

105TH CONGRESS
1ST SESSION

H. R. 764

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To make technical corrections to title 11, United States
Code, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Bankruptcy Amend-
3 ments of 1997”.

4 **SEC. 2. DEFINITIONS.**

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

7 (1) by striking “In this title—” and inserting
8 “In this title:”,

9 (2) in each paragraph by inserting “The term”
10 after the paragraph designation,

11 (3) in paragraph (35)(B) by striking “para-
12 graphs (21B) and (33)(A)” and inserting “para-
13 graphs (23) and (35)”,

14 (4) in paragraphs (35A) and (38) by striking “;
15 and” at the end and inserting a period,

16 (5) in paragraph (51B)—

17 (A) by inserting “who is not a family farm-
18 er” after “debtor” the first place it appears,
19 and

20 (B) by striking “\$4,000,000” and insert-
21 ing “\$15,000,000 as of the date of the filing of
22 the petition”,

23 (6) by amending paragraph (54) to read as fol-
24 lows:

25 “(54) The term ‘transfer’ means—

26 “(A) creation of a lien;

1 “(B) retention of title as a security inter-
2 est;

3 “(C) foreclosure of the debtor’s equity of
4 redemption; or

5 “(D) every mode, direct or indirect, abso-
6 lute or conditional, voluntary or involuntary, of
7 disposing of or parting with property or with an
8 interest in property;”,

9 (7) in paragraphs (1) through (35), in para-
10 graphs (36) and (37), and in paragraphs (40)
11 through (55), including paragraph (54) as added by
12 this section, by striking the semicolon at the end and
13 inserting a period, and

14 (8) by redesignating paragraphs (4) through
15 (55), including paragraph (54) as added by this sec-
16 tion, in entirely numerical sequence.

17 **SEC. 3. ADJUSTMENT OF DOLLAR AMOUNTS.**

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

21 **SEC. 4. EXTENSION OF TIME.**

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

1 **SEC. 5. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
2 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
3 **TITIONS.**

4 Section 110(j)(3) of title 11, United States Code, is
5 amended by striking “attorney’s” and inserting
6 “attorneys’ ”.

7 **SEC. 6. LIMITATION ON COMPENSATION OF PROFESSIONAL**
8 **PERSONS.**

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

12 **SEC. 7. COMPENSATION TO OFFICERS.**

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

15 (1) in paragraph (1) by inserting “, or the
16 debtor’s attorney” after “1103”, and

17 (2) in paragraph (3) by striking “(3)(A) In”
18 and inserting “(3) In”.

19 **SEC. 8. SPECIAL TAX PROVISIONS.**

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

23 **SEC. 9. EFFECT OF CONVERSION.**

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

1 **SEC. 10. AUTOMATIC STAY.**

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

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

6 (2) in paragraph (18) by striking the period at
7 the end and inserting “; or”, and

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

9 “(19) under subsection (a) of this section, of
10 any transfer that is not avoidable under section 544
11 and not avoidable under section 549.”.

12 **SEC. 11. DEFAULTS BASED ON NONMONETARY OBLIGA-**
13 **TIONS.**

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

17 (1) in subsection (b)—

18 (A) in paragraph (1)(A) by striking the
19 semicolon at the end and inserting the follow-
20 ing:

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

23 “(i) the satisfaction of any provision (other
24 than a penalty rate or penalty provision) relat-
25 ing to a default arising from any failure to per-
26 form nonmonetary obligations under an

unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

“(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;”, and

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

“(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract or under an unexpired lease of real or personal property.”,

(2) in subsection (c)—

(A) in paragraph (2) by adding “or” at the end,

1 (B) in paragraph (3) by striking “; or” at
2 the end and inserting a period, and

3 (C) by striking paragraph (4),
4 (3) in subsection (d)—

5 (A) by striking paragraphs (5) through
6 (9), and

7 (B) by redesignating paragraph (10) as
8 paragraph(5).

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

12 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-
13 tion 1124(2) of title 11, United States Code, is amend-
14 ed—

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

19 (2) in subparagraph (C) by striking “and” at
20 the end,

21 (3) by redesignating subparagraph (D) as sub-
22 paragraph (E), and

23 (4) by inserting after subparagraph (C) the fol-
24 lowing:

1 “(D) if such claim or such interest arises
 2 from any failure to perform a nonmonetary ob-
 3 ligation, compensates the holder of such claim
 4 or such interest (other than the debtor or an in-
 5 sider) for any actual pecuniary loss incurred by
 6 such holder as a result of such failure; and”.

7 **SEC. 12. AMENDMENT TO TABLE OF SECTIONS.**

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

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

11 **SEC. 13. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

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

15 **SEC. 14. PRIORITIES.**

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

18 (1) in paragraph (3)(B) by striking the semi-
 19 colon at the end and inserting a period, and

20 (2) in paragraph (7) by inserting “unsecured”
 21 after “allowed”.

22 **SEC. 15. EXEMPTIONS.**

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

1 (1) in subsection (f)(1)(A)(ii)(II)—

2 (A) by striking “includes a liability des-
3 ignated as” and inserting “is for a liability that
4 is designated as, and is actually in the nature
5 of,”, and

6 (B) by striking “, unless” and all that fol-
7 lows through “support.”, and

8 (2) in subsection (g)(2) by striking “subsection
9 (f)(2)” and inserting “subsection (f)(1)(B)”.

10 **SEC. 16. EXCEPTIONS TO DISCHARGE.**

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

13 (1) in subsection (a)(3) by striking “or (6)”
14 each place it appears and inserting “(6), or (15)”,

15 (2) as amended by section 304(e) of Public Law
16 103–394 (108 Stat. 4133), in paragraph (15) by
17 transferring such paragraph so as to insert it after
18 paragraph (14) of subsection (a),

19 (3) in paragraph (9) by inserting “, watercraft,
20 or aircraft” after “motor vehicle”,

21 (4) in subsection (a)(15), as so redesignated by
22 operation of paragraph (2), by inserting “to a
23 spouse, former spouse, or child of the debtor and”
24 after “(15)”,

25 (5) in subsection (a)(17)—

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

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

6 (C) by inserting “(or a similar non-Federal
7 law)” after “title 28” each place it appears, and
8 (6) in subsection (e) by striking “a insured”
9 and inserting “an insured”.

10 **SEC. 17. EFFECT OF DISCHARGE.**

11 Section 524(a)(3) of title 11, United States Code, is
12 amended by striking “section 523” and all that follows
13 through “or that”, and inserting “section 523,
14 1228(a)(1), or 1328(a)(1) of this title, or that”.

15 **SEC. 18. PROTECTION AGAINST DISCRIMINATORY TREAT-**
16 **MENT.**

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

19 (1) in paragraph (1) by inserting “student” be-
20 fore “grant” the second place it appears, and

21 (2) in paragraph (2) by striking “the program
22 operated under part B, D, or E of” and inserting
23 “any program operated under”.

1 **SEC. 19. PROPERTY OF THE ESTATE.**

2 Section 541(b)(4)(B)(ii) of title 11, United States
3 Code is amended by inserting “365 or” before “542”.

4 **SEC. 20. LIMITATIONS ON AVOIDING POWERS.**

5 Section 546 of title 11, United States Code, is
6 amended by redesignating the second subsection (g) as
7 subsection (h).

8 **SEC. 21. PREFERENCES.**

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

11 (1) in subsection (b) by striking “subsection
12 (c)” and inserting “subsections (c) and (h)”, and

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

14 “(h) If the trustee avoids under subsection (b) a secu-
15 rity interest given between 90 days and 1 year before the
16 date of the filing of the petition, by the debtor to an entity
17 that is not an insider for the benefit of a creditor that
18 is an insider, then such security interest shall be consid-
19 ered to be avoided under this section only with respect
20 to the creditor that is an insider.”.

21 **SEC. 22. POSTPETITION TRANSACTIONS.**

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

24 (1) by inserting “an interest in” after “transfer
25 of”,

1 (2) by striking “such property” and inserting
2 “such real property”, and
3 (3) by striking “the interest” and inserting
4 “such interest”.

5 **SEC. 23. SETOFF.**

6 Section 553(b)(1) of title 11, United States Code, is
7 amended by striking “362(b)(14)” and inserting
8 “362(b)(17)”.

9 **SEC. 24. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

12 **SEC. 25. GENERAL PROVISIONS.**

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

15 **SEC. 26. APPOINTMENT OF ELECTED TRUSTEE.**

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

18 (1) by inserting “(1)” after “(b)”, and

19 (2) by adding at the end the following new
20 paragraph:

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

1 “(i) the trustee elected under paragraph (1)
2 shall be considered to have been selected and ap-
3 pointed for purposes of this section, and

4 “(ii) the service of any trustee appointed under
5 subsection (d) shall terminate.

6 “(B) In the case of any dispute arising out of an elec-
7 tion under subparagraph (A), the court shall resolve the
8 dispute.”.

9 **SEC. 27. ABANDONMENT OF RAILROAD LINE.**

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

13 **SEC. 28. CONTENTS OF PLAN.**

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

17 **SEC. 29. DISCHARGE.**

18 Subsections (a) and (c) of section 1228 of title 11,
19 United States Code, are amended by striking
20 “1222(b)(10)” each place it appears and inserting
21 “1222(b)(9)”.

22 **SEC. 30. CONTENTS OF PLAN.**

23 Section 1322 of title 11, United States Code, is
24 amended—

1 (1) in subsection (b) by striking “(c)” and in-
2 serting “(d)”, and

3 (2) in subsection (e) by striking “default, shall”
4 and inserting “default shall”.

5 **SEC. 31. DISCHARGE.**

6 Paragraphs (1), (2), and (3) of section 1328(a) of
7 title 11, United States Code, are amended to read as fol-
8 lows:

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

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

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

15 **SEC. 32. BANKRUPTCY CASES AND PROCEEDINGS.**

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

18 (1) by striking “made under this subsection”
19 and inserting “made under subsection (c)”, and

20 (2) by striking “This subsection” and inserting
21 “Subsection (c) and this subsection”.

22 **SEC. 33. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
23 **RULE.**

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

1 (1) in the first undesignated paragraph—

2 (A) by inserting “(1) the term” before
3 “‘bankruptcy’, and

4 (B) by striking the period at the end and
5 inserting “; and”, and

6 (2) in the second undesignated paragraph—

7 (A) by inserting “(2) the term” before
8 “ ‘document’, and

9 (B) by striking “this title” and inserting
10 “title 11”.

11 **SEC. 34. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 (a) EFFECTIVE DATE.—Except as provided in sub-
13 section (b), this Act and the amendments made by this
14 Act shall take effect on the date of the enactment of this
15 Act.

16 (b) APPLICATION OF AMENDMENTS.—The amend-
17 ments made by this Act shall apply only with respect to
18 cases commenced under title 11 of the United States Code
19 on or after the date of the enactment of this Act.

Passed the House of Representatives November 12,
1997.

Attest:

ROBIN H. CARLE,
Clerk.