

105TH CONGRESS  
2D SESSION

# H. R. 3146

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

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## 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

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## 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.

- 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:

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

5 “(i) the creditor establishes the re-  
6 quirements of subparagraph (B) with re-  
7 spect to the consumer’s credit application;  
8 or

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

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

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

20 **SEC. 3. DISCOURAGING WAGE SEIZURES WHICH PUSH PEO-**  
21 **PLE INTO BANKRUPTCY.**

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

24 (1) in subsection (e)(3) by adding at the end  
25 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 REPOSSESSION 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.

○