

105TH CONGRESS
2D SESSION

H. R. 3146

To amend title 11 of the United States Code relating to bankruptcy.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1998

Mr. NADLER (for himself, Mr. CONYERS, and Mr. HILLIARD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL


To amend title 11 of the United States Code relating to
bankruptcy.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Lenders and Borrowers Bankruptcy Account-
6 ability Act of 1998”.

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

- Sec. 1. Short title; table of contents.
 - Sec. 2. Discouraging reckless lending practices.
 - Sec. 3. Discouraging wage seizures which push people into bankruptcy.
 - Sec. 4. Stop creditors’ abuses of the bankruptcy system.
 - Sec. 5. Improve debtors’ understanding of bankruptcy options and alternatives.
 - Sec. 6. Increase incentives for voluntary repayment plans.
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- Sec. 7. Provide fair property exemptions and prevent high-rollers from abusing the system.
- Sec. 8. Prevent abuse of bankruptcy system by debtors who can afford to pay their debts.
- Sec. 9. Prevent abusive bankruptcy filings.
- Sec. 10. Improve accuracy of debtors' bankruptcy schedules.
- Sec. 11. Ensure proportionate and fair recoveries for creditors.
- Sec. 12. Prevent windfalls for undersecured creditors.
- Sec. 13. Reinforce the fresh start.
- Sec. 14. Clarifying amendments.
- Sec. 15. Applicability of amendments.

1 SEC. 2. DISCOURAGING RECKLESS LENDING PRACTICES.

2 (a) LIMITING CLAIMS ARISING FROM IRRESPON-
 3 SIBLE LEADERSHIP PRACTICES.—Section 502(b) of title
 4 11, United States Code, is amended—

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

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

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

10 “(10) the claim is—

11 “(A) based upon an extension to an indi-
 12 vidual of unsecured credit which caused, and
 13 which the claimant knew or should have known
 14 would cause, the debtor’s aggregate unsecured
 15 debts to exceed 40 percent of the debtor’s an-
 16 nual gross income; or

17 “(B) based on a secured debt if the credi-
 18 tor has violated section 129(h) of the Truth in
 19 Lending Act;

1 “(11) the claim arises from a debt on which the
2 creditor failed or refused to waive interest in an un-
3 successful consumer credit counseling plan at-
4 tempted by the debtor before filing bankruptcy (and
5 the creditor shall bear the burden of proving its
6 waiver of interest in such a plan);

7 “(12) the claim arises from a debt incurred in
8 or adjacent to a gambling facility, or a debt which
9 the creditor knew or should have known was in-
10 tended to be used by the debtor for gambling pur-
11 poses;

12 “(13) the claim arises from a consumer debt on
13 which the annual percentage rate for the debt as de-
14 fined by section 107 of the Truth in Lending Act in-
15 creased by more than 5 percent in the 12-month pe-
16 riod ending before the order for relief;

17 “(14) the claim is not secured and arises from
18 a consumer debt on which a billing statement pro-
19 vided by the creditor in the 1-year period ending on
20 the date of the order for relief included an offer to
21 accept a periodic payment which, if made on the due
22 date for that periodic payment and each subsequent
23 due date, would not amortize the principal amount
24 due to the creditor at the then current rate of inter-

1 est in a period of less than 15 years from the due
2 date of the periodic payment; or

3 “(15) the claim is made by a creditor, its
4 agents, or assignees based on a debt with respect to
5 which the creditor, its agents or assignees engaged
6 in conduct which violated section 805, 806, 807, or
7 808 of the Fair Credit Reporting Act whether or not
8 such creditor is a debt collector as defined by section
9 803(6) of such Act. Civil liability against such credi-
10 tor, agent or assignee under section 813 of such Act
11 shall also be available whether or not such creditor
12 is a debt collector as defined by section 803(6) of
13 such Act.”.

14 (b) CLARIFY THE DISCHARGEABILITY OF CREDIT
15 CARD DEBT IN A WAY THAT PLACES SOME RESPON-
16 SIBILITY ON CREDITORS FOR IRRESPONSIBLE LENDING
17 PRACTICES.—

18 (1) REQUIREMENTS.—Section 523(a)(2) of title
19 11, United States Code, is amended—

20 (A) in subparagraph (B) by striking “or”
21 at the end,

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

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

“(D) except as provided in subparagraph (C), consumer debts under an open end credit plan (as defined section 103 of the Truth in Lending Act) are dischargeable unless—

“(i) the creditor establishes the requirements of subparagraph (B) with respect to the consumer’s credit application; or

“(ii) the creditor establishes actual and reasonable reliance on an express fraudulent statement made by the debtor in connection with an extension of credit in excess of the amount available under the open end credit plan.”.

(2) PROOF.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

“(h) Proof of fraud under this section shall be made by clear and convincing evidence.”.

SEC. 3. DISCOURAGING WAGE SEIZURES WHICH PUSH PEOPLE INTO BANKRUPTCY.

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

(1) in subsection (e)(3) by adding at the end the following:

1 “In the case of wages or other income of an individual
 2 debtor, a transfer of the right to receive such income is
 3 not effective until the time that the income is to be paid
 4 to the debtor.”; and

5 (2) by amending subsection (c)(8) to read as
 6 follows:

7 “(8) that is a voluntary transfer of property
 8 that has an aggregate amount less than \$600.”.

9 **SEC. 4. STOP CREDITORS’ ABUSES OF THE BANKRUPTCY**
 10 **SYSTEM.**

11 (a) SANCTIONS FOR CREDITOR ABUSES OF THE
 12 BANKRUPTCY SYSTEM.—

13 (1) ALLOWANCE OF CLAIMS OR INTERESTS.—

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

16 “(k)(1) If, in a case of an individual debtor, following
 17 an objection filed by the debtor, a claim (other than a
 18 claim for a debt for alimony or child support) is disallowed
 19 or reduced by an amount representing more than 5 per-
 20 cent of the original filed claim or \$500, whichever is less,
 21 the court shall award the debtor reasonable attorneys’ fees
 22 and costs.

23 “(2) If, in a case of an individual debtor, the court
 24 finds that the position of any claimant with respect to
 25 whom an objection is timely filed under this section is not

1 substantially justified, the court shall also award damages
2 in the amount of \$5,000 and may, in appropriate cir-
3 cumstances, award punitive damages.”.

4 (2) EXCEPTIONS TO DISCHARGE.—Section
5 523(d) of title 11, United States Code, is amended
6 to read as follows:

7 “(d) If a creditor requests a determination of
8 dischargeability of a consumer debt under this section
9 (other than under paragraph (5) or (15) of subsection
10 (a)), and such debt is discharged, the court shall award
11 to the debtor reasonable attorneys’ fees and costs. If the
12 court finds that the position of any creditor proceeding
13 under this section is not substantially justified, the court
14 shall also award three times actual damages (but not less
15 than \$5,000) and, may, in appropriate circumstances,
16 award punitive damages.”.

17 (3) EFFECT OF DISCHARGE.—Section 524 of
18 title 11, United States Code, is amended by adding
19 at the end the following:

20 “(i) A creditor’s failure to credit payments received
21 under a plan confirmed under this title in the manner and
22 amounts required by the plan shall be considered to be
23 an act described in subsection (a)(2) or, if such failure
24 occurs before the discharge, an act in violation of section
25 362(a) of this title.

1 “(j)(1) A creditor may not charge a debtor or a debt-
 2 or’s account for attorney’s fees or costs related to work
 3 performed in connection with a case under this title except
 4 to the extent that such fees are reasonable under the
 5 standards of section 330(a) of this title for actual, nec-
 6 essary services rendered, approved by the court, and con-
 7 sistent with applicable contracts and nonbankruptcy law.

8 “(2) A charge made in violation of paragraph (1)
 9 shall be considered to be an act described in subsection
 10 (a)(2) or, if such charge occurs before the discharge, of
 11 section 362(a) of this title.

12 “(k) An individual injured by any willful violation of
 13 discharge in a case under this title shall recover 3 times
 14 actual damages but not less than \$5,000, plus costs and
 15 attorneys’ fees, and, in appropriate circumstances, may re-
 16 cover punitive damages.”.

17 (4) AUTOMATIC STAY.—Section 362(h) of title
 18 11, United States Code, is amended—

19 (A) by striking “actual damages, includ-
 20 ing” and inserting “3 times actual damages
 21 (but not less than \$5,000)”,

22 (B) by inserting “(1)” after “(h)”, and

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

24 “(2) If the court finds that the position of any credi-
 25 tor filing a motion for relief from a stay under this section

1 is not substantially justified, the court shall award dam-
2 ages in the amount of 3 times the debtor's actual damages
3 (but not less than \$5,000) plus costs and attorneys' fees.'".

4 (5) ELIGIBILITY FOR RELIEF.—Section 109 of
5 title 11, United States Code, is amended by adding
6 at the end the following:

7 “(h) If a creditor files a motion to dismiss a case on
8 the grounds that the debtor may not be a debtor under
9 the chapter under which the case is pending and if such
10 motion is denied or withdrawn, the court shall award the
11 debtor a reasonable attorney's fee and costs. If the court
12 finds that the position of any party filing a motion under
13 this section is not substantially justified, the court shall
14 award to the debtor damages in the amount of 3 times
15 the debtor's actual damages incurred in opposing such mo-
16 tion (but not less than \$5,000) and, in appropriate cir-
17 cumstances, may award punitive damages.'".

18 (b) DISMISSAL.—Section 707 of title 11, United
19 States Code, is amended by adding at the end the follow-
20 ing:

21 “(c) If a creditor files a motion to dismiss a case
22 under this section and such motion is denied or with-
23 drawn, the court shall award the debtor a reasonable at-
24 torney's fee and costs. If the court finds that the position
25 of any party filing a motion under this section is not sub-

1 stantially justified, the court shall award to the debtor
2 damages in the amount of 3 times the debtor’s actual
3 damages (but not less than \$5,000) and may, in appro-
4 priate circumstances, award punitive damages.”.

5 (c) PROHIBIT REAFFIRMATIONS AND THREATS OF
6 REPOSESSION AGAINST DEBTORS WHO ARE CURRENT IN
7 THEIR PAYMENTS.—

8 (1) EFFECT OF DISCHARGE.—Section 524 of
9 title 11, United States Code, is amended—

10 (A) in subsection (a)—

11 (i) in paragraph (2) by striking “and”
12 at the end,

13 (ii) in paragraph (3) by striking the
14 period at the end and inserting “; and”,
15 and

16 (iii) by adding at the end the follow-
17 ing:

18 “(4) operates as an injunction against any act
19 to enforce against property of the debtor any lien to
20 the extent that lien secures any such debt, or to ac-
21 celerate any such debt, based solely upon the com-
22 mencement of a case under this title, the insolvency
23 or financial condition of the debtor, or on appoint-
24 ment of or taking possession by a trustee in a case
25 under this title, notwithstanding any provision in an

1 agreement, transfer instrument, or applicable law,
2 whether or not discharge of such debt is waived.”,

3 (B) in subsection (c) by striking “is en-
4 forceable” the first place it appears and all that
5 follows through the period at the end, and in-
6 serting “is not enforceable, whether or not dis-
7 charge of such debt is waived.”, and

8 (C) by striking subsection (d).

9 (2) REDEMPTION.—Section 722 of title 11,
10 United States Code, is amended—

11 (A) by—

12 (i) striking “tangible” and all that fol-
13 lows through “use”, and inserting “prop-
14 erty, other than real property subject to a
15 security interest”, and

16 (ii) by striking “dischargeable con-
17 sumer”,

18 (B) by inserting “(a)” after “§ **722**”, and

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

20 “(b) The debtor may pay the amount necessary to
21 redeem the property under subsection (a) of this section
22 in installments over such period, and on such terms, as
23 the court may order.”.

1 **SEC. 5. IMPROVE DEBTORS' UNDERSTANDING OF BANK-**
 2 **RUPTCY OPTIONS AND ALTERNATIVES.**

3 Section 521 of title 11, United States Code, is
 4 amended by adding at the end the following:

5 “(6) With the petition for relief, an individual
 6 or joint debtor filing for relief under chapter 7 or
 7 chapter 13 shall file a statement acknowledging re-
 8 ceipt of an explanation on an Official Form promul-
 9 gated by the Judicial Conference of the United
 10 States of the relief available under both chapters,
 11 and of the relief which is provided by private credit
 12 counseling agencies. Such an explanation shall also
 13 include detailed information regarding the sources of
 14 funding for private credit counseling agencies.”.

15 **SEC. 6. INCREASE INCENTIVES FOR VOLUNTARY REPAY-**
 16 **MENT PLANS.**

17 (a) AMENDMENT TO FAIR CREDIT REPORTING
 18 ACT.—Section 605(a)(1) of the Fair Credit Reporting Act
 19 (15 U.S.C. 1681c(a)(1)) is amended to read as follows:

20 “(1) Cases under—

21 “(A) chapter 7 or 11 of title 11 of the United
 22 States Code that, from the date of entry of the order
 23 for relief antedate the report by more than 10 years;

24 “(B) chapter 12 or 13 of title 11 of the United
 25 States Code in which a discharge has been entered,

1 that, from the date of entry of the order for relief
2 antedate the report by more than 5 years;

3 “(C) chapter 12 or 13 of title 11 of the United
4 States Code in which a discharge has not been en-
5 tered, that, from the date of entry of the order for
6 relief antedate the report by more than 10 years;
7 and

8 “(D) when information can no longer be re-
9 ported based on subparagraph (B), no consumer re-
10 porting agency may make any consumer report con-
11 taining any of the information provided for under
12 paragraphs (1) through (6) which antedates the
13 order for relief in the case covered by subparagraph
14 (B).”.

15 (b) EFFECTIVE IMPLEMENTATION OF CHAPTER 13
16 PLANS.—Section 1325 of title 11, United States Code, is
17 amended by adding at the end the following:

18 “(d) A court may not require as a condition of con-
19 firmation under subsection (a)(3), payments to holders of
20 allowed unsecured claims that exceed the greater of the
21 amount required under subsection (a)(4) or the amount
22 required under subsection (b).”.

23 (c) CLASSIFICATION OF CLAIMS IN CHAPTER 13.—
24 Section 1322(b)(1) of title 11, United States Code, is
25 amended to read as follows:

1 “(1) designate a class or classes of unsecured
2 claims, as provided in section 1122 of this title, but
3 may not discriminate unfairly against any class so
4 designated; however, such plan may designate dif-
5 ferent treatment for claims for a debt of the debtor
6 if—

7 “(A) an individual is liable on such debt
8 with the debtor; or

9 “(B) such debt is of a kind excepted from
10 discharge under section 1328(a) of this title;”.

11 (d) 5-YEAR CHAPTER 13 PLANS.—Section 1322(d)
12 is amended to read as follows:

13 “(d) The plan may not provide for payments over a
14 period that is longer than 3 years, unless the debtor pro-
15 poses a longer period, but the court may not approve a
16 period that is longer than 5 years.”.

17 (e) VALUATION OF SECURED CLAIM AT CONFIRMA-
18 TION.—Section 1327(a) of title 11, United States Code,
19 is amended by adding at the end the following:

20 “If a plan proposes to value property to determine a credi-
21 tor’s secured claim pursuant to section 506(a), and the
22 creditor receives notice of proposed valuation and con-
23 firmation hearing, such value shall be established by the
24 confirmed plan, whether or not the holder of the claim
25 has filed a proof of claim. If the plan does not so provide,

1 any party may obtain a determination of the amount of
 2 an allowed secured claim, either before or after the con-
 3 firmation, whether or not the holder of the claim has filed
 4 a proof of claim.”.

5 (f) PROTECTING CHAPTER 13 DEBTOR’S PROPERTY
 6 DURING CASE.—Section 1306(c) of title 11, United States
 7 Code, is amended by adding at the end the following:

8 “(c) During the pendency of a chapter 13 case, sec-
 9 tion 362 shall protect property of the estate which has
 10 revested in the debtor to the same extent as it protects
 11 other property of the estate.”.

12 (g) INCENTIVES FOR CONSENSUAL MODIFICATION
 13 OF MORTGAGES.—Section 1322 of title 11, United States
 14 Code, is amended by adding at the end the following:

15 “(f) Notwithstanding subsection (b)(2) and applica-
 16 ble nonbankruptcy law, the rights of a holder of a secured
 17 claim may be modified with the consent of the holder of
 18 the claim by capitalizing the amount of any default, and
 19 amortizing any balance over an agreed term not less than
 20 the existing term of the loan, at an interest rate equivalent
 21 to or below the interest rate in effect on that claim at
 22 the time of modification. If a modification agreement is
 23 filed with the court at the time it is made, relief from the
 24 automatic stay shall thereafter be granted pursuant to sec-
 25 tion 362(d)(1) of this title upon motion, if the debtor is

1 more than 60 days delinquent pursuant to the agreement
2 at the time of the hearing on the motion.”.

3 **SEC. 7. PROVIDE FAIR PROPERTY EXEMPTIONS AND PRE-**
4 **VENT HIGH-ROLLERS FROM ABUSING THE**
5 **SYSTEM.**

6 (a) PERMIT EFFECTIVE USE OF EXEMPTIONS.—Sec-
7 tion 522 of title 11, United States Code, is amended by
8 adding at the end the following:

9 “(n) If, in the 1-year period ending on the date of
10 the filing of the petition and while the debtor was insol-
11 vent, the debtor makes property exempt under subsection
12 (b) by converting property to a form of property that is
13 exempt in an unlimited amount, such property shall not
14 be exempt under this section to the extent that the value
15 of the debtor’s interest in the property that is converted
16 exceeds \$100,000. Such conversion shall not otherwise be
17 a basis for denying an exemption and shall not be the basis
18 for denying the debtor other relief under this title.”.

19 (b) ESTABLISH A MODEST FLOOR FOR EXEMP-
20 TIONS.—Section 522(b)(1) of title 11, United States Code,
21 is amended by striking “unless the State law that is appli-
22 cable to the debtor under paragraph (2)(A) specifically
23 does not so authorize”.

1 **SEC. 8. PREVENT ABUSE OF BANKRUPTCY SYSTEM BY**
2 **DEBTORS WHO CAN AFFORD TO PAY THEIR**
3 **DEBTS.**

4 (a) DISMISSAL.—Section 707(b) of title 11, United
5 States Code, is amended—

- 6 (1) by striking “substantial”,
7 (2) by inserting “(1)” after “(b)”, and
8 (3) by adding at the end the following:

9 “(2) A case shall be considered to be an abuse of the
10 provisions of this chapter if, after providing a reasonable
11 standard of living for the debtor and the debtor’s depend-
12 ents that is not excessive, including payments on secured
13 debts, nondischargeable debts, priority debts, and arrear-
14 ages on all such debts, the debtor is able to pay the debt-
15 or’s unsecured nonpriority debts as they come due or to
16 pay them in full over a 36-month chapter 13 plan, and
17 the court after consideration of all the circumstances finds
18 the case to be an abuse of this chapter.

19 “(3) The trustee shall examine the income, expenses
20 and circumstances of each debtor whose income exceeds
21 the income set forth in paragraph (4) and refer to the
22 United States trustee any case in which the debtor is a
23 debtor of the kind described in paragraph (2). The United
24 States trustee, in the discretion of the United States trust-
25 ee, may bring a motion under this section.

1 “(4) Notwithstanding any other provision of this sub-
 2 section, a case shall not be considered to be an abuse of
 3 the provisions of this chapter if the debtor’s household in-
 4 come does not exceed \$60,000, adjusted upward by \$5,000
 5 for each household member exceeding 4.

6 “(5) Notwithstanding subsection (b)(1), a creditor
 7 may present facts pertinent to a finding of abuse to the
 8 trustee at the meeting of creditors held pursuant to sec-
 9 tion 341(a) of this title.”.

10 (b) CONFORMING AMENDMENT.—Section 104(b)(1)
 11 of title 11, United States Code, is amended by inserting
 12 “707(b),” after “523(a)(2)(C)”.

13 **SEC. 9. PREVENT ABUSIVE BANKRUPTCY FILINGS.**

14 (a) PREVENT ABUSE OF BANKRUPTCY FILINGS.—
 15 Section 362 of title 11, United States Code, is amended
 16 by adding at the end the following:

17 “(i)(1) The stay under subsection (a) shall terminate
 18 30 days after the order for relief if—

19 “(A) the debtor has filed 2 prior cases within
 20 6-years period ending on the date of the order for
 21 relief; and

22 “(B) the debtor has been a debtor in a prior
 23 case that was dismissed in the 180-day period end-
 24 ing on the date of the order for relief.

1 “(2)(A) Paragraph (1) shall not apply if the debtor
2 files and serves on all secured creditors and real property
3 lessors a motion for continuation of the stay and notice
4 of a hearing on that motion and no objection to continu-
5 ation of the stay is filed by such creditor, such lessor, or
6 the trustee.

7 “(B) If the debtor files and serves a motion and no-
8 tice as described in subparagraph (A), and such objection
9 is filed timely, the court, after notice and a hearing, shall
10 enter an order terminating the stay—

11 “(i) with respect to the objecting creditor or the
12 objecting lessor; or

13 “(ii) if the trustee objects, with respect to such
14 creditors and such lessors as the court may order;
15 unless the debtor proves that there is a reasonable pros-
16 pect of a feasible plan being completed in the case or in
17 a chapter 7 case, there is cause for continuing the stay.
18 In deciding the motion the court may consider any appro-
19 priate factors, including changes in the debtor’s cir-
20 cumstances, the debtor’s efforts in prior cases, the amount
21 of arrears, circumstances of the prior cases, the debtor’s
22 honesty with the court, and differences in chapter 13 plans
23 between the prior cases and the current case.

1 “(j)(1) The filing of a petition under section 301 or
2 302 of this title does not operate as a stay under sub-
3 section (a) of this section if—

4 “(A) the debtor has filed 3 prior cases in the
5 6-year period ending on the date of the order for re-
6 lief; and

7 “(B) the debtor has been a debtor in a prior
8 case that was dismissed in the 180-day period end-
9 ing on the date of the order for relief.

10 “(2) Notwithstanding paragraph (1), the court may
11 on motion of the debtor impose a stay of the same scope
12 as that of subsection (a), or of a lesser scope, if the debtor
13 proves that there is a reasonable prospect of a feasible
14 plan being completed in the case. In deciding the motion
15 the court may consider factors including changes in the
16 debtor’s circumstances, the debtor’s efforts in prior cases,
17 the amount of arrears, other circumstances in prior cases,
18 the debtor’s honesty with the court, and differences in
19 chapter 13 plans between the prior cases and the current
20 case.

21 “(k)(1) After notice and a hearing, the court may
22 enter an order suspending, for a period not to exceed 6
23 years, the operation of the stay provided under subsection
24 (a) with respect to particular real property if the debtor
25 transferred, or was the transferee in a transfer of, such

1 property, or an interest in such property, to avoid fore-
2 closure or eviction. Such an order shall be effective against
3 any debtor having actual notice of the order or, if the
4 order is filed in an official public record where the title
5 to the property may be searched, constructive notice of
6 the order.

7 “(2) Notwithstanding an order entered under para-
8 graph (1), a debtor in a case under this title may request
9 the court to impose a stay to protect such property, and
10 the court shall grant such stay if the debtor—

11 “(A) has an interest in such property that
12 would be adversely affected by the order entered
13 under such paragraph; and

14 “(B) did not participate in a transfer of such
15 property, or an interest in such property, to avoid
16 foreclosure or eviction.”.

17 (b) POLICING NONATTORNEY PETITION PREPAR-
18 ERS.—

19 (1) PREPARATION OF PETITIONS.—Section
20 110(a)(1) of title 11, United States Code, is amend-
21 ed by inserting “under the direct active supervision
22 of that attorney” after “or an employee of an attor-
23 ney”.

1 (2) NOTICE.—Section 110(b)(1) of title 11,
2 United States Code, is amended by adding at the
3 end the following:

4 “Before accepting any fees from the debtor, the bank-
5 ruptcy petition preparer must provide to the debtor a writ-
6 ten Notice to Debtors About Bankruptcy Petition Prepar-
7 ers, an official form promulgated by the Judicial Con-
8 ference of the United States. Such notice shall inform the
9 debtor in simple language that bankruptcy petition pre-
10 parers are not attorneys and cannot practice law or give
11 legal advice. The notice shall contain a description of ex-
12 amples of legal advice which bankruptcy petition preparers
13 are not authorized to give. A court may adopt rules or
14 guidelines setting a maximum fee for typing and
15 photocopying bankruptcy petitions and schedules which
16 the court finds reasonable for a bankruptcy petition pre-
17 parer to charge. A Notice to Debtors must be signed by
18 the debtor and filed along with any document for filing.”.

19 (3) LIMITATION ON EXECUTION OF DOCU-
20 MENTS.—Section 110(e)(1) of title 11, United
21 States Code, is amended by adding at the end the
22 following:

23 “Nor shall a bankruptcy petition preparer offer a potential
24 bankruptcy debtor any legal advice which shall include the
25 following:

1 “(A) advising the debtor whether to file bank-
2 ruptcy or whether chapter 7, 11, 12 or 13 is more
3 appropriate for the debtor;

4 “(B) advising the debtor whether the debtor’s
5 debts will be eliminated or discharged in a bank-
6 ruptcy case;

7 “(C) advising the debtor whether the debtor will
8 be able to keep the debtor’s home, car, or other
9 property after filing a bankruptcy case;

10 “(D) advising the debtor as to the tax con-
11 sequences of a bankruptcy or the dischargeability of
12 tax claims;

13 “(E) advising the debtor whether the debtor
14 may or should promise to repay or ‘reaffirm’ debts
15 to creditors;

16 “(F) advising the debtor how to characterize
17 the nature of the debtor’s interests in property or
18 the debtor’s debts; or

19 “(G) advising the debtor about bankruptcy pro-
20 cedures and rights.”.

21 (4) MOTIONS.—Section 110(h)(3) of title 11,
22 United States Code, is amended by inserting before
23 the period at the end the following:

24 “or may move the court for an order to disgorge fees paid
25 to the bankruptcy petition preparer for any violation of

1 this subsection or of subsection (b), (c), (d), (e), (f), (g),
2 or (i)”).

3 (5) PENALTY.—Section 110(h) of title 11,
4 United States Code, is amended by adding at the
5 end the following:

6 “(5) A bankruptcy petition preparer shall be fined
7 not more than \$500 for each violation of paragraph
8 (h)(1).”.

9 **SEC. 10. IMPROVE ACCURACY OF DEBTORS’ BANKRUPTCY**
10 **SCHEDULES.**

11 Section 727(a) of title 11, United States Code, is
12 amended—

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

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

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

18 “(11) the debtor intentionally omitted property
19 of the estate from the debtor’s schedule of assets,
20 such omission was material, and the debtor would
21 not have been entitled to fully exempt such property
22 if it had been timely listed in the schedules.”.

1 **SEC. 11. ENSURE PROPORTIONATE AND FAIR RECOVERIES**
2 **FOR CREDITORS.**

3 (a) RESTRICTING INTEREST ON INTEREST.—Section
4 1322(e) of title 11, United States Code, is amended by
5 inserting “, except the satisfaction of any penalty rate”
6 before the period at the end.

7 (b) SATISFACTION OF SECURED CLAIMS.—Section
8 1325(a)(5)(B)(i) is amended to read as follows:

9 “(i) the plan provides that the holder of
10 such claim retain the lien securing such claim
11 until such allowed secured claim is paid, at
12 which time the lien is extinguished;”.

13 (c) ADEQUATELY COMPENSATE SECURED CREDI-
14 TORS FOR DEFERRED PAYMENTS.—Section
15 1325(a)(5)(B) of title 11, United States Code, is amended
16 by striking clause (ii) and inserting the following:

17 “(ii) the value of property to be distributed
18 under the plan on account of such claim is not
19 less than the allowed amount of such claim; and

20 “(iii) the compensation for delay in pay-
21 ments on allowed secured claims made pursuant
22 to clause (ii) shall be the interest rate paid on
23 6-month United States treasury bill plus 2 per-
24 cent or the nondefault interest rate set in the
25 claim’s underlying contract, whichever rate is
26 less; or”.

1 **SEC. 12. PREVENT WINDFALLS FOR UNDERSECURED**
2 **CREDITORS.**

3 (a) INVALIDATING HIDDEN SECURITY INTERESTS
4 AND VALUELESS HOUSEHOLD LIENS.—

5 (1) EXEMPT PROPERTY.—Section 522(f) of title
6 11, United States Code, is amended by adding at
7 the end the following:

8 “(4) A lien held by a creditor on an interest of
9 the debtor in any item of household furnishings,
10 household goods, wearing apparel, appliances, books,
11 animals, crops, musical instruments, or jewelry held
12 primarily for the personal, family, or household use
13 of the debtor or a dependent of the debtor shall be
14 void unless—

15 “(A) the holder of the lien files with the
16 court and serves on the debtor, within 30 days
17 after the meeting of creditors or before the
18 hearing on confirmation of a plan, whichever
19 occurs first, a sworn declaration that the pur-
20 chase price for the particular item that is sub-
21 ject to such lien exceeded \$1,500, and

22 “(B)(i) the debtor does not timely object to
23 such declaration; or

24 “(ii)(I) the debtor objects to such declara-
25 tion; and

1 “(II) the court finds that the purchase
2 price of the item exceeded \$1,500 and that such
3 lien is not avoidable under paragraph (f)(1) of
4 this section.”.

5 (2) CONFORMING AMENDMENT.—Section
6 104(b)(1) of title 11, United States Code, is amend-
7 ed by inserting “522(f),” after “522(d)”.

8 (b) ELIMINATE UNENFORCEABLE TAX LIENS.—

9 (1) TAX LIENS.—Section 522(c)(2)(B) of title
10 11, United States Code, is amended by inserting
11 “and which has not been avoided under this section”
12 before the period at the end.

13 (2) FIXING OF LIENS.—Section 522(f)(1) of
14 title 11, United States Code, is amended by adding
15 at the end the following:

16 “(C) a tax lien, to the extent that under
17 applicable nonbankruptcy law such lien was un-
18 enforceable immediately before the order for re-
19 lief as to property of the debtor.”.

20 (c) TREAT RENT-TO-OWN TRANSACTIONS AS CRED-
21 IT SALES.—

22 (1) DEFINITIONS.—Section 101 of title 11,
23 United States Code, is amended—

24 (A) by inserting after paragraph (8) the
25 following:

1 “(8A) ‘consumer good’ means an item of per-
2 sonal property (excluding a motor vehicle and a
3 motor home) acquired by an individual primarily for
4 a personal, family, or household purpose;”; and

5 (B) by inserting after paragraph (45) the
6 following:

7 “(45A) ‘rent-to-own contract’ means an agree-
8 ment, in the form of a terminable lease or bailment
9 of a consumer good, between an individual and an
10 entity regularly engaged in the business of making
11 consumer goods available to individuals under
12 which—

13 “(A) the lessee or bailee—

14 “(i) has the right of possession and
15 use of the consumer good; and

16 “(ii) has the option to renew the
17 agreement periodically by making pay-
18 ments specified in the agreement; and

19 “(B) the lessor or bailor agrees, orally or
20 in writing, to transfer ownership of the con-
21 sumer good to the lessee or bailee upon the ful-
22 fillment of all obligations of the lessee or bailee
23 for the transfer under the agreement;”.

1 (2) CASES UNDER CHAPTER 7.—(A) Subchapter
2 II of chapter 7 of title 11, United States Code, is
3 amended by adding at the end the following:

4 **“§ 729. Rent-to-own contracts**

5 “In a proceeding under this chapter in which the
6 debtor is in possession of a consumer good under a rent-
7 to-own contract, the debtor and the lessor or bailor shall
8 be accorded the same rights and obligations with respect
9 to the consumer good as such lessor or bailor would be
10 accorded if the rent-to-own contract had been a purchase
11 contract.”.

12 (B) The table of sections of chapter 7 of title
13 11, United States Code, is amended by adding at
14 the end of the items relating to subchapter II the
15 following:

“729. Rent-to-own contracts.”.

16 (3) CASES UNDER CHAPTER 13.—(A) Sub-
17 chapter I of chapter 13 of title 11, United States
18 Code, is amended by adding at the end the follow-
19 ing:

20 **“§ 1308. Rent-to-own contracts**

21 “In a proceeding under this chapter in which the
22 debtor is in possession of a consumer good under a rent-
23 to-own contract, the debtor and the lessor or bailor shall
24 be accorded the same rights and obligations with respect
25 to the consumer good as such lessor or bailor would be

1 accorded if the rent-to-own contract had been a purchase
2 contract.”.

3 (B) The table of sections of chapter 13 is
4 amended by adding at the end of the items relating
5 to subchapter I the following:

“1308. Rent-to-own contracts.”.

6 (d) VALUATION OF PROPERTY.—The last sentence of
7 section 506(a) of title 11, United States Code, is amended
8 to read as follows:

9 “Such value shall be the liquidation value of the property
10 which shall be not more than the cash wholesale value of
11 the property and shall be determined in conjunction with
12 any hearing on a plan or after notice and a hearing pursu-
13 ant to any other provision of this title when they are paid
14 in full.”.

15 (e) REQUIRE PROOF OF CLAIM.—Section 1327(c) of
16 title 11 is amended to read as follows:

17 “(c) Except as otherwise provided in the plan or in
18 the order confirming the plan, the property of the estate
19 and the debtor, whether or not revested in the debtor
20 under subsection (b), is free and clear of—

21 “(1) any claim or interest of any creditor pro-
22 vided for by the plan; and

23 “(2) any lien held by a holder of a secured
24 claim with notice of the case that has not filed a
25 timely proof of claim and served that proof of claim

1 on the debtor and the debtor’s attorney, except that
 2 a lien which has been duly perfected prior to the pe-
 3 tition date and is secured by a claim provided for
 4 under section 1322(b)(5) may be so affected only to
 5 the extent the plan proposes to cure any default.”.

6 (f) PERMIT CHAPTER 13 DEBTORS TO SAVE HOMES
 7 ENCUMBERED BY UNDERSECURED MORTGAGES.—Sec-
 8 tion 1322(b) of title 11, United States Code, is amended—

9 (1) by inserting “purchase money” after “only
 10 by a”, and

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

12 “(11) provide for payment of allowed secured
 13 claims consistent with section 1325(a)(5) of this
 14 title, over a period exceeding the period permitted
 15 under subsection (d).”.

16 **SEC. 13. REINFORCE THE FRESH START.**

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

20 (1) by striking paragraph (14),

21 (2) in paragraph (17)—

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

1 (B) by striking “section 1915(b) or (f)”
 2 and inserting “subsection (b) or (f)(2) of sec-
 3 tion 1915, and

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

6 (3) by redesignating paragraphs (15) through
 7 (18) as paragraphs (14) through (17), respectively.

8 (b) PROTECTION OF RETIREMENT FUNDS IN BANK-
 9 RUPTCY.—Section 522 of title 11, United States Code, is
 10 amended—

11 (1) in subsection (b)(2) by adding at the end
 12 the following:

13 “(C) retirement funds to the extent exempt
 14 from taxation under section 401, 403, 408,
 15 414, 457, or 501(a) of the Internal Revenue
 16 Code of 1986,” and

17 (2) in subsection (d) by adding at the end the
 18 following:

19 “(12) retirement funds to the extent exempt
 20 from taxation under 401, 403, 408, 414, 457, or
 21 501(a) of the Internal Revenue Code of 1986.”.

22 (c) EFFECTIVE PROTECTION FOR UTILITY SERVICE
 23 IN THE WAKE OF DEREGULATION.—Section 366 of title
 24 11, United States Code, is amended by adding at the end
 25 the following:

1 “(c) For the purposes of this section, the term ‘util-
 2 ity’ includes any provider of gas, electric, telephone, tele-
 3 communication, cable television, satellite communication,
 4 water, or sewer service, whether or not such service is a
 5 regulated monopoly.”.

6 **SEC. 14. CLARIFYING AMENDMENTS.**

7 (a) CLARIFYING THE ANTI-DISCRIMINATION PROVI-
 8 SIONS OF THE CODE.—Section 525 of title 11, United
 9 States Code, is amended—

10 (1) in subsection (a) by striking “other simi-
 11 lar”, and

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

13 “(d) For purposes of this section, ‘grant’ includes any
 14 right, benefit or privilege.”.

15 (b) CLARIFYING THE MEANING OF “LIQUIDATED”.—
 16 Section 101 of title 11, United States Code, is amended
 17 by inserting after paragraph (37) the following:

18 “(37A) ‘liquidated’ means readily determinable
 19 in a fixed amount and not subject to bona fide dis-
 20 pute;”.

21 (c) CLARIFYING THE MEANING OF “HOUSEHOLD
 22 GOODS”.—Section 101 of title 11, United States Code,
 23 is amended by inserting after paragraph (27) the follow-
 24 ing:

1 “(27A) ‘household goods’ includes tangible per-
2 sonal property normally found in or around a home,
3 but does not include motorized vehicles used for
4 transportation purposes;”.

5 (d) TREATMENT OF LEASES IN CHAPTER 7 CASES.—
6 Section 365 of title 11, United States Code, is amended
7 by adding at the end the following:

8 “(p) If a chapter 7 trustee does not assume a lease
9 of personal property or of residential property under which
10 an individual debtor is the lessee, the lease shall be deemed
11 abandoned to the debtor. Except to the extent provided
12 by section 525, the effect of the abandonment shall be the
13 following:

14 “(1) The debtor shall have the right to contin-
15 ued possession of the leased property, subject to any
16 grounds for termination of the lease under applica-
17 ble nonbankruptcy law, including nonpayment of
18 prepetition rent, other than a provision in the lease
19 purporting to modify, condition, or terminate the
20 contract because of bankruptcy, insolvency, the debt-
21 or’s financial condition, the commencement of a case
22 or the grant of a discharge under this title, or the
23 appointment of a receiver or custodian under non-
24 bankruptcy law.

1 “(2) The lessor may be granted relief from the
2 stay of section 362(a) if the lessor has grounds for
3 termination of the lease as provided in paragraph
4 (1).

5 “(3) Any right of the debtor under nonbank-
6 ruptcy to cure a default on the lease or to renew the
7 lease shall not be affected by the filing of the case
8 under this title.

9 “(4) The estate shall be relieved of any liability
10 for breach of the lease occurring after abandon-
11 ment.”.

12 (e) CLARIFYING THE ABILITY TO AVOID CERTAIN
13 LIENS.—Section 522(f)(2)(C) is amended by inserting “to
14 the extent such judgment is a lien on property subject to
15 the mortgage” before the period at the end.

16 (f) CLARIFYING ISSUE PRECLUSION AND VICARIOUS
17 LIABILITY FOR NONDISCHARGEABILITY CASES.—Section
18 523 of title 11, United States Code, is amended by adding
19 at the end the following:

20 “(f) The issue preclusive effect in a proceeding aris-
21 ing under this section of a prior judgment shall be deter-
22 mined according to Federal law. A prior default judgment
23 shall not have issue-preclusive effect under this section.

1 “(g) A debt shall not be nondischargeable under this
2 section based upon the conduct of an individual other than
3 the debtor.”.

4 (h) LIEN AVOIDANCE.—Section 522(f)(1) of title 11,
5 United States Code, is amended by striking “the fixing
6 of”.

7 (i) CHAPTER 13 PLAN CONFIRMATION CURES DE-
8 FAULTS.—Section 362(a)(1) of title 11, United States
9 Code, is amended by inserting “, rescheduling,” after
10 “commencement”.

11 (j) ATTORNEYS FEES REVIEW AND APPROVAL.—
12 Section 330(a) of title 11, United States Code, is amended
13 by inserting “, or to the debtor’s attorney” after “1103”.

14 (k) RETIREMENT LOAN REPAYMENT.—Section
15 1325(b)(2) of title 11, United States Code, is amended
16 by striking “For” and all that follows through “ex-
17 pended—”, and inserting the following: “For purposes of
18 this subsection, ‘disposable income’ means income which
19 is received by the debtor (not including income that is
20 withheld from the debtor’s wages for the repayment of
21 loans from Internal Revenue Code-qualified retirement ac-
22 counts) and which is not reasonably necessary to be ex-
23 pended—”.

1 (l) PROCEDURE FOR CLAIMING EXEMPTIONS.—The
 2 last sentence of section 522(l) is amended to read as fol-
 3 lows:

4 “The debtor’s entire interest in each item of property
 5 claimed as exempt on such list is exempt unless—

6 “(1) the list specifies that there is nonexempt
 7 equity in the property; or

8 “(2) a party in interest objects.”.

9 (m) EXEMPTION RIGHTS.—Section 522(b)(2) of title
 10 11, United States Code, is amended by adding at the end
 11 the following:

12 “(C) To the extent that nonbankruptcy law
 13 providing for an exemption requires that such
 14 exemption is available only if there is a pending
 15 execution on property, such exemption may be
 16 claimed under this section regardless of whether
 17 there is a money judgment against the debtor
 18 or whether a money judgment is being enforced
 19 by execution sale or any other procedure.”.

20 **SEC. 15. APPLICABILITY OF AMENDMENTS.**

21 The amendments made by this Act shall not apply
 22 with respect to cases commenced under title 11 of the
 23 United States Code before the date of the enactment of
 24 this Act.

