEC. 423. DISPOSITION OF PROPERTY OF THE ESTATE.

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

SEC. 424. GENERAL PROVISIONS.

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

SEC. 425. APPOINTMENT OF ELECTED TRUSTEE.

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

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

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

 - “(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and
 - “(ii) the service of any trustee appointed under subsection (d) shall terminate.

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

SEC. 426. ABANDONMENT OF RAILROAD LINE.

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

SEC. 427. CONTENTS OF PLAN.

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

SEC. 428. DISCHARGE UNDER CHAPTER 12.

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

SEC. 429. EXTENSIONS.

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

- (1) in subparagraph (A), in the matter following clause (ii), by striking “or October 1, 2002, whichever occurs first”; and
- (2) in subparagraph (F)—
 - (A) in clause (i)—
 - (i) in subclause (II), by striking “or October 1, 2002, whichever occurs first”; and
 - (ii) in the matter following subclause (II), by striking “October 1, 2003, or”; and
 - (B) in clause (ii), in the matter following subclause (II)—
 - (i) by striking “before October 1, 2003, or”; and
 - (ii) by striking “, whichever occurs first”.

SEC. 430. BANKRUPTCY CASES AND PROCEEDINGS.

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

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

SEC. 431. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

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

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

SEC. 432. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of enactment of this Act.

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

I. BACKGROUND AND NEED FOR THE LEGISLATION.

In recent years, bankruptcy filings have increased to record levels. According to the House, there were 1,423,128 bankruptcy filings in the 12 month period ending March 31, 1998, of which 1,370,490 (96.3%) were consumer bankruptcies. This represents a 19.1 percent rise over the same period ending in 1997, and the eight consecutive 12-month period that filings hit a record high. Currently, the rate of personal bankruptcies is about one in seventy. Richard E. Coulson et al., *Case Developments In Consumer Bankruptcy Highlight Need For Statutory Reform*, 51 Consumer Fin. L. Q. Rep. 261 (Summer 1997). *Unemployment Holds Steady And Is The Lowest In 28 Years*, Seattle Intelligencer, June 6, 1998, at B3; Statement of Jim Paxton, Chairman of the Joint Economic Committee, *July Employment Statistics*, (Aug. 8, 1997). This extraordinary increase in bankruptcy filings has a significant negative impact on the American economy. In response to this rising number of bankruptcies and the heightened degree of abusiveness by creditors and debtors, the Committee recommends S. 1301, which will promote fair and balanced reforms of the consumer bankruptcy laws while providing an unprecedented level of protec-

tion for all consumers, especially ex-spouses, single parents, and children affected by bankruptcy proceedings.

GENERAL OVERVIEW OF THE CURRENT BANKRUPTCY SYSTEM

Title I of S. 1301 reforms the bankruptcy code to limit the availability of bankruptcy relief to those who truly need it. The concept—“needs-based bankruptcy”—is the culmination of many Congressional efforts, by Republicans and Democrats, over five decades, to reform the bankruptcy system so that bankruptcy is available to those unfortunate Americans who need debt forgiveness, but is not abused by those who are not truly in financial need or who have the ability to contribute to repayment of their debts.

The Constitution gives Congress the authority to enact “uniform laws on the subject of bankruptcies throughout the United States.” Art. I, § 8, cl. 4 (1787). Since 1898, bankruptcy protections have been a permanent part of federal law.¹ Under current law, individuals considering bankruptcy often proceed under Chapter 7, where the bankrupt will surrender all assets which do not qualify for an exemption to a bankruptcy trustee. The bankruptcy trustee then sells the bankrupt’s property and distributes the proceeds to the creditors. Any deficiency which remains after the sale of these assets is simply erased (or “discharged”), and the bankrupt cannot be required to repay debts which have been erased during bankruptcy. Chapter 7, often referred to as “straight bankruptcy,” is the oldest and most commonly used type of bankruptcy proceeding.

Individuals may also declare bankruptcy under Chapter 13 of the bankruptcy code. Chapter 13 provides for the development of a repayment plan that allows a debtor to repay some portion of pre-bankruptcy debts. At the end of the repayment period, the unpaid portion of debt is erased, and a debtor cannot be required to repay the unpaid portion of the discharged debt. Unlike Chapter 7, the purpose of Chapter 13 is to rehabilitate financially-troubled consumers by using future earnings to repay debts in exchange for a discharge of the unpaid portions of those debts.

Prior to 1984, an individual contemplating bankruptcy had the unfettered discretion to choose either Chapter 7 or Chapter 13. Thus, an individual who could repay some pre-bankruptcy debt under Chapter 13 was not required to do so under Chapter 7. In 1984, Congress amended section 707 of the Bankruptcy Code to provide that a Chapter 7 case could be dismissed on the judge’s or the United States trustee’s motion, if the bankrupt’s case showed “substantial abuse.” Unfortunately, for a variety of reasons, these provisions have proven unworkable. It is this feature of bankruptcy law which has caused justifiable concern on the part of many who support the general concept of erasing or discharging debts for Americans in serious financial trouble, but who recognize the need to tailor bankruptcy relief to the extent needed. Many feel that the recent explosion in personal bankruptcy filings is partly attrib-

¹The first attempt at establishing a national bankruptcy policy was the Bankruptcy Act of 1800. 2 Stat. 19 (1800). This act, like the two that followed, was of short duration and enacted in response to a financial panic. Between 1803 and 1898 the United States attempted 8 times to enact or amend a uniform system of bankruptcy. U.S. Laws, Statutes, Etc., Bankruptcy Act Revision, Hearings before the Subcommittee on Civil and Constitutional Rights, Ninety-Fourth Congress. Each time the act either failed to pass or was repealed.

utable to the decreased moral stigma associated with a bankruptcy system which provides debt relief to certain Americans who use bankruptcy as a financial planning device. See testimony of Tahira Hira, Subcommittee on Administrative Oversight and the Courts Hearing, "S. 1301, The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis" (March 11, 1997); Testimony of Kenneth R. Crone, Subcommittee on Administrative Oversight and the Courts Hearing, "The Increase in Personal Bankruptcy and the Crisis in Consumer Credit," (April 11, 1997). This decreased moral stigma means that bankruptcy is not viewed as a last resort for financially troubled Americans who need, and deserve, debt forgiveness. Lee Flint, *Bankruptcy Policy: Toward a Moral Justification for Financial Rehabilitation of Consumer Debt*, 48 Wash. & Lee L. Rev. 515 (1991).

S. 1301 responds to the growing concern about the record levels of bankruptcy filings by clarifying when a bankruptcy judge who should dismiss a Chapter 7 case, or convert a Chapter 7 case to Chapter 13. If a bankrupt in Chapter 7 can repay twenty-percent or more of his general unsecured debts, the judge can require the bankrupt to transfer to Chapter 13 or leave the bankruptcy system. The Committee notes that the Department of Justice supports a judicially administered means-test. See Letter to the Honorable Orrin G. Hatch, Committee on the Judiciary, May 7, 1998 (on file with the Committee).

While some opponents of bankruptcy reform including the two dissenting Members of this Committee, blame the explosion of bankruptcies on too much credit, the Committee has strong reservations about the detrimental effect on power and minority communities of reducing the availability of credit. If credit lending practices are restricted as the dissenters suggest should be, the result will be less credit available to women, minorities, and others who need to borrow money to pay various necessities and emergencies.

THE HISTORY OF NEEDS-BASED BANKRUPTCY

The idea of requiring bankrupts to repay their debts when they have the ability to do so is not new. This topic has been the subject of many proposed amendments, from the early 1930s to the current Congress. S. 1301 is an extension of this longstanding effort to ensure that bankruptcy is reserved for those truly in need of debt forgiveness. See Oversight Hearing on Personal Bankruptcy, Committee on the Judiciary, Subcommittee on Monopolies and Commercial Law, 97th Cong. 2nd Sess., (1982) (Statement of Frank Kennedy).

The general structure of the present federal bankruptcy code is the result of the Bankruptcy Reform Act of 1978, Pub. L. 95-598. The 1978 Act was the first major overhaul and attempt to update comprehensively the bankruptcy law since passage of the Chandler Act in 1938. 52 Stat. 840 (1938). Prior to the Chandler Act, individuals in serious financial trouble had no choice but to file for "straight bankruptcy" under Chapter VII.² However, the Chandler Act contained a new, alternative procedure, the Chapter XIII Wage

²One feature of the 1978 revision of bankruptcy laws re-designated the bankruptcy chapters so that they are now identified by Arabic, rather than Roman, numerals.

Earners' Plan, which allowed an individual to retain nonexempt assets by proposing a plan to pay his or her existing debts from future income, after which the wage earner would receive a discharge of any unpaid balances of his debts.

The debate over Chapter XIII occurred years earlier in joint hearings before the House and Senate Judiciary Committees in 1932, during the Seventy-Second Congress. By the time it was enacted in 1938, Chapter XIII codified informal practices which had developed without explicit statutory authorization. In the mid 1930's in Birmingham, Alabama a former special referee in bankruptcy, Valentine Nesbitt, first developed a "repayment option" which was the model for Chapter XIII. Weinstein, *The Bankruptcy Law of 1938* (1938).

The hearings in 1932 were held on S. 3866, Section 75 of which would have established a repayment plan for wage earners. Section 75 provided a method for an indebted wage earner to come into court without being labeled "a bankrupt," and get the benefit of a court injunction to fend off creditors while the wage earner arranged to repay his pre-bankruptcy debts in installments.

Proponents of the 1932 amendment believed that most Americans were making enormous efforts to avoid bankruptcy, and that most wage earners who were in deeply in debt genuinely desire to pay their debts, if given time, and if they were not harassed by their creditors.

During the consideration of the 1932 proposal, Congress explicitly considered bankruptcy practices in England. In 1888, an English bankruptcy statute, gave the power to the bankruptcy judges to condition debt forgiveness on the repayment of some debts. Douglas Boshkoff, *Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings*, U. Pa. L. Rev. 69 (1982). With the conditional or suspended discharge, English courts are given broad discretion to condition debt-forgiveness on the making of payments to creditors from future earnings or other post-bankruptcy acquisitions, or to suspend the discharge while such payments are being made. The British experience shows that bankruptcy courts can, if given the power, play an important role limiting bankruptcy relief to those who truly need it. S. 1301 gives bankruptcy judges that power.

Since the 1938 amendments, there have been several proposals to limit bankruptcy relief to those who truly need it. In the 1960s, Congress considered several such proposals. See H.R. 12784, 88th Cong., 2d Sess. (1964); H.R. 292, 89th Cong., 1st Sess. (1965); S. 613, 89th Cong., 1st Sess. (1965); H.R. 1057 & H.R. 5771, 90th Cong., 1st Sess. (1967). Under these proposals, an individual debtor seeking relief under the liquidation provisions of the bankruptcy laws would be denied relief if the court concluded that he or she could pay substantial amounts of debts out of future earnings under a Chapter XIII plan.

Following the 1978 amendments, in the early 1980s, Senator Dole introduced S. 2000 during in the 97th Congress. In the House of Representatives, Congressman Evans introduced H.R. 4786, which eventually garnered 269 co-sponsors. Congress did not pass either proposal in the 97th Congress, so these measure were re-introduced in the 98th Congress as H.R. 1169 and S. 445. As a re-

sult of these efforts, Congress created Section 707(b) of the Bankruptcy Code in 1984 to allow judges to dismiss Chapter 7 cases if granting relief would constitute a “substantial abuse” of the bankruptcy code. Pub. Law 105-165. The focus of the effort was to require bankrupts who had the ability to pay a significant percentage of their debts “without difficulty” to proceed under Chapter 13 instead of Chapter 7. However, the term “substantial abuse” was not defined and creditors and trustees were expressly forbidden from presenting evidence to a judge that granting relief in a particular case would result in a “substantial abuse.” Further, Section 707(b) specifies that courts must presume that substantial abuse does not exist. Under a minority view, the debtor’s “ability to pay” debts out of future income, standing alone, can qualify as substantial abuse. See *In Re Koch*, 109 F. 3d 1285 (8th Cir. 1997). The prevailing view, however, is “ability to pay” is but one factor a court may consider in assessing whether there is a substantial abuse. See *In Re Green*, 934 F.2d 568 (4th Cir. 1991). In other words, Section 707(b) was designed with serious defects which have rendered the section unusable as a practical matter.

S. 1301 amends Section 707(b) to cure these defects. First, the phrase “substantial abuse” has been dropped and replaced with the lesser standard of “abuse.” Second, S. 1301 explicitly requires judges to consider a bankrupt’s ability to repay general creditors in determining whether to dismiss the bankrupt’s case or transfer the bankrupt to Chapter 13. Importantly, under S. 1301, creditors and trustees are now explicitly given the power to present evidence of abuse to the bankruptcy judge. S. 1301 gives trustees important new financial incentives for ferreting out bankrupts who have repayment capacity and provides for appropriate penalties for bankruptcy attorneys who recklessly steer individuals with repayment capacity to Chapter 7 bankruptcy.

As this historical survey clearly shows, the concept of limiting bankruptcy relief to those who truly need it has been a recurring theme in the debate over bankruptcy since the beginning of permanent bankruptcy laws. On numerous occasions, Congress has considered various proposals to limit bankruptcy relief in this way. Given the unprecedented level of consumer bankruptcies filed in this country in recent years, and the financial losses to American businesses and consumers which necessarily result from so much debt forgiveness, the Committee feels that the time has come for the common-sense reforms embodied in S. 1301.

ENHANCED CONSUMER PROTECTIONS

In addition to the “means testing” provisions discussed earlier, S. 1301 contains several important reforms which will protect individuals who face unnecessary and unfair harassment from creditors. There have been examples of creditors unjustifiably alleging that a debt should not be discharged because it was incurred through fraud with no basis for making such an allegation. *In Re Lantanawhich*, 207 BR 326 (Bankr. D. Mass. 1987); Mohl, Sears to Pay Staff, Residents \$10.82 Million,” *The Boston Globe* A-1 (September 4, 1997); Susan Chandler, Sears, States Settle Debt Cases Firm to Pay About 2 Million to Illinois Customers, *Chicago Tribune*, (Sept. 4, 1997); Mary Kane, “(A) Banks Finance The Bankrupt

(B) Credit Card Firms Eager to Solicit Consumers Despite Credit Problems”, *The Star Ledger* Newark, N.J., (July 20, 1997); James Russell, “U.S. Judge Vindicates Bankrupt Consumer Courts: The Jurist Sends A Strong Message to Credit Card Marketers in Case Involving AT & T”, *Orange County Reg.*, (May 30, 1997). Obviously, such activities threaten the integrity of the bankruptcy system, one feature of which is to protect honest debtors from the threats of unscrupulous debt collectors. The Committee therefore recommends several provisions in Title II of S. 1301 which contain tough new penalties to punish and deter unethical or illegal collection activities.

The two dissenting Members of the Committee completely ignore the new consumer protection penalties when they allege that S. 1301 does not adequately address the problem of coercive re-affirmations. Section 203 of S. 1301 specifically targets coercive re-affirmations by providing that creditors will face treble damage awards as well as minimum fines and legal costs if they fail to comply with the pro-consumer limitations which currently exist in Section 524 of the bankruptcy code. Moreover, under Section 203 of S. 1301 creditors are barred from using many collection techniques if they refused to accept an offer of compromise from a financially troubled customer who later declares bankruptcy. Thus, it is more than disingenuous for the two dissenting Members of the Committee to suggest that the Committee, or the sponsors of this legislation, will “make a terrible problem worse.”

Moreover, the dissenters appear to ignore the tough new restrictions imposed on creditors’ actions in bankruptcy. These restrictions include penalties on creditors who bring motions to object to debtor’s discharge without substantial justification for the motion. The penalties for this include attorney fees and costs of the debtor to be assessed against the creditor. Furthermore, if a creditor willfully does not apply Chapter 13 trustee payments per the plan, it will constitute a violation of the bankruptcy injunction and be punishable as such. To complement the need for accuracy in the debtor’s schedules, creditors are called upon to be accurate in the proofs of claim filed. If the proof of claim is disallowed or reduced in amount by 20% or more, the court may award the debtor attorney fees, costs and damages as warranted by the equities of the case. Finally, a creditor is barred from bringing a non-dischargeability action if the debtor made prepetition good faith efforts at negotiating a reasonable alternative payment schedule that the creditor unreasonably refused.

Contrary to the views of the two dissenting Members of this Committee, and as Senator Durbin correctly notes in his additional views, the Committee adopted by unanimous consent an amendment to protect the elderly from predatory loans. While this amendment may need technical refinements to avoid excessive litigation and abuse, the Committee is strongly committed to protecting consumers from unethical lending practices.

REDUCING ABUSIVE USES OF THE BANKRUPTCY CODE

As the National Bankruptcy Review Commission correctly noted, many of the worst abuses of the bankruptcy system involve individuals who repeatedly file for bankruptcy with the sole intention of

using the automatic stay (i.e., a court injunction which arises whenever a bankruptcy case is filed). National Bankruptcy Rev. Comm. Rep., *Bankruptcy the Next Twenty Years*, October 20, 1997 vol. 1, at 262. Accordingly, Title III of S. 1301 contains restrictions on repeat filers. Under S. 1301, if a bankrupt has filed for bankruptcy before, and that case was dismissed, the bankrupt will not get the benefit of the automatic stay. The Committee feels that this change will dramatically reduce the number of frivolous bankruptcy cases.

Title III also contains new protections for secured lenders and requires random audits of bankruptcy petitions to verify the accuracy of information contained in bankruptcy petitions. The Committee is concerned that there is little incentive for individuals to list all of their assets or fully disclose their financial affairs, including their income and living expenses, when they file for bankruptcy. Of course, such laxity fosters an environment in which the overall financial condition of the bankrupt is likely to be inaccurate, with the result that creditors may receive less than they could when a bankrupt's financial affairs are accurately disclosed. Accordingly, the random audit procedures will restore some integrity to the system, since all material misstatements are required to be reported to the appropriate authorities.

ENHANCED PROTECTIONS FOR CHILD SUPPORT

In response to concerns that certain provisions of S. 1301 could have unintended consequences which would make the collection of child support debts more difficult, the Committee unanimously accepted an amendment offered by Senators Hatch, Grassley and Kyl to enhance the relative position of child support claimants in bankruptcy proceedings. Section 325 of S. 1301, now requires the payment of all unpaid child support prior to other debts in a Chapter 7 liquidation proceeding and prior final in a Chapter 13 bankruptcy. Similarly, Section 325 requires child support to be paid first before other priority debts in a Chapter 13 repayment plan.

ADDITIONAL BANKRUPTCY JUDGESHIPS AND MISCELLANEOUS PROVISIONS

S. 1301 requires the Administrative Office of the United States Courts to provide special procedures and safeguards to ensure the confidentiality of tax information which bankrupts are required to file with their court papers. S. 1301 also expands the scope of non-dischargeable debts to include debts incurred as a result of a civil judgement from claims relating to sexual conduct or intentional violent conduct.

Furthermore, the Committee adopted, by a unanimous vote, an amendment that authorizes eighteen new temporary bankruptcy judgeships around the country, and extends five other ones. In considering whether to create new bankruptcy judgeships, the Committee has emphasized that the judiciary bears the burden of demonstrating the need for new judgeships. Although not satisfied that this burden has been completely met, the Committee is willing to agree to most of the Judicial Conference's requests at this time with the understanding that future requests will be subject to more thorough scrutiny.

The Subcommittee on Administrative Oversight and the Courts held a hearing on this matter last year on September 22, 1997. Following the hearing, the Judicial Conference took many months to supply information requested by the Subcommittee. In fact, to date, some of the requested material has never been provided. For instance, the Subcommittee requested documents related to special task forces the Judicial Conference dispatched to districts requesting new judgeships to evaluate these districts and make recommendations regarding the effective use of resources. The Subcommittee was initially informed that no written documents existed. The Subcommittee then requested that the observations and recommendations be put in writing and submitted to the Subcommittee for review. The Judicial Conference responded that if this information was given to Congress, judges would be less candid and open about their respective district's shortfalls and needs. See Letter from Senator Grassley to the Honorable David Thompson (requesting information on the actions taken to avoid adding new judgeships), October 23, 1997, (on file with the Subcommittee on Administrative Oversight and the Courts); Letter from The Honorable David Thompson to Senator Grassley, November 6, 1997, (on file with the Subcommittee on Administrative Oversight and the Courts). The Committee views access to such information necessary in order for Congress to determine judgeship needs.

The Judicial Conference, and supporters of its judgeship request, have argued for their case by referring to the overall rise in bankruptcy filings. The Committee feels that focusing merely on increased filings misses the mark.

Importantly, the Judicial Conference uses a weighting system to determine when new bankruptcy judgeships are needed. This means that because not all bankruptcy cases require the same amount of judge time and effort, some cases are weighted more than others, with the more complex cases being given a much greater weight than the simpler cases. The recent increase in bankruptcy filings has been due almost entirely to consumer bankruptcy cases—in particular consumer cases filed under chapter 7 of the bankruptcy code. Laura Castaneda, *Issuers of Credit Cards Get Tougher*, San Francisco Chronicle, Sept. 15 1997. Unlike complex corporate reorganizations under Chapter 11, these cases require little effort from a bankruptcy judge. As a result, they are not weighted heavily in the formula used to assess the need for new judges. In most of the districts which are requesting new judgeships, the weighted case-filings, relied upon in making judgeship requests, have either decreased or remained about the same since 1993. Ed Flynn, *Chapter 7 Case Processing Speed*, American Bankruptcy Institute Journal (1994). Thus, the Committee questions the pressing need for new judgeships because the weighted case filings appear either to have remained stable or decreased in most requesting districts.

The amendment includes a modest reporting requirement for non-caseload related travel, to help ensure more accountability. In recent years, a question has arisen regarding the amount of non-case related travel engaged in by bankruptcy judges in those districts which are requesting new judgeships. The Committee believes that the American taxpayer is entitled to expect that bank-

ruptcy judges exhaust all options before requesting additional judgeships.

The Committee has been very reluctant to create new judgeships unless the need for such judgeships are fully justified. At the request of Subcommittee Chairman Grassley, the General Accounting Office examined the non-caseload related travel of bankruptcy judges in districts which are requesting new judgeships. GAO Rep., Federal Judiciary: Information on Noncase-Related Travel of Bankruptcy Judges in 14 Bankruptcy Districts, GGD-97-166R at 1, Aug. 8, 1997. The non-partisan GAO study has raised questions regarding non-case related travel.

The Committee agrees that bankruptcy judges should engage in some non-case related travel. But, it is perhaps inappropriate to spend nearly a year's worth of work-time on non-case related travel—as one district did—where pressing official work is pending and then argue for more judges. In the fourteen requesting districts, there were 416 trips taken in 1995 and 406 taken in 1996. GAO Report at 4. Many non-case related trips involved teaching seminars and courses. It is beyond dispute that there are numerous bankruptcy professionals and academics capable of teaching seminars and many of these activities are beneficial to the general public. However, the Committee is of the view that bankruptcy judges should give first priority to their caseload. That would be the appropriate way to do business, and one the Committee believes that the taxpayers have every right to demand.

II. COMMITTEE AND SUBCOMMITTEE CONSIDERATION IN THE 105TH CONGRESS.

As noted earlier, the work of the Committee in the 105th Congress built upon the foundations established by the work of prior Congresses. In addition, during the 105th Congress, the Subcommittee on Administrative Oversight and the Courts held the following hearings.

SUBCOMMITTEE HEARINGS

The Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary held a hearing on April 11, 1997 on the increase in personal bankruptcies and the crisis in consumer credit. Witnesses included Michael E. Staten, Director of the Credit Research Center, Purdue University; Ian Domowitz, Department of Economics, Professor at Northwestern University; Edward Bankole, Vice-President, Moody's Investors Service; Kim Kowalewski, Chief, Financial and General Macroeconomic Analysis Division, Congressional Budget Office; and Michael McEnaney, Morrison and Foerster, on behalf of the National Consumer Bankruptcy Coalition.

On October 21, 1997, the Subcommittee held a hearing in Washington, D.C. to review the recommendations of the National Bankruptcy Review Commission. The witnesses testifying on behalf of the Commission included Brady C. Williamson, Chair; Hon. Robert E. Ginsberg, Vice-Chair, U.S. Bankruptcy Judge; M. Caldwell Butler; Jim Sheppard; Hon. Edith Hollan Jones; John Gose; Babette Ceccotti; and Jay Alix.

On March 11, 1998, the Subcommittee held a hearing on S. 1301, entitled "The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis". The Subcommittee heard witnesses from three panels. The first panel of witnesses included Lawrence A. Friedman, Secretary, National Association of Bankruptcy Trustees; Hon. A. Thomas Small, Chief Bankruptcy Judge; Tahira K. Hira, Professor at Iowa State University; George J. Wallace, attorney at Eckert, Seamans, Cherin, and Melott, LLC; William E. Brewer, Jr., National Association of Consumer Bankruptcy Attorneys; Stan Bluestone, National Retail Federation. Witnesses on the second panel were Richard Stana, General Accounting Office; Michael Staten, Director of Credit Research Center; Stephen Brobeck, Executive Director, Consumer Federation of America; Brian McDonnell, National Association of Federal Credit Unions; and Robert Elliot, Household International. Witnesses on the third panel consisted of Douglas Boshkoff, Professor at Indiana University School of Law; Randy Picker, National Bankruptcy Conference; Deborah D. Williamson, American Bankruptcy Institute; and Matthew Mason, United Auto Workers.

Thus, over a period of a year, the Subcommittee held three hearings focusing primarily on consumer bankruptcy issues and heard from twenty-five witnesses.

Given the large number of witnesses who provided testimony regarding the current crisis in consumer bankruptcy, the committee is perplexed by the complaint of the two dissenting Members of this Committee that further hearings are needed. It is profoundly ironic that the Senator voicing this complaint never attended any of the three hearings conducted by the Subcommittee on the Administrative Oversight and the Courts or submitted written questions to any of the witnesses who appeared at these hearings. In light of such non-participation, it is difficult to see any value to future hearings. Thus, having chosen not to engage in various hearings held by the Subcommittee in any way, it is troubling that the two dissenting Members of the Committee now use their own non-participation as a political argument to derail this legislation.

SUBCOMMITTEE MARKUP

The Subcommittee on Administrative Oversight and the Courts met on April 2, 1998 at 2 p.m. with a quorum present.

(1) Senator Kohl offered an amendment to eliminate the misuse of the homestead exemption. This amendment would allow certain property to be exempted under state or local law, up to \$100,000. The amendment was agreed to by unanimous consent.

(2) Senator Sessions offered an amendment that would impose mandatory debtor education. The amendment was agreed to by unanimous consent.

(3) Senator Durbin offered an amendment that would exempt debtors from creditor-initiated motions under Section 707(b) if the family has a monthly total income equal to or less than the national median family income. The amendment was agreed to by unanimous consent.

(4) Senator Sessions offered an amendment that would prohibit the use of bankruptcy laws to avoid evictions and unlawful detainer actions. The amendment was agreed by a 4-3 vote.

(5) Senator Kyl offered an amendment to establish a presumption that debts incurred during the 90-day period preceding a bankruptcy are nondischargeable. The amendment was agreed to by a voice vote.

(6) Senator Kyl offered an amendment that would make debts incurred through fraud nondischargeable in Chapter 13 cases. The amendment was agreed to by a voice vote.

(7) Senator Sessions offered an amendment to define the term debtor's principal residence, incidental property, and other purposes. The amendment was deferred for Committee consideration.

(8) Senator Sessions offered an amendment to bar "cramdowns" of items purchased on secured credit within 90 days of bankruptcy. The amendment was agreed to by unanimous consent.

The Subcommittee then voted to favorably report S. 1301 with an amendment in the nature of a substitute by a rollcall vote of 6 yeas and 1 nay.

YEAS	NAYS
Thurmond (by proxy)	Feingold
Kyl	
Sessions	
Durbin	
Kohl (by proxy)	
Grassley	

COMMITTEE MARKUP

The Senate Committee on the Judiciary, with a quorum present, met on May 21, 1998 at 10 a.m. The following rollcall votes occurred on the bill and the amendments proposed thereto:

(1) Senator Specter offered an amendment to permit a judge to waive bankruptcy filing fees when the judge determines the debtor will be unable to pay the fee even in a series of monthly installments. The amendment was defeated by a rollcall vote of 9 yeas to 9 nays.

YEAS	NAYS
Specter	Thurmond
Leahy	Grassley
Kennedy (by proxy)	Thompson (by proxy)
Biden	Kyl
Kohl (by proxy)	DeWine
Feinstein	Ashcroft
Feingold	Abraham
Durbin	Sessions
Torricelli	Hatch

(2) Senator Specter offered an amendment that would provide that the standard applied by a judge in ordering the debtors' attorney to pay costs and attorney's fees would be that the conduct of the lawyer be "frivolous". The amendment was defeated by 9 yeas to 9 nays.

YEAS	NAYS
Specter	Thurmond
Thompson (by proxy)	Grassley
Leahy	Kyl

Kennedy (by proxy)	DeWine
Biden	Ashcroft
Kohl (by proxy)	Abraham
Feinstein	Sessions
Feingold	Durbin
Torricelli	Hatch

(3) Senator Feingold offered an amendment that would provide that the standard applied by a judge in ordering the debtors's attorney to pay costs and attorney's fees would be that the conduct of the lawyer was not substantially justified. The amendment was accepted by unanimous consent.

(4) Senator Grassley offered an amendment to provide additional bankruptcy judgeships. The amendment was agreed by unanimous consent.

(5) Senator Grassley offered a technical amendment to insert language that would provide more-focused creditor sanctions. The amendment was agreed by unanimous consent.

(6) Senator Hatch offered an amendment co-sponsored by Senators Grassley and Kyl to augment the ability of ex-spouses, single parents and children to collect payments from deadbeat parents by making child support and alimony payments the top priority under the bankruptcy laws. The amendment was accepted by unanimous consent.

(7) Senator Durbin offered an amendment that would broaden the Federal Trade Commission's definition of household goods beyond families with children to all persons involved in the bankruptcy proceedings. The amendment was deferred for floor consideration.

(8) Senator Abraham offered an amendment that would prohibit "cramdowns" in Chapter 13 cases. The amendment was passed by a 10 yeas to 7 nays rollcall vote.

YEAS	NAYS
Thurmond	Leahy (by proxy)
Grassley	Kennedy
Thompson (by proxy)	Biden
Kyl	Kohl
DeWine	Feinstein
Ashcroft (by proxy)	Feingold
Abraham	Durbin
Sessions	
Torricelli	
Hatch	

(9) Senator Torricelli offered an amendment that provided that any debt incurred for certain intentional tort would not be dischargeable. The amendment was agreed to by unanimous consent.

(10) Senator Durbin offered an amendment that would modify the amendment accepted by the Subcommittee on Administrative Oversight and the Courts to prohibit the use of bankruptcy laws to avoid evictions and unlawful detainer actions, if the debtor continued to pay rent during the course of the bankruptcy. The amendment was deferred for floor consideration.

(11) Senator Durbin offered an amendment to disallow bankruptcy claims of lenders who engage in predatory lending practices

in violation of the Truth in Lending Act. The amendment was agreed to by unanimous consent.

(12) Senator Leahy offered an amendment to require that the Administrative Office of the Director of the United States Courts establish a standard of measures to safeguard the confidentiality of tax information. The amendment was adopted by unanimous consent.

(13) Senator Feingold offered an amendment that would exempt debtor's attorneys from being responsible for reasonable costs and attorney fees in cases where an attorney took on the bankruptcy case pro bono. The amendment was deferred.

The Committee voted to favorably report S. 1301 by a rollcall vote of 15 yeas to 2 nays.

YEAS	NAYS
Thurmond	Kennedy
Grassley	Feingold
Specter (by proxy)	
Thompson (by proxy)	
Kyl	
DeWine	
Ashcroft	
Abraham	
Sessions	
Leahy	
Biden	
Kohl (by proxy)	
Durbin	
Torricelli	
Hatch	

III. SECTION-BY-SECTION ANALYSIS

TITLE I—NEEDS BASED BANKRUPTCY

This title of S. 1301 changes section 707(b) of the bankruptcy code to allow for a Chapter 7 case to be dismissed or converted to Chapter 13.

Section 101. Conversion

This section amends section 706(c) of Title 11 of the United States Code. It is amended by inserting “or consents to” after “requests”.

Section 102. Dismissal or conversion

This section deletes the current section heading and inserts the following: “707. Dismissal of a case or conversion to a case under chapter 13.” The section strikes the word “substantial” and provides a non-exhaustive list of factors that a court must consider in deciding whether to dismiss or convert a Chapter 7 Bankruptcy case. The factors include the following: (A) if the debtor could pay an amount greater than or equal to 20% of unsecured claims which are not considered to be priority claims or (B) if the debtor filed the petition for relief in bad faith. The term “bad faith” is intended to encompass situations where dismissals have been warranted under

the current version of 707(b). This section explicitly gives creditors and trustees the right to file motions under Section 707(b). The Committee believes that this will level the playing field for creditors.

In addition, the section directs the court to order the counsel for the debtor to reimburse the trustee for all reasonable costs associated with prosecuting a motion for dismissal or conversion if the motion was granted and if the court finds that the action of the counsel for the debtor in filing under this chapter was not substantially justified. The Committee intends the term “not substantially justified,” as used in this section, and as used throughout S.1301, to mean that there is no “reasonable basis in fact and law,” as interpreted by the following bankruptcy cases: *In re Akdogan*, 204 B.R. 90, 98 (E.D.N.Y. 1997); see also *In re Carolam*, 204 B.R. 980, 987 (Bankr. 9th Cir. 1996) (1996); *In re Burns*, 894 F.2d 361, 363 (10th Cir. 1990) (discussing history of Section 523 (d) of the Bankruptcy Code).

As four dissenting members of the National Bankruptcy Commission correctly observed, “bankruptcy mills” often process consumers into bankruptcies without “serious investigation” of their financial condition. Recommendations for Reform of Consumer Bankruptcy Law By Four Dissenting Commissioners, p. 23, printed in The Report of the National Bankruptcy Review Commission. The Committee notes that Chapter 7 trustees are often in the best position to know which bankrupts have the ability to repay their debts. Therefore, trustees are now expected to investigate the debtor’s petition and schedules and conduct the first meeting of creditors to determine in a fair way if the debtor does not belong in Chapter 7. The prospect of reimbursement for filing 707(b) motions will deputize this well-informed army of trustees to identify and eliminate bankruptcy abuses. The court may further order fines against the debtor’s attorney for violations of Rule 9011, where appropriate.

Furthermore, the section provides that the court may award a debtor all reasonable costs in contesting a creditor’s motion to transfer or dismiss, including attorneys’ fees, if the court does not grant the motion and the party’s position was not substantially justified or the motion was brought solely to coerce a debtor into waiving a guaranteed right. Thus, contrary to the assertion of the two dissenting Members of this Committee, there are real and meaningful disincentives for creditors to use 707(b) motions solely to harass or coerce debtors.

The section also addresses the problems associated with small creditors by providing that a party in interest filing an aggregate claim of less than \$1,000 is not subject to the fines in subparagraph (A).

Finally, the section prohibits §707(b) creditor and trustee motions if the debtor (or the debtor and spouse combined) have current monthly total income equal to or less than the national median household monthly income for a household of equal size. The section further provides that for a household of more than 4, the median income of the household shall be that of a household of 4 plus \$583 for each additional member of the household above 4.

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

Section 201. Allowance of claims or interests

This section amends section 502 of Title 11, United States Code, to prevent creditors in bankruptcy from deliberately overstating their claims. Under the amended section, a court may award the debtor reasonable attorneys' fees if the court disallows the creditor's claim or the court reduces the creditor's claim by more than 20% and the court finds that the position of the filing party was not substantially justified. Case law permits the court to award additional damages when appropriate and the position of the creditor was not substantially justified.

Section 202. Exceptions to discharge

This section amends section 523 of Title 11 of the United States Code. The section adds to the list of non-dischargeable debts, debts acquired by a "materially false representation upon which the defrauded person justifiably relied." The Committee is especially concerned that some unscrupulous creditors have alleged false representations with no basis for doing so. Under the amended section, a court shall award the debtor reasonable attorneys' fees and costs if the creditor requests a determination of dischargeability of a consumer debt and the debt is not discharged. This section also directs the court, if it finds the creditor's proceeding is not substantially justified, to award additional amounts as may be required by the equities of the case.

Additionally, the section provides that a creditor may not contest the discharge of a consumer debt if (1) the debtor made a good faith effort to negotiate a reasonable repayment schedule and (2) the creditor unreasonably refused to negotiate a repayment schedule. The burden of proof for establishing these facts will be on the debtor.

Section 203. Effect of discharge

This section amends section 524 of Title 11 of the United States Code. Under the amended section, the "willful" failure of a creditor to credit payments received under a plan confirmed under the bankruptcy code shall constitute a violation of this discharge injunction under subsection (a)(2). The Committee intends the term "willful" to encompass only deliberate refusals to credit payments under circumstances where it is clear that the creditor is aware of its legally binding responsibility to do so. The section also provides that a creditor may not charge a debtor or his account for attorneys' fees or costs except as specifically provided for in the plan. In addition, any individual who is injured because of a failure by a creditor to comply with reaffirmation agreement requirements or by any willful violation of the subsection (a)(2) injunction shall be entitled to recover (1) the greater of (A) the amount of actual damages multiplied by 3 or (B) \$5,000; and (2) costs and attorneys' fees.

Section 204. Automatic stay

This section amends section 362(h) of Title 11 of the United States Code. Under the amended section, any individual who is injured by a willful violation of a stay provided under this section

shall be entitled to recover (1) actual damages and (2) reasonable costs and attorneys' fees. The section also provides that the above individual may recover punitive damages in appropriate circumstances.

Section 205. Discharge

This section amends section 727 of Title 11 of the United States Code. The section provides that a creditor may not request a determination of dischargeability of a consumer debt if (1) the debtor made a good faith effort to negotiate a reasonable repayment schedule and (2) the creditor unreasonably refused to negotiate a repayment schedule. The burden of proof for establishing these facts will be on the debtor. Under the amended section, the court may award the debtor reasonable attorneys' fees and costs if a creditor files a motion to deny relief to a debtor and the motion is denied or withdrawn after the debtor has replied. The section also provides that the court may assess damages against the creditor, in an amount as may be required by the equities of the case, if it finds the position of a party filing a motion not substantially justified.

Section 206. Discouraging predatory lending practices

This section amends section 502(b) of Title 11 of the United States Code. After technical amendments, this section amends section 502 to prohibit the bankruptcy claims of lenders that materially violate certain requirements of the Truth in Lending Act in new loans made by such lenders. However, the Committee does not intend to clog the bankruptcy courts with litigation over disputes involving the Truth in Lending Act.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION
OF THE BANKRUPTCY SYSTEM

Section 301. Notice of alternatives

This section amends section 342 of Title 11 of the United States Code. Under the amended section, an individual whose debts are primarily consumer debts shall receive a written notice prescribed by the United States trustee for the district in which the petition is filed. The section provides that the notice shall contain the following:

- (1) brief descriptions of chapters 7, 11, 12 and 13 of title 11 outlining the general purpose, benefits and costs of proceeding under each chapter;
- (2) brief descriptions of services available from an independent, nonprofit debt counseling service; and
- (3) the name, address and telephone number of each nonprofit debt counseling service with an office located in the district in which the petition was filed. The list of nonprofit debt counseling services shall include any service that has registered with the clerk of the bankruptcy court on or before December 10 of the preceding year, unless the chief bankruptcy judge of the district, after notice and opportunity for a hearing, orders, for good cause, that a particular debt counseling service shall not be listed.

Further, the section also amends section 521 of Title 11 of the United States Code to clarify a debtor's duties. Under the amended section, the debtor shall file with the court the following:

- (1) a list of creditors; and unless the court orders otherwise;
- (2) a schedule of assets and liabilities;
- (3) a schedule of current income and expenditures;
- (4) a statement of the debtor's financial affairs;
- (5) if applicable, a certificate of the attorney for the debtor or bankruptcy petition preparer indicating the debtor received any notice required or if no attorney or bankruptcy petition preparer are indicated, that notice was actually obtained and read by the debtor;
- (6) copies of Federal tax returns filed by the debtor for the 3-year period preceding the order for relief;
- (7) copies of all payment advances or other evidence of payment received by the debtor from any employer within 60 days prior to the filing of the petition;
- (8) an itemized statement of projected monthly net income; and
- (9) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12 months following the date of filing.

The section also adds that a creditor under chapter 7 or 13 may at any time request the petition, schedule, and a statement of affairs filed by the debtor or a plan filed by the debtor from the bankruptcy court.

The section also provides that a debtor under chapter 7 or 13 shall file with the court the following:

- (1) at the time filed with the taxing authority, all tax returns within the period from the commencement of the case until its close;
- (2) at the time filed with the taxing authority, all tax returns that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;
- (3) any amendments to tax returns; and
- (4) in Chapter 13 cases, a statement subject to penalties of perjury of debtor's income and expenditures in the preceding tax year and monthly net income. The preceding statement must show how the amounts are calculated. This statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and any persons who contributed to the debtor's household as well as the amounts contributed.

In addition, the tax returns, amendments, and statement of income and expenditures previously described shall be available for inspection and copying by the United States trustee, any bankruptcy administrator, trustee or party in interest.

The Director of the Administrative Office of the United States Courts shall establish procedures to maintain the confidentiality of any tax information no later than 30 days after the date of enactment of the Consumer Bankruptcy Act of 1998. Moreover, the section directs the Director of the Administrative Office of the United

States not later than 1 year after the date of enactment of this bill to prepare and submit a report to Congress assessing the effectiveness of the restrictions and suggestions for penalties.

Section 302. Fair treatment of secured creditors under chapter 13

This section amends section 1325(a)(5)(B)(I) of Title 11 of the United States Code. After technical amendments, this section strikes the previous subsection (a) and adds a new section, which provides that “cramdowns” will not be permitted in Chapter 13 cases. Under current law, a secured claim can be reduced or “crammed down” to the value of the collateral and since secured claims are paid in full, reducing the amount of secured claims means that secured lenders will receive less.

The section also amends the title of section (b) to “Payment of Holders of Claims Secured by Liens.” This subsection provides that a lienholder will retain the lien securing such claim until the debt that gave rise to the lien is fully paid for, as provided under the plan.

The section also amends section 506 of Title 11 of the United States Code. Under the amended section, a claim is attributable to the purchase price of personal property acquired in the 90 days prior to filing cannot be reduced under section 506(a).

Section 303. Discouragement of bad faith repeat filings

This section will greatly reduce abuses of the bankruptcy system by reducing the incentive to file for bankruptcy repeatedly without completing the bankruptcy process. After technical amendments, the amended section adds that with respect to any action taken on a debt or property securing a debt, or any lease, the automatic stay shall terminate with respect to the property or debtor on the 30th day after the filing of the later case if: (A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and (B) a single or joint case of that debtor was pending during the preceding year but was dismissed (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title).

This section provides that the court may extend the stay in a particular case with respect to 1 or more creditors, if a party in interest so requests, after providing notice and a hearing before the expiration of the 30-day period in paragraph (2). The stay will be extended only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

The section provides that a case shall be presumed to have not been filed in good faith if:

(A) more than one previous case under chapter 7, 11, or 13 of Title 11 of the United States Code title in which the individual was a debtor was pending during the 1-year period described in paragraph (1) or;

(B) a previous case under chapters 7, 11, or 13 in which the individual was a debtor was dismissed after the debtor failed to file or amend the petition or other documents as required (after having received from the court a request to do so), or the

debtor failed to perform the terms of a plan that was confirmed by the court (without substantial excuse) or;

(C) if, (1) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor, (2) the case is a chapter 7 case and there is no other reason to conclude that the later case will be concluded with a discharge, or (3) the case is a chapter 11 or 13 case and there is not a confirmed plan that will be fully performed.

The section also provides that if a request is made, and granted, for relief from the stay under subsection (a) with respect to real or personal property the court may, in addition to making any other order under this subsection, order that the relief so granted shall be in rem either: (1) for a definite period of not less than 1 year, or (2) indefinitely.

Furthermore, the section provides that after an order is issued under subparagraph (A), the stay under subsection (a) shall not apply to any property subject to the in rem order in any other case filed by the debtor. Additionally, if an in rem order so provides, the stay shall, in addition to being inapplicable to the debtor involved, not apply with respect to an entity under this title if: (1) the entity had reason to know of the order at the time that the entity obtained an interest in the property affected, or (2) the entity was notified of the commencement of the proceeding for relief from the stay, and at such time no case in which the entity was a debtor was pending.

For the purposes of this section, a case is pending during the period beginning with the issuance of the order for relief and ending at such time as the case involved is closed.

Section 304. Timely filing and confirmation of plans under chapter 13

This section amends section 1321 of Title 11 of the United States Code. The amended section provides that the debtor shall file a plan no later than 90 days after the order for relief. The court may extend such period if the debtor should not justly be held accountable for the circumstances creating the need for the extension.

The section also amends section 1324 of Title 11 of the United States Code. The amended section, concerning confirmation of hearings provides that the hearing shall be held no later than 45 days after the filing of the plan unless the court, after notice and hearing, orders otherwise.

Section 305. Application of the co-debtor stay only when the stay protects the debtor

This section amends section 1301(b) of Title 11 of the United States Code. After technical amendments, the section limits the co-debtor stay to 30 days when the debtor did not receive consideration for property that is subject to a claim when transferred to another party. However, a special rule is provided to protect a spouse or ex-spouse when the other spouse or ex-spouse files for bankruptcy and is obligated under a legally binding separation or property settlement agreement or divorce or dissolution decree to pay

the creditor of the non-filing spouse. Finally, the co-debtor stay shall terminate as of the date of confirmation of the plan if the plan provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned.

Section 306. Improved bankruptcy statistics

This section amends Chapter 6 of Part I of Title 28 of the United States Code by adding a new section. This new section provides that the clerk of each district shall compile statistics regarding debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. The Director of the Administrative Office of the United States shall prescribe the form for the statistics, compile the statistics, and make them available to the public. In addition, the director shall prepare annually and submit to Congress a report concerning the statistics compiled and an analysis of the information.

The compilation required of the Director shall be itemized by chapter with respect to title 11, presented both in the aggregate and for each district, and include information concerning the following: (A) total assets and liabilities of the debtors and each category of assets and liabilities reported by those debtors in the schedules prescribed pursuant to section 2075; (B) current total monthly income, projected monthly net income, and average income and expenses as filed by the debtors under sections 111, 521, and 1322 of title 11; (C) the aggregate amount of debt discharged in the reporting period (the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in predominantly nondischargeable categories); (D) average time period between filing of the petition and the closing of the case; (E) for the reporting period, the number of cases in which a reaffirmation was filed, total number of reaffirmations filed, number of reaffirmation cases where the debtor was not represented by an attorney, and of those cases the number approved by the court; (F) with respect to cases filed under chapter 13 of title 11, the number of cases where the final order determined the value of property securing a claim to be less than the amount of the claim, the number of final orders determining the value of property securing a claim issued, the number of cases dismissed for failure to make payments, and the number of cases where the debtor filed another case within the 6 years previous to the filing, and (G) the extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct.

The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

Section 307. Audit procedures

This section amends section 586 of Title 28 of the United States Code. This section provides that the Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11 (and when applicable section 111 of title 11) in cases filed under chapter 7 or 13.

Importantly, the audits required by this section shall be made in accordance with generally accepted auditing standards and performed by independent certified public accountants or licensed public accountants. The audit procedures shall:

- (1) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform those audits;
- (2) establish a method of randomly selecting cases to be audited (not less than 1 out of every 500 cases in each Federal judicial district shall be selected);
- (3) require audits for schedule of income and expenses which reflect greater than average variances from the statistical norm of the district; and
- (4) establish procedures for reporting the results of the audits to the Attorney General, the United States Attorney and the courts as appropriate, providing, at least annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported, and fully funding the audits, including procedures requiring a debtor with sufficient available income or assets to contribute to the payment and an administrative expense.

The section also provides that the United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee in accordance with the above procedures.

Upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other things that the auditor requests and that are reasonably necessary to facilitate the audit to be made available for inspection and copying.

The report of each audit conducted under this subsection shall be filed with the court, the Attorney General, and the United States Attorney, under the procedures established in paragraph (1).

If a material misstatement of income or expenditures or of assets is reported under subparagraph (A), a statement specifying that misstatement shall be filed with the court and the United States trustee and shall give notice thereof to the creditors and the United States Attorney for the district (in an appropriate case in the opinion of the United States trustee).

The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

Section 308. Creditor representation at first meeting of creditors

This section amends section 341(c) of Title 11 of the United States Code. The amended section provides that notwithstanding any local or State law requiring that representation be by an attorney in a meeting of creditors under subsection (a), a creditor holding a consumer debt or any representative of the creditor shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney. Nothing in the subsection should be construed to re-

quire any creditor to be represented by an attorney at any meeting of creditors.

This section will reduce costs for small businesses in bankruptcy, which often cannot afford to pay an attorney to appear at the creditor's meeting.

Section 309. Fair notice for creditors in chapter 7 and 13 cases

This section amends section 342 of Title 11 of the United States Code. After technical amendments, the amended section provides that if the credit agreement between a debtor and a creditor, or the last communication before the filing of the petition, lists a current account number of the debtor, the debtor shall include that account number in any notice to the creditor required to be given under this title.

The section also provides that, if the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address.

For the purposes of this section, the term "notice" includes: (A) any correspondence from the debtor to the creditor after commencement of the case, (B) any statement of the debtor's intention under section 521(a)(2), (C) notice of commencement of any proceeding in the case to which the creditor is a party, and (D) any notice of hearing under section 1324.

A creditor, in a case of an individual under chapter 7 or 13, may file at any time with the court a notice of the address to be used to notify the creditor. This notice shall be served on the debtor. If the court or the debtor is required to give the creditor notice, 5 days after receipt of the notice under paragraph (1), the notice shall be given at that address.

An entity may file a statement indicating its address for notice in cases under chapter 7 or 13. After 30 days following the statement, any notice in a case filed under chapter 7 or 13 given by the court shall be to that address. Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor, provided that the stay provided in section 362 of Title 11 of the United States Code shall apply to any creditor who has received actual notice of the filing of a bankruptcy petition.

The section also provides that if the creditor has designated a person or department to be responsible for receiving notices and has established reasonable procedures to ensure bankruptcy notices will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that department or person.

These changes will prevent unscrupulous debtors from misidentifying account numbers or serving notice in remote locations in order to hinder or delay creditors.

Section 310. Stopping abusive conversions from chapter 13

This section amends section 348(f)(1) of Title 11 of the United States Code. The first change deletes "in the converted case, with allowed secured claims" of subparagraph (B) and inserts in its

place, “only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12.”

The amended section also provides that with respect to cases converted from chapter 13, the claim of a creditor holding security as of the date of the petition shall continue to be secured unless the full amount of the claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion. This is true notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding. Thus, if a “cram down” occurs in Chapter 13, the debtor could not benefit from this “cram down” if the case is converted to Chapter 7.

Section 311. Prompt relief from stay in individual cases

This section amends section 362(e) of Title 11 of the United States Code. The amended section provides that in the case of an individual filing under chapter 7, 11, or 13, the automatic stay under subsection (a) shall terminate 60 days after a request is made by a party in interest under subsection (d), unless a final decision is rendered by the court during the 60-day period (beginning on the date of the request), or the 60-day period is extended by agreement of all parties in interest or by the court for such time as the court finds is required by compelling circumstances.

Section 312. Dismissal for failure to file schedules timely or provide required information

This section provides that bankruptcy cases will be dismissed if an individual debtor in a case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) of this title within 45 days after the filing for bankruptcy. Under this section, any party in interest may request the court to enter an order dismissing the case. The court shall enter an order of dismissal not later than 5 days after that request, except, upon request of the debtor made within 45 days after the filing for bankruptcy, the court may allow the debtor an additional period not to exceed 20 days to file the information required under section 521(a)(1) of this title, if the court finds justification for extending the period.

Section 313. Adequate time for preparation for a hearing on confirmation of the plan

This section amends section 1324 of Title 11 of the United States Code. After technical amendments, the amended section provides if not later than 5 days after receiving notice of a hearing on confirmation of the plan, a creditor objects to the confirmation of the plan, the hearing on confirmation of the plan may be held no earlier than 20 days after the first meeting of creditors under section 341(a) of this title. This will give creditors the time necessary to determine whether the debtor’s plan is fair and proposed in good faith.

Section 314. Discharge under chapter 13

This section amends section 1328 of Title 11 of the United States Code. The section provides that any debt which is fraudulently in-

curred is not dischargeable. It further provides that restitution awarded as a result of a conviction of a crime for willful or malicious personal injury or death to another person is not dischargeable in Chapter 13.

Section 315. Non-dischargeable debts

The section provides that debts incurred to pay nondischargeable debts are themselves nondischargeable. Importantly, this section does not apply when nondischargeable debts are paid by new borrowing by either a single parent who has 1 or more dependent children at the time of the order for relief, or there is an allowed claim for alimony or child support that was unpaid at the time of the petition and the creditor cannot demonstrate that the debtor intentionally incurred the debt to pay the nondischargeable debt. This will ensure that new debts incurred to pay non-dischargeable debts will not compete with nondischargeable child or family support in a post-bankruptcy environment.

Section 316. Credit extensions on the eve of bankruptcy presumed nondischargeable

This section amends section 523 of Title 11 of the United States Code. Under the amended section, consumer debts of \$400 or more incurred within 90 days of bankruptcy for goods or services which are not necessary for the maintenance or support of the debtor or a dependent child are presumed to be nondischargeable.

Section 317. Definition of household goods and antiques

This section amends section 101 of Title 11 of the United States Code. The section provides that the term “household goods” has the same meaning as given by the Federal Trade Commission in 16 CFR section 444.1(I). This section also expands the Federal Trade Commission’s definition of household goods to include tangible personal property that is needed for the maintenance and support of a dependent child.

Under current law, household goods are exempt from the bankruptcy estate and cannot be reached by creditors. The Committee supports the concept of excepting reasonably necessary household goods from the reach of creditors, but is very concerned that the category not become so broad that it would encompass many items not reasonably necessary to the functioning of a household. The Committee intends this change to prohibit courts from defining the households goods exemption to encompass such items as automobiles, gun collections, recreational vehicles or boats.

Section 318. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral

This section amends section 362 of Title 11 of the United States Code. The section provides that the automatic stay is terminated as to property securing a claim or subject to an unexpired lease, if within the proscribed time the debtor fails to timely file the required statements of intention or to indicate whether the property will be surrendered or retained. The stay may also be terminated if the debtor intends to retain the property and fails to meet the requirement to redeem the property or reaffirm the debt, or assume

the unexpired lease. The stay may additionally be terminated if the debtor fails to timely take the action specified in a statement of intention, unless the statement specifies reaffirmation and the creditor refuses to reaffirm the debt on the original contract terms. The Committee recommends this change so that secured creditors are not unfairly disadvantaged by debtors who retain collateral without retaining and paying for the collateral, and only surrendering it at some future date, perhaps in a deteriorated condition.

Section 319. Adequate protection of lessors and purchase money secured creditors

This section adds a new section 1307A. This new section protects lessors of personal property and creditors holding purchase money security interests by directing the debtor to make cash payments to these creditors under chapter 13. The section directs the debtor to continue making payments until the earlier of the dates on which the creditor begins to receive payments under the Chapter 13 repayment plan or the debtor relinquishes possession of the property to the lessor, creditor or a third party under claim of right. The court, subject to limitations, may, after notice and hearing, change the amount and timing of the payments.

Section 320. Limitation

This section amends section 522 of Title 11 of the United States Code, to limit to \$100,000 the amount a debtor may exempt in real or personal property used as a residence or in a burial plot. This limitation does not apply to a family farmer.

This section will eliminate one of the most flagrant abuses of the bankruptcy system. It closes a loophole that allows debtors in a few states to shield their assets in luxury homes, while their creditors are shortchanged. Currently, a Chapter 7 debtor can exempt certain possessions from being sold off to satisfy his debts. A principal exemption is for a debtor's home, up to a certain value as established by state law. Although most states cap the exemption at \$40,000 or less, five states exempt homes no matter how high their value.

As a result, millionaire debtors who declare bankruptcy in these states continue to live in a style that is no longer appropriate, while their creditors get little or nothing. For example, the owner of a failed Ohio S&L paid off only a fraction of \$300 million in bankruptcy claims, but still held on to the multimillion dollar ranch he bought in Florida; a New Jersey couple moved to Florida when their business was about to fail, and then used bankruptcy to protect their half million dollar home, while writing off much of the nearly \$2 million they owed creditors; and a convicted Wall Street financier filed bankruptcy while owing at least \$50 million in debts and fines, but still kept his \$5 million Florida mansion with 11 bedrooms and 21 bathrooms. Many debtors move to states like Florida and Texas expressly to take advantage of their unlimited exemptions.

The \$100,000 cap will prevent these high profile abuses and in so doing help restore the stigma to bankruptcy. This cap was endorsed by the Bankruptcy Review Commission.

Section 321. Miscellaneous improvements

The section amends section 109 of Title 11 of the United States Code. This section adds a new subsection (h) which provides that in the 90 days prior to a filing, a potential debtor must attempt to make a repayment plan outside the bankruptcy system through an approved credit counseling program.

The section also amends section 727(a) of Title 11 of the United States Code. The section adds a new subsection (11) which adds the failure to complete a personal financial management course to the list of actions for which a court shall not grant a discharge.

The section also amends section 1328 of Title 11 of the United States Code. The section adds a new subsection (f) which adds the failure to complete a personal financial management course to the list of actions for which a court shall not grant a discharge.

The section also amends section 521 of Title 11 of the United States Code. This section adds a new subsection (e) which requires a debtor to file a certificate from a credit counseling service or other evidence of a good faith attempt to create a debt repayment plan. In addition, the debtor must file a copy of the debt repayment plan.

The section also amends section 523(d) of Title 11 of the United States Code. The section provides that a creditor may not request a determination of dischargeability of a consumer debt if the debtor made a good faith attempt to negotiate a repayment schedule pursuant to section 109(h).

The section also amends Chapter 1 of Title 11 of the United States Code to add a new section 111. The new section provides that the clerk of each district shall maintain a list of credit counseling services. The list of programs is to be approved by the United States trustee or the bankruptcy administrator for the district. The section further directs the United States trustee or bankruptcy administrator to make available an instructional course concerning personal financial management or provide a list of approved personal financial management courses.

The section also amends section 101 of Title 11 of the United States Code. This section defines the term “debtor’s principal residence” to include incidental property commonly conveyed with a principal residence in the area where the property is located, all easements, rights appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance, and all replacements or additions to the property without regard to whether it is attached to real property. Under current law, mortgages on principal residences are not subject to being reduced to the value of the residence in bankruptcy. This prohibition on “cramdowns” protects homeowners by reducing incentives for mortgage lenders to foreclose when a homeowner falls behind in mortgage payments.

Section 322. Bankruptcy judgeships

This section amends Title 28 of the United States Code. It authorizes the appointment of additional temporary bankruptcy judgeships in the districts that follow:

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

- (B) Four additional bankruptcy judgeships for the central district of California;
- (C) One additional bankruptcy judgeship for the southern district of Florida;
- (D) Two additional bankruptcy judgeships for the district of Maryland;
- (E) One additional bankruptcy judgeship for the eastern district of Michigan;
- (F) One additional bankruptcy judgeship for the southern district of Mississippi;
- (G) One additional bankruptcy judgeship for the district of New Jersey;
- (H) One additional bankruptcy judgeship for the eastern district of New York;
- (I) One additional bankruptcy judgeship for the northern district of New York;
- (J) One additional bankruptcy judgeship for the southern district of New York;
- (K) One additional bankruptcy judgeship for the eastern district of Pennsylvania;
- (L) One additional bankruptcy judgeship for the middle district of Pennsylvania;
- (M) One additional bankruptcy judgeship for the western district of Tennessee; and
- (N) One additional bankruptcy judgeship for the eastern district of Virginia.

The section provides that judgeship vacancies in the above districts resulting from death, retirement, resignation, or removal of a bankruptcy judge which occur 5 years or more after the appointment date shall not be filled.

The section also adds that temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under the Bankruptcy Judgeship Act of 1992 are extended until the first vacancy resulting from the death, retirement, resignation, or removal occurs:

- (A) 8 years or more after November 8, 1993, in the northern district of Alabama;
- (B) 10 years or more after October 28, 1993, in the district of Delaware;
- (C) 8 years or more after August 29, 1994, in the district of Puerto Rico;
- (D) 8 years or more after June 27, 1994, in the district of South Carolina; and
- (E) 8 years or more after November 23, 1993, in the district of Tennessee.

The section also amends section 152(a)(1) of Title 28 of the United States Code. It adds that each judge shall be appointed by the United States Court of Appeals for the circuit in which such a district is located.

The section also amends section 156 of Title 28 of the United States Code to require post-travel reports for non-cases related travel by bankruptcy judges. The section defines the term travel expenses to include expenses incurred by a bankruptcy judge that

are not directly related to any case, and excludes expenses incurred by the judge paid from personal funds and where no payment or reimbursement is made to the judge by the government or any other person or entity. Each bankruptcy judge will submit an annual report to the Chief Bankruptcy Judge. The Chief Bankruptcy Judge will submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge. The annual report shall include: the travel expenses and the name of each judge, the description of the subject matter of the travel expenses, the number of days that the judge traveled.

The section also requires that the Director of Administrative Office of the United States consolidate the reports received into one report and submit it to Congress.

Section 323. Preferred payment of child support in chapter 7 proceedings

This section amends section 507(a) of Title 11 of the United States Code. It amends the section by placing expenses or claims that are entitled to priority under paragraph (7) in first priority over any other claims or expenses that have priority as child or marital supports under 507(a)(7).

Section 324. Preferred payment of child support in chapter 13 proceedings

This section amends section 1322(b)(1) of Title 11 of the United States Code. It amends the section by requiring that child support payments be paid before any other priority claim is paid during a Chapter 13 repayment plan.

Section 325. Payment of child support required to obtain a discharge in chapter 13 proceedings

This section amends section 1325(a) of Title 11 of the United States Code. The amended section provides that the debtor is required to pay all alimony and child support obligations in full in order to obtain debt forgiveness in Chapter 13.

Section 326. Child support and alimony collection

This section amends section 362(b) of Title 11 of the United States Code. After technical amendments, this section exempts collection activities for child support and alimony from the automatic stay. The section specifically permits the withholding of income pursuant to an order specified in section 466(b) of the Social Security Act and also adds the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, under the Social Security Act one the reporting of overdue support owed by an absent parent to any consumer reporting agency. The Committee recommends this change which will greatly improve the ability of state governments, and ex-spouses to collect unpaid child support.

Section 327. Nondischargeability of certain debts for alimony, maintenance, and support

The section amends section 523 of Title 11 of the United States Code as amended by section 202 of this Act. After technical amendments, the section adds that certain debts incurred for actual alimony and child support are automatically non-dischargeable. This provision will make it unnecessary for an ex-spouse seeking to enforce these obligations to incur the legal expenses of litigation, as required by present law, non-dischargeable of the marital dissolution obligation in bankruptcy.

Section 328. Enforcement of child and spousal support

This section amends 522(c)(1) of Title 11 of the United States Code. The section adds that exempted property shall be liable for debts of a kind that are specified in paragraph (1) or (5) of section 523(a). As a result, child support, alimony and marital dissolution obligations can be collected post-bankruptcy from exempt property.

Section 329. Dependent child defined

This section amends section 101 of Title 11 of the United States Code. This section defines the term “dependent child” as a child who has not attained the age of 18 and who is a dependent of that individual as within the Internal Revenue Code.

TITLE IV—TECHNICAL CORRECTIONS

In general, the changes in this title of S. 1301 mirror provisions of H.R. 764, which passed the House of Representatives earlier this Congress.

Section 401. Definitions

This section amends the definitions contained in section 101 of Title 11 of the United States Code. Paragraphs (1), (2), (4), (5)(B), (7), and (8) of section 401 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (8) of this section makes the necessary conforming amendment to cross references to the newly redesignated definitions and simplifies these references to avoid future reference errors. Paragraph (5)(A) of the section excludes family farms from the definition of single asset real estate.

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

market rate on the value of the creditor's interest in the real estate.

The present \$4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. The section removes the ceiling.

Section 402. Adjustment of dollar amounts

This section corrects an omission in section 104(b) of Title 11 of the United States Code, as added by Public Law 103-894, by adding references to section 522(f)(3), and 707(b)(5) so that the triennial adjustment required by section 104(b) extends to the figure representing an aggregate value of certain implements, professional books, tools of the trade, farm animals, and crops which the debtor may exempt from the property of the estate and so protect from creditors' liens. Section 522(f)(3) now sets the total permissible value of such property at \$5,000.

Section 403. Extension of time

The section makes a technical amendment by striking "922" and all that follows and inserting "922, 1201 or." To correct a reference error described in amendment notes contained in the United States Code.

Section 404. Who may be a debtor

This section of the bill makes a technical amendment by striking subsection "(c) or (d) of". Additionally, it amends section 109(b)(2) of the United States Code.

Section 405. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

This section of the bill makes a technical correction to change from the singular possessive to the plural possessive the reference to the fees payable to attorneys. This section amends section 110(j)(3) of Title 11, of the United States Code.

Section 406. Limitation on compensation of professional persons

This section amends 328(a) of Title 11 of the United States Code to provide that a trustee or a creditors' and equity security holders' committee may, with court approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. This section amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

Section 407. Special tax provisions

The section of the bill makes a technical correction in section 346(g)(1)(C) of Title 11 of the United States Code to remove language referring to a repealed section of the Internal Revenue Code of 1986. Additional information regarding the repealed section is indicated in the appropriate footnote, and contained in the notes

under the heading “References in Text,” found in the United States Code.

Section 408. Effect of conversion

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

Section 409. Automatic stay

The section clarifies that the automatic stay does not apply to a transfer that is not avoidable under sections 544 or 549 or Title 11. Further, this section prohibits using the automatic stay to prevent the continuation of state law eviction proceedings.

Section 410. Amendment to table of section

This section amends chapter 5 of Title 11 of the United States Code. This section makes technical amendments by striking the section 556 and replacing with, “556. Contractual right to liquidate a commodities contract or forward contract.”

Section 411. Allowance of administrative expenses

This section provides that 503(b)(4) of Title 11 of the United States Code, limits the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors’ and equity security holders’ committees would not be recoverable, but expenses incurred for such professional services by the committees themselves would be.

Section 412. Priorities

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

Section 413. Exemptions

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

Section 414. Exceptions to discharge

This section makes technical and conforming changes to accommodate drafting errors in changes made to Title 11 from the Bankruptcy Reform Act of 1994 and the Omnibus Consolidated Rescissions and Appropriation Act of 1996.

Section 415. Effect of discharge

Section 17 of the bill makes technical amendments to correct errors in section 524(a)(3) of Title 11 of the United States Code.

Section 416. Protection against discriminatory treatment

The section amends section 525(c) of Title 11 of the United States Code by making a technical amendment to conform a reference to its antecedent reference. The omission of “student” before “grant” in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. The section is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant’s bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Section 417. Property of the estate

The section makes technical changes to Section 541 of the Bankruptcy Code to clarify the original Congressional intent to generally exclude production payments from the debtor’s estate.

Section 418. Limitations on avoiding powers

The section amends section 546 of Title 11 of the United States Code to redesignate subsection (g) as subsection (h).

Section 419. Preferences

Section 419 of the bill restates Congress’s intent to overrule the so-called DePrizio doctrine and verify the intent behind section 547 of the Code. In 1994, the Congress first attempted to clarify this situation by amending section 550 of the Code. The section by section analysis placed in the Congressional Record at that stated: “This section by section overrules the DePrizio line of cases and clarifies that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90 day statutory period.” (140 Cong. Rec. No. 142 at H10767 (October 6, 1994); See also, Statement of Sen. Grassley, 140 Cong. Rec. No. 144 at S14461 (October 6, 1994)). However, in a misapplication of the plain language doctrine, certain courts have ignored the 1994 amendments and this legislative history. In the present bill, yet again, it is the Committee’s intent to expressly overrule DePrizio by making a technical amendment to section 547 so as to re-affirm the position that innocent lenders should not be subject to the insider preference provisions of the Code. Further, it is our intent that section 419 be applied to all pending court actions where there has been no final judgement, consistent with the original intent of section 547 as clarified by the 1994 amendments.

Section 420. Postpetition transactions

The section amends section 549(c) to clarify its application to an interest in real property.

Section 421. Technical amendment

The section provides a technical amendment that replaces “product” with its plural form “products.”

Section 422. Setoff

The section amends section 553(b)(1) of Title 11 of the United States Code to replace the current paragraph cross reference to “362(b)(17).”

Section 423. Disposition of property of the estate

The section amends section 726(b) of Title 11 of the United States Code, by striking “1009”.

Section 424. General provisions

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

Section 425. Appointment of elected trustee

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

Section 426. Abandonment of railroad line

The section redesignates section “11347” as section “11326(a).”

Section 427. Contents of plan

The section redesignates section “11347” as section “11326(a).”

Section 428. Discharge under chapter 12.

The section amends section 1228 of Title 11 of the United States Code, replacing each reference of “1222(b)(10)” with “1222(b)(9)”.

Section 429. Extensions

The section amends section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 by removing “or October 1, 2002 and or October 1, 2003,” and “whichever occurs first.”

Section 430. Bankruptcy cases and proceedings

This section makes a technical change to correct an incomplete cross-reference.

Section 431. Knowing disregard of bankruptcy law or rule

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

Section 432. Effective date; application of amendments

This section provides that amendments made by this Title of S. 1301 shall take effect on the date of enactment, but shall apply only to cases commenced under Title 11 on or after the date of enactment. The vast majority of Bankruptcy Code changes made by this act are technical and will not change the results in future cases.

IV. COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 404 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 1998.

Hon. ORRIN G. HATCH,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed federal cost estimate (including the impact on state and local governments) and private-sector mandates statement for S. 1301, the Consumer Bankruptcy Reform Act of 1998.

If you wish further details on these items, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman and Mark Grabowicz (for federal costs), Leo Lex (for the state and local impact), and Matthew Eyles (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosures.

CONGRESSIONAL BUDGET OFFICE PRIVATE-SECTOR MANDATES
STATEMENTS

S. 1301—Consumer Bankruptcy Reform Act of 1998

Summary: S. 1301 would make many changes and additions to the federal bankruptcy laws. By amending the bankruptcy code, the bill would affect consumer debtors, creditors, private bankruptcy trustees, attorneys, bankruptcy petition preparers, debt relief counselors, and other entities in the private sector.

Certain provisions in S. 1301 that effectuate means-testing in the bankruptcy system would impose new private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). New mandates would be imposed on consumer bankruptcy attorneys and bankruptcy petition preparers.

CBO estimates that the direct costs of new private-sector mandates in S. 1301 would exceed the statutory threshold in UMRA (\$100 million in 1996, adjusted annually for inflation). In 1999, mandate costs could be between \$200 million and \$525 million. Nearly all mandate costs would stem from requirements for consumer bankruptcy attorneys to investigate and verify financial information provided by their clients. Mandate costs on bankruptcy petition preparers, which arise from new consumer protection regulations, would be modest. Mandate costs can be expected to grow in future years. By 2003, direct costs could be between \$300 million and \$950 million.

Bankruptcy attorneys would initially bear those costs, although they would be able to recoup most costs by increased payments from bankruptcy estates. Administrative costs, which include attorneys' fees and costs, receive priority treatment in the bankruptcy system and are generally reimbursed before creditors' claims.

S. 1301 would also provide financial benefits to creditors. By incorporating means-testing into the bankruptcy system, the number of debtors who would be required to file plans of reorganization would rise. As a result, the pool of funds available to creditors for repayment would likely increase. In addition, other provisions in the bill would generate further benefits to creditors. However, benefits to creditors would be partially offset by higher costs of administering the bankruptcy code. In isolated cases, where administrative costs rise by more than the pool of debtors' funds, S. 1301 could impose costs on some creditors.

Overview of the bill and private-sector mandates: Under current law, most individual debtors who seek bankruptcy relief have two options: liquidation (chapter 7) or reorganization (chapter 13). S. 1301 would institute a "needs-based system" for relief under chapter 7 by requiring individuals (and households) who file for bankruptcy to seek debt relief under chapter 13 if they earn a regular income equal to or greater than the national median income (adjusted for household size) and could pay at least 20 percent of their unsecured debts. In chapter 7 cases, debtors' nonexempt assets are sold and distributed by a court-appointed trustee to creditors after deducting administrative expenses. Chapter 7 debtors who are discharged from the system receive a "fresh start" and are not liable for creditors' claims not repaid in full. By contrast, chapter 13 allows debtors to retain their assets in exchange for agreeing to repay creditors out of future income over a period of three to five years. In both chapters, certain debts, such as taxes or those debts incurred fraudulently, may not be discharged.

S. 1301 would amend current law by establishing a system of means-testing provisions for determining the eligibility of consumers for relief under the bankruptcy code. Some provisions in the bill that carry out means-testing would impose new private-sector mandates. S. 1301 would also expand the types of debts that may not be discharged from bankruptcy. In addition, S. 1301 would amend other provisions in federal bankruptcy law, including those covering spousal or child support, family farmers, collection of bankruptcy data, and single-asset real estate debtors.

The Unfunded Mandates Reform Act (Public Law 104-4) defines a private-sector mandate as any provision in legislation that would

impose an enforcement duty upon the private-sector except a condition of federal assistance or a duty arising from participation in a voluntary federal program. While a very small portion of debtors is forced into bankruptcy, the bankruptcy process is largely voluntary for debtors, and debtor-initiated bankruptcies are equivalent to participation in a voluntary federal program. Consequently, new duties imposed by the bill on individuals who file as debtors do not meet the definition of private-sector mandates, and additional costs for debtors would not be counted as direct costs for purposes of UMRA.

Provisions that would impose new enforceable duties on other private entities, such as bankruptcy attorneys and petition preparers (including debtors' attorneys), do meet the definition of a private-sector mandate. Creditors, who are subject to many requirements under the existing bankruptcy code, would face changed duties under S. 1301. Creditors have very specific obligations when they are a party in interest to a bankruptcy case, and most creditors' duties in current law would remain. While S. 1301 would alter the duties of some creditors, in general, the bill would provide creditors with additional rights in bankruptcy cases.

Private-sector mandates contained in the bill: S. 1301 would impose new private-sector mandates, as defined in UMRA, on bankruptcy attorneys and bankruptcy petition preparers. Bankruptcy attorneys would face new duties to investigate and verify financial information of their clients. Section 102 of the bill would apply Bankruptcy Rule 9011 from Title 11, United States Code, to make bankruptcy attorneys liable for misrepresentations of a debtor's financial condition. Rule 9011 requires attorneys to reasonably verify information provided by debtors and attest, under threat of sanctions and other penalties, that such information is well-grounded in fact. As a result, attorneys in consumer bankruptcy cases would have a duty to investigate and verify documents that their clients must include in petitions for bankruptcy relief. Those documents include a list of creditors, a schedule of assets and liabilities, a schedule of current income and expenditures, statements of projected monthly net income and reasonably anticipated increases in income or expenditures, and other financial information.

S. 1301 would also impose new consumer protection regulations on bankruptcy petition preparers, including attorneys. The bill would require bankruptcy petition preparers to provide potential clients a written notice, prescribed by the Executive Office for the United States Trustees (U.S. Trustees) for the district in which the petition is filed, that contains: a description of chapters 7, 11, 12, and 13, including the costs and benefits of each chapter; a description of services that may be available from nonprofit debt counseling services; and information that would enable the individual to contact nonprofit debt counseling services.

Estimated direct cost to the private sector: CBO estimates that the direct costs of new private-sector mandates contained in S. 1301 would exceed the statutory threshold in each of the first five years that the mandates were effective. In 1999, new mandates could impose direct costs of between \$200 million and \$525 million. Costs would likely increase over the five-year period and, by 2003, direct private-sector mandate costs could total between \$300 mil-

lion and \$950 million: Almost all costs would result from additional duties of attorneys to investigate and verify financial information provided by their clients. Because reliable national data on the costs of the bankruptcy system are lacking and the actual costs to attorneys are uncertain, these estimates encompass a broad range.

CBO's estimate excludes: financial transfers between debtors and creditors that would result from enacting S. 1301; costs that could result from delaying distributions from bankruptcy estates to certain creditors due to increased litigation; and potential reductions in debtor repayments in cases where the costs of administration rise by more than payments by debtors.

Costs to Consumer Bankruptcy Attorneys. S. 1301 would make consumer bankruptcy attorneys responsible for verifying the financial information provided by debtors who file for relief. CBO estimates that additional attorneys' costs could be between \$200 million and \$525 million in 1999. By 2003, direct costs could be between \$300 million and \$950 million. These estimates are based on information from the U.S. Trustees about the number of bankruptcy cases expected to be filed over the 1999–2003 period, estimates of debtors who would choose not to file if S. 1301 is enacted, estimates of debtors who would have their cases filed as or converted to chapter 13 cases under the bill's requirements, and estimates of the increased costs to attorneys from performing inquiries into their client's financial condition.

Information from the U.S. Trustees and trends in bankruptcy filings indicate that, in 1999, more than 1.4 million consumer bankruptcy petitions will likely be filed. Of those cases filed in 1999, about 960,000 petitions would be filed under chapter 7 and about 390,000 petitions under chapter 13. CBO estimates that, under S. 1301, 5 percent of chapter 7 debtors (about 48,000) would choose not to file, and 5 percent of all chapter 7 cases would be filed as or converted to chapter 13 cases. Completing investigations of debtors' financial affairs and, for chapter 7 cases, computing debtor-eligibility, would be time consuming. The costs to attorneys could increase by several hundred dollars per case. If attorneys' costs rise by roughly \$150 per case to \$400 per case, applying that increase to a reduced level of chapter 7 cases and a higher number of chapter 13 cases, direct costs in 1999 would be within the \$200 million to \$525 million range.

Mandate costs would increase in subsequent years even if bankruptcy filings drop initially as a result of enacting S. 1301. Bankruptcy filings, after a small decline in 2000, will likely increase between 2001–2003. The U.S. Trustees estimate that in 2003 more than 1.8 million nonbusiness petitions would be filed (about 1.3 million under chapter 7 and 540,000 under chapter 13). Applying the same assumptions about the number of chapter 7 cases not filed for any bankruptcy protection, those converted to chapter 13 cases, and increased attorneys' costs, direct costs in 2003 would be about \$250 million to \$700 million. Furthermore, attorneys' responsibilities for cases filed under chapter 13 in years before 2003 would carry forward because chapter 13 cases have a duration of between three years and five years. Despite a failure rate of 2 out of 3 plans filed under chapter 13, duties for attorneys from cases

filed in previous years could add an additional \$50 million to \$250 million, depending on the amount of future litigation.

The costs of new mandates in S. 1301 would initially be borne by bankruptcy attorneys. However, provisions in current law exist for reimbursement of attorneys by increased payments from bankruptcy estates. Attorneys' fees and costs are treated as administrative expenses in the bankruptcy code and are paid out of debtors' estates before distributions are made to creditors. Consequently, the cost of new mandates are ultimately paid out of the pool of funds available to creditors.

Costs to Bankruptcy Petition Preparers. S. 1301 would apply new consumer protection regulations to bankruptcy petition preparers. The bill provides that petition preparers must dispense notices to potential clients about the bankruptcy system, alternatives to the system, and information about nonprofit debt counseling services in the area. CBO estimates that the direct cost of notice requirements would be modest. Notices would be prescribed by the U.S. Trustees for each district and, consequently, little effort would likely be required of bankruptcy petition preparers to comply with the new regulations.

Effects on Creditors. S. 1301 also contains many provisions that would benefit creditors. Most significant for creditors are provisions that would shift debtors from chapter 7 to chapter 13 and provisions that would expand the types of debts that would be non-dischargeable. By expanding the types of debts that are non-dischargeable, such as many credit card debts over \$400 when incurred within 90 days of filing, some creditors would continue to receive payments on debts that would be discharged under current law. Means-testing in the bankruptcy system would result in more individuals being required to seek relief under chapter 13 rather than chapter 7 and fewer filing for any bankruptcy protection. Because chapter 13 requires debtors to develop a plan to repay creditors over a specified period, the total pool of funds available for distribution for creditors would likely increase. As long as the likelihood of repayment by debtors and the pool of funds increases by an amount that is greater than the rise in administrative costs, creditors would be made better off under the bill.

Estimate prepared by: Matt Eyles.

Estimate approved by: Arlene Holen, Assistant Director for Special Studies.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1301—Consumer Bankruptcy Reform Act of 1998

Summary: S. 1301 would make changes and additions to the laws relating to bankruptcy, including establishing a system of means-testing for determining eligibility for obtaining relief under chapter 7 of the U.S. bankruptcy code. CBO estimates that implementing S. 1301 would cost \$293 million over the 1999–2003 period—\$277 million in discretionary spending, which would be subject to appropriation of the necessary funds, and \$16 million in mandatory spending. In addition, we estimate that the bill would increase receipts by \$1 million a year. Because the bill would affect

direct spending and receipts, pay-as-you-go procedures would apply.

S. 1301 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

Description of the bill's major provisions: Title I of S. 1301 would establish a system of means-testing for determining eligibility for relief under chapter 7 of the U.S. bankruptcy code. Title II would provide various procedural protections to debtors. Title III would:

- require the Administrative Office of the United States Courts (AOUSC) to receive and maintain income tax returns for all chapter 7 and chapter 13 debtors;

- require the AOUSC to collect and publish certain statistics on bankruptcy cases;

- require that at least one out of every 500 bankruptcy cases under chapter 13 or chapter 7 be audited by an independent certified public accountant;

- require the Executive Office for the United States Trustees (U.S. Trustees) to establish a program to educate debtors on financial management; and

- authorize 18 new temporary judgeships and extend five existing judgeships in 19 federal districts.

Title IV would make various technical changes to bankruptcy laws.

Estimated cost to the Federal Government: The bill would affect direct spending because it would authorize additional bankruptcy judgeships, and the salaries and benefits of these judges are considered mandatory. Costs for other personnel and administrative expenses of the courts associated with additional judgeships would be subject to the availability of appropriated funds. Enacting the means-testing provisions in Title I would result in fewer debtors filing for chapter 7 bankruptcy protection and more debtors filing for chapter 13 protection. As a result, CBO estimates a net increase in revenues from bankruptcy filing fees each year.

As shown in the following table, CBO estimates that implementing S. 1301 would cost the courts, the AOUSC, and the U.S. Trustees \$43 million in 1999 and \$277 million over the 1999–2003 period, subject to appropriation of the necessary funds. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by \$1 million in 1999 and \$16 million over the 1999–2003 period. Additional revenues from filing fees would total \$5 million over five years. The costs of this legislation fall within budget function 750 (administration of justice).

Basis of estimate: For purposes of this estimate, CBO assumes that S. 1301 will be enacted by October 1, 1998, and that all estimated authorization amounts will be appropriated for each fiscal year.

[By fiscal year, in million of dollars]

	1999	2000	2001	2002	2003
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Means-Testing Litigation (Sections 101–102):					
Estimated Authorization Level	1	1	1	(1)	(1)

[By fiscal year, in million of dollars]

	1999	2000	2001	2002	2003
Estimated Outlays	1	1	1	(¹)	(¹)
Maintain Income Tax Information (Section 301):					
Estimated Authorization Level	6	5	6	7	9
Estimated Outlays	5	5	6	7	9
Data Compilation/Publication (Section 306):					
Estimated Authorization Level	2	6	8	8	9
Estimated Outlays	2	5	8	8	9
Audit Procedures (Section 307):					
Estimated Authorization Level	0	2	4	5	6
Estimated Outlays	0	2	4	5	6
Debtor Financial Management Training (Section 321):					
Estimated Authorization Level	40	33	32	26	27
Estimated Outlays	32	34	32	27	27
Support Costs for Additional Judgeships (Section 322):					
Estimated Authorization Level	3	9	10	10	11
Estimated Outlays	3	8	10	10	10
Total Changes:					
Estimated Authorization Level	52	56	61	56	62
Estimated Outlays	43	55	61	57	61
CHANGES IN DIRECT SPENDING					
Additional Judgeships (Section 322):					
Estimated Authorization Level	1	3	4	4	4
Estimated Outlays	1	3	4	4	4
CHANGES IN REVENUES					
Decrease in Chapter 7 Filing Fees and Increase in Chapter 13 Filing Fees:					
Estimated Revenues, Title I	1	1	1	1	1

¹ Less than \$500,000 a year.

Spending subject to appropriation: The estimated increases in discretionary spending would be required to fund the additional workload that would be imposed on the courts, the AOUSC, and the U.S. Trustees. Currently, the U.S. Trustees are funded through the bankruptcy-related fees collected by the courts. Without additional statutory authority, these fees cannot be increased to cover any additional expenditures that would result from enacting the bill. Because the legislation does not provide for such increases in fees, any additional costs would be subject to the availability of appropriated funds.

Means-testing (sections 101–102).—The means-testing provision in S. 1301 would require a bankruptcy judge to consider two factors when deciding if a debtor’s petition for a chapter 7 bankruptcy would be abusive and therefore require dismissal or conversion to a chapter 13 case. First, the court would consider whether the debtor could repay 20 percent of his or her general unsecured claims. Second, the court would consider if the debtor filed the case in “bad faith.” Also, creditors would be allowed to bring motions claiming abuse of the bankruptcy system, unless the debtor and the debtor’s spouse have combined current monthly income less than or equal to the national median income for a family of the same size. In addition, a creditor would have to pay the debtor’s attorney’s fees and litigation costs if the motion to dismiss the case was denied and not substantially justified.

Under S. 1301, CBO estimates that the U.S. Trustees would be required to compile and review income data necessary for means-testing and to participate in any litigation that would result from

issues concerning eligibility. CBO expects that any additional data collection requirements would not pose a significant burden on the U.S. Trustees and thus would require no additional appropriations. However, we expect that the U.S. Trustees would incur additional costs for the work that would result from increased litigation.

Based on information from the U.S. Trustees, CBO expects that the bill's means-testing provisions could increase litigation over a debtor's eligibility for chapter 7 relief because of potential conflicts between the courts and debtors over whether granting relief would be an "abuse" of the bankruptcy code. Under the bill, additional motions for dismissal would result as more objective criteria would be applied to a debtor's income and expenses and because creditors would have the ability to challenge petitions for chapter 7 relief. Some debtors whose petitions for chapter 7 relief would be denied under S. 1301 would undoubtedly appeal those decisions.

Although CBO cannot predict the amount of additional litigation, we expect that there would be some during the first few years following enactment of S. 1301, as parties test the new law's standards. We expect that the U.S. Trustees, who would become gatekeepers to the bankruptcy system under the bill, would be heavily involved in any litigation that would result, at an estimated cost of about \$1 million through 2001. In subsequent years, the amount of litigation could diminish as precedents are established, and we estimate that costs would decrease to about less than \$500,000 annually.

Maintenance of tax returns (section 301).—This section would require the AOUSC to receive and retain tax returns for the three most recent years preceding the commencement of the bankruptcy case for all chapter 7 and chapter 13 debtors (about 7 million debtors over the 1999–2003 period). CBO estimates that appropriations of \$33 million over the next five years would be required to store and provide access to over 20 million tax returns.

Compilation and publication of bankruptcy data and statistics (section 306).—S. 1301 would require the AOUSC to collect data on chapter 7, chapter 11, and chapter 13 cases and to make the information available to the public. CBO estimates that appropriations of about \$33 million would be required over the 1999–2003 period to meet these requirements. Of the total estimated cost, about \$22 million would be required over the next five years for additional legal clerks, analysts, and data base support. The remainder of the estimated cost (\$11 million) would be incurred for compiling data and providing Internet access to records pertaining to bankruptcy cases.

Audit procedures (section 307).—Beginning 18 months after enactment, S. 1301 would require that at least one out of every 500 bankruptcy cases under chapter 7 and chapter 13, plus other selected cases under those chapters, be audited by an independent certified public accountant. The U.S. Trustees estimates that about 1.2 million cases would be subject to audit in fiscal year 2000, increasing to about 1.8 million in fiscal year 2003. Assuming that about 0.25 percent of all cases would be audited and that each audit would cost about \$1,200 (in 1998 dollars), implementing this provision would require appropriations of \$2 million in fiscal year 2000 and \$17 million over the 1999–2003 period. Section 307 also

would require the Attorney General to attempt to recover some of the costs of audits from debtors with sufficient income or assets. As a result, it is possible that net costs for this section could be less than the above estimate to the extent that debtors could contribute to the funding of the audits; however, CBO does not expect that such debtor contributions would be significant.

Instructional courses in financial management (section 321).—This section would require the U.S. Trustees to establish a training program to educate debtors on financial management. Debtors would be required to undergo this training, or comparable training approved by the U.S. Trustees, as a condition of receiving relief from certain debts. Based on information from the U.S. Trustees, CBO estimates that about 1 million debtors would participate if such a program were administered by the U.S. Trustees in fiscal year 1999. In future years, CBO expects that private companies would offer comparable instruction that could be taken by debtors (at their own expense) in place of a class administered by the U.S. Trustees. As a result, we expect that the number of debtors participating in the U.S. Trustees' instructional program would drop to about 600,000 by fiscal year 2002. At a projected cost of about \$40 per debtor, CBO estimates that the U.S. Trustees would require the appropriation of about \$158 million over the next five years to administer the training program.

Extension and authorization of bankruptcy judgeships—Support costs (section 322).—This provision would extend five temporary bankruptcy judgeships and authorize 18 new temporary bankruptcy judgeships for 19 federal judicial districts. Based on information from the AOUSC, CBO assumes that one half of the 18 new positions would be filled by the middle of fiscal year 1999 and the other half would be filled by the start of fiscal year 2000. Also, we anticipate that all five temporary judgeships would be extended by fiscal year 2001. We expect that discretionary expenditures associated with each judgeship would average about \$400,000 (in 1998 dollars), after initial costs of about \$145,000. Therefore, CBO estimates that the administrative support of additional bankruptcy judges would require an appropriation of about \$3 million in 1999 and about \$43 million over the 1999–2003 period.

DIRECT SPENDING AND REVENUES

Means-testing (sections 101–103).—CBO estimates that enacting the means-testing provisions would impose some additional workload on the courts. Although the U.S. Trustees would be responsible for conducting the initial review of financial information under either bill, CBO expects that the courts would also be involved in some level of review of such data. In addition, many bankruptcy judges expect that additional hearings and other court proceedings would be held over eligibility and income data.

Section 322 of this bill authorizes 18 new temporary bankruptcy judgeships and extends five existing temporary judgeships. Based on information from the AOUSC and other bankruptcy experts, CBO expects that such an increase in the number of bankruptcy judges would be sufficient to meet the increased workload. Assuming that the salary and benefits of a bankruptcy judge would average about \$152,000 a year (in 1998 dollars), CBO estimates that

the mandatory costs associated with the salaries and benefits of these additional judgeships would be \$1 million in 1999 and about \$16 million over the 1999–2003 period.

The means-testing provisions would also affect the government's income from bankruptcy filing fees because they would cause changes in the number and type of bankruptcy filings. CBO projects that, as a result of this bill, about 5 percent of all chapter 7 debtors (about 48,000 out of 960,000 cases each year) would not file for any type of bankruptcy protection and that about 5 percent of all chapter 7 cases would be filed as or converted to chapter 13 cases. With a reduction in chapter 7 filings, the government would lose income from chapter 7 filing fees. CBO estimates that for each case that would not be filed under chapter 7 or any other chapter, there would be a \$130 reduction in the filing fee paid to the government. Income from this fee appears in two different places in the budget. Of the \$130, \$70 is recorded as part of the offsetting collections to the U.S. Trustee System Fund and Judiciary, and \$15 is recorded as governmental receipts (i.e., revenues). Under chapter 7, the remaining \$45 is paid to the private trustee assigned to the case and does not affect the federal budget. Assuming that fees for about 48,000 cases would no longer be collected each year, CBO estimates that enacting S. 1301 would result in a loss of about \$1 million a year in revenues and about \$3 million in offsetting collections. The loss of offsetting collections would reduce the amount available for spending by the U.S. Trustees and the AOUSC; however, CBO estimates that no additional appropriations would be required to replace this projected loss of fees because it would be matched by a reduction in workload associated with these chapter 7 cases.

The shift of cases from chapter 7 to chapter 13 would, in contrast, lead to greater fee collections. In contrast to the distribution of fees under chapter 7, \$60 of the \$130 filing fee is collected as a governmental receipt under chapter 13. (Private trustees are not paid out of the filing fee under chapter 13.) Thus, the government collects an additional \$45 for each shift of a case from chapter 7 to chapter 13. Because CBO expects that about 48,000 chapter 7 cases would be filed as or converted to chapter 13 cases, we estimate that revenues would increase by about \$2 million in each year. On balance, the net change in revenues would be an increase of about \$1 million each year.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. As shown in the table below, CBO estimates that enacting S. 1301 would increase direct spending by about \$16 million over the next five years for the salaries and benefits of additional bankruptcy judges. In addition, enacting Title I would result in fewer chapter 7 debtors filing for bankruptcy protection and more debtors filing for chapter 13, protection. As a result, CBO estimates a net increase in revenues of about \$1 million each year. For purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	1	3	4	4	4	4	4	3	2	2
Changes in receipts	0	1	1	1	1	1	1	1	1	1	1

Estimated impact on State, local, and tribal governments: S. 1301 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments. Federal bankruptcy statutes currently allow states to determine certain property exemptions for homes in bankruptcy cases. The bill would place some limits on the value of homes that individuals may protect under those statutes. While this provision may limit the application of some state laws, it may also free up additional resources in cases where a state or local government may have an outstanding tax claim.

Previous CBO estimates: On May 8, 1998, CBO transmitted a preliminary cost estimate comparing the means-testing provisions in S. 1301, as reported by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts on April 2, 1998, with those in H.R. 3150, as introduced on February 3, 1998. The May 8 letter indicated that implementing the means-testing provisions in S. 1301 could require between 10 and 15 additional judges to meet the increased workload requirements that would be imposed on the federal court system under S. 1301. Costs for the salaries and benefits of judges, which are mandatory, would be about \$2 million annually. CBO further indicated that the means-testing provisions (in the subcommittee version of S. 1301) would not—by themselves—affect direct spending because the earlier version of the bill did not authorize any increase in the number of bankruptcy judges.

Subsequently, on June 5, 1998, CBO transmitted a cost estimate for H.R. 3150, as reported by the House Committee on the Judiciary on May 20, 1998. Unlike S. 1301, H.R. 3150 would not authorize additional bankruptcy judgeships. Thus, enacting H.R. 3150 would not affect direct spending. Differences in discretionary spending estimates between S. 1301 and H.R. 3150 reflect differences in the provisions of the two bills.

Estimate prepared by: Federal Costs: Susanne S. Mehlmand and Mark Grabowicz; Impact on State, Local, and Tribal Governments: Leo Lex.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 1301 will not have significant regulatory impact.

VI. ADDITIONAL VIEWS OF SENATOR PATRICK LEAHY

Every American agrees with the basic principle that debts should be repaid. The vast majority of Americans are able to meet their obligations. But, for those who fall on financial hard times, bankruptcy should be available in a fair and balanced way.

Unfortunately, more and more Americans are filing for bankruptcy. The numbers are disturbing. While the unemployment rate keeps going down and inflation remains low, the Nation's personal bankruptcies keep going up. Vermont's personal bankruptcy rate increased by about 40 percent for each of the last two years and Vermont was ranked next to last in personal bankruptcy filings last year. In most other states, personal bankruptcy rates increased even more dramatically.

I do not know all the answers as to why more and more Americans are filing for bankruptcy. I think some may be abusing the system. I think most are not. My guess is that stagnant wages and more consumer credit card debt are the primary reasons. Where there are abuses in the bankruptcy law, we should move to correct them. I want to commend Senator Durbin and Senator Grassley for moving forward to correct abuses in a measured and balanced way.

I have consulted with our bankruptcy judge in Vermont and will continue to do so. He cautions that we remember the purpose bankruptcy serves, which is as a safety net for many of our constituents. Those who use bankruptcy are the most vulnerable of the American middle class. They are older Americans who have lost their jobs or are unable to pay their medical debts. They are women attempting to raise their families or secure alimony and child support after a divorce. They are individuals struggling to recover from unemployment.

As we move forward with reforms that are appropriate to eliminate abuses in the system, we need to remember the people who use the system, both the debtor and the creditor. We need to balance the interests of creditors with those of middle class Americans who need the opportunity to resolve overwhelming financial burdens.

PATRICK LEAHY.

VII. ADDITIONAL VIEWS OF SENATOR HERB KOHL

The dramatic rise in bankruptcies is very troubling, regardless of whether the blame lies with credit card companies, a culture that disparages personal responsibility, the bankruptcy code or, most probably, with all of the above. While none of us wants to return to the era of “debtors” prison,” we need to do something to reverse this trend.

But true “reform” will only occur if we target the abuses *without* overburdening the vast majority of debtors who truly need—and deserve—relief. That is why I support this bill. It is also why Senator Sessions and I added a much-needed cap on the homestead exemption. And, finally, it is the reason that we need to go further by also taking steps to protect debtors from abuses by the credit card industry. Let me explain.

First, I support the approach this bill takes because it generally targets people who can afford to repay some of their debts, not honest debtors who have fallen on hard times. Its “means testing” provisions send the message that abuse of the bankruptcy code will not be tolerated, while still providing flexibility to take into account debtors’ individual circumstances. Unlike other proposals under consideration, it does not sweep too broadly, putting costly procedural burdens on honest as well as abusive debtors. Of course, as with any piece of legislation, this bill has room for improvement. I look forward to refining and strengthening it on the floor.

Second, our cap on the homestead exemption will eliminate one of the worst abuses of the bankruptcy system. This proposal, adopted unanimously in subcommittee, closes a loophole that allows too many debtors to shield their assets in luxury homes, while their creditors get left out in the cold. Currently, a handful of States allow debtors to protect their homes no matter how high the value. And time after time, millionaire debtors move to States with unlimited exemptions, like Florida and Texas, declare bankruptcy—yet continue to live like kings while their creditors get little or nothing. If we want to restore the stigma attached to bankruptcy, these high profile abuses are the best place to start.

Our proposal is simple and effective: It caps at \$100,000 the maximum homestead exemption that an individual filing bankruptcy can claim. With the cap in place, bankrupt debtors will retain their right to a roof over their heads, but not to luxury accommodations.

Finally, real reform should require a *balanced* approach that not only targets abuses by debtors, but also curbs abuses by *creditors*. The credit card industry has played no small role in the explosion of consumer debt and consumer bankruptcies. Mass credit card solicitations do more than overload our mail boxes and pile up on our kitchen tables. They also tempt many individuals to try to borrow their way out of financial distress, often leaving them worse off and

with little choice other than bankruptcy. Perhaps, as an incentive to creditors, the benefits of this measure should be denied to credit card companies who deliberately extend credit to those who are clearly too irresponsible to use it wisely. On the floor, I hope we can address these abuses, or, at the very least, ensure that consumers have the information they need to make intelligent choices.

Overall, I commend Senators Grassley and Durbin for their hard work and close collaboration. I look forward to a final product that continues tackling the worst abuses, while still helping honest debtors.

HERB KOHL.

VIII. ADDITIONAL VIEWS OF SENATORS RICHARD J. DURBIN, RUSSELL D. FEINGOLD, DIANNE FEINSTEIN, HERB KOHL AND ROBERT G. TORRICELLI

We write to express our concerns that S. 1301 will not adequately prevent bankruptcies, make insolvency less likely, or improve the perilous financial situation that millions of Americans find themselves in every year. S. 1301 does not contain enough provisions that aim at improving the financial lot of millions of Americans or that confront the question why more than 1 million Americans filed for personal bankruptcy last year.

The main goal of S. 1301 is to prevent abuse of the bankruptcy code. Abuse is simply the manipulation of the law to avoid paying debts that legitimately could be paid with a reasonable amount of effort by the debtor. This is a goal that we entirely support. We support the goals of S. 1301 because of the overriding importance of preventing and catching abuse. But we also believe that it has defects that should be cured before final passage.

We firmly believe that S. 1301 must be accompanied by other provisions—aimed at dealing with financial industry practices that prey on the unfortunate and that increase the likelihood of bankruptcy—in order for it to be fully effective and thoughtful.

At the committee markup of S. 1301, Senator Torricelli commented on a growing trend in America: “There is bankruptcy by entrapment in this country—unsolicited credit cards, credit cards to very low income people, credit cards at usurious rates of interest. The class of protections that we are offering to legitimate corporations that extend credit, in my judgment, should not be fully extended to those companies with these usurious rates who prey on low-income people, and do so on an unsolicited basis.”

A few facts may help put the situation into perspective.

In 1975, total household debt was 24 percent of aggregate household income. Today, household debt is more than 100 percent of aggregate household income.¹ In short, in the last 23 years, the average debt burden of the average American family has quadrupled. Not surprisingly, this higher debt burden has made more and more American families vulnerable to financial catastrophe. A job loss, layoff, or income decline can result in debts spinning out of control very quickly. A divorce, a car crash, a health emergency, a sick parent, or a lawsuit can lead to a financial emergency.

The evidence indicates that most personal bankruptcies filed are not for abusive purposes. Several facts illuminate this case:

According to the National Bankruptcy Review Commission, in 1977 there were 0.74 bankruptcies for every million dollars of con-

¹ See Statistical Abstract of the United States.

sumer debt; in 1997, there were 0.73 bankruptcies for every million dollars of consumer debt.²

The average income of a person in bankruptcy has steadily declined since 1981. In 1981, the median income of a debtor in bankruptcy was \$23,254. In 1997, it was \$17,652. Even as median income was dropping, the median amount of unsecured debt owed by the average debtor was growing from \$20,230 in 1981 to \$28,949 in 1997.³

Studies prepared by the Congressional Budget Office indicate that personal bankruptcy filings increase almost in lockstep with increases in household debt-to-income ratios. (Chart attached).⁴

These facts persuade us of two things. First, most people are going into bankruptcy because of debt, not because they are lazy, shiftless, and morally corrupt. Second, any effort to address the bankruptcy problem must not only deal with the personal responsibility of the debtor but must also deal with the corporate responsibility of the creditor.

A combination of industry practices have contributed greatly to the bankruptcy crisis.

From 1994 to 1996, credit card issuers mailed more than two and a half billion card solicitations each year. Each American household probably received more than 41 credit card mailings—not counting telephone solicitations or home equity loan solicitations. In a little over four years, the credit card companies offered about \$1 million of credit to every household in the United States.⁵

And then in 1997, credit card solicitation jumped 20 percent to three billion mailings. Direct solicitations of both college and high school students reached unprecedented heights. More than half of the eighth grade students in one Peoria, Illinois grade school class have received credit-card applications in their own name.⁶ In upstate New York, nearly every member of a group living house for people with learning disabilities received credit card applications. One of them, who could sign his name but could not add or subtract, had 13 credit cards with more than \$11,000 in debt outstanding. His only income is \$7,000 a year from Social Security disability benefits.⁷

In the last four years, outstanding credit card debt has doubled so that by the end of 1997 \$422 billion in credit card loans were outstanding.⁸ Credit card usage has grown fastest in recent years among debtors with the lowest incomes. Since the early 1990s, Americans with incomes below the poverty line nearly doubled their credit card usage, and those in the \$10,000 to \$25,000 income

² Report of the National Bankruptcy Review Commission (1997) at 85.

³ Elizabeth Warren, "The Bankruptcy Crisis," 73 *Indiana Law Journal* 1049 (1998).

⁴ Statement of Kim Kowalewski, Chief, Financial and General Macroeconomic Analysis Unit, Congressional Budget Office, before the Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, United States Senate at 4 (April 1997). See also Diane Ellis, "The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-offs, and the Personal Bankruptcy Rate," *Bank Trends* 98-05 (Division of Insurance, FDIC February 1998).

⁵ George M. Salem and Aaron C. Clark, GKM Banking Industry Report, *Bank Credit Cards: Loan Loss Risks are Growing*, 5 (June 11, 1996).

⁶ Pam Adams, "Differences From State to State Can Have a Major Impact on Debtors," *Peoria Journal Star*, June 29, 1998.

⁷ Dan Herbeck, "Where Credit Isn't Due Developmentally Disabled Become Victims," *Buffalo News*, April 7, 1998.

⁸ OCC Advisory Letter 96-7, September 26, 1996, (96-7.txt at www.occ.treas.gov); FDIC Quarterly Banking Profile Graph Book, Fourth Quarter 1997.

bracket came in a close second in the rise in debt. The result is not surprising: 27 percent of the under \$10,000 families have consumer debt that is more than 40 percent of their income. Nearly one in ten has at least one debt that is more than 60 days past due.⁹

Even as credit card lending has exploded, so too has home equity lending with high loan-to-value ratios. Between 1995 and 1997, the amount of this high-risk home equity lending has increased from \$1 billion to \$10 billion. This year, it is expected to double from its 1997 level.¹⁰

The increased availability of credit among many segments of our society has been highly beneficial. But it also has its dark side.

As the New York Times reported in 1996: "A model developed by Fair Isaac & Company, a consulting firm, finds that the characteristics of many people who are about to file for bankruptcy are also those of the most profitable customers: They take a lot of cash advances, borrow up to their credit limits and only make the minimum payment each month."¹¹

Ironically, a string of industry practices punish people who engage in good personal financial management. For example, a number of credit card issuers have begun terminating the accounts of people who pay their debts off in full every month. Other banks charge people monthly fees—on top of interest paid—if they pay their debts off in full.

More troubling, another set of practices effectively pushes over-extended borrowers into deeper and deeper trouble. Late fees, over-limit fees, other hidden charges and dramatic jumps in interest rates mean that a person who suffers a minor financial roadbump can quickly find himself speeding toward financial catastrophe. Banks often almost double the interest rate they charge for a consumer who misses two payments. Getting behind on your credit cards today is not just a small problem that can be cured easily with a new job at the same salary or with a small loan from a friend willing to help. Moreover, evidence indicates that creditors are unwilling to help people who find themselves in financial trouble. A survey of people who declared bankruptcy prepared by Visa in 1996 found that two-thirds of the people surveyed reported that creditors did not try to work with them to help them avoid filing for bankruptcy.¹²

In addition, credit card companies encourage debtors to only make minimum payments which do not pay down the loan. Industry analysts estimate that using a typical minimum monthly payment rate on a credit card it would take 34 years to pay off a \$2,500 loan and total payments would exceed 300 percent of the original principal.¹³ But the average credit card holder would never know this. Credit card companies also offer low teaser rates that

⁹Federal Reserve Bulletin, Family Finances in the U.S.: Recent Evidence from the Survey of Consumer Finances, Table 14 Aggregate and median ratios of debt payments to family incomes, and shares of debtors with ratios above 40 percent and those with any payment sixty days or more past due, by selected family characteristics, 1989, 1992, and 1995.

¹⁰Fred Bleakley, "A 125% Solution to Card Debt Stirs Worry—Second Mortgage Trend May Signal Economic Trouble," Wall St. Journal, November 17, 1997; see also, "Increased Home Equity Loans Raises Specter of Card Delinquencies," 8 Credit Risk Management, July 13, 1998.

¹¹Saul Hansell, "The Debt Trap—A Special Report. Personal Bankruptcies Surging as Economy Hums," The New York Times, August 25, 1996.

¹²Visa, "Consumer Bankruptcy: Bankruptcy Debtor Survey," 10 (July 1996).

¹³Salem & Clark, *supra* note 5, at 25.

are designed to encourage consumers to run up balances when the rate is low but that are inevitably paid off at a much higher rate.

These practices—a tidal wave of solicitations, aggressive marketing among higher risk customers, and fees and penalties that push people in trouble further down—are combined with solicitations and bills that are virtually incomprehensible to the average consumer. Trying to read or understand a credit card offer, bill or contract is a lesson in frustration and confusion. As a result, the vast majority of Americans are stymied in their efforts to fully understand the implications of their financial decisions. They pay only the monthly minimum not knowing that at that rate it will take them almost 35 years to pay off the full amount. They transfer balances to cards with low introductory rates only to be surprised by higher interest rates on other purchases. Not surprisingly, consumer confusion mixed with tantalizing offers and aggressive solicitation from credit card companies is a recipe for financial trouble.

And the sad fact is that many Americans seem to believe that they can literally borrow their way out of debt. Credit card companies and home equity lenders encourage this impression by attempting to persuade consumers to consolidate all of their debt and then get an extra line of credit. As Senator Feinstein commented at the committee mark up: “But one of the things that is happening more and more is the almost entrapment that takes place from credit card companies who provide credit cards with up to a \$10,000 limit to people who really have no business having those credit cards. I have two people close to me that [were] * * * very close to bankruptcy, with seven or eight different credit cards and figuring they could get out of debt by sort of playing one against the other and really not having the kind of credit rating to have any of those cards. * * * It seems to me that any legislation really ought to put some obligation on those who sell credit so loosely, that at least they be required under the law of this land to look at the creditworthiness of the individual who is getting that credit.”

So we write today to make clear that we must take aim at these practices. Real reform must assure not only that consumers have clear and comprehensible information about credit card debt, but that the institutions that engage in risky and predatory lending are neither encouraged nor protected by the bankruptcy law. We intend to insist on comprehensive bankruptcy reform.

DICK DURBIN.
RUSS FEINGOLD.
DIANNE FEINSTEIN.
HERB KOHL.
ROBERT G. TORRICELLI.

IX. ADDITIONAL VIEWS OF SENATOR RICHARD J. DURBIN

Much of our discussion concerning reform of the nation's bankruptcy laws has focused upon perceived abuses of the bankruptcy system by consumer debtors. Far less discussion has occurred with regard to abuses by creditors that help usher the nation's consumers into bankruptcy. I believe that abuses exist on both sides of the debtor-creditor relationship and that bankruptcy reform is incomplete if it fails to address documented abuses among creditors.

Studies have identified a host of predatory financial practices directed at the nation's financially vulnerable. These studies suggest that many low-income Americans participate in a virtual "fringe" economy. They may lack access to mainstream financial institutions—often because of high minimum balance requirements or excessive fees—and may also lack the collateral or the credit rating needed to secure loans for a home, for home repairs, or for other essential needs.

This segment of the economy is at the mercy of a variety of credit practices by a variety of offerors that can lead to financial ruin. High pressure consumer finance companies have bilked unsophisticated consumers out of substantial sums by aggressively marketing expensive loan insurance products, charging usurious interest rates, urging repeated refinancings, and loading their products with hidden fees and costs. High cost mortgage lenders have defrauded millions of older Americans with modest income but substantial home equity of their lifelong homeownership investments. Some auto lenders in the used-car industry have gouged customers with interest rates as high as 50%, and with assessments for credit insurance, repair warranties, and hidden fees, adding thousands of dollars to the cost of an otherwise inexpensive used car. Pawn shops in some states have charged annual rates of 240% or more to consumers who have nowhere else to turn for small, short-term loans.

Abusive credit practices of every stripe harm millions of older and low-income Americans each year. During the committee debate on S. 1301, I offered an amendment designed to address and curtail just one bad practice among many—the predatory, high-cost mortgage loans targeted at the low-income elderly and the financially unsophisticated. This amendment was adopted unanimously, and I write to day to discuss it in further detail.

In recent years, there has been an explosion in the market for these home mortgages, generally for secondary mortgages that are not used to fund the purchase or construction of a home. The market is known as the "subprime mortgage" industry. The subprime mortgage industry offers home mortgage loans to higher-risk borrowers—loans carrying far greater interest rates and fees than conventional loans, and also carrying extremely high profit margins for these lenders.

In 1997 alone, subprime lenders originated over \$125 billion dollars in home equity loans. By the first half of 1997 they accounted for 15.5% of the total home equity lending market. The companies engaging in subprime mortgage lending have grown from small companies into large corporations with nationwide operations. According to a recent study of predatory financial practices by the Public Policy Institute, a part of the Research Group for the American Association of Retired Persons, “[t]he evidence indicates that, nationally, the losses to mortgage fraud and rate-gouging may reach into the billions of dollars over the past decade—representing hundreds of thousands and perhaps more than one million individual victims.” Michael Hudson, “Predatory Financial Practices: How Can Consumers Be Protected?” (Winter 1997).

The growth of the subprime lending industry is of concern to us for two reasons—first, because of the reprehensible tactics, called predatory lending practices, which some of these companies use to conduct their business, and second, because of the vulnerable people—senior citizens and the low-income, the financially unwary—whom they often target with their loans.

The story of Genie McNab, a 70-year-old woman living in Decatur, Georgia, demonstrates both aspects of the problem. Ms. McNab is retired and lives alone on Social Security and retirement benefits. In November of 1996, with the “help” of a mortgage broker, Ms. McNab obtained a 15-year mortgage loan for \$54,300 from a large national finance company. Her annual percentage rate is 12.85%. Under the terms of the mortgage, she will pay \$596.49 a month until the year 2011, when she will be required to make a final payment of \$47,599.14. By the time she is done, her \$54,200 loan will have cost her \$154,967.

Fifteen years from now, when she is 83 years old, Genie McNab will be saddled with a balloon payment she will never be able to make. She’ll face foreclosure, and she’ll be forced to consider bankruptcy. She’ll face the loss of her home and her financial security, not to mention her dignity and sense of well-being. Ironically, Ms. McNab paid a mortgage broker \$700 to find her this unconscionable loan—a mortgage broker who also collected a \$1,100 fee from the mortgage lender.

Unfortunately, Ms. McNab is a typical target of the high-cost mortgage lender—an elderly person, living alone on a fixed income. She is just the type of person who may suddenly have encountered an unexpected financial obstacle—the death of a spouse and the loss of that spouse’s income, a large medical bill, an expensive home repair, or a mounting credit card debt incurred to deal with that income loss or with those medical bills. These are the real life circumstances which make her an irresistible target for some members of the subprime mortgage industry.

According to a former career employee of the industry, who testified anonymously at a hearing before Senate Special Committee on Aging in March of this year, “my perfect customer would be an uneducated woman who is living on a fixed income—hopefully from her deceased husband’s pension and social security—who has her house paid off, is living off of credit cards, but having a difficult time keeping up her payments, and who must make a car payment in addition to her credit card payments.” This industry professional

candidly acknowledged that unscrupulous lenders specifically market their loans to elderly widowed women, blue-collar workers, people who haven't gone to college, people on fixed incomes, non-English speaking people and people who have significant equity in their homes.

They targeted another such person in the District of Columbia. Her name is Helen Ferguson. She is 76 years old and lives in Northwest D.C. As a result of predatory lending practices, her home is in jeopardy. In 1991, Ms. Ferguson had a total monthly income of about \$504 from Social Security and Supplemental Security Income. With the help of her family, she made a \$229 monthly mortgage payment on her house. However, on her fixed income, she was unable to make needed home repairs. She began hearing and seeing radio and television ads for low interest home improvement loans and contacted a lender. Ms. Ferguson thought she signed up for a \$25,000 loan, but in reality, the lender collected over \$5,000 in fees and settlement charges for a \$15,000 loan. The interest rate the lender charged her was 17%. Her mortgage payments went up to \$400 a month—almost twice her old payment.

Over the next few years, the lender repeatedly tried to convince Ms. Ferguson to take out more loans, calling her and her sister at home and work, sending letters and Christmas cards. In March of 1993, she gave in to the lender, borrowing money to make home repairs. By March of 1994, she could not keep up with her mortgage payments. She signed for a loan with another lender, unaware that it had a variable interest rate and terms that would cause her payments to rise to \$600 and eventually \$723 a month. For this loan she paid over \$5,000 in broker fees, and more than 14% in total fees and settlement charges. The first lender also continued to solicit her, and she eventually signed up for even more loans. Each time the lender persuaded her that a refinancing would enable her to meet her monthly payments.

Ms. Ferguson was the target of a predatory loan practice known as "loan flipping." In such cases, lenders purposely structure the loans with monthly payments they know the homeowner cannot afford so that at the point of default they will return to the lender to refinance. The refinancing provides the lender with additional points and fees. And in the case of some Ms. Ferguson's loans, not only did the lender prepare two sets of documents, and rush the signing, but the lender's representatives took with them all the papers from the mortgage closing, mailing them to her only after the 3-day rescission period was expired and the check for home repairs was spent.

Ms. Ferguson eventually was obligated to make monthly payments of more than \$800, although her income was only \$504 a month, and the lenders knew it. In 5 years the debt on her home increased from \$20,000 to over \$85,000. She felt helpless and overwhelmed, and it was only after contacting the American Association of Retired Persons that she realized these lenders were violating federal law.

Lump sum balloon payments on short-term loans, loan flipping, the extension of credit with a complete disregard for the borrower's ability to repay—these aren't the only abusive mortgage practices. Lenders on these secondary mortgages sometimes include harsh re-

payment penalties in the loan terms, or roll over fees and charges into the loan, or negatively amortize the loan payments so that principal actually increases over time—all of which is prohibited by law, although ordinary homeowners are unlikely to be aware of that. Some of these homeowners will not make it to a lawyer or other source of help before financial meltdown occurs. When they realize what has happened, these consumers are often on the brink of foreclosure and bankruptcy. Often, the people soliciting these loans have won their trust and confidence, and the homeowners are reluctant to believe that they have been so ruthlessly taken in.

The problem of predatory financial practices in the high-cost mortgage industry is relevant to bankruptcy because it is driving vulnerable people into bankruptcy. These people are not entering bankruptcy in order to abuse the system, they are filing bankruptcy because the reprehensible tactics of unscrupulous lenders have driven them into insolvency.

My amendment prohibits a high-cost mortgage lender that extended credit in violation of the provisions of the Truth-In-Lending Act from collecting its claim in bankruptcy. The result of my amendment will be that when an individual like Genie McNab or Helen Ferguson goes to the bankruptcy court—seeking last-resort help for the financial distress an unscrupulous lender has caused her—the claim of the predatory home lender will not be allowed. If the lender has failed to comply with the requirements of the Truth in Lending Act for high-cost second mortgages, the lender will have absolutely no claim against the bankruptcy estate.

My amendment is not aimed at all subprime lenders or at all second mortgages. Indeed, it is aimed only at the worst, most predatory, of these by and large worthy lenders. My provision is aimed only at practices that are already illegal. It does not deal with technical or immaterial violations of the Truth in Lending Act. Disallowing the claims of predatory lenders in bankruptcy cases will not end these predatory practices altogether. Yet it is one step we can take to curb creditor abuse in a situation where the lender bears primary responsibility for the deterioration of a consumer's financial situation.

DICK DURBIN.

X. MINORITY AND DISSENTING VIEWS OF SENATOR EDWARD M. KENNEDY AND SENATOR RUSSELL D. FEINGOLD

I. INTRODUCTION

There is no doubt that more and more Americans are turning to the consumer bankruptcy system and the financial protections it offers. In 1997, more than 1.3 million families filed for bankruptcy. This represents nearly a 400 percent increase since 1980. Clearly, steps must be taken to reign in the number of individuals and families filing for bankruptcy. Where there is fraud and abuse we must take steps to reduce and eliminate it.

The Consumer Bankruptcy Reform Act of 1997 is not a well-balanced solution to this problem. Instead, it has the potential to harm women and children, the elderly, and the unemployed. It elevates unsecured credit card debt to the same levels as alimony and child support, student loans, and taxes. It penalizes an attorney for vigorously representing a debtor. In short, this bill takes a good idea—reducing the number of bankruptcy filings—and twists it into a bad deal for some of our most vulnerable Americans.

S. 1301 assumes that debtors are by nature irresponsible or intent on committing fraud. In part, this is a result of using erroneous assumptions to craft public policy. Despite evidence that debtors now wait longer to file bankruptcy and are deeper in debt than those who filed for bankruptcy a decade ago, proponents of this bill argue that a declining social stigma is responsible for an increase in bankruptcy filings.

Supporters of this legislation also use an October 1997, Credit Research Center report entitled, *Personal Bankruptcy: A Report on Petitioners Ability to Pay* as a foundation for the claim that most debtors could actually repay more of their debts than is currently required by law. But the General Accounting Office (GAO) found that the Center's report had several methodological flaws that make both its validity and its reliability suspect. The GAO concluded that "[t]he methods used in the Center's analysis do not provide a sound basis for generalizing the Center report's findings to the annual 1996 filings in each of the 13 locations nor to the national population of personal bankruptcy filings."

In reality, the causes of increased bankruptcy filings are far more complex than a declining social stigma. Increased bankruptcy filings can be attributed to job loss, divorce, increasing health care costs, and declining real wages. A more complete explanation for the increase in bankruptcy filings includes the conclusions of numerous scholars and researchers, who believe that increased marketing and high credit card interest rates are major contributors to increased bankruptcy filings. For example, Harvard Business School researchers David Moss and Gibbs Johnson note that "the

evidence suggests that shifts in the volume of and distribution of consumer credit—rather than declining stigma—are the most likely sources of the recent surge in consumer filings.” They add that another explanation for the surge of filings that began in the late 1980s “is that consumer creditors began reaching substantially further down into the income distribution beginning in the mid 1980s.”

A report issued by the Consumer Federation of America earlier this year indicates that credit card mail solicitations reached an all-time high in 1997—in the second quarter alone, credit card companies sent out 881 million mail solicitations. In total, credit card companies sent out 3.1 million mail solicitations last year. Credit card manufacturers also increased their advertising 14 percent between 1995 and 1996.

But even in the face of mounting evidence that credit card marketing and skyrocketing interest rates have contributed to increased bankruptcy filings, this bill does nothing to prevent credit card companies from targeting low-income families. It does nothing to curb high credit card interest rates or to slow the flow of unsolicited, pre-approved credit card applications. It demands no new consumer protections or disclosures from the credit card industry.

This is irresponsible legislating, since evidence suggests a strong link between credit card interest rates, credit card defaults, and bankruptcy. University of Maryland professor Lawrence Ausubel, in a 1997 article in the *American Bankruptcy Law Journal*, noted this link and added that bankruptcy filings “follow exceedingly closely changes in the rate of credit card delinquencies.”

How can we turn a blind eye to credit card lending practices that allow—even encourage—people who can’t afford credit cards to incur enormous debts? Students, low-income families, even people who have declared bankruptcy routinely receive unsolicited, pre-approved credit card applications.

When job loss, divorce, or medical emergency strike, some of these individuals have no choice but to file for bankruptcy in order to stabilize themselves. Congress must balance the interests of creditors with those of Americans who need the opportunity to resolve overwhelming financial burdens. As we address abuses by debtors, we must also address creditor abuses. This bill does not do that.

In light of these substantial concerns, we believe that the Judiciary Committee moved too rapidly in its consideration of S. 1301 and ignored the recommendations of numerous bankruptcy judges, scholars, and practitioners. After only two days of subcommittee hearings on the issue of consumer bankruptcy and one hearing on the proposed bill, the Committee passed legislation embodying the most ambitious changes in the bankruptcy law in the 100 years of the modern bankruptcy system. This is a dramatic departure from the attention Congress usually gives to major bankruptcy reform legislation.

The majority’s criticism of Senators’ hearing attendance does not change the fact that there were very few hearings devoted to the topic of consumer bankruptcy or S. 1301. Moreover, one of the dissenters does not sit on the Subcommittee, and the only Full Committee hearing on S. 1301 was canceled without explanation. The

hearing was not rescheduled. As noted above, this contrasts significantly with Congress' intensive and thorough review of the 1978 bankruptcy bill.

In 1978, the last time Congress reformed the bankruptcy laws, the Subcommittee on Improvements in Judicial Machinery held 21 days of hearings, and the Full Committee held three more hearings on the bill. Similarly, the House Subcommittee on Civil and Constitutional Rights held 35 days of hearings.

The Committee also gave little consideration to the report of the bi-partisan National Bankruptcy Review Commission that sent its findings and recommendations to Congress in October 1997. While the Commission did not reach unanimous agreement in the area of consumer bankruptcy, the legislation diverges sharply from the recommendations of both the majority and the four-person minority. When the Commission was authorized in 1994, Congress specifically pronounced itself "generally satisfied with the basic framework established in the current Bankruptcy Code," and counseled the Commission "not [to] disturb the fundamental tenets of current law."

Keeping in mind its mandate, the Commission held 21 public meetings, which were attended by 2600 people. After hearing from 602 participants, the Commission adopted 172 proposals, which were forwarded to Congress. Although S. 1301 adopts a few of those recommendations, it primarily consists of proposals that were specifically rejected or not acted upon by the Commission.

Congress has not reached consensus on the catalyst for increased bankruptcy filings, nor has it adequately explored all alternatives to reduce filings. We do know, however, that single parents and children, older Americans, minorities, and working families, among others, will be especially hard-hit by the provisions included in S. 1301. Before passing bankruptcy reform legislation, Congress should fully examine the complexities of the problem and carefully craft legislation that will eliminate creditor and debtor abuses without eliminating an important safety net for middle class Americans. Anything less is a disservice to our constituents.

II. THE EFFECT OF S. 1301 ON SINGLE PARENTS AND CHILDREN

S. 1301 has been criticized for its effects on single parents and children, both as debtors and as creditors trying to collect past-due support. Many of the provisions producing these concerns do not explicitly mention ex-spouses, children or support obligations. Rather, the especially problematic provisions increase dividends and collection rights for nonpriority unsecured creditors (such as credit card lenders) through forced repayment plans,¹ additional exceptions to discharge,² or provisions enhancing creditors' leverage to obtain reaffirmations³ at the expense of priority creditors (such as child support recipients). Other provisions inflate the claims and entitlements of secured institutional lenders,⁴ leaving a smaller proportion of income available for payment of priority claims. In addition, numerous provisions in S. 1301 complicate

¹See S. 1301 § 102.

²Id. §§ 314, 315, 316.

³Id. §§ 102, 308, 310, 315, 316, 317, 318.

⁴Id. §§ 302, 305, 310, 311, 317, 318, 319, 321.

bankruptcy procedure or encourage unilateral action by particular creditors such that scarce resources will be consumed through litigation or through addressing the consequences of ejection from the system.⁵

Some proponents of S. 1301 put forth a set of amendments with the express purpose of protecting support obligations. While those amendments include some well-intentioned proposals that may enhance the legal status of support obligations, the amendments are largely cosmetic. Rather than clearing the way for women and children to collect past due and current support obligations, many of the new provisions would have little effect in practice, and, in some instances, actually could hamper the ability of women and children to collect support obligations because those provisions also would increase competition for scarce resources by expanding the priority and nondischargeability of additional government obligations and of nonsupport debts.

The following discussion analyzes the components of the “child support amendments.”

A. Legal Priority of Child Support

1. CHAPTER 7

During the weeks preceding the Judiciary Committee markup of S. 1301, several Members of Congress raised concerns about the bill’s effect on the payment of spousal and child support obligations. Specifically, on May 5, 1998, 31 Senators wrote Chairman Hatch and Ranking Member Leahy that,

Under current law, outstanding spouse and child support, in addition to past taxes and educational loans, are debts that cannot be discharged in bankruptcy like other debts. Thus, for example, when a non-custodial parent files for bankruptcy and is able to discharge certain debts, the custodial parent is better able to retrieve child support without competing with commercial creditors for the limited resources available post-bankruptcy. This treatment is wholly appropriate: a child is not something one borrows, rather, he or she is someone to whom one has a moral and legal obligation * * * [p]rovisions in S. 1301 and H.R. 3150 would dramatically alter the priority placed on this support. The legislation effectively places spousal and child support obligations on equal footing with some consumer debt. This means that custodial parents and ex-spouses may have to compete in bankruptcy and *post-bankruptcy courts* with the vast resources of these commercial lenders with little likelihood of success. (Emphasis added)

In response to this concern, the Judiciary Committee amended 11 U.S.C. § 507 to subordinate administrative expenses to prepetition priority support obligations. While this amendment is being highlighted as exemplary of a commitment to protect support obligations, the amendment may not be workable and is not likely to have an appreciable effect.

⁵ Id. §§ 102, 301, 303, 305, 309, 319, 321, 409.

The order of priority is relevant only with respect to distributions of nonexempt unencumbered property in Chapter 7. The vast majority of Chapter 7 cases are “no asset” cases, and creditors receive no distributions, making one’s level of priority irrelevant. In the handful of “asset” consumer Chapter 7 cases, it is necessary to be able to pay administrative expenses to liquidate property for other priority creditors, and thus subordinating administrative expenses may not be in the best interests of support recipients if it precludes the liquidation of property altogether. In Chapter 13, all priority debts are entitled to the same treatment and must be paid in full unless the creditors agree to lesser treatment, again making priority irrelevant.

Overall, this provision does not ameliorate the adverse consequences of this bill on support recipients, which are unrelated to the level of priority accorded to prepetition arrearages on support obligations. Rather, the effect of this bill is felt most severely after bankruptcy when spousal and child support will have to compete with newly-nondischargeable consumer debt.

2. CHAPTER 13

Section 324 would amend 11 U.S.C. § 1322(b)(1) so that priority prepetition support debts can be paid in a Chapter 13 plan prior to other priority claims, notwithstanding the order of priorities set forth in 11 U.S.C. § 507(a). The amendment would not be binding because section 1322(b) delineates the debtor’s options for crafting a Chapter 13 plan but does not prescribe mandatory treatment. In any event, while well-intentioned, the amendment would not change current practice since support obligations normally are frontloaded in Chapter 13 plans.

B. Payment of Child Support as Prerequisite to Chapter 13 Plan Confirmation and Discharge

Section 325 would amend 11 U.S.C. § 1325(a) to condition confirmation of a Chapter 13 plan on the payment of support obligations. To the extent that this provision requires the payment of regular support obligations, it is not objectionable and is consistent with public policy. If, however, the language of this provision is construed to include arrears, this requirement might be infeasible and thus may not be in the best interest of the support recipient, the debtor, or other creditors. The language therefore should be modified slightly to clarify that the provision intends to refer to ongoing, not past-due, support. In addition, as currently drafted, the provision does not address the consequences of discovering after confirmation that preconfirmation payments were not complete. The remedy for such a discovery should be plan modification, dismissal or conversion, but not revocation of confirmation.

Section 325 also would condition a Chapter 13 discharge on a certification that the debtor made postpetition support payments in accordance with the plan or otherwise paid those obligations in full. Again, while this provision probably would be fine in most cases, it is unclear whether the provision is intended to refer to past due obligations, ongoing obligations, or both. Moreover, a support recipient should be permitted to agree different treatment in the debt-

or's plan, like other creditors are entitled to do. *See, e.g.*, 11 U.S.C. § 1322(a)(2). Overall, one should bear in mind that the majority of Chapter 13 debtors never receives a discharge, and thus this amendment is not likely to be an issue in a large percentage of the cases.

C. Wage Orders

Section 326 would amend 11 U.S.C. § 362(b) so that the automatic stay that enjoins most collection actions in bankruptcy cases would not enjoin actions to impose or enforce a wage order for domestic support obligations or actions to withhold, suspend, or restrict licenses of the debtor for his delinquency in support obligations. This amendment would obviate the need for parties to seek relief from the stay, and thus in some instances could minimize costs, although section 362(b)(2), which was added to the Bankruptcy Code in 1994, already permits the continuation of garnishment in most cases. In addition, since some wage assignments are for debts owed to a government unit rather than to the ex-spouse or child directly, this provision sometimes will divert funds away from individual support recipients when a government unit exercises its wage order rights for its own benefit. For this amendment to be truly pro-family, government units should be required to hold such withheld payments in trust for application to any outstanding obligations owed directly to support recipients.

An automatic stay exception for wage orders may have limited efficacy, since bankruptcy cases with claims for domestic support obligations do not necessarily involve wage orders. The ability to obtain a wage order depends on the laws of a given state and whether the ex-spouse's employment situation makes this possible. Since individuals who file for bankruptcy are likely to have experienced a prebankruptcy period of unemployment or marginal employment for cash payment, it is less likely that a support recipient will have a wage order against a debtor spouse. Moreover, a wage order or license revocation may be useless if a financially troubled ex-spouse cannot shed his high interest unsecured debts; S. 1301 would impose restrictions on access to Chapter 7 and decrease all debtors' ability to discharge unsecured debts, and thus will increase a debtor's incentives to leave his job, move to another jurisdiction, and get paid on a cash basis. Thus, while permitting continued wage garnishment may be helpful in some instances, it falls short of addressing the detrimental impact of this legislation on single parents and children.

D. Exceptions to discharge

1. DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS

Section 315 would add an exception to discharge for debts incurred to pay obligations that would not have been dischargeable if unpaid on the date of the bankruptcy filing. This provision is problematic due to the lack of policy justification for making general unsecured debts nondischargeable unless they were incurred fraudulently. The fact that the debt was incurred to pay a debt that may have been nondischargeable does not change this analysis, since the societal need for repayment of the underlying debt

has been satisfied. In some cases, excepting a general unsecured debt from discharge actually will frustrate Congress' original policy determination to make a debt nondischargeable. For example, excepting from discharge an obligation to a financial institution used to pay a domestic support obligation would make it more difficult for ex-spouses and children to collect debts owed directly to them, as they would face additional competition from institutional lenders for limited resources. Moreover, one cannot always predict which debts will be deemed nondischargeable, since courts have reached variable interpretations of the exceptions to discharge. This amendment therefore could expand the number of complicated nondischargeability threats and allegations, providing increased leverage for certain lenders to pursue and obtain reaffirmations of unsecured debt.

The attempt in the "child support amendments" to ameliorate this provision for support recipients is well-meaning but unfortunately may not accomplish its intended goal. The amended provision actually goes farther than the original provision to expand the number of potentially nondischargeable debts by including debts incurred to pay obligations that would be nondischargeable under any subsection of section 523(a). In cases involving dependent children or support obligations, a debt would be nondischargeable if the debtor "intentionally incurred the debt" to pay a nondischargeable debt. This language is likely to be construed to mean that the general unsecured debt survives bankruptcy as long as the payment was made "intentionally" and not accidentally, which is not a meaningful requirement. To the extent that the amendment is seeking to target individuals who incur debts with the intention not to repay them at all, this behavior already is addressed in current Bankruptcy Code section 523(a)(2)(A).

2. CONSUMER DEBTS INCURRED WITHIN 90 DAYS PRIOR TO FILING FOR BANKRUPTCY

Section 316 would create a presumption of nondischargeability for any consumer debt \$400 or greater and not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor incurred within 90 days prior to bankruptcy. Clearly, debtors should not incur debts with the intention not to repay them, e.g., if they know that they are going to file for bankruptcy; section 523(a)(2)(A) of current law already makes such debts nondischargeable. Yet, debts incurred within 90 days prior to filing may not have been incurred in contemplation of bankruptcy, and thus the isolation of these debts for special treatment is somewhat arbitrary. This type of bright line rule does not catch the abusers of the system, who can plan around this provision and delay their filings. Such rules instead catch the least sophisticated and least well-represented families who are legitimate candidates for debt relief. This amendment also might capture older debts that were refinanced within 90 days prior to bankruptcy, and thus could discourage debtors' attempts to privately resolve financial problems.

In response to concerns that this expansion of credit card debt nondischargeability adversely affects the collection of support obligations, the "child support amendments" added additional language

limiting the amendment's effects to debts greater than or equal to \$400 and for goods and services not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor. This positive step is commendable. However, due to the realities of bankruptcy practice, this amendment is not likely to ameliorate the adverse consequences of this provision. Lenders could allege in nearly every case that goods were not "reasonably necessary," and fighting the claim would cost more than the amount of the claim itself. Rather than litigating, with the attendant drain on money, time and legal resources, it is more likely that the debtor will concede nondischargeability or reaffirm the debt. Either way, the litigation costs or the surviving debt and accompanying interest charges would adversely affect the ability of the debtor to meet his obligation to pay other important debts and expenses.

E. Protection of Property Settlement Debts

Section 327 would amend 11 U.S.C. § 523(a)(5) to except from discharge all debts resulting from property settlements. This amendment does not expand nondischargeability for debts that are actually in the nature of support (e.g., many hold harmless agreements), which already are protected under the current section 523(a)(5). The amendment instead would expand protection for nonsupport debts between ex-spouses. Although this sounds reasonable on its face, it could have odd consequences in some cases.

First, a support recipient who files for bankruptcy him or herself may not be able to discharge property settlement debts under this amendment. As another example, consider a debtor who has been married and divorced twice and owes support obligations to his second ex-wife and children, but does not support his first ex-wife because she is the successful owner of her own business. If the first divorce decree dealt with business debts, this change would elevate business debts to his wealthy first wife to the status of support obligations to his second ex-wife and her children, who thus would face increased competition for the debtors' resources (along with unsecured lenders whose debts would ride through bankruptcy through increased nondischargeable debts and reaffirmations).

F. Collection From Otherwise Exempt Property

Section 328 of S. 1301 would permit nondischargeable support obligations to be collected from exempt property notwithstanding federal or state law. Perhaps more significantly, it would grant this entitlement to taxing authorities, which are more likely to be able to take advantage of this provision. By overriding all state and federal laws exempting property, the amendment would nullify wage exemptions, federal wage garnishment laws, and exemptions in section 6334 of the Internal Revenue Code and comparable state laws, all of which limit the property that can be seized by taxing agencies to satisfy a tax debt. For example, the amendment would permit the Internal Revenue Service to seize items that otherwise would be exempt under the Internal Revenue Code, such as clothing and school books. The amendment would override state laws protecting tenancies by the entirety from the tax debts of one spouse and, for the first time, would jeopardize a separated

spouse's interest in such property as to tax claims that are solely against the bankrupt spouse. Aside from the latitude that this provision grants to the Internal Revenue Service, the efficacy of this type of provision for a support recipient depends greatly upon the ability of an ex-spouse to hire a lawyer, find property to attach, and pursue these legal rights.

G. Application of the Co-Debtor Stay Only When the Stay Protects the Debtor

Under section 305, the Chapter 13 co-debtor stay would be terminated automatically 30 days after the bankruptcy filing if the debtor did not receive consideration for the creditor's claim or if property securing debt was not in the debtor's possession. The co-debtor stay could be retained if the debtor could show that receipt of property was not part of a scheme to defraud or hinder any creditor. The co-debtor stay would be lifted upon Chapter 13 plan confirmation as to a lease that has been surrendered or abandoned. The exception to the co-debtor stay would not apply if the debtor was maintaining property pursuant to a legally binding separation agreement or divorce decree. However, this carveout would not prevent a creditor from acting unilaterally against property that is the subject of an informal agreement or if the lender did not know the details of the support order or divorce decree. Thus, section 305 still could be harmful to support recipients and is less preferable than current law. In any event, the Bankruptcy Code should provide a specific remedy for violations of the co-debtor stay.

H. Definition of Household Goods and Antiques

Section 317 would define "household goods" using the definition employed by the Federal Trade Commission Trade Regulation Rule on Credit Practices, 16 C.F.R. § 444.1, but also would include tangible personal property reasonably necessary for maintenance or support of a dependent child. Providing statutory definitions can have a beneficial clarifying effect in some instances, but the recommended FTC definition would diverge from the prevailing current interpretations of "household goods" in section 522(f) and probably increase litigation. See, e.g., *In re McGreevy*, 955 F.2d 957 (4th Cir. 1992) (defining household goods as items of personal property typically found in or around home and used by debtor or his dependents to support and facilitate day-to-day living within home, including maintenance and upkeep of home); see also *In re Reid*, 121 B.R. 875 (Bankr. D.N.M. 1990) (rejecting narrow FTC definition for purposes of section 522(f), *In re Boyer*, 63 B.R. 153 (Bankr. E.D. Mo. 1986) (same).

III. S. 1301 WILL HARM OLDER AMERICANS AND MINORITIES

Proponents of S. 1301 assert that the bill will reduce bankruptcy system abuses. They claim that many debtors utilize the current system to avoid debts that they have the ability, at least in part, to repay. The bill advocates use of a "needs based" approach in order to significantly reduce Chapter 7 filings and force some debtors to utilize Chapter 13. The bill compels some debtors who are "able" to pay 20% of their unsecured debt to file Chapter 13. In ad-

dition to forcing many debtors to file for Chapter 13 bankruptcy, the bill creates new categories of non-dischargeable debt. By expanding categories of non-dischargeable debt (e.g., certain credit card debt) and altering many of the requirements of Chapter 7 and Chapter 13, the proposed reforms will make it more difficult for debtors to achieve financial stability and rebuild their long-term financial futures. The proposed structural alterations in the bankruptcy laws will likely have deleterious effects on some of the most vulnerable sectors of the population, including older Americans, and African-American and Latino families.

A. S. 1301 May Cause Financial Distress Among Older Americans

Many of those who call for bankruptcy reform point to the recent increase in credit card debt and consumer bankruptcy filings and suggest that many debtors are guilty of fiscal irresponsibility; however, most older Americans who file for bankruptcy cite job loss and catastrophic medical problems as the cause of their financial distress. In recent years thousands of older Americans have been the victims of downsizing; some are able to find other employment but often at substantially lower wages and without the health and other benefits that become increasingly important with age. Moreover, for older victims of downsizing, loss of income may not be temporary. As Harvard University Law Professor Elizabeth Warren has noted, when a thirty-year worker loses a job at age 54, the person's economic survival is severely threatened.

Older Americans, particularly those who are under 65 and do not yet have access to the social safety nets of Social Security and Medicare, often resort to short-term, high-interest credit when faced with unemployment because they assume that their unemployment will be temporary. Due to their age, however, many of these individuals never earn a salary comparable to that which they lost; thus, they find themselves unable to deal with the debt they have incurred. Under existing bankruptcy laws, these people could file for Chapter 7 relief and discharge all of their short-term, high-interest debt (principally credit card and finance company debt, along with some medical debt). This increases the possibility that they will be able to continue making priority debt payments.

S. 1301 would radically increase the burden on older Americans. Many will not be able to obtain bankruptcy relief unless they commit every available penny of disposable income to a multi-year repayment plan, although two-thirds of debtors who currently file Chapter 13 already fail to complete their repayment plans. Those who file for Chapter 7 relief will be saddled with nondischargeable credit card debt. By increasing the amount of non-dischargeable debt, S. 1301 will create hardships for older Americans, who are unlikely to be able to increase their income and regain financial stability.

The negative impact of S. 1301, however, may be felt most harshly by older Americans over the age of 65 who suffer a significant health problem or job loss. It is very unlikely that those seniors—many who have already been pushed out of the job market—can find suitable new employment. Moreover, when they are in financial distress, Social Security and Medicare are often insufficient to allow them to maintain their financial stability. S. 1301, by broad-

ening the definition of nondischargeable debt, may eliminate valuable safeguards that protect older Americans from financial ruin.

B. S. 1301 May Make It More Difficult for Minorities to Save Their Homes

Current bankruptcy law recognizes that home ownership is a focal point of the American dream. For American homeowners, current law provides an opportunity to segregate the consumer and medical debt incurred during unemployment or medical emergencies from delinquent mortgage payments, and allows homeowners to remedy any mortgage arrearages.

Many minority homeowners commit a larger percentage of their take-home pay to their mortgages than the average homeowner; often, their homes represent virtually all of their family wealth. Thus, when faced with a period of unemployment or temporarily disabling illness, African American and Latino families are six hundred percent more likely to seek bankruptcy protection in order to prevent the loss of their homes. These families, who may have already faced discrimination in home mortgage lending and housing purchases, and who often face inequality in hiring opportunities, seek bankruptcy protection to stabilize their economic circumstances and protect the middle class lives they have struggled to achieve.

The changes to bankruptcy law proposed in S. 1301 will dramatically decrease the ability of these families to protect their homes. If S. 1301 becomes law, these families will not be able to focus their limited resources on paying their mortgages due to the expansion of non-dischargeable debt and new rules governing the treatment and payment of other types of debt; thus, they are far more likely to lose their homes. As noted above, because African-American and Latino families dedicate a larger percentage of their income to their homes and because they are forced to file bankruptcy more often, S. 1301 will have a disproportionately severe impact on these groups.

IV. S. 1301 MAY DENY DEBTORS EQUAL ACCESS TO JUSTICE

S. 1301 attempts to implement needs-based bankruptcy reforms either by dismissing Chapter 7 cases or compelling conversion to Chapter 13. The bill proposes amending Section 707(b) of the Bankruptcy Code, which currently allows the court to dismiss or convert a bankruptcy petition due to "substantial abuse" of the system by the debtor. The bill would strike the "substantial" requirement and delineate a set of factors that a court must consider when deciding whether to dismiss or convert a case. As stated earlier, a threshold issue would be the debtor's ability to pay at least 20% of his unsecured debts. If he is able to do so, he would be forced to file Chapter 13. Currently, only the court or the U.S. Trustee can initiate a 707(b) motion. S. 1301, however, would allow creditors and case trustees to file such motions in any case in which the debtor has an income at or above the 1996 national median figures. Under the bill, many debtors' access to Chapter 7 protection would be essentially eliminated.

A. The Detrimental Effects of Allowing Creditors To File 707(b) Motions

If S. 1301 becomes law, creditors will have a tremendous incentive to file—or threaten to file—a 707(b) motion in virtually every case. Although some bill proponents argue that the bill contains safeguards against such abuse, these protections are largely illusory. S. 1301 provides that if the court finds that the creditor’s 707(b) motion was “substantially unjustified,” the bill would allow for the award of costs and fees to the debtor. However, this supposed safeguard would be essentially meaningless for debtors who lack access to counsel. Indeed, the “safeguard” would also impose a substantial additional burden on debtors who do have counsel, because they would be forced to file yet another motion. Experience with fee shifting under other provisions of the Bankruptcy Code has revealed that fee shifting is an insufficient deterrent. Respondents to 707(b) motions are debtors. Forcing people who are, by definition, financially distressed to assume the additional cost of litigating the merits of a 707(b) motion is unreasonable. In fact, even if the debtor wins the 707(b) motion and seeks fees and costs, he must access more funds to file another motion charging that the creditor’s motion was not substantially justified. Creditors will, therefore, have little disincentive to file 707(b) motions and debtors will be left with little to no real recourse against creditor abuse.

Moreover, under S. 1301, creditors can use their ability to file a 707(b) motion as a threat to get debtors to reaffirm their debts. Giving creditors such a powerful bargaining chip will undoubtedly intimidate many debtors legitimately seeking Chapter 7 relief and deter them from seeking the protection of the bankruptcy system.

B. The Detrimental Effects of Allowing Trustees To File 707(b) Motions

Enabling trustees to file 707(b) motions seems, on its face, to be a potentially worthwhile reform. The original version of Section 102(A)(3), however, would have made a debtor’s attorney responsible for the trustee’s costs and fees if the motion failed. The penalty would not have been predicated on bad faith or the filing of a frivolous motion, but simply losing the 707(b) motion. Fortunately, the Judiciary Committee accepted an amendment that will make the debtor’s attorney liable only if he was “not substantially justified” in filing the petition. Even this standard, however, is untenable.

This provision of S. 1301 applies a stricter standard to consumer debtors’ attorneys than to attorneys in any other federal proceeding. The conduct of consumer debtors’ attorneys should meet the standards set for all attorneys in Rule 11, which is incorporated in Federal Rule of Bankruptcy Procedures 9011.⁶ Every other fee-shifting provision in federal law that holds the attorney liable requires affirmative wrongdoing by the attorney. There is no legiti-

⁶Federal Rule of Bankruptcy Procedure, Rule 9011 provides that the court may issue “sanctions upon the attorney [or] law firm” representing a party in a bankruptcy proceeding if the attorney filed a paper that was for an “improper purpose” or was “frivolous.”

mate basis for different and more punitive standards for consumer bankruptcy attorneys.

Ultimately, this provision punishes debtors, not only their attorneys. Very few debtors' attorneys are likely to risk their own finances and welfare for a Chapter 7 bankruptcy filing. The cumulative effect of this proposal is that many truly needy debtors will be denied the benefit of counsel if they wish to file for Chapter 7 protection, thus, forcing them to file pro se.

Pro se debtors are particularly susceptible to exploitation by well-organized, powerful institutional creditors. The inherent disadvantages of filing pro se will only be exacerbated by the proposed measures. Pro se cases are often dismissed for trivial, procedural mistakes such as incorrect or untimely filings. This bill, by likely increasing the number of pro se cases, will increase the number of such dismissals. For example, Section 303 of the bill creates a presumption of bad faith when a case is dismissed for failure to file the papers in proper form. This provision, combined with the likely increase in pro se filers, will mean that many debtors who are legitimately seeking bankruptcy protection will be denied such relief due to administrative error and will have a difficult time re-entering the system due to the new repeat filing prohibition.

Moreover, if the bill's current attorney's fees provision is maintained, it would have the perverse result of increasing systemic abuses. As noted above, attorneys will likely raise their fees, therefore, more debtors will turn to less expensive, non-attorney petition preparers. Many non-attorney preparers are helpful to debtors, but, in some cases, unscrupulous, non-attorney petition preparers have been known to abuse the system. If attorneys are forced to raise their fees, even more pro se debtors will turn to these preparers, and some will pay for poor work and faulty legal advice.

As noted above, these attorneys' fees provisions are designed to intimidate lawyers into counseling against Chapter 7 filings. Not only is this fact troubling in and of itself, but it also creates a conflict of interest between a debtor's attorney and his client. Even if the client would be better served by a Chapter 7 filing, the lawyer would be faced with the dubious incentive to counsel the client to file Chapter 13 in order to protect the attorney's financial interests. Rule 1.7(b) of the Rules of Professional Conduct specifically prohibits a lawyer from handling a case "if representation of that client may be materially limited by the lawyer's * * * own interests." This bill would create a scenario in which debtors' attorneys would arguably be in violation of this rule on a regular basis. S. 1301, thus, sets the stage for extremely problematic attorney-client dynamics that will ultimately harm vulnerable consumers.

C. The Existing Prohibition Against Debtors Filing In Forma Pauperis Presents an Additional Barrier to Justice

The existing prohibition against debtors filing in forma pauperis is an additional barrier to debtors' access to justice in the bankruptcy system. Ironically, bankruptcy is the only federal proceeding in which a poor person cannot file in forma pauperis. Currently the filing fee for consumer bankruptcy is \$175, a considerable amount of money for the indigent—those who truly need bankruptcy protection. A study by the Federal Judicial Center of the in forma

pauperis pilot project concluded last year revealed that permitting in forma pauperis filings enable low income consumers to use the bankruptcy system without having an appreciable effect on the filing rate overall. The Judiciary Committee, by a 9 to 9 vote, rejected an amendment that would have eliminated this counterintuitive prohibition. Allowing this anomaly to remain as part of the Bankruptcy Code amounts to yet another aspect of the consumer bankruptcy system that reduces access to justice for those poor people the system was designed to protect.

D. S. 1301 May Create Advantages for Wealthier, More Sophisticated Debtors

Finally, recall that S. 1301 would in some circumstances compel those who are able to pay at least 20% of their unsecured debt after standardized living expenses and secured debt to file Chapter 13. Debtors of some sophistication and/or who have access to counsel could manipulate their financial situations to make it appear as if they are incapable of meeting the threshold requirements and are, therefore, entitled to Chapter 7 protection under the bill. Some of the ways in which wealthier, knowledgeable debtors could manipulate the system include: reducing his or her income or having a spouse quit a job, increasing his or her debt (e.g., buying a new car), or increasing his or her unsecured debt (e.g., taking an expensive vacation paid for on credit cards before declaring bankruptcy). Thus, the proposed reforms actually facilitate abuse of the system by wealthier, more sophisticated debtors who have access to counsel. Many minorities and elderly Americans seeking bankruptcy protection do not have access to such counsel. This puts our neediest citizens at even greater risk of financial ruin.

V. BANKRUPTCY REFORM LEGISLATION MUST ADDRESS THE ISSUE OF DEBT REAFFIRMATION

One of our main concerns is that this legislation will significantly increase the opportunity for abusive behavior by creditors. One of the main areas of abuse in recent years has been the solicitation and enforcement of reaffirmation agreements—both legal and illegal. A reaffirmation is an agreement made between a debtor and creditor to continue paying off a debt despite bankruptcy. In short, a promise to continue paying the debt even after bankruptcy.

Often reaffirmations are made for good reasons. Many people want to keep their cars, so they reaffirm the debt. Other people want to keep one of their credit cards and in order to do so, they reaffirm the debt. Unfortunately, however, other people reaffirm debt because they cannot fight coercive creditor tactics.

This problem is very real. In one Boston bankruptcy court, Sears had 2,733 illegal reaffirmation agreements that had been entered into without complying with the law. Nationwide, in a two year period, more than 80,000 people were affected by these abusive reaffirmations. There is an ongoing federal criminal investigation of this problem.

The U.S. Attorney in Boston filed suit alleging that Sears had committed mail and wire fraud in its reaffirmation practices. He commented that “In obtaining these agreements, Sears deceived

debtors into thinking they were obligated to pay back debts which had already been discharged by the Bankruptcy Court.”

The attorneys general in 40 states also began investigations into reaffirmation practices. And, as a result, Sears was forced to agree to pay \$165 million to consumers and the attorney general is looking into these practices. In Illinois, for example, almost 2,300 residents were affected and Sears reimbursed them nearly \$2 million.

But it does not stop with Sears. Federated Department stores—which includes Bloomingdale’s, Macy’s, and Sterns—agreed to pay \$14.64 million in settlement of several state suits involving Alabama, California, Illinois, Massachusetts, New Jersey, Ohio, Pennsylvania, South Carolina, Tennessee and 11 other states. The U.S. Trustee’s office commented that Federated “enticed and threatened customers who filed for bankruptcy * * * to sign contracts agreeing to repay their debts to Federated.”

In addition, Montgomery Ward had to provide refunds on about 30,000 accounts and is now reviewing 180,000 other agreements. GE Capital Corp, Discover Card, May Department Stores, and AT&T are other companies that have faced similar problems.

These types of practices contribute to significant problems in the bankruptcy system. Not only are the practices of many creditors offensive to the letter of the law, but in many instances creditors obtain reaffirmations by behavior that can only be called extortionate. Oftentimes, creditors threaten to repossess largely worthless household goods knowing that the desperate debtor, anxious to keep goods of some sentimental value or goods that are vital, will reaffirm the debt under pressure.

S. 1301 will make a terrible problem worse. This legislation contains numerous provisions that will increase the power of a creditor to coerce a reaffirmation. The measure broadens the ability of creditors to threaten to repossess household goods. It allows creditors to threaten to bring motions asserting that debts accumulated 90 days before bankruptcy were not “necessary.” It will allow creditors to threaten to assert that a certain debt was fraudulent or that it was incurred to pay an otherwise non-dischargeable debt. Creditors will be able to bring 707(b) motions. They will be able to threaten dismissal motions if paperwork is not in perfect order. The list goes on. And every new provision in S. 1301 that provides a new leverage point for creditors is a prescription for extortionate reaffirmations.

These types of reaffirmations present real problems for two reasons: first, they force people to unknowingly give up their legitimate and legal rights, and second, reaffirmations are the financial equivalent of an undischarged debt. In short, every new reaffirmation that can be coerced as a result of this bill is another debt that is competing in a post-bankruptcy world with debts like child support, alimony, taxes, student loans, mortgages and car payments. As we have previously discussed, this competition for scarce resources is a prescription for peril.

The majority asserts that S. 1301 contains provisions that will mitigate abusive reaffirmations. But this is a bit like putting one finger in the dyke while using the others to turn the switch to open the flood gates.

The bill does contain some provisions that attempt to address creditor abuses. But these provisions barely confront the problem. The majority points to the provision that would impose penalties on creditors who file reaffirmations that do not comply with section 524. They then assert that this will deal with coercive reaffirmations. This is not the case for two reasons. First, section 524 has virtually no impact on stopping coercive practices, and second, people in bankruptcy only rarely have the wherewithal to seek enforcement of penalties for failure to comply with section 524.

Section 524 contains a series of disclosure requirements. For example, a reaffirmation agreement must contain a notice of the right of the debtor to rescind the agreement. It must also clearly disclose that the reaffirmation is not required under bankruptcy law. While well intentioned, these disclosure requirements are of little use in dealing with coercive creditor tactics. Being told that you can rescind and that the agreement is not mandatory has little impact when counterbalanced by the threat that your microwave or child's swing set may be repossessed or that a series of expensive motions that you cannot defend may be brought against you.

Creditors have been remarkably effective in developing coercive tactics. They know that debtors are acutely vulnerable to these tactics. A bankrupt debtor is virtually incapable of opposing a creditor motion. Bankruptcy debtors simply cannot afford the legal fees to defend a motion. The vast majority of the time, then, they simply and quickly accede to anything the creditor wants.

Most abusive or coercive creditor behavior occurs in the shadows. Reaffirmations are solicited in the hallways of the court house or by phone at night. The threats that lead to reaffirmation are implied or sometimes overt. And the debtors who deal with this behavior are poor and virtually unrepresented by counsel. To suggest that a string of changes to the code will solve the problem is to turn a blind eye to the real world where the threat of a motion is more effective than an actual motion. In the real world, bankruptcy debtors, who typically make less than \$18,000 a year, cannot afford to find a lawyer to contest a motion, much less win the motion and then pursue sanctions—which are largely discretionary.

In addition to pointing out the sanctions authorized in Section 203, the majority asserts that the section also bars creditors from using many collection tactics if they refused an offer of compromise. Again, this is an illusory provision. As written, the debtor must prove that he made an effort to negotiate a reasonable alternative repayment schedule and that the creditor unreasonably refused to negotiate. The sad fact is that this provision will merely benefit the well-off and manipulative debtor who is trying to game the system, but it will be virtually useless for the poor and under represented, i.e. the average, debtor.

Finally, the majority points to a provision dealing with predatory loans to the elderly. The majority, however, cannot even support that provision unreservedly. It says that the one worthy provision in the bill “may need technical refinements to avoid excessive litigation and abuse.” We dare not venture to guess what will fall under the rubric of “technical” changes. And we are not surprised to learn that at least as to consumer friendly provisions, the majority is suddenly concerned about “excessive litigation.”

VI. THE CONSUMER CREDIT INDUSTRY SHARES RESPONSIBILITY FOR RISING CONSUMER BANKRUPTCY FILINGS

Congress is concerned about the increasing number of families that file bankruptcy every year. Proponents and opponents of the Consumer Bankruptcy Reform Act have vigorously debated the source of this problem. Many proponents of the legislation argue that consumer abuses have precipitated the rise in filings. Accordingly, they believe sweeping legislative reform is necessary to curb abuses and eliminate so-called, “bankruptcies of convenience.”

We disagree with their assessment of the problem and the solution. The only support offered for the assertions of the proponents of the legislation about consumer abuse come from studies paid for by the credit industry. These studies have been thoroughly discredited by the Government Accounting Office and the Congressional Budget Office. Virtually all independent academic studies and all government studies of the increase in bankruptcy demonstrate that the rise in bankruptcy filings follows equally sharp rises in the amount of consumer debt per household.⁷ Proponents urge significant structural change to the consumer bankruptcy system with no verifiable data to document the source of the problem, no independent analysis of whether this legislation will solve any problems, and no consideration of the unintended consequences of such a sweeping change.

More families are in bankruptcy because more families are carrying too much debt. Bankruptcy is the hospital for families overloaded with debt. If we saw a sharp rise in hospital admissions, we would ask what had happened to the health of our people—not how much we could change the hospital treatment rules. To consider changes in the bankruptcy laws without addressing broader questions about consumer lending practices is irresponsible, and is likely to do more injury to already troubled families.

A. Credit Card Issuers Are Aggressively Targeting Consumers Who Cannot Afford Additional Debt, Increasing the Risk That They Will File for Bankruptcy

Because of the high profitability of consumer credit lending, credit card issuers are using many tools to increase their customer base and encourage debtors to carry large card balances. They aggressively solicit new customers, encourage debtors to make minimum payments which will not decrease the loan principal, offer “teaser” interest rates designed to encourage customers to increase debt, switch credit rates with no advance notification to customers, use confusing and sometimes misleading descriptions of interest calculations, fail to disclose how long or how expensive repayment will be using minimum monthly payments, market cards to college and high school students, and increase credit limits for customers who carry large debt balances without further credit investigation or even a request from the customer.

Although credit card issuers are aggressively targeting American families, many families have fewer resources to pay their debts. The real incomes of the bottom 60 percent of American consumers

⁷ E. Warren, *Consumer Bankruptcy: Issues Summary* (April 2, 1998).

have declined since 1989. More than one of every nine families pay more than 40 percent of their income in debt service, and credit card usage has grown fastest in recent years among debtors with the lowest incomes. Since the early 1990s, Americans with incomes below the poverty level nearly doubled their credit card usage, and those in the \$10,000 to \$25,000 income bracket are similarly positioned.

Credit card issuers make no effort to educate consumers about the true costs and risks of credit card debt. They give increasingly complex credit terms designed to increase the likelihood of longer payments over time. Effectively, consumer interest rates have risen with the tacking on of a series of fees and charges. For example, credit card industry analysts estimate that if an individual made typical monthly payments, it would take 34 years to eliminate a \$2,500 credit card debt. Total payments would exceed 300 percent of the original principal. Most borrowers are not aware of this fact, and, unlike mortgage loans and car loans, credit card statements do not disclose the amortization rates or the total interest that will be paid if the cardholder makes only the minimum monthly payment.⁸

Despite current economic growth, it is not surprising that these families are more likely to file for bankruptcy. Their incomes are lower and their debt loads are higher. They are carrying more short-term, high interest credit card debt, and, as a result, they are more susceptible to financial failure and, eventually, bankruptcy.

Although credit card debt is not the sole factor responsible for consumer bankruptcies, for many families, it may be a critical component of financial failure. The credit card industry's willingness to ignore the practical effect of their lending practices while advocating legislation that increases the amount of unsecured debt that may not be discharged no matter how hopeless the debtor's financial condition is of grave concern to us. Such legislation is not in the best interest of consumers. It is designed only to increase the already burgeoning profit margins of the credit card industry.

B. The Credit Card Industry Is Willing To Take Greater Risks To Increase Profits

1. BACKGROUND

Since 1993, credit card lending has been the fastest growing component of consumer lending. The growth of the industry was precipitated by the deregulation of consumer credit interest rates in the late 1970s, which gave states greater flexibility to raise interest rates (See, *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978) and *Smiley v. Citibank (South Dakota), N.A.*, 116 S.Ct. 1730 (1996)).

In the *Marquette* case, the Court determined that the National Banking Act permits national banks to charge out-of-state customers the maximum interest rate allowable in the bank's home state. Similarly, the Court determined in the *Smiley* case that na-

⁸George M. Salem and Aaron C. Clark, GKM Banking Industry Report, Bank Credit Cards: Loan Loss Risks are Growing, p.25 (June 11, 1996).

tional banks may export late-payment fees, annual fees, cash advance fees, and other fees related to the extension of credit.

Credit card issuers and some states capitalized on the new environment created by these decisions and deregulation. "Some states quickly seized the opportunity to deregulate interest and other banking functions to attract banks and other consumer lenders * * * [M]ost leading banking states had relaxed or repealed their interest rate ceilings by 1982, and the bank credit market was functionally deregulated."⁹ Lenders then began to broaden their customer base by extending credit to those further down the spectrum of credit quality.¹⁰

2. AGGRESSIVE SOLICITATION OF CUSTOMERS WHO REPRESENT A GREATER RISK

The result is aggressive marketing and a loosening of underwriting standards in an effort to attract more credit card customers and increase profits.

More than two and a half billion card solicitations were mailed every year between 1994 and 1996. This means more than 41 mailings went out each year to every American household—not counting telephone solicitations. Based on industry estimates, those offers add up to about \$243,000 of credit per household per year. At this rate, in a little over four years, the credit card companies have offered about a million dollars of credit to every household in the United States.¹¹

In addition to mail solicitations, in 1996, for example, credit card companies logged 24.1 million telemarketing hours.

Some credit card issuers argue that solicitations should be compared to fast food advertising and "[j]ust as consumers ought not go have a Big Mac every time they see a McDonald's ad, they probably ought not avail themselves of every credit card solicitation they receive."¹² Americans do not avail themselves of every credit card solicitation, but they have responded to the billions of dollars in advertising that have urged them to buy on credit without considering either the long-term consequences or how high-cost, short-term debt increases their economic vulnerability to some other economic shock. Credit card issuers suggest that a credit product is no more difficult to understand than a Big Mac and requires no more sophisticated analysis than whether to buy one with cheese or one without. But as the bankruptcy files amply demonstrate, the long-term effects of credit that outstrips income can be catastrophic. Borrowing decisions are important and require sober reflection and detailed information. They should not be made so lightly as the credit card issuers' advertisements urge.

Aggressive solicitation has dramatically increased the number of credit cards issued to consumers. Three-quarters of all households

⁹Diane Ellis, *The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-offs, and the Personal Bankruptcy Rate*, Bank Trends 98-05, at pg. 3, (Division of Insurance, FDIC, February 1998).

¹⁰*Id.* at 5.

¹¹George M. Salem and Aaron C. Clark, *supra* note 8, at 5.

¹²Shenk, *Bankrupt Policy*, *The New Republic*, May 18, 1998, at 16, 17 (quoting William Binzel, a spokesperson for the credit card industry).

have at least one credit card, and three-quarters of those households carry credit card debt from month-to-month. Of great concern is the fact that solicitations are not limited to working adults. Direct solicitation of college and high school students has increased in recent years. Cards are available at many colleges to almost any student—no income, no credit history, and no parental signature required.¹³ The National Bankruptcy Review Commission received an advertisement for a two-day workshop for creditors entitled, “Competing in the Sub Prime Credit Card Market,” including a presentation entitled, “Targeting College Students: Real Life 101,” with tips on how to “target the money makers of tomorrow.”

We fully support efforts to eliminate discriminatory lending practices, but the relaxation of industry standards is of great concern. The democratization of credit should not be confused with overly aggressive solicitation of customers who are clearly unable to accommodate additional debt and the failure to inform customers about the full risks of the products they use. Credit card issuers have a responsibility to carefully consider the credit worthiness of their potential customers in an effort to limit the number of consumer bankruptcies.¹⁴

3. CREDIT CARD ISSUERS ARE SELLING HIGH PRICED, HIGH PROFIT DEBT—NOT CONSUMER PROTECTION

Credit card issuers are not motivated to consider the best interests of their potential customers. Credit card issuers earn approximately 75 percent of their revenues from the interest paid by borrowers who do not pay in full every month. Several companies charge fees or cancel cards if customers pay in full every month.¹⁵ For example, Beneficial National Bank of Delaware canceled 12,000 customers’ MasterCard because the customers paid their balances every month. NationsBank and GE Rewards MasterCard have imposed fees or canceled cards for customers who pay their bills in full.

Of even greater concern is the aggressive targeting of those who have filed bankruptcy. Industry analysts explain that these debtors are attractive because they have proven that they will take on credit and, by law, they cannot seek a bankruptcy discharge for another six years.¹⁶

In addition to discouraging debt payment, credit card issuers have identified new means to increase profits through credit card lending—the securitization of credit card debt. Asset backed securities are debt or investment securities backed by receivables such as credit card, automobile, or home equity loans. Securitization creates its own growth imperative. By promising investors steady or

¹³ Report of the National Bankruptcy Review Commission 93 (October 20, 1997); George M. Salem and Aaron C. Clark, GKM Banking Industry Report, Bank Credit Cards: Loan Loss Risks are Growing, pg. 9 (June 11, 1996).

¹⁴ Although humorous, the following example makes it clear that credit card issuers will solicit the business of almost anyone—or anything. Last year, Barbara Fazio of Windsor, Connecticut received a credit card solicitation for her 9-year-old cat, Daisy. Fazio had answered a television advertisement for free insulation and used her cat’s name as a joke. Six weeks later, Visa offered Daisy a Gold Card with a \$2,500 line of credit.

¹⁵ David S. Evans & Richard L. Schmalensee, The Economics of the Payment Card Industry, Fig. 3 (1993).

¹⁶ Dr. Michael Staten, Director, Credit Research Center, Krannert School of Management, Purdue University, Working Paper No.58, The Impact of Post-Bankruptcy Credit on the Number of Personal Bankruptcies (January 1993).

even increased returns from customer debt over time, credit issuers must persuade more people to borrow more money or find new customers to replace those who have paid off their debts. To meet these contractual commitments, securitization may encourage credit card issuers to pursue customers that are less credit worthy. Credit card issuers loaned consumers \$422 billion by the end of 1997; credit card loans totaling \$191 billion were securitized and sold by the companies.

Increased sophistication in credit collection also increases the willingness of credit card issuers to lend to poor credit risks. Computer analysis, direct telephoning, more effective mail campaigns, better ability to reach relatives and employers, and other techniques permit creditors to wring more out of accounts that would have been written off just a few years ago. Investors have learned about the growth industry for bad debt. For example, Commercial Financial Services (CFS) acquires credit card debt that has been charged off as uncollectible from 25 of the largest credit card issuers, packages the debt into securities, sells the securities to investors, and pursues new collection activities against the customers. CFS securitized \$1 billion in charged-off credit cards in 1997 and plans to securitize \$1.5 billion in 1998.¹⁷ Armed with tools that make poor lending practices profitable, credit card issuers expand credit availability and increase consumer credit problems, including bankruptcy.

C. Industry Regulators and Analysts Have Expressed Concern About Credit Card Issuer Practices

The risks taken by credit card issuers have not escaped criticism and concern by industry regulators and analysts. The Office of the Comptroller of the Currency issued an Advisory Letter on September 25, 1996, that alerted national banks to the risks associated with preapproved solicitations of credit cards. The letter said:

Although accounting for only a relatively small percentage of total commercial bank assets, credit card loans have grown faster than any other type of consumer loans over the past 3 years. Recently there have been pronounced increases in the rates of default and delinquency for credit card loans.

Aggressive competition recently has pressured some banks to forgo customary and effective testing of new credit card products and preapproved solicitation campaigns in hopes of capturing a product market before a competitor. Despite the relatively small average loan size and high net interest margins in credit card lending, the default and delinquency trends are areas of concern for both bankers and regulators.

The alert was issued by the OCC almost two years ago, but there are few signs that credit card issuers have reassessed their solicitation and lending practices. The FDIC has noted that "by marketing high-risk debt to customers who are at substantial risk for non-

¹⁷See, Office of the Comptroller of the Currency, Comptroller's Handbook on Credit Card Lending, at 44-48 (September 1996); CFS Stays Private While Getting Bigger, Private Placement Report, January 12, 1998, 1, 1998, WL 5034591.

payment, credit card issuers have contributed to the rise in consumer bankruptcies.”¹⁸

There are private solutions to the problems of high bankruptcies and increasing bad debts. Industry consultants estimate that credit card companies could cut their bankruptcy losses by more than 50 percent if they would institute minimal credit screening.¹⁹ Instead, however, this legislation would provide a government subsidy for bad debt collection while it increased the rewards for credit card issuers who aggressively market high cost credit products to customers already in financial trouble. There are a number of factors that contribute to the rise in consumer bankruptcy filings. It is a complex problem and simplistic answers are short-sighted and potentially harmful to millions of consumers. Congress must consider the many factors that have created this problem, including credit card issuer solicitation and lending practices.

VII. CONCLUSION

In conclusion, we want to stress that we do not oppose efforts to reform the bankruptcy system—there are problems that should be addressed by Congress. We do, however, strongly object to the hurried manner in which S. 1301 was debated and voted upon in the Judiciary Committee. The result is a bill that does not appropriately address debtor and creditor abuses.

We will, of course, continue to work with proponents of the bill to improve S. 1301. To that end, a number of amendments should be adopted during the Senate floor debate. Before passing comprehensive reform legislation, the Senate should: (1) ensure that the interests of women and children are not pushed aside in favor of the interests of credit card companies, (2) address the predatory lending practices that disproportionately affect older Americans, (3) protect debtors’ access to the bankruptcy system and to justice, (4) ensure procedural safeguards that will protect consumers from bad faith debt reaffirmation agreements, and (5) pass reforms that will eliminate the abuses of the consumer credit industry. It is only through efforts such as these, that Congress can truly “reform” the bankruptcy system for the benefit of all Americans.

TED KENNEDY.
RUSS FEINGOLD.

¹⁸Diane Ellis, *supra* note 8.

¹⁹Fair, Isaac & Co. released a new bankruptcy predictor that it says can eliminate 54 percent of bankruptcy losses by screening potential nonpayers from the bottom 10 percent of credit card holders. Fair, Isaac & Co. @www.fairisaac.com; Credit Cards: Fight for Bankruptcy Law Reform Masks Truth, 162 Am. Banker 30 (September 8, 1997).

XI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 130, as reported, are shown as follows (existing law which would be omitted is enclosed in bold brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman type):

UNITED STATES CODE

* * * * *

TITLE 11—BANKRUPTCY

* * * * *

CHAPTER 1—GENERAL PROVISIONS

Sec.

101. Definitions.

* * * * *

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

§ 101. Definitions

[In this title—] *In this title:*

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

(2) *The term* “affiliate” means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

* * * * *

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

[(3) Redesignated (21B)]

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

(5) *The term* “claim” means—

(A) * * *

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is re-

duced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured[;].

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

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

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

(9) *The term* “corporation”—
(A) includes—

* * * * *

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

(10) *The term* “creditor” means—
(A) * * *

* * * * *

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

(11) *The term* “custodian” means—
(A) * * *

* * * * *

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

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

[(12A)] (13) *The term* “debt for child support” means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor[;].

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

[(13A)] (15) *The term* “debtor’s principal residence”—

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

(B) includes an individual condominium or co-operative unit[;].

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

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

* * * * *

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

[(14A)] (17) *The term “dependent child” means, with respect to an individual, a child who has not attained the age of 18 and who is a dependent of that individual, within the meaning of section 152 of the Internal Revenue Code[;].*

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

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

(A) share in a corporation, whether or not transferable or denominated “stock”, or similar security;

(B) interest of a limited partner in a limited partnership;

or

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

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

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

(A) * * *

* * * * *

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

* * * * *

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

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

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

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

[(21A)] (25) *The term “farmout agreement” means a written agreement in which—*

(A) * * *

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or re-

lated operations, to develop or produce liquid or gaseous hydrocarbons on the property[;].

[(21B)] (26) *The term* “Federal depository institutions regulatory agency” means—

(A) * * *

* * * * *

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

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

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

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

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

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

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

[(27A)] (33) *The term “household goods” has the meaning given that term in section 444.1(i) of title 16, of the Code of Federal Regulations (as in effect on the effective date of this paragraph), which is part of the regulations issued by the Federal Trade Commission that are commonly known as the “Trade Regulation Rule on Credit Practices,” except that the term shall also include any tangible personal property reasonably necessary for the maintenance or support of a dependent child[;].*

[(27B)] (35) *The term “incidental property” means, with respect to a debtor’s principle residence—*

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

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

(C) *all replacements or additions[;].*

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

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

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

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

(A) *if the debtor is an individual—*

* * * * *

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

[(32)] (39) *“insolvent” means—*

(A) ** * **

* * * * *

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

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

or

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

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

(A) ** * **

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

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

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

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

(B) includes an insured credit union (except in the case of ~~paragraphs (21B) and (33)(A)~~ *paragraphs (23) and (35)* of this subsection~~;~~].
[(35A)] (43) *The term “intellectual property” means—*
 (A) trade secret;

* * * * *

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

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

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

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

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

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

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

(A) acquires an asset from a person—

* * * * *

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

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

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

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

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

[(42A)] (51) *The term “production payment” means a term overriding royalty satisfiable in cash or in kind—*

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

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

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

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

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

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

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

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

[(49)] (58) “security”—

(A) includes—

* * * * *

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

* * * * *

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

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

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

[(51A)] (61) *The term “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any*

other similar payment commonly used in the forward contract trade[;].

[(51B)] (62) *The term* “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income a debtor *whi is not a family farmer* and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental [thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;].

[(51C)] (63) *The term* “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000[;].

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

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

[(53A)] (66) *The term* “stockbroker” means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

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

(i) for the account of others; or

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

[(53B)] (67) *The term* “swap agreement” means—

(A) * * *

* * * * *

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

[(53C)] (68) *The term* “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor[;].

[(53D)] (69) *The term* “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years,

and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan[;].

[(54) “stockbroker” means person—

[(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

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

[(i) for the account of others; or

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

[(54)] (70) *The term “transfer” means—*

(A) *the creation of a lien;*

(B) *the retention of title as a security interest;*

(C) *the foreclosure of a debtor’s equity of redemption; or*

(D) *each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—*
(i) property; or
(ii) an interest in property[;].

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

[(56A)] (72) *The term “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized[;].*

* * * * *

§ 104. Adjustment of dollar amounts

(a) * * *

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), [522(d),] 522(f)(3), 707(b)(5), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

* * * * *

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), [522(d),] 522(f)(3), 707(b)(5), and 523(a)(2)(C) of this title.

* * * * *

§ 108. Extension of time

(a) If applicable * * *

* * * * *

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceed-

ing, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 30 days after notice of the termination or expiration of the stay under section 362, [922, 1201, or] 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

§ 109. Who may be a debtor

(a) * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

- (1) a railroad;
- (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under [subsection (c) or (d) of] section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

* * * * *

(h) Notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the “bankruptcy system”), through a credit counseling program (offered through credit counseling services described in section 111(a)) that has been approved by—

- (1) the United States trustee; or*
- (2) the bankruptcy administrator for the district in which the petition is filed.*

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

(a) In this section—

* * * * *

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

* * * * *

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

* * * * *

§111. Credit counseling services; financial management instructional courses

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

- (1) the United States trustee; or
- (2) the bankruptcy administrator for the district.

(b) The United States trustee or each bankruptcy administrator referred to in subsection (a)(1) shall—

- (1) make available to debtors who are individuals and instructional course concerning personal financial management, under the direction of the bankruptcy court; and
- (2) maintain a list of instructional courses concerning personal financial management that are operated by a private entity and that have been approved by the United States trustee or that bankruptcy administrator.

* * * * *

CHAPTER 3—CASE ADMINISTRATION

* * * * *

Subchapter II—Officers

* * * * *

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

* * * * *

Subchapter III—Administration

* * * * *

§ 341. Meetings of creditors and equity security holders

(a) * * *

* * * * *

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. *Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.*

* * * * *

§ 342. Notice

(a) * * *

[(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.]

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

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

(2) A brief description of services that may be available to that individual from an independent nonprofit debt counseling service.

(3)(A) The name, address, and telephone number of each nonprofit debt counseling service with an office located in the district in which the petition is filed, if any.

(B) Any nonprofit debt counseling service described in subparagraph (A) that has registered with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in the list referred to in that clause, unless the chief bankruptcy judge of the district involved, after giving notice to the debt counseling service and the United States trustee and opportunity for a hearing, orders, for good cause, that a particular debt counseling service shall not be so listed.

(c) If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor[, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice].

(d)(1) If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a vol-

untary case from the creditor to a debtor who is an individual states an account number of the debtor that is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include that account number in any notice to the creditor required to be given under this title.

(2) If the creditor has specified to the debtor, in the last communication before the filing of the petition, an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address.

(3) For purposes of this section, the term "notice" shall include—

(A) any correspondence from the debtor to the creditor after the commencement of the case;

(B) any statement of the debtor's intention under section 521(a)(2);

(C) notice of the commencement of any proceeding in the case to which the creditor is a party; and

(D) any notice of a hearing under section 1324.

(e)(1) At any time, a creditor, in a case of an individual under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case.

(2) If the court or the debtor is required to give the creditor notice, not later than 5 days after receipt of the notice under paragraph (1), that notice shall be given at that address.

(f) An entity may file with the court a notice stating its address for notice in cases under chapter 7 or 13. After the date that is 30 days following the filing of that notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor.

(2) If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that person or department.

* * * * *

§ 346. Special tax provisions

(a) * * *

* * * * *

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

(A) * * *

* * * * *

(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such

transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986].

* * * * *

§ 348. Effect of conversion

(a) * * *

* * * * *

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; [and]

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply [in the converted case, with allowed secured claims] *only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan[.]; and*

(C) *with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding.*

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

* * * * *

Subchapter IV—Administrative Powers

* * * * *

§ 362. Automatic stay

(a) * * *

* * * * *

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

(1) * * *

* * * * *

(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement

against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; **[or]**

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

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

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

(20) *under subsection (a) with respect to the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(15) of the Social Security Act (42 U.S.C. 666(a)(15)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));*

(21) *under subsection (a) of this section of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;*

(22) *under subsection (a)(3) of this section, of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement; or*

(23) *under subsection (a)(3) of this section, of the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated.*

(c)(1) Except as provided in subsections (d), **[(e), and (f)]** (e), (f), and (h) of this section—

[(1) the stay] (A) *the stay* of an action against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

[(2) the stay] (B) *the stay* of any other act under subsection (a) of this section continues until the earliest of—

[(A) the time] (i) *the time* the case is closed;

[(B) the time] (ii) *the time* the case is dismissed; or

[(C)] (iii) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

(2) *Except as provided in subsections (d) through (f), the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case if—*

(A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and

(B) a single or joint case of that debtor (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)) was pending during the preceding year but was dismissed.

(3) If a party in interest so requests, the court may extend the stay in a particular case with respect to 1 or more creditors (subject to such conditions or limitations as the court may impose) after providing notice and a hearing completed before the expiration of the 30-day period described in paragraph (2) only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

(4) A case shall be presumed to have not been filed in good faith (except that such presumption may be rebutted by clear and convincing evidence to the contrary)—

(A) with respect to the creditors involved, if—

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

(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debt or was dismissed within the period specified in paragraph (2) after—

(I) the debtor, after having received from the court a request to do so, failed to file or amend the petition or other documents as required by this title; or

(II) the debtor, without substantial excuse, failed to perform the terms of a plan that was confirmed by the court; or

(iii)(I) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor;

(II) if the case is a chapter 7 case, there is no other reason to conclude that the later case will be concluded with a discharge; or

(III) if the case is a chapter 11 or 13 case, there is not a confirmed plan that will be fully performed; and

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

(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and the request is granted in whole or in part, the court may, in addition to making any other order under this subsection, order that the relief so granted shall be in rem either—

(i) for a definite period of not less than 1 year; or

(ii) indefinitely.

(B)(i) After an order is issued under subparagraph (A), the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor.

(ii) If an in rem order issued under subparagraph (A) so provides, the stay shall, in addition to being inapplicable to the debtor involved, not apply with respect to an entity under this title if—

(I) the entity had reason to know of the order at the time that the entity obtained an interest in the property affected; or

(II) the entity was notified of the commencement of the proceeding for relief from the stay, and at the time of the notification, no case in which the entity was a debtor was pending.

(6) For purposes of this section, a case is pending during the period beginning with the issuance of the order for relief and ending at such time as the case involved is closed.

* * * * *

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) that 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause.

* * * * *

[(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs

and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.】

(h) In an individual case under chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim that is in an amount greater than \$3,000, or subject to an unexpired lease with a remaining term of at least 1 year (in any case in which the debtor owes at least \$3,000 for a 1-year period), if within 30 days after the expiration of the applicable period under section 521(a)(2)—

(1)(A) the debtor fails to timely file a statement of intention to surrender or retain the property; or

(B) if the debtor indicates in the filing that the debtor will retain the property, the debtor fails to meet an applicable requirement to—

(i) either—

(I) redeem the property pursuant to section 722; or

(II) reaffirm the debt the property secures pursuant to section 524(c); or

(ii) assume the unexpired lease pursuant to section 365(d) if the trustee does not do so; or

(2) the debtor fails to timely take the action specified in a statement of intention referred to in paragraph (1)(A) (as amended, if that statement is amended before expiration of the period for taking action), unless—

(A) the statement of intention specifies reaffirmation; and

(B) the creditor refuses to reaffirm the debt on the original contract terms for the debt.

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

(A) actual damages; and

(B) reasonable costs, including attorneys' fees.

(2) In addition to recovering actual damages, costs, and attorneys' fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.

* * * * *

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

Subchapter I—Creditors and Claims

* * * * *

§ 502. Allowance of claims or interests

(a) A claim * * *

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for

a reason other than because such claim is contingent or unmatured;

* * * * *

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; **[or]**

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide~~[\.]~~; or

(10) *the claim is based on a secured debt if the creditor has failed to comply with the requirements of subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).*

* * * * *

(j) A claim * * *

(k)(1) *The court may award the debtor reasonable attorneys' fees and costs if, after an objection if filed by a debtor, the court—*

(A)(i) disallows the claim; or

(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest; and

(B) finds the position of the party filing the claim is not substantially justified.

(2) *If the court finds that the position of a claimant under this section is not substantially justified, the court may, in addition to awarding a debtor reasonable attorneys' fees and costs under paragraph (1), award such damages as may be required by the equities of the case.*

§ 503. Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

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

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

* * * * *

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowed under *subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection*, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title,

and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

* * * * *

§ 506. Determination of secured status

(a) An allowed * * *

* * * * *

(e) *Subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor during the 90-day period preceding the date of filing of the petition.*

§ 507. Priorities

(a) The following expenses and claims have priority in the following order, *except that, notwithstanding any other provision of this title, any expense or claim entitled to priority under paragraph (7) shall have first priority over any other expense or claim that has priority under any other provision of this subsection:*

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 or title 28.

* * * * *

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

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

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

* * * * *

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

* * * * *

Subchapter II—Debtor's Duties and Benefits

* * * * *

§ 521. Debtor’s duties

(a) The debtor shall—

[(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor’s financial affairs;]

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor’s financial affairs and, if applicable, a certificate—

(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor or any notice required by section 342(b); or

(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

(vi) a statement of the amount of projected monthly net income, itemized to show how calculated; and

(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;

* * * * *

(2) if an individual debtor’s schedule of assets and liabilities includes [consumer] debts which are secured by property of the estate—

(A) * * *

(B) within [forty-five days after the filing of a notice of intent under this section] 30 days after the first meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such [forty-five day period] 30 day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor’s or the trustee’s rights with regard to such property under this title, except as provided in section 362(h);

* * * * *

(5) appear at the hearing required under section 524(d) of this title.

(b)(1) *At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.*

(2) *At any time, a creditor, in a case under chapter 13, may file with the court notice that the creditor requests the plan filed by the debtor in the case and the court shall make that plan available to the creditor who requests that plan.*

(c) *An individual debtor in a case under chapter 7 or 13 shall file with the court—*

(1) *at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;*

(2) *at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;*

(3) *any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and*

(4) *in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—*

(A) *beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and*

(B) *thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.*

(d)(1) *A statement referred to in subsection (c)(4) shall disclose—*

(A) *the amount and sources of income of the debtor;*

(B) *the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and*

(C) *the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.*

(2) *The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (e).*

(e)(1) *Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.*

(2) *The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.*

(3) *Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—*

(A) *assesses the effectiveness of the procedures under paragraph (1); and*

(B) *if appropriate, includes proposed legislation—*

(i) *to further protect the confidentiality of tax information; and*

(ii) *to provide penalties for the improper use by any person of the tax information required to be provided under this section.*

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

(1) *a certificate from the credit counseling service that provided the debtor services under section 109(h) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(h); and*

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

§ 522. Exemptions

(a) *In this section—*

* * * * *

(b) *Notwithstanding * * **

* * * * *

(2)(A) *subject to subsection (n), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and*

* * * * *

(c) *Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—*

(1) *a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title, except that, notwithstanding any other Federal law or State law relating to exempted property, such exempt property shall be liable for debts of a kind specified in paragraph (1) or (5) of section 523(a);*

* * * * *

(f)(1) *Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an inter-*

est of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

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

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

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

* * * * *

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

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

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

* * * * *

(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate \$100,000 in value in—

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

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

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

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

§ 523. Exceptions to discharge

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

(1) for a tax or a customs duty—

* * * * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, **[a false representation]** *a material false representation upon which the defrauded person justifiably relied*, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition**;** **[and, for purposes of this subparagraph, consumer debts owed in an aggregate amount greater than or equal to \$400 incurred for goods or services not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor to a single creditor that are incurred during the 90-day period preceding the date of the order for relief shall be presumed to be nondischargeable under this subparagraph];** or

(B) use of a statement in writing—
 (i) that is materially false;

* * * * *

(iv) that the debtor caused to be made or published with intent to deceive; **[or]**

[(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$1,000 for “luxury goods or services” incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; “luxury goods or services” do not include goods or services reasonably acquired for the support or maintenance of the debt or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;]

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

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

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

* * * * *

[(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other of a court of record, determination made in accordance

with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(5) to a spouse, former spouse, or child of the debtor—

(A) for actual alimony to, maintenance for, or support of that spouse or child;

(B) that was incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, property settlement agreement, divorce decree, other order of a court of record, or determination made in accordance with State or territorial law by a governmental unit; or

(C) that is described in subparagraph (A) or (B) and that is assigned pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(3)), or to the Federal Government, a State, or any political subdivision of a State, but not to the extent that the debt (other than a debt described in subparagraph (C)) is assigned to another entity, voluntarily, by operation of law, or otherwise;

* * * * *

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

* * * * *

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228 (a) or (b), or 1328(b), or any other provision of this subsection, except for any debt incurred to pay such a nondischargeable debt in any case in which—

(A)(i) the debtor who paid the nondischargeable debt is a single parent who has 1 or more dependent children at the time of the order for relief; or

(ii) there is an allowed claim for alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor payable under a judicial or administrative order to that spouse or child (but not to any other person) that was unpaid by the debtor as of the date of the petition; and

(B) the creditor is unable to demonstrate that the debtor intentionally incurred the debt to pay the nondischargeable debt;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

* * * * *

(17) for a fee imposed [by a court] on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under [sec-

tion 1915(b) or (f)] *subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law)*, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (*or a similar non-Federal law*); or

* * * * *

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), [(6), or (15)] *or (6)*, as the case may be, of subsection (a) of this section.

[(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.]

(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys' fees and costs.

(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys' fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

(i) before the filing of the petition, the debtor made a good faith attempt pursuant to section 109(h) to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

(ii) the refusal to negotiate by the creditor involved was not reasonable.

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

§ 524. Effect of discharge

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

(1) voids * * *

* * * * *

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act,

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

(h) APPLICATION TO EXISTING INJUNCTIONS.—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

* * * * *

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

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

(1) *the greater of—*

(A)(i) *the amount of actual damages; multiplied by*

(ii) *3; or*

(B) *\$5,000; and*

(2) *costs and attorney's fees.*

§ 525. Protection against discriminatory treatment

(a) Except * * *

* * * * *

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

in the case under this title or that was discharged under the Bankruptcy Act.

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

Subchapter III—The Estate

Sec.

541. Property of the estate.

* * * * *

556. Contractual right to liquidate a commodity contract or forward contract.

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

* * * * *

§ 541. Property of the estate

(a) The * * *

* * * * *

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

* * * * *

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

* * * * *

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

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

* * * * *

§ 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

* * * * *

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer under a swap agreement, made by or to a swap participant, in connection with a swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

[(g)] (h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best

interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

§ 547. Preferences

(a) In this section—

(1) “inventory” means * * *

* * * * *

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

* * * * *

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

* * * * *

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

* * * * *

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

* * * * *

§ 552. Postpetition effect of security interest

(a) Except * * *

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, [product] *products*, offspring, or profits of such property, then such security interest extends to such proceeds,

[product] *products*, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

* * * * *

§ 553. Setoff

(a) Except * * *

* * * * *

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

* * * * *

CHAPTER 7—LIQUIDATION

Subchapter I—Officers and Administration

Sec.

701. Interim trustee.

* * * * *

[707. Dismissal.]

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

§ 706. Conversion

(a) The debtor * * *

* * * * *

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests *or consents to* such conversion.

* * * * *

[§ 707. Dismissal]

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

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

* * * * *

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, **[but not]** *or* at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, *or, with the debtor's consent, convert such a case to a case under chapter 13 of this title*, if it finds that the granting of relief would be a **[substantial abuse]** *abuse* of the

provisions of this chapter. **¶**There shall be a presumption in favor of granting the relief requested by the debtor. **¶**In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to any qualified religious or charitable entity or organization (as the term is defined in section 548(d)(4)).

(2) *In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall consider whether—*

(A) *under section 1325(b)(1), on the basis of the current income of the debtor, the debtor could pay an amount greater than or equal to 20 percent of unsecured claims that are not considered to be priority claims (as determined under subchapter I of chapter 5); or*

(B) *the debtor filed a petition for the relief in bad faith.*

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

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

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

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

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

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

(ii) *determined that the petition—*

(I) *is well grounded in fact; and*

(II) *is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1) of this subsection.*

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

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

(ii) *the court finds that—*

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

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

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

(5) *However, a party in interest may not bring a motion under this section if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the national median household monthly income calculated on a monthly basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus \$583 for each additional member of that household.*

(c)(1) *Notwithstanding subsection (a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.*

(2) *With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after that request.*

(3) *Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 20 days to file the information required under section 521(a)(1) if the court finds justification for extending the period for the filing.*

* * * * *

Subchapter II—Collection, Liquidation, and Distribution of the Estate

* * * * *

§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

* * * * *

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

* * * * *

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

* * * * *

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; **[or]**

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter~~1~~; or

(11) *after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 that was administered or approved by—*

(A) *the United States trustee; or*

(B) *the bankruptcy administrator for the district in which the petition is filed.*

* * * * *

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(3)(A) *A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—*

(i) *before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and*

(ii) *that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.*

(B) *For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—*

(i) *an offer made by that debtor under subparagraph (A)(i) was reasonable; and*

(ii) *the refusal to negotiate by the creditor involved to was not reasonable.*

* * * * *

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

(f)(1) *The court may award the debtor reasonable attorneys' fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—*

- (A) is denied; or
- (B) is withdrawn after the debtor has replied.

(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.

* * * * *

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

Subchapter I—General Provisions

* * * * *

§ 901. Applicability of other sections of this title

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

* * * * *

CHAPTER 11—REORGANIZATION

Subchapter I—Officers and Administration

* * * * *

§ 1104. Appointment of trustee or examiner

(a) At any time * * *

* * * * *

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

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

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

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

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

* * * * *

Subchapter IV—Railroad Reorganization

* * * * *

§ 1170. Abandonment of railroad line

(a) The court, after notice and a hearing, may authorize the abandonment of all or a portion of a railroad line if such abandonment is—

* * * * *

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

* * * * *

§ 1172. Contents of plan

(a) In addition to the provisions required or permitted under section 1123 of this title, a plan—

* * * * *

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

* * * * *

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

* * * * *

Subchapter II—The Plan

* * * * *

§ 1228. Discharge

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

(1) provided for under section 1222(b)(5) or [1222(b)(10)] 1222(b)(9) of this title; or

* * * * *

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

(1) provided for under section 1222(b)(5) or **[1222(b)(10)]** 1222(b)(9) of this title; or

* * * * *

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

Subchapter I—Officers, Administration, and the Estate

Sec.

1301. Stay of action against codebtor.

* * * * *

1307. Conversion or dismissal.

1307A. Adequate protection in chapter 13 cases.

§ 1301. Stay of action against codebtor

(a) Except * * *

* * * * *

(b)(1) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

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

- (i) *the individual that received that consideration; or*
- (ii) *property not in the possession of the debtor that secures that claim.*

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

- (i) *an individual described in subparagraph (A)(i); or*
- (ii) *property described in subparagraph (A)(ii).*

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

* * * * *

§ 1307. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

* * * * *

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 1307A. Adequate protection in chapter 13 cases

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

(i) any lessor of personal property; and

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

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

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

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

(I) the lessor or creditor; or

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

(2) *The payments referred to in paragraph (1)(A) shall be determined by the court.*

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

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

(B) *The amount of a payment referred to in paragraph (1) shall not be less than the reasonable depreciation of the personal property described in subsection (a)(1), determined on a month-to-month basis.*

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

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

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

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

Subchapter II—The Plan

[§ 1321. Filing of plan

[The debtor shall file a plan.]

§ 1321. Filing of plan

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

§ 1322. Contents of plan

(a) The plan shall—

* * * * *

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

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims~~;~~ *and provide for the payment of any claim entitled to priority under section 507(a)(7) before the payment of any other claim entitled to priority under section 507(a), notwithstanding the priorities established under section 507(a);*

* * * * *

§ 1324. Confirmation hearing

~~After~~ (a) *Except as provided in subsection (b) and after notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan. That hearing shall be held not later than 45 days after the filing of the plan, unless the court, after providing notice and a hearing, orders otherwise.*

(b) *If not later than 5 days after receiving notice of a hearing on confirmation of the plan, a creditor objects to the confirmation of the plan, the hearing on confirmation of the plan may be held no earlier than 20 days after the first meeting of creditors under section 341(a).*

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

* * * * *

~~(5) with respect to each allowed secured claim provided for by the plan—~~

(5) with respect to an allowed claim provided for by the plan that is secured under applicable non-bankruptcy law by reason of a lien on property in which the estate has an interest or is subject to a setoff under section 553—

(A) the holder of such claim has accepted the plan;

~~(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and~~

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim until the debt that is the subject of the claim is fully paid for, as provided under the plan; and

* * * * *

(C) the debtor surrenders the property securing such claim to such holder; **[and]**
 (6) the debtor will be able to make all payments under the plan and to comply with the plan**].**; and

(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under that order for alimony, maintenance, or support that are due after the date on which the petition is filed.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph.

* * * * *

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, *and with respect to a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, only after the debtor certifies as of the later of the date of that completion or the date of certification that all amounts payable under that order for alimony, maintenance, or support that are due before the date of that certification have been paid in accordance with the plan if applicable, or if the underlying debt is not treated by the plan, paid in full, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—*

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

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

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

(1) provided for under section 1322(b)(5);

(2) of the kind specified in paragraph (2), (4), (5), (8), or (9) of section 523(a);

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

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

* * * * *

(f) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an in-

structional course concerning personal financial management described in section 111 that was administered or approved by—
(1) the United States trustee; or
(2) the bankruptcy administrator for the district in which the petition is filed.

* * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

PART I.—CRIMES

* * * * *

CHAPTER 9—BANKRUPTCY

* * * * *

§ 156. Knowing disregard of bankruptcy law or rule

(a) DEFINITIONS.—In this section—

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

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

* * * * *

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

* * * * *

PART I—ORGANIZATION OF COURTS

* * * * *

CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151. Designation of bankruptcy courts.

* * * * *

158. Appeals.

159. Bankruptcy statistics.

* * * * *

§ 152. Appointment of bankruptcy judges

(a)(1) [The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.] *Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

* * * * *

§ 156. Staff; expenses

(a) Each * * *

* * * * *

(f) For purposes * * *

(g)(1) *In this subsection, the term “travel expenses”—*

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

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

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

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

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

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

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

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

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

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

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

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

(ii) annually submit such consolidated report to Congress.

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

* * * * *

§ 159. Bankruptcy statistics

(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office').

(b) The Director shall—

(1) compile the statistics referred to in subsection (a);

(2) make the statistics available to the public; and

(3) not later than October 31, 1998, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

(c) The compilation required under subsection (b) shall—

(1) be itemized, by chapter, with respect to title 11;

(2) be presented in the aggregate and for each district; and

(3) include information concerning—

(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

(B) the current total monthly income, projected monthly net income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;

(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

(D) the average period of time between the filing of the petition and the closing of the case;

(E) for the reporting period—

(i) the number of cases in which a reaffirmation was filed; and

(ii)(I) the total number of reaffirmations filed;

(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and

(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

(II) the number of final orders determining the value of property securing a claim issued;

(ii) the number of cases dismissed for failure to make payments under the plan; and

(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing; and

(G) the extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct.

* * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * *

CHAPTER 39—UNITED STATES TRUSTEES

* * * * *

§ 581. United States trustees

* * * * *

[HISTORICAL AND STATUTORY NOTES]

* * * * *

“SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

“(a) GENERAL EFFECTIVE DATE.—* * *

* * * * *

“(d) APPLICATION OF AMENDMENTS TO JUDICIAL DISTRICTS.—

“(1) Certain * * *

* * * * *

“(3) JUDICIAL DISTRICTS FOR THE STATES OF ALABAMA AND NORTH CAROLINA.—(A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of this title], shall not—

“(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or
 “(ii) apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, United States Code, as amended by section 111(a) of this act [subsec. (a) of this section], [or October 1, 2002, whichever occurs first,] except that the amendment to section 105(a) of title 11, United States Code [section 105(a) of Title 11], shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990 [Dec. 1, 1990].

* * * * *

“(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code [section 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of Title 11]—

“(I) commenced before the effective date of this act, and

“(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective [or October 1, 2002, whichever occurs first],

the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of this title], shall not apply until [October 1, 2003, or] the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

“(ii) For purposes of clause (i), the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of this title], shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code [sections 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of title II], if—

“(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title [section 704 of Title 11], or

“(II) a plan is confirmed under section 1129, 1225, or 1325 of such title [section 1129, 1225, or 1325, respectively of Title 11],

[before October 1, 2003, or] the expiration of the 1-year period beginning on the date such election becomes effective[, whichever occurs first.]

* * * * *

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustee in cases under chapter 7 of title 11;

* * * * *

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; **and**

[(6) make such reports as the Attorney General directs.]

(6) make such reports as the Attorney General directs, including the results of audits performed under section (f); and

(7) on or before January 1 of each calendar year, and also not later than 30 days after any change in the nonprofit debt counseling services registered with the bankruptcy court, prescribed and make available on request the notice described in section 342(b)(3) of title 11 for each district included in the region.

* * * * *

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

* * * * *

(f)(1)(A) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

(B) The audits described in subparagraph (A) shall be made in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. Those procedures shall—

(i) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform those audits;

(ii) establish a method of randomly selecting cases to be audited according to generally accepted auditing standards, except that not less than 1 out of every 500 cases in each Federal judicial district shall be selected for audit;

(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

(iv) establish procedures for—

(I) reporting the results of those audits and any material misstatement of income, expenditures, or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate;

(II) providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

(III) fully funding those audits, including procedures requiring each debtor with sufficient available income or assets to contribute to the payment for those audits, as an administrative expense or otherwise.

(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things, or property belonging to the debtor as the auditor requests and that are reasonably necessary to facilitate the audit to be made available for inspection and copying.

(4)(A) The report of each audit conducted under this subsection shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1).

(B) If a material misstatement of income or expenditures or of assets is reported under subparagraph (A), a statement specifying that misstatement shall be filed with the court and the United States trustee shall—

(i) give notice thereof to the creditors in the case; and

(ii) in an appropriate case, in the opinion of the United States trustee, that requires investigation with respect to possible criminal violations, the United States Attorney for the district.

* * * * *

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * *

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

* * * * *

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

United States Code, as such section applies to an action affecting
the property of the estate in bankruptcy.

* * * * *

○