

105TH CONGRESS
2D SESSION

S. 1914

To amend title 11, United States Code, provide for business bankruptcy reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 1998

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 11, United States Code, provide for business bankruptcy reform, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Business Bankruptcy Reform Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 101. Definitions.

Sec. 102. Disposal of patient records.

- Sec. 103. Administrative expense claim for costs of closing a health care business.
- Sec. 104. Appointment of ombudsman to act as patient advocate.
- Sec. 105. Debtor in possession; duty of trustee to transfer patients.
- Sec. 106. Clarification of treatment of pension plan contribution during pendency of a case.
- Sec. 107. Pension plan contribution requirement.
- Sec. 108. Exclusion of payroll deductions.

TITLE II—FINANCIAL INSTRUMENTS

- Sec. 201. Definitions of certain contracts and agreements.
- Sec. 202. Definitions of financial institution and forward contract merchant.
- Sec. 203. Master netting agreement and master netting agreement participant defined.
- Sec. 204. Swap agreements, securities contracts, commodity contracts, forward contracts, repurchase agreements and master netting agreements under an automatic stay.
- Sec. 205. Limitation of avoidance powers under master netting agreement.
- Sec. 206. Fraudulent transfers of master netting agreements.
- Sec. 207. Liquidation, termination, or acceleration of certain instruments.
- Sec. 208. Municipal bankruptcies.
- Sec. 209. Securities contracts, commodity contracts, and forward contracts.
- Sec. 210. Ancillary proceedings.
- Sec. 211. Liquidations.
- Sec. 212. Setoff.
- Sec. 213. Recordkeeping requirements.
- Sec. 214. Damage measure.
- Sec. 215. Asset-backed securitizations.
- Sec. 216. Applicability.

TITLE III—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 301. Amendment to add a chapter 6 to title 11, United States Code.
- Sec. 302. Amendments to other chapters in title 11, United States Code.

TITLE IV—SMALL BUSINESS BANKRUPTCY

- Sec. 401. Small business defined.
- Sec. 402. Flexible rules for disclosure statement and plan.
- Sec. 403. Standard form disclosure statements and plans.
- Sec. 404. Uniform national reporting requirements.
- Sec. 405. Uniform reporting rules and forms.
- Sec. 406. Duties in small business cases.
- Sec. 407. Plan filing and confirmation deadlines.
- Sec. 408. Plan confirmation deadline.
- Sec. 409. Prohibition against extension of time.
- Sec. 410. Duties of the United States trustee and bankruptcy administrator.
- Sec. 411. Scheduling conferences.
- Sec. 412. Serial filer provisions.
- Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee.
- Sec. 414. Single asset real estate defined.
- Sec. 415. Plan confirmation.
- Sec. 416. Payment of interest.

TITLE V—BANKRUPTCY TAX ISSUES

- Sec. 501. Effective notice to government.
- Sec. 502. Notice of request for a determination of taxes.
- Sec. 503. Rate of interest on tax claims.
- Sec. 504. Tolling of priority of tax claim time periods.
- Sec. 505. Assessment defined.
- Sec. 506. Chapter 11 discharge of fraudulent taxes.
- Sec. 507. The stay of proceedings in tax court.
- Sec. 508. Periodic payment of taxes in chapter 11 cases.
- Sec. 509. The avoidance of statutory tax liens prohibited.
- Sec. 510. Course of business payment of taxes.
- Sec. 511. Tardily filed priority tax claims.
- Sec. 512. Income tax returns prepared by tax authorities.
- Sec. 513. The discharge of the estate's liability for unpaid taxes.
- Sec. 514. Standards for tax disclosure.
- Sec. 515. Setoff of tax refunds.

TITLE VI—MISCELLANEOUS

- Sec. 601. Executory contracts and unexpired leases.
- Sec. 602. Allowance of claims or interests.
- Sec. 603. Expedited appeals of bankruptcy cases to courts of appeals.
- Sec. 604. Creditors and equity security holders committees.
- Sec. 605. Repeal of sunset provision.
- Sec. 606. Cases ancillary to foreign proceedings.

1 **TITLE I—HEALTH CARE AND** 2 **EMPLOYEE BENEFITS**

3 **SEC. 101. DEFINITIONS.**

4 (a) **HEALTH CARE BUSINESS DEFINED.**—Section
5 101 of title 11, United States Code, is amended by insert-
6 ing after paragraph (27) the following:

7 “(27A) ‘health care business’—

8 “(A) means any public or private entity
9 (without regard to whether that entity is orga-
10 nized for profit or not for profit) that is pri-
11 marily engaged in offering to the general public
12 facilities and services for—

13 “(i) the diagnosis or treatment of in-
14 jury, deformity, or disease;

- 1 “(ii) surgical, drug treatment, psy-
2 chiatric or obstetric care; and
3 “(B) includes—
4 “(i) any—
5 “(I) general or specialized hos-
6 pital;
7 “(II) ancillary ambulatory, emer-
8 gency, or surgical treatment facility;
9 “(III) hospice;
10 “(IV) health maintenance organi-
11 zation;
12 “(V) home health agency; and
13 “(VI) other health care institu-
14 tion that is similar to an entity re-
15 ferred to in subelause (I), (II), (III),
16 (IV), or (V); and
17 “(ii) any long-term care facility, in-
18 cluding any—
19 “(I) skilled nursing facility;
20 “(II) intermediate care facility;
21 “(III) assisted living facility;
22 “(IV) home for the aged;
23 “(V) domiciliary care facility; and
24 “(VI) health care institution that
25 is related to a facility referred to in

1 subclause (I), (II), (III), (IV), or (V),
2 if that institution is primarily engaged
3 in offering room, board, laundry, or
4 personal assistance with activities of
5 daily living and incidentals to activi-
6 ties of daily living;”.

7 (b) HEALTH MAINTENANCE ORGANIZATION DE-
8 FINED.—Section 101 of title 11, United States Code, as
9 amended by subsection (a), is amended by inserting after
10 paragraph (27A) the following:

11 “(27B) ‘health maintenance organization’
12 means any person that undertakes to provide or ar-
13 range for basic health care services through an orga-
14 nized system—

15 “(A) that—

16 “(i) combines the delivery and financ-
17 ing of health care to enrollees; and

18 “(ii)(I) provides—

19 “(aa) physician services directly
20 through physicians or 1 or more
21 groups of physicians; and

22 “(bb) basic health care services
23 directly or under a contractual ar-
24 rangement; and

1 “(II) if reasonable and appropriate,
2 provides physician services and basic
3 health care services through arrangements
4 other than the arrangements referred to in
5 clause (i); and

6 “(B) includes any organization described
7 in subparagraph (A) that provides, or arranges
8 for, health care services on a prepayment or
9 other financial basis;”.

10 (c) PATIENT.—Section 101 of title 11, United States
11 Code, as amended by subsection (b), is amended by insert-
12 ing after paragraph (40) the following:

13 “(40A) ‘patient’ means any person who obtains
14 or receives services from a health care business;”.

15 (d) PATIENT RECORDS.—Section 101 of title 11,
16 United States Code, as amended by subsection (c), is
17 amended by inserting after paragraph (40A) the following:

18 “(40B) ‘patient records’ means any written doc-
19 ument relating to a patient or record recorded in a
20 magnetic, optical, or other form of electronic me-
21 dium;”.

22 **SEC. 102. DISPOSAL OF PATIENT RECORDS.**

23 (a) IN GENERAL.—Subchapter III of chapter 3 of
24 title 11, United States Code, is amended by adding at the
25 end the following:

1 **“§ 351. Disposal of patient records**

2 “If a health care business commences a case under
3 chapter 7, 9, or 11, and the trustee does not have a suffi-
4 cient amount of funds to pay for the storage of patient
5 records in the manner required under applicable Federal
6 or State law, the following requirements shall apply:

7 “(1) The trustee shall mail, by certified mail, a
8 written request to each appropriate Federal or State
9 agency to request permission from that agency to
10 deposit the patient records with that agency.

11 “(2) If no appropriate Federal or State agency
12 agrees to permit the deposit of patient records re-
13 ferred to in paragraph (1) by the date that is 60
14 days after the trustee mails a written request under
15 that paragraph, the trustee shall—

16 “(A) publish notice, in 1 or more appro-
17 priate newspapers, that if those patient records
18 are not claimed by the patient or an insurance
19 provider (if applicable law permits the insur-
20 ance provider to make that claim) by the date
21 that is 60 days after the date of that notifica-
22 tion, the trustee will destroy the patient
23 records; and

24 “(B) during the 60-day period described in
25 subparagraph (A), the trustee shall attempt to
26 notify directly each patient that is the subject

1 of the patient records concerning the patient
2 records by mailing to the last known address of
3 that patient an appropriate notice regarding the
4 claiming or disposing of patient records.

5 “(3) If, after providing the notification under
6 paragraph (2), patient records are not claimed dur-
7 ing the 60-day period described in paragraph (2)(A)
8 or in any case in which a notice is mailed under
9 paragraph (2)(B), during the 90-day period begin-
10 ning on the date on which the notice is mailed, by
11 a patient or insurance provider in accordance with
12 that paragraph, the trustee shall destroy those
13 records by—

14 “(A) if the records are written, shredding
15 or burning the records; or

16 “(B) if the records are magnetic, optical,
17 or other electronic records, by otherwise de-
18 stroying those records so that those records
19 cannot be retrieved.”.

20 (b) CLERICAL AMENDMENT.—The chapter analysis
21 for chapter 3 of title 11, United States Code, is amended
22 by inserting after the item relating to section 350 the fol-
23 lowing:

“351. Disposal of patient records.”.

1 **SEC. 103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF**
 2 **CLOSING A HEALTH CARE BUSINESS.**

3 Section 503(b) of title 11, United States Code, is
 4 amended—

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

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

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

10 “(7) the actual, necessary costs and expenses of
 11 closing a health care business incurred by a trustee,
 12 including any cost or expense incurred—

13 “(A) in disposing of patient records in ac-
 14 cordance with section 351; or

15 “(B) in connection with transferring pa-
 16 tients from the health care business that is in
 17 the process of being closed to another health
 18 care business.”.

19 **SEC. 104. APPOINTMENT OF OMBUDSMAN TO ACT AS**
 20 **PATIENT ADVOCATE.**

21 (a) IN GENERAL.—

22 (1) APPOINTMENT OF OMBUDSMAN.—Sub-
 23 chapter II of chapter 3 of title 11, United States
 24 Code, is amended by inserting after section 331 the
 25 following:

1 **“§ 332. Appointment of ombudsman**

2 “(a) Not later than 30 days after a case is com-
3 menced by a health care business under chapter 7, 9, or
4 11, the court shall appoint an ombudsman to represent
5 the interests of the patients of the health care business.

6 “(b) An ombudsman appointed under subsection (a)
7 shall—

8 “(1) monitor the quality of patient care, to the
9 extent necessary under the circumstances, including
10 reviewing records and interviewing patients and phy-
11 sicians;

12 “(2) report to the court, at a hearing or in writ-
13 ing, not later than 60 days after the date of appoint-
14 ment, and not less frequently than every 60 days
15 thereafter, regarding the quality of patient care at
16 the health care business involved; and

17 “(3) if the ombudsman determines that the
18 quality of patient care is declining significantly or is
19 otherwise being materially compromised, notify the
20 court by motion or written report, with notice to ap-
21 propriate parties in interest, immediately upon mak-
22 ing that determination.

23 “(c) An ombudsman shall maintain any information
24 obtained by the ombudsman under this section that relates
25 to patients (including information relating to patient
26 records) as confidential information.”.

1 (2) CLERICAL AMENDMENT.—The chapter anal-
 2 ysis for chapter 3 of title 11, United States Code,
 3 is amended by inserting after the item relating to
 4 section 331 the following:

“332. Appointment of ombudsman.”.

5 (b) COMPENSATION OF OMBUDSMAN.—Section
 6 330(a)(1) of title 11, United States Code, is amended—

7 (1) in the matter proceeding subparagraph (A),
 8 by inserting “an ombudsman appointed under sec-
 9 tion 331, or” before “a professional person”; and

10 (2) in subparagraph (A), by inserting “ombuds-
 11 man,” before “professional person”.

12 **SEC. 105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**
 13 **TRANSFER PATIENTS.**

14 (a) IN GENERAL.—Section 704 of title 11, United
 15 States Code, is amended—

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

18 (2) in paragraph (9), by striking the period and
 19 inserting “; and”; and

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

21 “(10) use all reasonable and best efforts to
 22 transfer patients from a health care business that is
 23 in the process of being closed to an appropriate
 24 health care business that—

1 “(A) is in the vicinity of the health care
2 business that is closing;

3 “(B) provides the patient with services
4 that are substantially similar to those provided
5 by the health care business that is in the pro-
6 cess of being closed; and

7 “(C) maintains a reasonable quality of
8 care.”.

9 (b) CONFORMING AMENDMENT.—Section 1106(a)(1)
10 of title 11, United States Code, is amended by striking
11 “and 704(9)” and inserting “704(9), and 704(10)”.

12 **SEC. 106. CLARIFICATION OF TREATMENT OF PENSION**
13 **PLAN CONTRIBUTION DURING PENDENCY OF**
14 **A CASE.**

15 (a) TREATMENT OF PENSION BENEFITS AS ADMIN-
16 ISTRATIVE EXPENSES.—Section 503(b) of title 11, United
17 States Code, as amended by section 103, is amended—

18 (1) in paragraph (6), by striking “and” at the
19 end;

20 (2) in paragraph (7), by striking the period at
21 the end and inserting “; and”; and

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

23 “(8) minimum funding contributions for which
24 the debtor is liable that—

1 “(A) are made to an employee pension
2 benefit plan that is subject to the minimum
3 funding requirements under—

4 “(i) section 412 of the Internal Reve-
5 nue Code of 1986; or

6 “(ii) section 302 of the Employee Re-
7 tirement Income Security Act of 1974 (29
8 U.S.C. 1082); and

9 “(B) become due on or after the date of
10 filing of the petition commencing the case.”.

11 (b) **TIMELY PAYMENT REQUIRED IN CERTAIN CIR-**
12 **CUMSTANCES.**—Section 503(b) of title 11, United States
13 Code is amended by adding at the end the following flush
14 sentence:

15 “If, as of a due date referred to in paragraph (8)(B), a
16 pension plan is required to make a contribution under sec-
17 tion 412(m)(5) of the Internal Revenue Code of 1986 or
18 section 302(e)(6) of the Employee Retirement Income Se-
19 curity Act of 1974 (29 U.S.C. 1082(e)(6)), the trustee
20 shall make that contribution under that section by the ap-
21 plicable date specified in that section.”.

22 (c) **APPLICABILITY.**—The amendment made by sub-
23 section (b) shall apply to contributions made on or after
24 the date of enactment of this Act.

1 **SEC. 107. PENSION PLAN CONTRIBUTION REQUIREMENT.**

2 (a) **FUNDING REQUIRED IF PLAN IS NOT TERMI-**
3 **NATED.**—Subchapter IV of chapter 3 of title 11, United
4 States Code, is amended by adding at the end the follow-
5 ing:

6 **“§ 367. Continuance of certain pension plans**

7 “Notwithstanding sections 502(b)(2) and 503, in any
8 case under this title in which the debtor is the sponsor
9 of a pension plan covered under section 4021 of the Em-
10 ployee Retirement Income Security Act of 1974 (29
11 U.S.C. 1321), if the trustee does not terminate that pen-
12 sion plan in accordance with section 4041 of such Act (29
13 U.S.C. 1341) during the 180-day period beginning on the
14 date of issuance of an order for relief, the trustee shall—

15 “(1) pay any amount of contributions, including
16 any interest due on that amount, that—

17 “(A) is outstanding at the end of that 180-
18 day period; and

19 “(B) is required to be paid under that Act;
20 and

21 “(2) unless the pension plan is terminated in
22 accordance with the Employee Retirement Income
23 Security Act of 1974 (29 U.S.C. 1001 et seq.) after
24 the end of that 180-day period—

1 “(A) pay any contributions that are re-
2 quired to be paid after that date as those con-
3 tributions become due; or

4 “(B) provide to the court adequate assur-
5 ances that the contributions referred to in sub-
6 paragraph (A) will be paid.”.

7 (b) **APPLICABILITY.**—This section applies to cases
8 that are pending or commenced on or after the date of
9 enactment of this Act.

10 (c) **CLERICAL AMENDMENT.**—The chapter analysis
11 for chapter 3 of title 11, United States Code, is amended
12 by inserting after the item relating to section 366 the fol-
13 lowing:

“367. Continuance of certain pension plans.”.

14 **SEC. 108. EXCLUSION OF PAYROLL DEDUCTIONS.**

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

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

19 (2) in paragraph (5), by striking the period at
20 the end and inserting “; or”; and

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

22 “(6) any funds deducted from paid wages, if
23 those deductions—

1 “(A) were made during the 180-day period
2 immediately preceding the commencement of a
3 case under this title;

4 “(B) are held by an employer who is the
5 debtor in the case referred to in subparagraph
6 (A); and

7 “(C) were made for funds that are owed to
8 any entity other than to the United States.”.

9 **TITLE II—FINANCIAL**
10 **INSTRUMENTS**

11 **SEC. 201. DEFINITIONS OF CERTAIN CONTRACTS AND**
12 **AGREEMENTS.**

13 (a) FORWARD CONTRACTS; REPURCHASE AGREE-
14 MENTS; SWAP AGREEMENTS.—

15 (1) AMENDMENTS TO TITLE 11.—Section 101
16 of title 11, United States Code, is amended—

17 (A) in paragraph (25)—

18 (i) by striking “means a contract”
19 and inserting the following: “means—
20 “(A) a contract”; and

21 (ii) by striking “, or any combination
22 thereof or option thereon;” and inserting
23 the following: “, or any other similar
24 agreement;

1 “(B) any combination of agreements or
2 transactions referred to in subparagraph (A);

3 “(C) any option to enter into any agree-
4 ment or transaction referred to in subparagraph
5 (A);

6 “(D) a master agreement that provides for
7 an agreement or transaction referred to in sub-
8 paragraph (A), together with supplements
9 thereto, without regard to whether the master
10 agreement provides for an agreement or trans-
11 action that is not a forward contract under this
12 paragraph, except that the master agreement
13 shall be considered to be a forward contract
14 under this paragraph only with respect to each
15 agreement or transaction under the master
16 agreement that is referred to subparagraph (A);
17 and

18 “(E) a security agreement or arrangement
19 or other credit enhancement related to any con-
20 tract referred to in subparagraph (A);”;

21 (B) by striking paragraph (47) and insert-
22 ing the following:

23 “(47) ‘repurchase agreement’—

24 “(A) means—

1 “(i) an agreement, including related
2 terms, that provides for the transfer of 1
3 or more certificates of deposit, eligible
4 bankers’ acceptances, or securities, against
5 the transfer of funds by the transferee of
6 the certificates of deposit, acceptances, or
7 securities, with a simultaneous agreement
8 by such transferee to transfer to the trans-
9 feror thereof certificates, acceptances, or
10 securities as described in this subpara-
11 graph, at a date certain or on demand,
12 against the transfer of funds, and any
13 other similar agreement;

14 “(ii) a master agreement that pro-
15 vides for an agreement or transaction re-
16 ferred to in clause (i), together with all
17 supplements, without regard to whether
18 the master agreement provides for an
19 agreement or transaction that is not a re-
20 purchase agreement under this subpara-
21 graph, except that the master agreement
22 shall be considered to be a repurchase
23 agreement under this subparagraph only
24 with respect to each agreement or trans-

1 action under the master agreement that is
2 referred to in clause (i);

3 “(iii) any combination of agreements
4 or transactions referred to in clause (i);

5 “(iv) any option to enter into any
6 agreement or transaction referred to in
7 clause (i); or

8 “(v) a security agreement or arrange-
9 ment or other credit enhancement related
10 to any agreement or transaction referred
11 to in clause (i); and

12 “(B) includes a reverse repurchase agree-
13 ment.”; and

14 (C) by striking paragraph (53B) and in-
15 serting the following:

16 “(53B) ‘swap agreement’ means—

17 “(A) any agreement, including the terms
18 and conditions incorporated by reference in any
19 such agreement, that is—

20 “(i) an interest rate swap, option, fu-
21 ture, or forward agreement, including a
22 rate floor, rate cap, rate collar, cross-cur-
23 rency rate swap, or basis swap;

1 “(ii) a spot, same day-tomorrow, to-
2 morrow-next, forward or other foreign ex-
3 change agreement;

4 “(iii) a currency swap, option, future,
5 or forward agreement;

6 “(iv) an equity index or equity swap,
7 option, future, or forward agreement;

8 “(v) a debt index or debt swap, op-
9 tion, future, or forward agreement;

10 “(vi) a credit spread or credit swap,
11 option, future, or forward agreement;

12 “(vii) a commodity index or commod-
13 ity swap, option, future, or forward agree-
14 ment;

15 “(viii) similar to any other agreement
16 referred to in this subparagraph that is
17 presently or in the future becomes regu-
18 larly entered into in the swap agreement
19 market (including terms and conditions in-
20 corporated by reference therein) and that
21 is a forward, swap, future, or option on 1
22 or more rates, currencies, commodities, eq-
23 uity securities or other equity instruments,
24 debt securities or other debt instruments,

1 or economic indices or measures of eco-
2 nomic risk or value;

3 “(ix) a master agreement that pro-
4 vides for an agreement or transaction re-
5 ferred to in clause (i), (ii), (iii), (iv), (v),
6 (vi), (vii), or (viii), together with all sup-
7 plements thereto, without regard to wheth-
8 er the master agreement contains an
9 agreement or transaction that is described
10 in any of those clauses, except that the
11 master agreement shall be considered to be
12 a swap agreement only with respect to
13 each agreement or transaction under the
14 master agreement that is referred to in
15 clause (i), (ii), (iii), (iv), (vi), (vii), or (viii);
16 or

17 “(x) any combination of agreements
18 referred to in this subparagraph;

19 “(B) any option to enter into any agree-
20 ment referred to in subparagraph (A); and

21 “(C) any security agreement or arrange-
22 ment or other credit enhancement related to
23 any agreements or transactions referred to in
24 subparagraph (A);”.

1 (2) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (53B) of section 101 of title 11, United
3 States Code, as amended by this section, shall be
4 construed or applied to challenge or affect the char-
5 acterization, definition, or treatment of any swap
6 agreement or any instrument defined as a swap
7 agreement in that paragraph under any other provi-
8 sion of law, except as expressly provided in that
9 other provision of law, including—

10 (A) the Securities Act of 1933 (15 U.S.C.

11 77a et seq.);

12 (B) the Securities Exchange Act of 1934

13 (15 U.S.C. 78a et seq.);

14 (C) the Public Utility Holding Company

15 Act of 1935 (15 U.S.C. 79a et seq.);

16 (D) the Trust Indenture Act of 1939 (15

17 U.S.C. 77aaa et seq.);

18 (E) the Investment Company Act of 1940

19 (15 U.S.C. 80a–1 et seq.);

20 (F) the Investment Advisers Act of 1940

21 (15 U.S.C. 80b et seq.);

22 (G) the Securities Investor Protection Act

23 of 1970 (15 U.S.C. 78aaa et seq.);

24 (H) the Commodity Exchange Act (7

25 U.S.C. 1 et seq.); and

1 (I) any rule or regulation promulgated by
2 the Securities and Exchange Commission or the
3 Commodities Futures Trading Commission.

4 (b) SECURITIES CONTRACTS.—Section 741(7) of title
5 11, United States Code, is amended to read as follows:

6 “(7) ‘securities contract’ means—

7 “(A) a contract for the purchase, sale, or
8 loan of a security, including an option for the
9 purchase or sale of a security, certificate of de-
10 posit, or group or index of securities (including
11 any interest therein or based on the value
12 thereof);

13 “(B) any option entered into on a national
14 securities exchange relating to foreign cur-
15 rencies;

16 “(C) the guarantee of any settlement of
17 cash or securities by or to a securities clearing
18 agency;

19 “(D) any margin loan;

20 “(E) any other agreement or transaction
21 that is similar to any instrument referred to in
22 this paragraph;

23 “(F) a master agreement that provides for
24 an agreement or transaction referred to in sub-
25 paragraph (A), (B), (C), (D), or (E), together

1 with supplements thereto, without regard to
2 whether the master agreement provides for an
3 agreement or transaction that is not a securi-
4 ties contract under this paragraph, except that
5 the master agreement shall be considered to be
6 a securities contract under this paragraph only
7 with respect to each agreement or transaction
8 under the master agreement that is referred to
9 in subparagraph (A), (B), (C), (D), or (E);

10 “(G) any combination of the agreements or
11 transactions referred to in this paragraph; or

12 “(H) any option to enter into any agree-
13 ment or transaction referred to in this para-
14 graph;”.

15 (c) COMMODITY CONTRACTS.—Section 761(4) of title
16 11, United States Code, is amended—

17 (1) in subparagraph (D), by striking “or” at
18 the end; and

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

20 “(F) any other agreement or transaction
21 that is similar to any instrument referred to in
22 this paragraph;

23 “(G) a master agreement that provides for
24 an agreement or transaction referred to in sub-
25 paragraph (A), (B), (C), (D), (E), or (F), to-

1 gether with supplements thereto, without regard
2 to whether the master agreement provides for
3 an agreement or transaction that is not a com-
4 modity contract under this paragraph, except
5 that the master agreement shall be considered
6 to be a commodity contract under this para-
7 graph only with respect to each agreement or
8 transaction under the master agreement that is
9 referred to in subparagraph (A), (B), (C), (D),
10 (E), or (F);

11 “(H) any combination of the agreements
12 or transactions referred to in this paragraph;

13 “(I) any option to enter into any agree-
14 ment or transaction referred to in this para-
15 graph; or

16 “(J) a security agreement or arrangement
17 or other credit enhancement related to 1 or
18 more instruments referred to in this para-
19 graph;”.

20 **SEC. 202. DEFINITIONS OF FINANCIAL INSTITUTION AND**
21 **FORWARD CONTRACT MERCHANT.**

22 (a) **FINANCIAL INSTITUTION DEFINED.**—Section
23 101(22) of title 11, United States Code, is amended to
24 read as follows:

25 “(22) ‘financial institution’—

1 “(A) means—

2 “(i) a depository institution, as that
3 term is defined in section 3 of the Federal
4 Deposit Insurance Act; and

5 “(ii) a credit union, as defined in sec-
6 tion 101 of the Federal Credit Union Act;
7 and

8 “(B) includes—

9 “(i) a Federal Reserve bank;

10 “(ii) a trust company;

11 “(iii) a savings bank and a savings as-
12 sociation, as those terms are defined in
13 section 3 of the Federal Deposit Insurance
14 Act;

15 “(iv) a receiver or conservator for any
16 institution referred to in this paragraph;
17 and

18 “(v) a customer of any institution re-
19 ferred to in this paragraph in any case in
20 which such institution acts as agent or
21 custodian for that customer in connection
22 with a securities contract, as defined in
23 section 741(7);”.

1 (b) FINANCIAL PARTICIPANT DEFINED.—Section
2 101 of title 11, United States Code, is amended by insert-
3 ing after paragraph (22) the following new paragraph:

4 “(22A) ‘financial participant’ means—

5 “(A) any commodity broker, forward con-
6 tract merchant, stockbroker, financial institu-
7 tion, or securities clearing agency; or

8 “(B) any entity that, at any time before
9 the filing of the petition, has an outstanding
10 commodity contract, forward contract, or secu-
11 rities contract with the debtor.”.

12 (c) FORWARD CONTRACT MERCHANT DEFINED.—
13 Section 101(26) of title 11, United States Code, is amend-
14 ed to read as follows:

15 “(26) ‘forward contract merchant’ means a
16 Federal Reserve bank, or a person whose business
17 consists in whole or in part of entering into forward
18 contracts, as or with merchants, in a commodity (as
19 that term is defined in section 761(8)), or any simi-
20 lar good, article, service, right, or interest that is or
21 becomes the subject of dealing in the forward con-
22 tract trade;”.

1 **SEC. 203. MASTER NETTING AGREEMENT AND MASTER**
2 **NETTING AGREEMENT PARTICIPANT DE-**
3 **FINED.**

4 Section 101 of title 11, United States Code, is
5 amended by inserting after paragraph (38) the following
6 new paragraphs:

7 “(38A) ‘master netting agreement’ means—

8 “(A) an agreement providing for the exer-
9 cise of rights, including rights of netting, setoff,
10 liquidation, termination, acceleration, or close-
11 out, under or in connection with 1 or more con-
12 tracts described in section 561(a)(2); and

13 “(B) any security agreement or arrange-
14 ment or other credit enhancement related to
15 any of the agreements referred to in subpara-
16 graph (A);

17 “(38B) ‘master netting agreement participant’
18 means an entity that, at any time before the filing,
19 of a petition, is a party to an outstanding master
20 netting agreement with the debtor;”.

1 **SEC. 204. SWAP AGREEMENTS, SECURITIES CONTRACTS,**
2 **COMMODITY CONTRACTS, FORWARD CON-**
3 **TRACTS, REPURCHASE AGREEMENTS AND**
4 **MASTER NETTING AGREEMENTS UNDER AN**
5 **AUTOMATIC STAY.**

6 (a) IN GENERAL.—Section 362(b) of title 11, United
7 States Code, is amended—

8 (1) in paragraph (6), by inserting “, pledged to,
9 and under the control of such entity,” after “held
10 by”;

11 (2) in paragraph (7), by inserting “, pledged to,
12 and under the control of such repo participant,”
13 after “held by”;

14 (3) by striking paragraph (17) and inserting
15 the following:

16 “(17) under subsection (a), of the setoff by a
17 swap participant of any mutual debt and claim
18 under or in connection with 1 or more swap agree-
19 ments that constitutes the setoff of a claim against
20 the debtor for any payment or other transfer of
21 property due from the debtor under or in connection
22 with such swap agreements against—

23 “(A) any payment due to the debtor from
24 the swap participant under or in connection
25 with such swap agreements; or

26 “(B) cash, securities, or other property—

1 “(i) held by, pledged to, and under
2 the control of that swap participant; and

3 “(ii) due from that swap participant
4 to margin, guarantee, secure, or settle such
5 swap agreement;”;

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

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

9 “(19) under subsection (a), of the setoff by a
10 master netting agreement participant of a mutual
11 debt and claim under or in connection with 1 or
12 more master netting agreements that constitutes the
13 setoff of a claim against the debtor for any payment
14 or other transfer of property due from the debtor
15 under or in connection with such agreements
16 against—

17 “(A) any payment due to the debtor from
18 such participant under or in connection with
19 such agreements or any contract or agreement
20 subject to such agreements; or

21 “(B) cash, securities, or other property
22 held by, pledged to and under the control of, or
23 due from such participant to margin, guaran-
24 tee, secure, or settle such agreements or any

1 contract or agreement subject to such agree-
2 ments.”.

3 (b) LIMITATION.—Section 362 of title 11, United
4 States Code, is amended by adding at the end the follow-
5 ing:

6 “(i) The exercise of rights not subject to the stay
7 arising under subsection (a) pursuant to paragraph (6),
8 (7), (17), or (19) of subsection (b) shall not be stayed,
9 avoided, or otherwise limited by operation of any provision
10 of this title or by any order of a court or administrative
11 agency in any proceeding under this title.”.

12 **SEC. 205. LIMITATION OF AVOIDANCE POWERS UNDER**
13 **MASTER NETTING AGREEMENT.**

14 Section 546 of title 11, United States Code, is
15 amended—

16 (1) in the first subsection designated as sub-
17 section (g) (as added by section 103 of the Act enti-
18 tled “An Act to amend title 11 of the United States
19 Code regarding swap agreements and forward con-
20 tracts”, approved June 25, 1990 (Public Law 101-
21 311; 104 Stat. 268))—

22 (A) by striking “under a swap agree-
23 ment,”; and

1 (B) by striking “, in connection with a
2 swap agreement” and inserting “under or in
3 connection with any swap agreement”;

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

5 “(h) Notwithstanding sections 544, 545, 547,
6 548(a)(2), and 548(b), a trustee may not avoid a transfer
7 made by or to a master netting agreement participant
8 under or in connection with any master netting agreement
9 that is made before the commencement of the case, except
10 under section 548(a)(1).”; and

11 (3) by redesignating the second subsection des-
12 ignated as subsection (g) (as added by section
13 222(a) of the Bankruptcy Reform Act of 1994 (108
14 Stat. 4129)) as subsection (i) and inserting that
15 subsection after subsection (h), as added by this sec-
16 tion.

17 **SEC. 206. FRAUDULENT TRANSFERS OF MASTER NETTING**
18 **AGREEMENTS.**

19 Section 548(d)(2) of title 11, United States Code, is
20 amended—

21 (1) in subparagraph (C), by striking “and” at
22 the end;

23 (2) in subparagraph (D), by striking the period
24 at the end and inserting “; and”; and

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

1 “(E) a master netting agreement partici-
2 pant that receives a transfer in connection with
3 a master netting agreement takes for value to
4 the extent of that transfer.”.

5 **SEC. 207. LIQUIDATION, TERMINATION, OR ACCELERATION**
6 **OF CERTAIN INSTRUMENTS.**

7 (a) **SECURITIES CONTRACTS.**—Section 555 of title
8 11, United States Code, is amended—

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

11 **“§ 555. Contractual right to liquidate, terminate, or**
12 **accelerate a securities contract”;**

13 and

14 (2) in the first sentence, by inserting “, termi-
15 nation, or acceleration” after “liquidation”.

16 (b) **COMMODITIES OR FORWARD CONTRACTS.**—Sec-
17 tion 556 of title 11, United States Code, is amended—

18 (1) by striking the section heading and insert
19 the following:

20 **“§ 556. Contractual right to liquidate, terminate, or**
21 **accelerate a commodities contract or for-**
22 **ward contract”;**

23 and

24 (2) in the first sentence, by inserting “, termi-
25 nation, or acceleration” after “liquidation”.

1 (c) REPURCHASE AGREEMENTS.—Section 559 of
2 title 11, United States Code, is amended—

3 (1) by striking the section heading and insert-
4 ing the following:

5 **“§ 559. Contractual right to liquidate, terminate, or**
6 **accelerate a repurchase agreement”;**

7 and

8 (2) in the first sentence, by inserting “, termi-
9 nation, or acceleration” after “liquidation”.

10 (d) SWAP AGREEMENTS.—Section 560 of title 11,
11 United States Code, is amended—

12 (1) by striking the section heading and insert-
13 ing the following:

14 **“§ 560. Contractual right to liquidate, terminate, or**
15 **accelerate a swap agreement”;**

16 and

17 (2) in the first sentence—

18 (A) by striking “termination of a swap
19 agreement” and inserting “liquidation, termi-
20 nation, or acceleration of 1 or more swap agree-
21 ments”; and

22 (B) by striking “in connection with any
23 swap agreement” and inserting “in connection
24 with 1 or more swap agreements”.

1 (e) MASTER NETTING AGREEMENTS.—Subchapter
 2 III of chapter 5 of title 11, United States Code, is amend-
 3 ed by adding at the end the following:

4 **“§ 561. Contractual right to terminate, liquidate, ac-**
 5 **celerate, or offset under a master netting**
 6 **agreement and across contracts**

7 “(a) PROHIBITION ON STAY, AVOIDANCE, OR OTHER
 8 LIMITATION.—

9 “(1) IN GENERAL.—Subject to subsection (b),
 10 the exercise of any contractual right, because of a
 11 condition of the kind specified in section 365(e)(1),
 12 to cause the termination, liquidation, or acceleration
 13 of, or to offset or net termination values, payment
 14 amounts, or other transfer obligations arising under
 15 or in connection with 1 or more contracts or agree-
 16 ments described in paragraph (2) shall not be
 17 stayed, avoided, or otherwise limited—

18 “(A) by operation of any provision of this
 19 title; or

20 “(B) by any order of a court or adminis-
 21 trative agency in any proceeding under this
 22 title.

23 “(2) DEFINITION.—A contract or agreement
 24 described in this paragraph is—

1 “(A) a securities contract, as defined in
2 section 741(7);

3 “(B) a commodity contract, as defined in
4 section 761(4);

5 “(C) a forward contract;

6 “(D) a repurchase agreement;

7 “(E) a swap agreement; or

8 “(F) a master netting agreement.

9 “(b) LIMITATIONS.—A party may exercise a contrac-
10 tual right described in subsection (a) to terminate, liq-
11 uidate, or accelerate only to the extent that the party could
12 exercise such a right under section 555, 556, 559, or 560
13 for each individual contract covered by the master netting
14 agreement in issue, notwithstanding whether or not each
15 individual contract contains such contractual rights.

16 “(c) DEFINITION.—In this section, the term ‘contrac-
17 tual right’ includes—

18 “(1) a right set forth in a rule or bylaw of a
19 national securities exchange, a national securities as-
20 sociation or a securities clearing agency;

21 “(2) a right set forth in a bylaw of a clearing
22 organization or contract market or in a resolution of
23 the governing board thereof; and

24 “(3) a right, without regard to whether that
25 right is evidenced in writing, arising—

1 “(A) under common law;
 2 “(B) under law merchant; or
 3 “(C) by reason of normal business prac-
 4 tice.”.

5 (f) CLERICAL AMENDMENTS.—The chapter analysis
 6 for chapter 5 of title 11, United States Code, is amend-
 7 ed—

8 (1) by striking the items relating to sections
 9 555 and 556 and inserting the following:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
 tract.

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

10 and

11 (2) by striking the items relating to sections
 12 559 and 560 and inserting the following:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
 agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agreement.

“561. Contractual right to terminate, liquidate, accelerate, or offset under a
 master netting agreement and across contracts.”.

13 **SEC. 208. MUNICIPAL BANKRUPTCIES.**

14 Section 901(a) of title 11, United States Code, is
 15 amended by striking “557” and inserting “555, 556, 557,
 16 559, 560, 561, 562”.

17 **SEC. 209. SECURITIES CONTRACTS, COMMODITY CON-**
 18 **TRACTS, AND FORWARD CONTRACTS.**

19 Title 11, United States Code, is amended—

20 (1) in section 362(b)(6), by striking “commod-
 21 ity broker, forward contract merchant, stockbroker,

1 financial institutions, or securities clearing agency”
2 each place it appears and inserting “financial partic-
3 ipant”;

4 (2) in section 546(e), by striking “commodity
5 broker, forward contract merchant, stockbroker, fi-
6 nancial institution, or securities clearing agency”
7 and inserting “financial participant”;

8 (3) in section 548(d)(2)(B), by striking “com-
9 modity broker, forward contract merchant, stock-
10 broker, financial institution, or securities clearing
11 agency” and inserting “financial participant”;

12 (4) in section 555—

13 (A) by striking “stockbroker, financial in-
14 stitution, or securities clearing agency” and in-
15 serting “financial participant”; and

16 (B) by inserting before the period “, a
17 right set forth in a bylaw of a clearing organi-
18 zation or contract market or in a resolution of
19 the governing board thereof, and a right,
20 whether or not in writing, arising under com-
21 mon law, under law merchant, or by reason of
22 normal business practice”; and

23 (5) in section 556, by striking “commodity
24 broker or forward contract merchant” and inserting
25 “financial participant”.

1 **SEC. 210. ANCILLARY PROCEEDINGS.**

2 Section 304 of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(d) Any provision of this title relating to securities
5 contracts, commodity contracts, forward contracts, repur-
6 chase agreements, swap agreements, or master netting
7 agreements shall apply in a case ancillary to a foreign pro-
8 ceeding under this section so that enforcement of contrac-
9 tual provisions of such contracts and agreements in ac-
10 cordance with their terms will not be stayed or otherwise
11 limited by operation of any provision of this title or by
12 order of a court in any proceeding under this title, and
13 to limit avoidance powers to the same extent as a proceed-
14 ing under chapter 7 or 11 of this title (such enforcement
15 not to be limited based on the presence or absence of as-
16 sets of the debtor in the United States).”.

17 **SEC. 211. LIQUIDATIONS.**

18 (a) **COMMODITY BROKERS.**—Subchapter IV of chap-
19 ter 7 of title 11, United States Code, is amended by add-
20 ing at the end the following:

1 **“§ 767. Commodity broker liquidation and forward**
2 **contract merchants, commodity brokers,**
3 **stockbrokers, financial institutions, secu-**
4 **rities clearing agencies, swap partici-**
5 **pants, financial participants, repo par-**
6 **ticipants, and master netting agreement**
7 **participants**

8 “Notwithstanding any other provision of this title,
9 the exercise of rights by a forward contract merchant,
10 commodity broker, stockbroker, financial institution, secu-
11 rities clearing agency, swap participant, financial partici-
12 pant, repo participant, or master netting agreement par-
13 ticipant under this title shall not affect—

14 “(1) the priority of any unsecured claim that
15 such person may have after the exercise of those
16 rights; or

17 “(2) the applicability of this subchapter with re-
18 spect to customer property or distributions after the
19 exercise of such rights.”.

20 (b) STOCKBROKERS.—Subchapter III of chapter 7 of
21 title 11, United States Code, is amended by adding at the
22 end the following:

1 **“§ 753. Stockbroker liquidation and forward contract**
2 **merchants, commodity brokers, stock-**
3 **brokers, financial institutions, securities**
4 **clearing agencies, swap participants, fi-**
5 **nancial participants, repo participants,**
6 **and master netting agreement partici-**
7 **pants**

8 “Notwithstanding any other provision of this title,
9 the exercise of rights by a forward contract merchant,
10 commodity broker, stockbroker, financial institution, secu-
11 rities clearing agency, swap participant, financial partici-
12 pant, repo participant, or master netting agreement par-
13 ticipant under this title shall not affect—

14 “(1) the priority of any unsecured claim that
15 such person may have after the exercise of those
16 rights; or

17 “(2) the applicability of this subchapter with re-
18 spect to customer property or distributions after the
19 exercise of such rights.”.

20 (c) CLERICAL AMENDMENTS.—The chapter analysis
21 for chapter 7 of title 11, United States Code, is amend-
22 ed—

23 (1) by inserting after the item relating to sec-
24 tion 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

1 and

2 (2) by inserting after the item relating to sec-
3 tion 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”.

4 **SEC. 212. SETOFF.**

5 Section 553 of title 11, United States Code, is
6 amended—

7 (1) in subsection (a)(3)(C), by inserting before
8 the period “(except for a setoff of a kind described
9 in section 362(b)(6), 362(b)(7), 362(b)(17),
10 362(b)(19), 555, 556, 559, 560, or 561)”;

11 (2) in subsection (b)(1), by striking
12 “362(b)(14), 365(h), 546(h), or 365(i)(2)” and in-
13 serting “362(b)(17), 362(b)(19), 365(h), 365(i)(2),
14 546(h), 555, 556, 559, 560, or 561”.

15 **SEC. 213. RECORDKEEPING REQUIREMENTS.**

16 Section 11(e)(8) of the Federal Deposit Insurance
17 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
18 end the following:

19 “(F) RECORDKEEPING REQUIREMENTS.—

20 The Corporation, in consultation with the ap-
21 propriate Federal banking agencies, may pre-

1 scribe regulations to require detailed record-
 2 keeping by insured depository institutions with
 3 respect to qualified financial contracts (includ-
 4 ing market valuations).”.

5 **SEC. 214. DAMAGE MEASURE.**

6 (a) DAMAGE MEASURE.—

7 (1) IN GENERAL.—Subchapter IV of chapter 5
 8 of title 11, United States Code, as amended by this
 9 Act, is amended by adding at the end the following:

10 **“§ 562. Damage measure in connection with swap**
 11 **agreements, securities contracts, forward**
 12 **contracts, commodity contracts, repur-**
 13 **chase agreements, or master netting**
 14 **agreements**

15 “If a trustee rejects a swap agreement, securities con-
 16 tract (as that term is defined in section 741), forward con-
 17 tract, repurchase agreement, commodity contract, or mas-
 18 ter netting agreement pursuant to section 365(a), or if
 19 a forward contract merchant, stockbroker, financial insti-
 20 tution, securities clearing agency, repo participant, master
 21 netting agreement participant, commodity contract, or
 22 swap participant liquidates, terminates, or accelerates any
 23 such contract or agreement, damages shall be measured
 24 as of the earlier of—

25 “(1) the date of that rejection; or

1 “(2) the date of that liquidation, termination,
2 or acceleration.”.

3 (2) CLERICAL AMENDMENT.—The chapter anal-
4 ysis for chapter 5 of title 11, United States Code,
5 is amended by adding at the end the following:

“562. Damage measure in connection with swap agreements, securities con-
 tracts, forward contracts, commodity contracts, repurchase
 agreements, or master netting agreements.”.

6 (b) CLAIMS ARISING FROM REJECTION.—Section
7 502(g) of title 11, United States Code, is amended—

8 (1) by striking “(g) A claim” and inserting the
9 following:

10 “(g) TREATMENT OF CLAIM UPON REJECTION.—

11 “(1) IN GENERAL.—”; and

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

13 “(2) CLAIMS FOR DAMAGES.—A claim for dam-
14 ages calculated in accordance with section 562 shall
15 be allowed under subsection (a), (b), or (c), or shall
16 be disallowed under subsection (d) or (e), as if that
17 claim had arisen before the date of the filing of the
18 petition.”.

19 **SEC. 215. ASSET-BACKED SECURITIZATIONS.**

20 Section 541 of title 11, United States Code, is
21 amended—

22 (1) in subsection (b)—

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

1 (B) by redesignating paragraph (5) as
2 paragraph (6); and

3 (C) by inserting after paragraph (4) the
4 following:

5 “(5) any eligible asset (or proceeds thereof), to
6 the extent that such eligible asset was transferred by
7 the debtor, before the date of commencement of the
8 action, to an eligible entity in connection with an
9 asset-backed securitization; or”; and

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

11 “(e) For purposes of this section—

12 “(1) the term ‘asset-backed securitization’
13 means a transaction in which eligible assets trans-
14 ferred to an eligible entity are used as collateral for
15 securities, the most senior of which are rated invest-
16 ment grade by 1 or more nationally recognized secu-
17 rities rating organizations, issued by an issuer;

18 “(2) the term ‘eligible asset’ means—

19 “(A) financial assets (including interests
20 therein and proceeds thereof), either fixed or re-
21 volving, including residential and commercial
22 mortgage loans, consumer receivables, trade re-
23 ceivables, and lease receivables, that, by their
24 terms, convert into cash within a finite time pe-
25 riod, plus any rights or other assets designed to

1 assure the servicing or timely distribution of
2 proceeds to security holders;

3 “(B) cash; and

4 “(C) securities;

5 “(3) the term ‘eligible entity’ means—

6 “(A) an issuer; or

7 “(B) a trust, corporation, partnership, or
8 other entity engaged exclusively in the business
9 of acquiring and transferring eligible assets di-
10 rectly or indirectly to an issuer and taking ac-
11 tions ancillary thereto;

12 “(4) the term ‘issuer’ means a trust, corpora-
13 tion, partnership, or other entity engaged exclusively
14 in the business of acquiring and holding eligible as-
15 sets, issuing securities backed by eligible assets, and
16 taking actions ancillary thereto; and

17 “(5) the term ‘transferred’ means the debtor,
18 pursuant to a written agreement, represented and
19 warranted that eligible assets were sold, contributed,
20 or otherwise conveyed with the intention of removing
21 them from the estate of the debtor pursuant to sub-
22 section (b)(5), irrespective of—

23 “(A) whether the debtor directly or indi-
24 rectly obtained or held an interest in the issuer
25 or in any securities issued by the issuer;

1 “(B) whether the debtor had an obligation
2 to repurchase or to service or supervise the
3 servicing of all or any portion of such eligible
4 assets; or

5 “(C) the characterization of such sale, con-
6 tribution, or other conveyance for tax, account-
7 ing, regulatory reporting, or other purposes.”.

8 **SEC. 216. APPLICABILITY.**

9 The amendments made by this title shall apply with
10 respect to cases commenced or appointments made under
11 any Federal or State law after the date of enactment of
12 this Act.

13 **TITLE III—ANCILLARY AND**
14 **OTHER CROSS-BORDER CASES**

15 **SEC. 301. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11,**
16 **UNITED STATES CODE.**

17 (a) IN GENERAL.—Title 11, United States Code, is
18 amended by inserting after chapter 5 the following:

19 **“CHAPTER 6—ANCILLARY AND OTHER**
20 **CROSS-BORDER CASES**

“Sec.

“601. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“602. Definitions.

“603. International obligations of the United States.

“604. Commencement of ancillary case.

“605. Authorization to act in a foreign country.

“606. Public policy exception.

“607. Additional assistance.

“608. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND
CREDITORS TO THE COURT

- “609. Right of direct access.
- “610. Limited jurisdiction.
- “611. Commencement of bankruptcy case under section 301 or 303.
- “612. Participation of a foreign representative in a case under this title.
- “613. Access of foreign creditors to a case under this title.
- “614. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING
AND RELIEF

- “615. Application for recognition of a foreign proceeding.
- “616. Presumptions concerning recognition.
- “617. Order recognizing a foreign proceeding.
- “618. Subsequent information.
- “619. Relief that may be granted upon petition for recognition of a foreign proceeding.
- “620. Effects of recognition of a foreign main proceeding.
- “621. Relief that may be granted upon recognition of a foreign proceeding.
- “622. Protection of creditors and other interested persons.
- “623. Actions to avoid acts detrimental to creditors.
- “624. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND
FOREIGN REPRESENTATIVES

- “625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
- “626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- “627. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

- “628. Commencement of a case under this title after recognition of a foreign main proceeding.
- “629. Coordination of a case under this title and a foreign proceeding.
- “630. Coordination of more than 1 foreign proceeding.
- “631. Presumption of insolvency based on recognition of a foreign main proceeding.
- “632. Rule of payment in concurrent proceedings.

1 “§ 601. Purpose and scope of application

2 “(a) The purpose of this chapter is to incorporate the
3 Model Law on Cross-Border Insolvency so as to provide
4 effective mechanisms for dealing with cases of cross-border
5 insolvency with the objectives of—

6 “(1) cooperation between—

1 “(A) United States courts, United States
2 Trustees, trustees, examiners, debtors, and
3 debtors in possession; and

4 “(B) the courts and other competent au-
5 thorities of foreign countries involved in cross-
6 border insolvency cases;

7 “(2) greater legal certainty for trade and in-
8 vestment;

9 “(3) fair and efficient administration of cross-
10 border insolvencies that protects the interests of all
11 creditors, and other interested entities, including the
12 debtor;

13 “(4) protection and maximization of the value
14 of the debtor’s assets; and

15 “(5) facilitation of the rescue of financially
16 troubled businesses, thereby protecting investment
17 and preserving employment.

18 “(b) This chapter applies where—

19 “(1) assistance is sought in the United States
20 by a foreign court or a foreign representative in con-
21 nection with a foreign proceeding;

22 “(2) assistance is sought in a foreign country in
23 connection with a case under this title;

1 “(3) a foreign proceeding and a case under this
2 title with respect to the same debtor are taking place
3 concurrently; or

4 “(4) creditors or other interested persons in a
5 foreign country have an interest in requesting the
6 commencement of, or participating in, a case or pro-
7 ceeding under this title.

8 “(c) This chapter does not apply to—

9 “(1) a proceeding concerning an entity identi-
10 fied by exclusion in subsection 109(b); or

11 “(2) a natural person or a natural person and
12 that person’s spouse who have debts within the lim-
13 its specified in under section 109(e) and who are
14 citizens of the United States or aliens lawfully ad-
15 mitted for permanent residence in the United States.

16 “SUBCHAPTER I—GENERAL PROVISIONS

17 “§ 602. **Definitions**

18 “For the purposes of this chapter, the term—

19 “(1) ‘debtor’ means an entity that is the subject
20 of a foreign proceeding;

21 “(2) ‘establishment’ means any place of oper-
22 ations where the debtor carries out a nontransitory
23 economic activity;

1 “(3) ‘foreign court’ means a judicial or other
2 authority competent to control or supervise a foreign
3 proceeding;

4 “(4) ‘foreign main proceeding’ means a foreign
5 proceeding taking place in the country where the
6 debtor has the center of its main interests;

7 “(5) ‘foreign nonmain proceeding’ means a for-
8 eign proceeding, other than a foreign main proceed-
9 ing, taking place in a country where the debtor has
10 an establishment;

11 “(6) ‘trustee’ includes a trustee, a debtor in
12 possession in a case under any chapter of this title,
13 or a debtor under chapters 9 or 13 of this title; and

14 “(7) ‘within the territorial jurisdiction of the
15 United States’ when used with reference to property
16 of a debtor refers to tangible property located within
17 the territory of the United States and intangible
18 property deemed to be located within that territory,
19 including any property that may properly be seized
20 or garnished by an action in a Federal or State
21 court in the United States.

22 **“§ 603. International obligations of the United States**

23 “To the extent that this chapter conflicts with an ob-
24 ligation of the United States arising out of any treaty or
25 other form of agreement to which it is a party with 1 or

1 more other countries, the requirements of the treaty or
2 agreement prevail.

3 **“§ 604. Commencement of ancillary case**

4 “A case under this chapter is commenced by the filing
5 of a petition for recognition of a foreign proceeding under
6 section 615.

7 **“§ 605. Authorization to act in a foreign country**

8 “A trustee or another entity designated by the court
9 may be authorized by the court to act in a foreign country
10 on behalf of an estate created under section 541. An entity
11 authorized to act under this section may act in any way
12 permitted by the applicable foreign law.

13 **“§ 606. Public policy exception**

14 “Nothing in this chapter prevents the court from re-
15 fusing to take an action governed by this chapter if the
16 action would be manifestly contrary to the public policy
17 of the United States.

18 **“§ 607. Additional assistance**

19 “(a) Nothing in this chapter limits the power of the
20 court, upon recognition of a foreign proceeding, to provide
21 additional assistance to a foreign representative under this
22 title or under other laws of the United States.

23 “(b) In determining whether to provide additional as-
24 sistance under this title or under other laws of the United
25 States, the court shall consider whether such additional

1 assistance, consistent with the principles of comity, will
2 reasonably assure—

3 “(1) just treatment of all holders of claims
4 against or interests in the debtor’s property;

5 “(2) protection of claim holders in the United
6 States against prejudice and inconvenience in the
7 processing of claims in such foreign proceeding;

8 “(3) prevention of preferential or fraudulent
9 dispositions of property of the debtor;

10 “(4) distribution of proceeds of the debtor’s
11 property substantially in accordance with the order
12 prescribed by this title; and

13 “(5) if appropriate, the provision of an oppor-
14 tunity for a fresh start for the individual that such
15 foreign proceeding concerns.

16 **“§ 608. Interpretation**

17 “In interpreting this chapter, the court shall consider
18 its international origin, and the need to promote an appli-
19 cation of this chapter that is consistent with the applica-
20 tion of similar statutes adopted by foreign jurisdictions.

1 “SUBCHAPTER II—ACCESS OF FOREIGN REP-
2 RESENTATIVES AND CREDITORS TO THE
3 COURT

4 “§ 609. **Right of direct access**

5 “(a) A foreign representative is entitled to commence
6 a case under section 604 by filing a petition for recogni-
7 tion under section 615, and upon recognition, to apply di-
8 rectly to other Federal and State courts for appropriate
9 relief in those courts.

10 “(b) Upon recognition, and subject to section 610,
11 a foreign representative has the capacity to sue and be
12 sued.

13 “(c) Recognition under this chapter is prerequisite to
14 the granting of comity or cooperation to a foreign proceed-
15 ing in any State or Federal court in the United States.
16 Any request for comity or cooperation in any court shall
17 be accompanied by a sworn statement setting forth wheth-
18 er recognition under section 615 has been sought and the
19 status of any such petition.

20 “(d) Upon denial of recognition under this chapter,
21 the court may issue appropriate orders necessary to pre-
22 vent an attempt to obtain comity or cooperation from
23 courts in the United States without such recognition.

1 **“§ 610. Limited jurisdiction**

2 “The sole fact that a foreign representative files a
3 petition under sections 604 and 615 does not subject the
4 foreign representative to the jurisdiction of any court in
5 the United States for any other purpose.

6 **“§ 611. Commencement of bankruptcy case under sec-**
7 **tion 301 or 303**

8 “(a) Upon filing a petition for recognition, a foreign
9 representative may commence—

10 “(1) an involuntary case under section 303; or

11 “(2) a voluntary case under section 301 or 302,
12 if the foreign proceeding is a foreign main proceed-
13 ing.

14 “(b) The petition commencing a case under sub-
15 section (a) of this section must be accompanied by a state-
16 ment describing the petition for recognition and its cur-
17 rent status. The court where the petition for recognition
18 has been filed must be advised of the foreign representa-
19 tive’s intent to commence a case under subsection (a) of
20 this section prior to such commencement.

21 “(c) A case under subsection (a) shall be dismissed
22 unless recognition is granted.

23 **“§ 612. Participation of a foreign representative in a**
24 **case under this title**

25 “Upon recognition of a foreign proceeding, the for-
26 eign representative in that proceeding is entitled to par-

1 ticipate as a party in interest in a case regarding the debt-
2 or under this title.

3 **“§ 613. Access of foreign creditors to a case under**
4 **this title**

5 “(a) Foreign creditors have the same rights regarding
6 the commencement of, and participation in, a case under
7 this title as domestic creditors.

8 “(b)(1) Subsection (a) of this section does not change
9 or codify law in effect on the date of enactment of this
10 chapter as to the priority of claims under section 507 or
11 726, except that the claim of a foreign creditor under
12 those sections shall not be given a lower priority than the
13 class of general unsecured claims without priority solely
14 because the holder of such claim is a foreign creditor.

15 “(2)(A) Subsection (a) of this section and paragraph
16 (1) of this subsection do not change or codify law in effect
17 on the date of enactment of this chapter as to the allow-
18 ability of foreign revenue claims or other foreign public
19 law claims in a proceeding under this title.

20 “(B) Allowance and priority as to a foreign tax claim
21 or other foreign public law claim shall be governed by any
22 applicable tax treaty of the United States, under the con-
23 ditions and circumstances specified therein.

1 **“§ 614. Notification to foreign creditors concerning a**
2 **case under this title**

3 “(a) Whenever in a case under this title, notice is to
4 be given to creditors generally or to any class or category
5 of creditors, such notice shall also be given to the known
6 creditors generally, or to creditors in the notified class or
7 category, that do not have addresses in the United States.
8 The court may order that appropriate steps be taken with
9 a view to notifying any creditor whose address is not yet
10 known.

11 “(b) The notification to creditors with foreign ad-
12 dresses described in subsection (a) shall be given individ-
13 ually, unless the court considers that, under the cir-
14 cumstances, some other form of notification would be
15 more appropriate. No letters rogatory or other similar for-
16 mality is required.

17 “(c) When a notification of commencement of a case
18 is to be given to foreign creditors, the notification shall—

19 “(1) indicate the time period for filing proofs of
20 claim and specify the place for their filing;

21 “(2) indicate whether secured creditors need to
22 file their proofs of claim; and

23 “(3) contain any other information required to
24 be included in such a notification to creditors pursu-
25 ant to this title and the orders of the court.

1 “(c) A petition for recognition shall also be accom-
2 panied by a statement identifying all foreign proceedings
3 with respect to the debtor that are known to the foreign
4 representative.

5 “(d) The documents referred to in paragraphs (1)
6 and (2) of subsection (b) must be translated into English.
7 The court may require a translation into English of addi-
8 tional documents.

9 **“§ 616. Presumptions concerning recognition**

10 “(a) If the decision or certificate referred to in section
11 615(b) indicates that the foreign proceeding is a foreign
12 proceeding within the meaning of section 101(23) and that
13 the person or body is a foreign representative within the
14 meaning of section 101(24), the court is entitled to so pre-
15 sume.

16 “(b) The court is entitled to presume that documents
17 submitted in support of the petition for recognition are
18 authentic, whether the documents have been subjected to
19 legal processing under applicable law.

20 “(c) In the absence of evidence to the contrary, the
21 debtor’s registered office, or habitual residence in the case
22 of an individual, is presumed to be the center of the debt-
23 or’s main interests.

1 **“§ 617. Order recognizing a foreign proceeding**

2 “(a) Subject to section 606, an order recognizing a
3 foreign proceeding shall be entered if—

4 “(1) the foreign proceeding is a foreign main
5 proceeding or foreign nonmain proceeding within the
6 meaning of section 602 and is a foreign proceeding
7 within the meaning of section 101(23);

8 “(2) the person or body applying for recognition
9 is a foreign representative within the meaning of
10 section 101(24); and

11 “(3) the petition meets the requirements of sec-
12 tion 615.

13 “(b) The foreign proceeding shall be recognized—

14 “(1) as a foreign main proceeding if it is taking
15 place in the country where the debtor has the center
16 of its main interests; or

17 “(2) as a foreign nonmain proceeding if the
18 debtor has an establishment within the meaning of
19 section 602 in the foreign country where the pro-
20 ceeding is pending.

21 “(c) A petition for recognition of a foreign proceeding
22 shall be decided upon at the earliest possible time. Entry
23 of an order recognizing a foreign proceeding shall con-
24 stitute recognition under this chapter.

25 “(d) The provisions of this subchapter do not prevent
26 modification or termination of recognition if it is shown

1 that the grounds for granting it were fully or partially
2 lacking or have ceased to exist, but in considering such
3 action the court shall give due weight to possible prejudice
4 to parties that have relied upon the granting of recogni-
5 tion. The foreign proceeding may be closed in the manner
6 prescribed for a case under section 350.

7 **“§ 618. Subsequent information**

8 “From the time of filing the petition for recognition
9 of the foreign proceeding, the foreign representative shall
10 file with the court promptly a notice of change of status
11 concerning—

12 “(1) any substantial change in the status of the
13 foreign proceeding or the status of the foreign rep-
14 resentative’s appointment; and

15 “(2) any other foreign proceeding regarding the
16 debtor that becomes known to the foreign represent-
17 ative.

18 **“§ 619. Relief that may be granted upon petition for**
19 **recognition of a foreign proceeding**

20 “(a) From the time of filing a petition for recognition
21 until the petition is decided upon, the court may, at the
22 request of the foreign representative, where relief is ur-
23 gently needed to protect the assets of the debtor or the
24 interests of the creditors, grant relief of a provisional na-
25 ture, including—

1 “(1) staying execution against the debtor’s as-
2 sets;

3 “(2) entrusting the administration or realiza-
4 tion of all or part of the debtor’s assets located in
5 the United States to the foreign representative or
6 another person designated by the court, including an
7 examiner, in order to protect and preserve the value
8 of assets that, by their nature or because of other
9 circumstances, are perishable, susceptible to devalu-
10 ation or otherwise in jeopardy; and

11 “(3) any relief referred to in paragraph (3),
12 (4), or (7) of section 621(a).

13 “(b) Unless extended under section 621(a)(6), the re-
14 lief granted under this section terminates when the peti-
15 tion for recognition is decided upon.

16 “(c) It is a ground for denial of relief under this sec-
17 tion that such relief would interfere with the administra-
18 tion of a foreign main proceeding.

19 “(d) The court may not enjoin a police or regulatory
20 act of a governmental unit, including a criminal action or
21 proceeding, under this section.

22 “(e) The standards, procedures, and limitations ap-
23 plicable to an injunction shall apply to relief under this
24 section.

1 **“§ 620. Effects of recognition of a foreign main pro-**
2 **ceeding**

3 “(a) Upon recognition of a foreign proceeding that
4 is a foreign main proceeding—

5 “(1) section 362 applies with respect to the
6 debtor and that property of the debtor that is within
7 the territorial jurisdiction of the United States; and

8 “(2) transfer, encumbrance, or any other dis-
9 position of an interest of the debtor in property
10 within the territorial jurisdiction of the United
11 States is restrained as and to the extent that is pro-
12 vided for property of an estate under sections 363,
13 549, and 552.

14 Unless the court orders otherwise, the foreign representa-
15 tive may operate the debtor’s business and may exercise
16 the powers of a trustee under section 549, subject to sec-
17 tions 363 and 552.

18 “(b) The scope, and the modification or termination,
19 of the stay and restraints referred to in subsection (a) of
20 this section are subject to the exceptions and limitations
21 provided in subsections (b), (c), and (d) of section 362,
22 subsections (b) and (c) of section 363, and sections 552,
23 555 through 557, 559, and 560.

24 “(c) Subsection (a) of this section does not affect the
25 right to commence individual actions or proceedings in a

1 foreign country to the extent necessary to preserve a claim
2 against the debtor.

3 “(d) Subsection (a) of this section does not affect the
4 right of a foreign representative or an entity to file a peti-
5 tion commencing a case under this title or the right of
6 any party to file claims or take other proper actions in
7 such a case.

8 **“§ 621. Relief that may be granted upon recognition**
9 **of a foreign proceeding**

10 “(a) Upon recognition of a foreign proceeding, wheth-
11 er main or nonmain, where necessary to effectuate the
12 purpose of this chapter and to protect the assets of the
13 debtor or the interests of the creditors, the court may, at
14 the request of the foreign representative, grant any appro-
15 priate relief, including—

16 “(1) staying the commencement or continuation
17 of individual actions or individual proceedings con-
18 cerning the debtor’s assets, rights, obligations or li-
19 abilities to the extent they have not been stayed
20 under section 620(a);

21 “(2) staying execution against the debtor’s as-
22 sets to the extent it has not been stayed under sec-
23 tion 620(a);

24 “(3) suspending the right to transfer, encumber
25 or otherwise dispose of any assets of the debtor to

1 the extent this right has not been suspended under
2 section 620(a);

3 “(4) providing for the examination of witnesses,
4 the taking of evidence or the delivery of information
5 concerning the debtor’s assets, affairs, rights, obliga-
6 tions or liabilities;

7 “(5) entrusting the administration or realiza-
8 tion of all or part of the debtor’s assets within the
9 territorial jurisdiction of the United States to the
10 foreign representative or another person, including
11 an examiner, designated by the court;

12 “(6) extending relief granted under section
13 619(a); and

14 “(7) granting any additional relief that may be
15 available to a trustee, except for relief available
16 under sections 522, 544, 545, 547, 548, 550, and
17 724(a).

18 “(b) Upon recognition of a foreign proceeding, wheth-
19 er main or nonmain, the court may, at the request of the
20 foreign representative, entrust the distribution of all or
21 part of the debtor’s assets located in the United States
22 to the foreign representative or another person, including
23 an examiner, designated by the court, provided that the
24 court is satisfied that the interests of creditors in the
25 United States are sufficiently protected.

1 “(c) In granting relief under this section to a rep-
2 resentative of a foreign nonmain proceeding, the court
3 must be satisfied that the relief relates to assets that,
4 under the law of the United States, should be adminis-
5 tered in the foreign nonmain proceeding or concerns infor-
6 mation required in that proceeding.

7 “(d) The court may not enjoin a police or regulatory
8 act of a governmental unit, including a criminal action or
9 proceeding, under this section.

10 **“§ 622. Protection of creditors and other interested**
11 **persons**

12 “(a) In granting or denying relief under section 619
13 or 621, or in modifying or terminating relief under sub-
14 section (c) of this section, the court must find that the
15 interests of the creditors and other interested persons or
16 entities, including the debtor, are sufficiently protected.

17 “(b) The court may subject relief granted under sec-
18 tion 619 or 621 to conditions it considers appropriate.

19 “(c) The court may, at the request of the foreign rep-
20 resentative or an entity affected by relief granted under
21 section 619 or 621, or at its own motion, modify or termi-
22 nate such relief.

23 **“§ 623. Actions to avoid acts detrimental to creditors**

24 “(a) Upon recognition of a foreign proceeding, the
25 foreign representative has standing in a pending case

1 under another chapter of this title to initiate actions under
2 sections 522, 544, 545, 547, 548, 550, and 724(a).

3 “(b) When the foreign proceeding is a foreign
4 nonmain proceeding, the court must be satisfied that an
5 action under subsection (a) of this section relates to assets
6 that, under United States law, should be administered in
7 the foreign nonmain proceeding.

8 **“§ 624. Intervention by a foreign representative**

9 “Upon recognition of a foreign proceeding, the for-
10 eign representative may intervene in any proceedings in
11 a State or Federal court in the United States in which
12 the debtor is a party.

13 **“SUBCHAPTER IV—COOPERATION WITH FOR-**
14 **EIGN COURTS AND FOREIGN REPRESENTA-**
15 **TIVES**

16 **“§ 625. Cooperation and direct communication be-**
17 **tween the court and foreign courts or for-**
18 **ign representatives**

19 “(a) In all matters included within section 601, the
20 court shall cooperate to the maximum extent possible with
21 foreign courts or foreign representatives, either directly or
22 through the trustee.

23 “(b) The court is entitled to communicate directly
24 with, or to request information or assistance directly from,

1 foreign courts or foreign representatives, subject to the
2 rights of parties in interest to notice and participation.

3 **“§ 626. Cooperation and direct communication be-**
4 **tween the trustee and foreign courts or**
5 **foreign representatives**

6 “(a) In all matters included in section 601, the trust-
7 ee or other person, including an examiner, designated by
8 the court, shall, subject to the supervision of the court,
9 cooperate to the maximum extent possible with foreign
10 courts or foreign representatives.

11 “(b) The trustee or other person, including an exam-
12 iner, designated by the court is entitled, subject to the su-
13 pervision of the court, to communicate directly with for-
14 eign courts or foreign representatives.

15 “(c) Section 1104(d) shall apply to the appointment
16 of an examiner under this chapter. Any examiner shall
17 comply with the qualification requirements imposed on a
18 trustee by section 322(a).

19 **“§ 627. Forms of cooperation**

20 “Cooperation referred to in sections 625 and 626
21 may be implemented by any appropriate means, includ-
22 ing—

23 “(1) appointment of a person or body, including
24 an examiner, to act at the direction of the court;

1 “(2) communication of information by any
2 means considered appropriate by the court;

3 “(3) coordination of the administration and su-
4 pervision of the debtor’s assets and affairs;

5 “(4) approval or implementation of agreements
6 concerning the coordination of proceedings; and

7 “(5) coordination of concurrent proceedings re-
8 garding the same debtor.

9 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

10 **“§ 628. Commencement of a case under this title after**
11 **recognition of a foreign main proceeding**

12 “After recognition of a foreign main proceeding, a
13 case under another chapter of this title may be commenced
14 only if the debtor has assets in the United States. The
15 effects of that case shall be restricted to the assets of the
16 debtor that are within the territorial jurisdiction of the
17 United States and, to the extent necessary to implement
18 cooperation and coordination under sections 625, 626, and
19 627, to other assets of the debtor that are within the juris-
20 diction of the court under sections 541(a) and 1334(e),
21 to the extent that such other assets are not subject to the
22 jurisdiction and control of a foreign proceeding that has
23 been recognized under this chapter.

1 **“§ 629. Coordination of a case under this title and a**
2 **foreign proceeding**

3 “Where a foreign proceeding and a case under an-
4 other chapter of this title are taking place concurrently
5 regarding the same debtor, the court shall seek coopera-
6 tion and coordination under sections 625, 626, and 627,
7 and the following shall apply:

8 “(1) When the case in the United States is tak-
9 ing place at the time the petition for recognition of
10 the foreign proceeding is filed—

11 “(A) any relief granted under sections 619
12 or 621 must be consistent with the case in the
13 United States; and

14 “(B) even if the foreign proceeding is rec-
15 ognized as a foreign main proceeding, section
16 620 does not apply.

17 “(2) When a case in the United States under
18 this title commences after recognition, or after the
19 filing of the petition for recognition, of the foreign
20 proceeding—

21 “(A) any relief in effect under sections 619
22 or 621 shall be reviewed by the court and shall
23 be modified or terminated if inconsistent with
24 the case in the United States; and

25 “(B) if the foreign proceeding is a foreign
26 main proceeding, the stay and suspension re-

1 tors of the same class is proportionately less than the pay-
 2 ment the creditor has already received.”.

3 (b) CLERICAL AMENDMENT.—The table of chapters
 4 for title 11, United States Code, is amended by inserting
 5 after the item relating to chapter 5 the following:

“6. Ancillary and Other Cross-Border Cases 601”.

6 **SEC. 302. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11,**
 7 **UNITED STATES CODE.**

8 (a) APPLICABILITY OF CHAPTERS.—Section 103 of
 9 title 11, United States Code, is amended—

10 (1) in subsection (a), by inserting before the pe-
 11 riod the following: “and this chapter, sections 307,
 12 555 through 557, 559, and 560 apply in a case
 13 under chapter 6”; and

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

15 “(j) Chapter 6 applies only in a case under that chap-
 16 ter, except that section 605 applies to trustees and to any
 17 other entity designated by the court, including an exam-
 18 iner, under chapters 7, 11, and 12, to debtors in posses-
 19 sion under chapters 11 and 12, and to debtors or trustees
 20 under chapters 9 and 13 who are authorized to act under
 21 section 605.”.

22 (b) DEFINITIONS.—Section 101 of title 11, United
 23 States Code, is amended by striking paragraphs (23) and
 24 (24) and inserting the following:

1 “(23) ‘foreign proceeding’ means a collective ju-
2 dicial or administrative proceeding in a foreign state,
3 including an interim proceeding, pursuant to a law
4 relating to insolvency in which proceeding the assets
5 and affairs of the debtor are subject to control or
6 supervision by a foreign court, for the purpose of re-
7 organization or liquidation;

8 “(24) ‘foreign representative’ means a person
9 or body, including 1 appointed on an interim basis,
10 authorized in a foreign proceeding to administer the
11 reorganization or the liquidation of the debtor’s as-
12 sets or affairs or to act as a representative of the
13 foreign proceeding;”.

14 (c) AMENDMENTS TO TITLE 28, UNITED STATES
15 CODE.—

16 (1) PROCEDURES.—Section 157(b)(2) of title
17 28, United States Code, is amended—

18 (A) in subparagraph (N), by striking
19 “and” at the end;

20 (B) in subparagraph (O), by striking the
21 period at the end and inserting “; and”; and

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

23 “(P) recognition of foreign proceedings
24 and other matters under chapter 6.”.

1 (2) BANKRUPTCY CASES AND PROCEEDINGS.—
 2 Section 1334(c) of title 28, United States Code, is
 3 amended by striking “Nothing in” and inserting
 4 “Except with respect to a case under chapter 6 of
 5 title 11, nothing in”.

6 (3) DUTIES OF TRUSTEES.—Section 586(a)(3)
 7 of title 28, United States Code, is amended by in-
 8 serting “6,” after “chapter”.

9 **TITLE IV—SMALL BUSINESS**
 10 **BANKRUPTCY**

11 **SEC. 401. SMALL BUSINESS DEFINED.**

12 Section 101 of title 11, United States Code, is
 13 amended by striking paragraph (51C) and inserting the
 14 following:

15 “(51C) ‘small business case’ means any case
 16 filed under chapter 11 of this title in which the debt-
 17 or is a small business debtor;

18 “(51D) ‘small business debtor’ means—

19 “(A) any debtor in a case under chapter
 20 11 (including any group of affiliated debtors)
 21 that, as of the date of filing of the petition for
 22 the case involved, has noncontingent, liquidated
 23 secured and unsecured debts in an aggregate
 24 amount not to exceed \$5,000,000 (excluding

1 any debt owed to 1 or more affiliates or insid-
2 ers); and

3 “(B) any single asset real estate debtor,
4 without regard to the amount of liabilities of
5 that debtor;”.

6 **SEC. 402. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**
7 **AND PLAN.**

8 Section 1125(f) of title 11, United States Code, is
9 amended to read as follows:

10 “(f) Notwithstanding subsection (b), in a small busi-
11 ness case—

12 “(1) in determining whether a disclosure state-
13 ment provides adequate information, the court shall
14 consider—

15 “(A) the size of the case;

16 “(B) the benefit of additional information
17 to creditors and other parties in interest; and

18 “(C) the cost of providing additional infor-
19 mation;

20 “(2) in an appropriate case the court may de-
21 termine that—

22 “(A) the plan provides adequate informa-
23 tion; and

24 “(B) a separate disclosure statement is not
25 necessary;

1 “(3) the court may approve a disclosure state-
2 ment submitted on standard forms approved by the
3 court or adopted pursuant to section 2075 of title
4 28;

5 “(4)(A) the court may conditionally approve a
6 disclosure statement subject to final approval after
7 notice and a hearing;

8 “(B) acceptances and rejections of a plan may
9 be solicited based on a conditionally approved disclo-
10 sure statement as long as the debtor provides ade-
11 quate information to each holder of a claim or inter-
12 est that is solicited, but a conditionally approved dis-
13 closure statement shall be mailed at least 20 days
14 before the date of the hearing on confirmation of the
15 plan; and

16 “(C) the hearing on the disclosure statement
17 may be combined with the hearing on confirmation
18 of the plan.”.

19 **SEC. 403. STANDARD FORM DISCLOSURE STATEMENTS AND**
20 **PLANS.**

21 (a) **IN GENERAL.**—The Advisory Committee on
22 Bankruptcy Rules of the Judicial Conference shall, within
23 a reasonable period of time after the date of enactment
24 of this Act, propose for adoption standard form disclosure
25 statements and plans of reorganization for small business

1 debtors, as that term is defined in section 101(51C) of
2 title 11, United States Code, as added by section 401 of
3 this Act.

4 (b) CONTENTS.—The proposed standard form disclo-
5 sure statements and plans for reorganization referred to
6 in subsection (a) shall be designed to achieve a practical
7 balance between—

8 (1) the reasonable needs of the courts, the
9 United States trustee or bankruptcy administrator,
10 creditors, and other parties in interest for reason-
11 ably complete information; and

12 (2) economy and simplicity for debtors.

13 **SEC. 404. UNIFORM NATIONAL REPORTING REQUIRE-**
14 **MENTS.**

15 (a) **SMALL BUSINESS DEBTOR REPORTING RE-**
16 **QUIREMENTS.—**

17 (1) **IN GENERAL.—**Subchapter I of chapter 3 of
18 title 11, United States Code, is amended by adding
19 at the end the following:

20 **“§ 308. Small business debtor reporting requirements**

21 “Each small business debtor shall file with the court
22 periodic financial reports and other reports that the court
23 determines to be appropriate containing information relat-
24 ing to—

1 “(1) the profitability of the debtor that contains
2 specific information concerning the amount of in-
3 come carried or losses incurred during the then cur-
4 rent financial period and any other fiscal period that
5 the court determines to be appropriate;

6 “(2) reasonable approximations of projected
7 cash receipts and cash disbursements over a reason-
8 able period of time (as determined by the court);

9 “(3) with respect to a report submitted under
10 this section after an initial report, a comparison of
11 actual cash receipts and disbursements for the pe-
12 riod covered by the report with the projection con-
13 tained in each preceding report submitted under this
14 subsection;

15 “(4) whether the debtor is—

16 “(A) in compliance in all material respects
17 with postpetition requirements under this title
18 and the Federal Rules of Bankruptcy Proce-
19 dure; and

20 “(B) in a timely manner, filing tax returns
21 and making payments of taxes and other ad-
22 ministrative claims;

23 “(5) if the debtor is not filing a tax return or
24 making a payment of a tax or administrative
25 claim—

1 “(A) the nature of the failure by the debt-
2 or to file the return or make the claim; and

3 “(B) how the debtor intends to remedy the
4 failure, including—

5 “(i) the cost to the debtor of the rem-
6 edy; and

7 “(ii) when the debtor intends to carry
8 out the remedy;

9 “(6) such other matters as the court determines
10 to be—

11 “(A) in the best interests of small business
12 debtors and creditors; and

13 “(B) in the public interest, in promoting
14 fair and efficient procedures under chapter
15 11.”.

16 (2) CLERICAL AMENDMENT.—The chapter anal-
17 ysis for chapter 3 of title 11, United States Code,
18 is amended by inserting after the item relating to
19 section 307 the following:

“308. Small business debtor reporting requirements.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall become effective 60 days after the date
22 on which the Supreme Court, under section 2075 of title
23 28, United States Code, prescribes rules to provide for ap-
24 propriate forms and reporting under section 308 of title
25 11, United States Code.

1 **SEC. 405. UNIFORM REPORTING RULES AND FORMS.**

2 (a) IN GENERAL.—The Advisory Committee on
3 Bankruptcy Rules of the Judicial Conference shall, within
4 a reasonable period of time after the date of enactment
5 of this Act, propose for adoption revisions to the Federal
6 Rules of Bankruptcy Procedure and Official Bankruptcy
7 Forms that would enable small business debtors (as that
8 term is defined in section 101(51D) of title 11, United
9 States Code, as added by section 401 of this Act) to com-
10 ply with section 308 of title 11, United States Code.

11 (b) REQUIREMENTS FOR RULES.—The rules pre-
12 scribed under subsection (a) shall be designed to achieve
13 a practical balance between—

14 (1) the reasonable needs of the courts, the
15 United States trustee or bankruptcy administrator,
16 creditors, and other parties in interest for reason-
17 ably complete information; and

18 (2) economy and simplicity for debtors.

19 **SEC. 406. DUTIES IN SMALL BUSINESS CASES.**

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

1 **“§ 1115. Duties of a trustee or a debtor in possession**
2 **in small business cases**

3 “In a small business case, a trustee or the debtor in
4 possession, in addition to the duties required under this
5 title and as otherwise required by law, shall—

6 “(1) append to the voluntary petition or, in an
7 involuntary case, file within 3 days after the order
8 for relief—

9 “(A) the most recent balance sheet of the
10 trustee or debtor, statement of operations and
11 cashflow statement and most recent Federal in-
12 come tax return filed by the trustee or the debt-
13 or; or

14 “(B) a statement made under penalty of
15 perjury that—

16 “(i) no financial statement referred to
17 in subparagraph (A) has been prepared; or

18 “(ii) no Federal income tax return re-
19 ferred to in subparagraph (A) has been
20 filed;

21 “(2) attend, through the senior management
22 personnel or counsel of the debtor or trustee, meet-
23 ings scheduled by the court or the United States
24 trustee including—

25 “(A) initial debtor interviews;

26 “(B) scheduling conferences; and

1 “(C) meetings of creditors convened under
2 section 341;

3 “(3) timely file all schedules and statements of
4 financial affairs, unless the court, after notice and a
5 hearing, grants an extension, except that any such
6 extension shall terminate not later than 30 days
7 after the issuance by the court of the order for re-
8 lief, unless the court determines that extraordinary
9 and compelling circumstances merit an extension be-
10 yond that date;

11 “(4) file all postpetition financial and other re-
12 ports required by the Federal Rules of Bankruptcy
13 Procedure or by local rule;

14 “(5) maintain insurance customary and appro-
15 priate to the industry;

16 “(6)(A) timely file tax returns;

17 “(B) timely pay all administrative expense tax
18 claims, except for any such claim that the trustee or
19 debtor is contesting by appropriate proceedings and
20 with due diligence; and

21 “(C)(i) establish 1 or more separate deposit ac-
22 counts within 10 business days after the entry of
23 order for relief (or as soon thereafter as practicable
24 in any case in which, during that 10-day period, all

1 banks contacted by the trustee or debtor decline to
2 establish those accounts); and

3 “(ii) deposit in the accounts, within 1 business
4 day after receipt thereof, all taxes collected or with-
5 held by the trustee or debtor for governmental units;
6 and

7 “(7) allow the United States trustee or bank-
8 ruptcy administrator or its designated representative
9 to inspect the debtor’s business premises, books, and
10 records at reasonable times, after reasonable prior
11 written notice, unless the inspection requirement is
12 waived.”.

13 (b) CLERICAL AMENDMENT.—The chapter analysis
14 for chapter 11 of title 11, United States Code, is amended
15 by inserting after the item relating to section 1114 the
16 following:

“1115. Duties of a trustee or a debtor in possession in small business cases.”.

17 **SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.**

18 Section 1121(e) of title 11, United States Code, is
19 amended to read as follows:

20 “(e) In a small business case—

21 “(1) only the debtor may file a plan until after
22 90 days after the entry of the order for relief, un-
23 less—

24 “(A) that period is extended under this
25 subsection, after notice and hearing; or

1 “(B) the court, for cause, orders otherwise;

2 “(2) the plan, and any necessary disclosure
3 statement, shall be filed on or before 90 days after
4 the entry of the order for relief; and

5 “(3) the period for filing of a plan specified in
6 paragraph (1) or (2) and the period specified in sec-
7 tion 1129(e) within which the plan is required to be
8 confirmed may be extended only if—

9 “(A) the debtor, after providing notice to
10 each party in interest, including the United
11 States trustee, demonstrates by clear and con-
12 vincing evidence that the trustee or debtor will
13 confirm a plan of reorganization within a rea-
14 sonable period of time;

15 “(B) the court imposes a termination date
16 by which the debtor shall be required to meet
17 the applicable requirement; and

18 “(C) the order that provides for the ex-
19 tension is issued before the applicable date
20 specified in paragraph (1) or (2).”.

21 **SEC. 408. PLAN CONFIRMATION DEADLINE.**

22 Section 1129 of title 11, United States Code, is
23 amended by adding at the end the following:

24 “(e) In a small business case, the plan shall be con-
25 firmed on or before 150 days after the entry of the order

1 for relief, unless such time period is extended under sec-
2 tion 1121(e)(3).”.

3 **SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.**

4 Section 105(d)(2) of title 11, United States Code, is
5 amended—

6 (1) in subparagraph (A), by striking “or” at
7 the end;

8 (2) in subparagraph (B), by striking the period
9 and inserting “; or”; and

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

11 “(C) except as provided in section
12 1121(e)(3), in a small business case, the court
13 may not extend a time period specified in sec-
14 tion 1121(e) or 1129(e).”.

15 **SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE AND**
16 **BANKRUPTCY ADMINISTRATOR.**

17 (a) DUTIES OF THE UNITED STATES TRUSTEE.—

18 Section 586(a)(3) of title 28, United States Code, is
19 amended—

20 (1) in subparagraph (G), by striking “and” at
21 the end;

22 (2) by redesignating subparagraph (H) as sub-
23 paragraph (I); and

24 (3) by inserting after subparagraph (G) the fol-
25 lowing:

1 “(H) in small business cases, as defined in
2 section 101(51C) of title 11, performing the ad-
3 ditional duties specified in that title pertaining
4 to those cases, and in each such case the
5 United States trustee shall—

6 “(i) conduct an initial debtor inter-
7 view with the debtor as soon as practicable
8 after the entry of order for relief but be-
9 fore the first meeting scheduled under sec-
10 tion 341(a) of title 11, at which time the
11 United States trustee shall—

12 “(I) begin to investigate the debt-
13 or’s viability;

14 “(II) inquire about the debtor’s
15 business plan;

16 “(III) explain the debtor’s obliga-
17 tions to file monthly operating reports
18 and other required reports;

19 “(IV) attempt to develop an
20 agreed scheduling order; and

21 “(V) inform the debtor of other
22 obligations;

23 “(ii) if determined to be appropriate
24 and advisable, visit the appropriate busi-
25 ness premises of the debtor and ascertain

1 the state of the debtor's books and records
2 and verify that the debtor has filed the
3 debtor's tax returns;

4 “(iii) review and monitor diligently
5 the debtor's activities, to identify as
6 promptly as practicable after the entry of
7 order for relief whether the debtor will be
8 unable to confirm a plan; and

9 “(iv) in any case in which the United
10 States trustee finds material grounds for
11 any relief under section 1112 of title 11,
12 move the court promptly for relief; and”.

13 (b) DUTIES OF THE BANKRUPTCY ADMINIS-
14 TRATOR.—

15 (1) IN GENERAL.—Subchapter I of chapter 11
16 of title 11, United States Code, is amended by add-
17 ing at the end the following:

18 **“§ 1116. Duties of the bankruptcy administrator**

19 “In small business cases the bankruptcy adminis-
20 trator shall perform the duties specified in section
21 586(a)(3)(H) of title 28, in addition to the duties of the
22 United States trustee specified in this title.”.

23 (2) CLERICAL AMENDMENT.—The chapter anal-
24 ysis for chapter 11 of title 11, United States Code,

1 is amended by inserting after the item relating to
2 section 1115 the following:

“1116. Duties of the bankruptcy administrator.”.

3 **SEC. 411. SCHEDULING CONFERENCES.**

4 Section 105(d) of title 11, United States Code, is
5 amended by striking “The court, on its own motion” and
6 all that follows through “issue an order” in paragraph (2)
7 and inserting the following:

8 “(d) The court, on its own motion or on the request
9 of a party in interest—

10 “(1) shall hold such status conferences as are
11 necessary to further the expeditious and economical
12 resolution of the case; and

13 “(2) may issue an order.”.

14 **SEC. 412. SERIAL FILER PROVISIONS.**

15 Section 362 of title 11, United States Code, as
16 amended by section 204(b), is amended by adding at the
17 end the following:

18 “(j)(1) Except as provided in paragraphs (2) and (3),
19 the filing of a petition under chapter 11 does not operate
20 as a stay of any act described in subsection (a) in any
21 case in which the debtor—

22 “(A) is or was a debtor in a small business case
23 pending at the time of the petition in the subject
24 case;

1 “(B) was a debtor in a small business case that
2 was dismissed for any reason by an order that be-
3 came final within 2 years after the issuance of the
4 order for relief in the subject case;

5 “(C) was a debtor in a small business case in
6 which a plan was confirmed within 2 years after the
7 issuance of the order for relief in the subject case;
8 or

9 “(D) is an entity that has succeeded to sub-
10 stantially all of the assets or business of a small
11 business debtor described in subparagraph (A), (B),
12 or (C).

13 “(2) Paragraph (1) does not apply to a debtor if the
14 debtor proves, by a preponderance of the evidence, that—

15 “(A) the subject case has resulted from cir-
16 cumstances beyond the control of the debtor not
17 foreseeable at the time the first case was filed; and

18 “(B) it is more likely than not that the debtor
19 will confirm a feasible plan, other than a liquidating
20 plan, within a reasonable period of time.

21 “(3)(A) Except as provided in subparagraph (B), in
22 any case in which a debtor has transferred its business
23 or former business to a new legal entity that is not a debt-
24 or in a case under any chapter of this title, the filing of

1 the petition operates as a stay of the acts described in
2 subsection (a) of this section.

3 “(B) In any case in which the United States trustee
4 files a verified, ex parte motion seeking relief from the
5 stay, the court shall grant relief from the stay under sub-
6 section (a), by terminating or annulling that stay.

7 “(C) With respect to a stay terminated or annulled
8 under paragraph (2), if, after notice and hearing, the debt-
9 or satisfies the requirements of paragraph (2) and shows
10 that immediate and irreparable injury, loss, or damage will
11 result to the debtor, the court may order that the stay
12 shall be reimposed.”.

13 **SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CON-**
14 **VERSION AND APPOINTMENT OF TRUSTEE.**

15 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-
16 VERSION.—Section 1112(b) of title 11, United States
17 Code, is amended to read as follows:

18 “(b)(1) Except as provided in paragraph (2), sub-
19 section (c), or section 1104(a)(3), on request of a party
20 in interest, and after notice and a hearing, if the movant
21 establishes cause—

22 “(A) the court shall convert a case under this
23 chapter to a case under chapter 7; or

24 “(B) dismiss a case under this chapter,

1 whichever is in the best interest of creditors and the es-
2 tate.

3 “(2) The relief provided in paragraph (1) shall not
4 be granted if the debtor or another party in interest ob-
5 jects and establishes, by a preponderance of the evi-
6 dence—

7 “(A) that it is more likely than not that a plan
8 will be confirmed—

9 “(i) within an applicable period of time
10 specified in this title;

11 “(ii) by order of the court entered pursu-
12 ant to the provisions of section 1121(e)(3); or

13 “(iii) within a reasonable period of time if
14 there is no applicable period specified in this
15 title; and

16 “(B) if the cause of action is an act or omission
17 of the debtor—

18 “(i) that there exists a reasonable justifica-
19 tion for the act or omission; and

20 “(ii) that the act or omission will be cured
21 within a reasonable period of time but not to
22 exceed 30 days after the court decides the mo-
23 tion specified by the court, unless—

1 “(I) the movant expressly consents to
2 a continuance for a specific period of time;

3 or

4 “(II) compelling circumstances beyond
5 the control of the debtor justify an exten-
6 sion.

7 “(3) For purposes of this subsection, the term ‘cause’
8 includes—

9 “(A) substantial or continuing loss to or dimi-
10 nution of the estate;

11 “(B) gross mismanagement of the estate;

12 “(C) failure to maintain appropriate insurance;

13 “(D) unauthorized use of cash collateral harm-
14 ful to 1 or more creditors;

15 “(E) failure to comply with an order of the
16 court;

17 “(F) failure to timely satisfy any filing or re-
18 porting requirement established by this title or by
19 applicable rule;

20 “(G) failure to attend the meeting of creditors
21 convened under section 341(a) of this title or an ex-
22 amination ordered under Rule 2004;

23 “(H) failure to timely provide information or
24 attend meetings reasonably requested by the United
25 States trustee;

1 “(I) failure to timely pay taxes due after the
2 order for relief or to file tax returns due after the
3 order for relief;

4 “(J) failure to file or confirm a plan—

5 “(i) within the applicable period under this
6 title; or

7 “(ii) by order of the court; and

8 “(K) failure to pay any fee or charge required
9 under chapter 123 of title 28.

10 “(4)(A) Subject to subparagraph (B), the court
11 shall—

12 “(i) commence a hearing on any motion under
13 this subsection within 30 days after the filing of the
14 motion; and

15 “(ii) decide the motion within 15 days after
16 commencement of the hearing.

17 “(B) The court may extend a period described in
18 clause (i) or (ii) of subparagraph (A) with respect to a
19 movant if—

20 “(i) the movant expressly consents to a continu-
21 ance for a specific period of time; or

22 “(ii) compelling circumstances prevent the court
23 from meeting a time limit established under clause
24 (i) or (ii) of subparagraph (A).”.

1 (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF
2 TRUSTEE.—Section 1104(a) of title 11, United States
3 Code, is amended—

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

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

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

9 “(3) in any case in which grounds exist to con-
10 vert or dismiss the case under section 1112, but the
11 court determines that the appointment of a trustee
12 is in the best interests of creditors and the estate.”.

13 **SEC. 414. SINGLE ASSET REAL ESTATE DEFINED.**

14 Section 101(51B) of title 11, United States Code, is
15 amended to read as follows:

16 “(51B) ‘single asset real estate’ means undevel-
17 oped real property or other real property constitut-
18 ing a single property or project, other than residen-
19 tial real property with fewer than 4 residential units,
20 on which—

21 “(A) is located a single development or
22 project that generates substantially all of the
23 gross income of a debtor; and

24 “(B) no substantial business is being con-
25 ducted by—

1 “(i) a debtor; or

2 “(ii) a commonly controlled group of
3 entities all of which are concurrently debt-
4 ors in a case under chapter 11 of this title,
5 other than the business of operating the
6 real property and activities incidental
7 thereto;”.

8 **SEC. 415. PLAN CONFIRMATION.**

9 Section 1129(b)(2)(A) of title 11, United States
10 Code, is amended—

11 (1) by striking “or” at the end of clause (ii);

12 and

13 (2) by striking the period at the end of clause

14 (iii) and inserting “; or”; and

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

16 “(iv)(I) the court may find the plan to be
17 fair and equitable in any case in which—

18 “(aa) a class of secured claims invoke
19 the applicability of this subparagraph;

20 “(bb) that class of secured claims has
21 not made the election provided for under
22 section 1111(b)(1)(A)(i);

23 “(cc) the plan proponent seeks to con-
24 firm a plan over the rejection by the class
25 of unsecured claims that includes the defi-

1 ciency claim (that would not be paid in full
2 under the plan) held by the class of se-
3 cured claims; and

4 “(dd) the plan is for a debtor that
5 owns, leases, or otherwise holds single
6 asset real estate; except that

7 “(II) the court may find the plan for the
8 debtor to be fair and equitable under this clause
9 only if, in addition to the fulfillment of all other
10 requirements of this section—

11 “(aa) the value determined in accord-
12 ance with this subparagraph (referred to in
13 this subclause as the ‘new value’) is con-
14 tributed in cash on or before the effective
15 date of the plan, and in a manner in which
16 the only permissible accounting treatment
17 is for the new value to be accounted for as
18 equity capital that is not convertible for or
19 exchangeable into any other form of capital
20 including debt capital;

21 “(bb) the new value is required to be
22 applied on the effective date of the plan
23 under the plan to pay down in cash the al-
24 lowed secured claims of that class of se-
25 cured claims in such amount that, after

1 that payment is made, the principal
2 amount of debt secured by the single asset
3 real estate does not exceed 75 percent of
4 the value of the single asset real estate;
5 and

6 “(cc) the payment and other terms for
7 the debt remaining after the mandatory
8 application of new value as provided in
9 item (bb) satisfy, in all material particu-
10 lars, all relevant, then-prevailing market
11 terms in the locality for new loans secured
12 by liens on comparable real estate with re-
13 spect to—

14 “(AA) maturity date;

15 “(BB) amortization;

16 “(CC) interest rate;

17 “(DD) fixed-charge coverage; and

18 “(EE) loan documentation.”.

19 **SEC. 416. PAYMENT OF INTEREST.**

20 Section 362(d)(3) of title 11, United States Code, is
21 amended—

22 (1) in the matter preceding subparagraph (A),
23 by inserting “, or not later than 30 days after the
24 court determines that the debtor is subject to this

1 paragraph, whichever is later” after “90-day pe-
 2 riod)”; and

3 (2) by striking subparagraph (B) and inserting
 4 the following:

5 “(B) the debtor has commenced monthly
 6 payments (that notwithstanding section
 7 363(c)(2) may, in the debtor’s sole discretion,
 8 be made from rents or other income generated
 9 before or after the commencement of the case
 10 by or from the property) to each creditor whose
 11 claim is secured by that real estate (other than
 12 a claim secured by a judgment lien or an
 13 unmatured statutory lien), in an amount equal
 14 to the interest on the value of the creditor’s in-
 15 terest in the real estate, determined at the
 16 then-applicable contract rate of interest.”.

17 **TITLE V—BANKRUPTCY TAX**
 18 **ISSUES**

19 **SEC. 501. EFFECTIVE NOTICE TO GOVERNMENT.**

20 (a) CLARIFICATION OF DEFINITION OF GOVERN-
 21 MENTAL UNIT.—Section 101(27) of title 11, United
 22 States Code, is amended by striking “State;” and insert-
 23 ing “State or subdivision thereof;”.

24 (b) SAFE HARBOR ADDRESS; PENALTIES FOR FAIL-
 25 URE OF NOTICE.—

1 (1) IN GENERAL.—Section 342 of title 11,
2 United States Code, is amended by adding at the
3 end the following:

4 “(d) If a debtor lists a governmental unit as a credi-
5 tor in a list or schedule, any notice required to be given
6 by the debtor under this title, any rule, applicable law,
7 or order of the court, shall identify the department, agen-
8 cy, or instrumentality through which the debtor is in-
9 debted. The debtor shall also identify (with information
10 such as a taxpayer identification number, loan, account
11 or contract number, or real estate parcel number, if appli-
12 cable) and describe the underlying basis for the claim of
13 the governmental unit. If the liability of the debtor to a
14 governmental unit arises from a debt or obligation owed
15 or incurred by another individual, entity, or organization,
16 or under a different name, the debtor shall identify that
17 individual, entity, organization, or name.

18 “(e) The clerk shall keep and update quarterly, in
19 the form and manner as the appropriate Federal official
20 prescribes, and make available to debtors, a register in
21 which a governmental unit shall designate a safe harbor
22 mailing address for service of notice in cases pending in
23 the district. A governmental unit shall file a statement
24 with the clerk designating a safe harbor address to which
25 notices are to be sent.”.

1 (2) PENALTIES.—Section 342 of title 11,
2 United States Code, as amended by paragraph (1),
3 is amended by adding at the end the following:

4 “(f)(1) Subject to paragraph (2), if, after notice and
5 hearing, a governmental unit demonstrates, by a prepon-
6 derance of the evidence, that the governmental unit did
7 not receive timely actual notice as required under this sec-
8 tion—

9 “(A) any claim, right, or obligation in favor of
10 that governmental unit shall not be discharged; and

11 “(B) any order entered by the court barring the
12 enforcement of, or inhibiting any right, duty, or obli-
13 gation of that governmental unit shall be void.

14 “(2) The debtor shall have the burden of proof in re-
15 futing an assertion by a governmental unit under para-
16 graph (1) that the governmental unit did not receive the
17 timely actual notice referred to in that paragraph.

18 “(3) Notwithstanding paragraph (1), the relief
19 sought by a governmental unit under this subsection shall
20 not be granted, if, in a hearing under this title, a debtor
21 demonstrates that—

22 “(A) the debtor provided timely actual notice to
23 the governmental unit in a manner reasonably cal-
24 culated to satisfy the requirements of this sub-
25 section; and

1 “(B) if the register referred to in subsection
2 (e), at the time of the notification, included a safe
3 harbor address for the governmental unit involved,
4 the debtor provided the timely actual notice to the
5 governmental unit through the use of such safe har-
6 bor address.

7 “(4) No sanction under section 362(h) or any other
8 provision of law that provides for the imposition by a court
9 of a sanction for a violation of a stay under section 362(h)
10 or a sanction for failing to meet the applicable require-
11 ments of section 542 or 543 may be imposed, unless that
12 violation occurs after a notice of commencement of a case
13 made in accordance with this section is received by the
14 entity.”.

15 (c) PROPOSED REVISION OF RULES FOR PROVIDING
16 NOTICE.—

17 (1) IN GENERAL.—The Advisory Committee on
18 Bankruptcy Rules of the Judicial Conference shall,
19 within a reasonable period of time after the date of
20 enactment of this Act, propose for adoption revised
21 rules for the provision by a debtor (or an entity on
22 behalf of which the debtor is required to provide no-
23 tice) of notice to each Federal, State, or local gov-
24 ernmental unit (as that term is defined in section
25 101(27) of title 11, United States Code) that has

1 regulatory authority with respect to the debtor or is
2 a creditor or potential creditor of that debtor.

3 (2) REVISED RULES.—The proposed rules de-
4 scribed in paragraph (1) shall provide for notice rea-
5 sonably calculated to ensure that the notice will be
6 received by a representative of each governmental
7 unit that is authorized to act on the notice. At a
8 minimum, the proposed rules shall—

9 (A) require that the debtor—

10 (i) identify in the schedules for the
11 case and the notice, the subdivision, agen-
12 cy, or entity of the governmental unit with
13 respect to which the notice should be re-
14 ceived; and

15 (ii) provide sufficient information (in-
16 cluding case captions, permit numbers,
17 taxpayer identification numbers, or similar
18 identifying information) to permit the gov-
19 ernmental unit entitled to receive that no-
20 tice to identify—

21 (I) the debtor, or the entity on
22 behalf of which the debtor is obligated
23 to provide that notice, in the event the
24 debtor is a successor in interest or is

1 not the same as the entity that in-
2 curred the debt or obligation;

3 (II) any property that is the sub-
4 ject of the claim or obligation speci-
5 fied in the notice;

6 (III) the nature of the claim or
7 obligation referred to in subclause
8 (II); and

9 (IV) the purpose of the notice;
10 and

11 (B) provide sufficient information to per-
12 mit a debtor to identify the appropriate Fed-
13 eral, State, or local governmental unit through
14 the use of a safe harbor list established under
15 section 342(e) of title 11, United States Code,
16 as added by subsection (b) of this section.

17 **SEC. 502. NOTICE OF REQUEST FOR A DETERMINATION OF**
18 **TAXES.**

19 (a) ADOPTION OF REVISED RULES FOR PROVIDING
20 NOTICE.—The Advisory Committee on Bankruptcy Rules
21 of the Judicial Conference shall, within a reasonable pe-
22 riod of time after the date of enactment of this Act, pro-
23 pose for adoption rules under which the Federal, State,
24 and local governmental units may designate the manner
25 in which a trustee may make a request for the determina-

1 tion of any unpaid liability of the estate for any tax in-
2 curred during the administration of the case, as provided
3 under section 505(b) of title 11, United States Code.

4 (b) NOTICE REQUIRED.—The second sentence of sec-
5 tion 505(b) of title 11, United States Code, is amended
6 by striking “Unless” and inserting “If the request is made
7 in the manner designated by that governmental unit and
8 unless”.

9 **SEC. 503. RATE OF INTEREST ON TAX CLAIMS.**

10 (a) IN GENERAL.—Subchapter I of chapter 5 of title
11 11, United States Code, is amended by adding at the end
12 the following:

13 **“§ 511. Rate of interest on tax claims**

14 “In any case in which the holder of a claim for taxes
15 arising before the date of the order for relief is entitled
16 to receive interest on that claim, the rate of interest to
17 be applied shall be at least the rate provided in section
18 6621(a)(2) of the Internal Revenue Code of 1986.”.

19 (b) CLERICAL AMENDMENT.—The chapter analysis
20 for chapter 5 of title 11, United States Code, is amended
21 by inserting after the item relating to section 510 the fol-
22 lowing:

“511. Rate of interest on tax claims.”.

1 **SEC. 504. TOLLING OF PRIORITY OF TAX CLAIM TIME PERI-**
2 **ODS.**

3 Section 507(a)(8)(A) of title 11, United States Code,
4 is amended—

5 (1) in clause (i), by inserting before the semi-
6 colon at the end the following: “, plus any time plus
7 6 months, during which a stay of proceedings
8 against collections was in effect with respect to that
9 tax in a prior case under this title; and

10 (2) by striking clause (ii) and inserting the fol-
11 lowing:

12 “(ii) assessed within 240 days before
13 the date of the filing of the petition, exclu-
14 sive of—

15 “(I) any time plus 30 days dur-
16 ing which an offer in compromise or
17 installment agreement with respect to
18 that tax, was pending or in effect dur-
19 ing that 240-day period; and

20 “(II) any time plus 6 months
21 during which a stay of proceedings
22 against collections was in effect with
23 respect to that tax in a prior case
24 under this title during that 240-day
25 period;”.

1 **SEC. 505. ASSESSMENT DEFINED.**

2 Section 101 of title 11, United States Code, is
3 amended by inserting after paragraph (2) the following:

4 “(3)(A) ‘assessment’—

5 “(i) for purposes of State and local taxes,
6 means that action which is sufficiently final so
7 that thereafter a taxing authority may com-
8 mence an action to collect the tax; and

9 “(ii) for Federal tax purposes has the
10 meaning given such term in the Internal Reve-
11 nue Code of 1986; and

12 “(B) ‘assessed’ and ‘assessable’ shall be inter-
13 preted in a manner consistent with the definition of
14 the term ‘assessment’ in this paragraph;”.

15 **SEC. 506. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

16 Section 1141(d) of title 11, United States Code, is
17 amended by adding at the end the following:

18 “(5) Notwithstanding paragraph (1), the con-
19 firmation of a plan does not discharge a debtor that
20 is a corporation from any debt for a tax or customs
21 duty if, with respect to that tax or duty, the debtor
22 filed a fraudulent return or willfully attempted in
23 any manner to evade or defeat the tax or duty.”.

24 **SEC. 507. THE STAY OF PROCEEDINGS IN TAX COURT.**

25 (a) SECTION 362 STAY LIMITED TO PREPETITION
26 TAXES.—Section 362(a)(8) of title 11, United States

1 Code, is amended by striking the period at the end and
2 inserting “, with respect to a tax liability for a taxable
3 period ending before the order for relief under section 301,
4 302, or 303.”.

5 (b) APPEAL OF TAX COURT DECISIONS PER-
6 MITTED.—Section 362(b)(9) of title 11, United States
7 Code, is amended—

8 (1) in subparagraph (C), by striking “or” at
9 the end;

10 (2) in subparagraph (D), by striking the period
11 at the end and inserting “; or”; and

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

13 “(E) the appeal of a decision by a court or
14 administrative tribunal which determines a tax
15 liability of the debtor.”.

16 **SEC. 508. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**
17 **CASES.**

18 Section 1129(a)(9) of title 11, United States Code,
19 is amended—

20 (1) in subparagraph (B), by striking “and” at
21 the end;

22 (2) in subparagraph (C)—

23 (A) by inserting “in quarterly installments
24 or more frequent installments that shall be paid
25 in full not later than 6 years after the date on

1 which the order for relief is issued under this
2 title,” after “payments,”; and

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

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

6 “(D) with respect to a secured claim that
7 would otherwise meet the description of an un-
8 secured claim of a governmental unit under sec-
9 tion 507(a)(8), but for the secured status of
10 that claim, the holder of that claim will receive,
11 on account of that claim, cash payments, in the
12 same manner and over the same period, as pre-
13 scribed in subparagraph (C).”.

14 **SEC. 509. THE AVOIDANCE OF STATUTORY TAX LIENS PRO-**
15 **HIBITED.**

16 Section 545(2) of title 11, United States Code, is
17 amended by striking the semicolon at the end and insert-
18 ing “, except in any case in which a purchaser is a pur-
19 chaser described in section 6123 of the Internal Revenue
20 Code of 1986, or in any other similar provision of State
21 or local law;”.

22 **SEC. 510. COURSE OF BUSINESS PAYMENT OF TAXES.**

23 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of
24 title 28, United States Code, is amended by striking the
25 period at the end and inserting the following: “, and ex-

1 cept with respect to a property tax secured by a lien
2 against property of the estate that is abandoned by the
3 trustee of a bankruptcy estate pursuant to section 554 of
4 title 11, shall pay each such tax when due in the course
5 of that business. An officer or agent described in the pre-
6 ceding sentence shall pay any property tax secured by a
7 lien described in the preceding sentence within a reason-
8 able period of time after the lien attaches.”.

9 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—
10 Section 503(b)(1)(B)(i) of title 11, United States Code,
11 is amended by inserting “whether secured or unsecured,
12 including property taxes for which liability is in rem, in
13 personam, or both,” after “estate,”.

14 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE
15 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of
16 title 11, United States Code, is amended—

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

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

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

22 “(D) notwithstanding subsection (a), a
23 governmental unit shall not be required to file
24 a request for the payment of a claim described
25 in subparagraph (B) or (C);”.

1 **SEC. 511. TARDILY FILED PRIORITY TAX CLAIMS.**

2 Section 726(a)(1) of title 11, United States Code, is
3 amended by striking “the trustee commences distribution
4 under this section;” and inserting “the court approves the
5 final report and accounting of the trustee;”.

6 **SEC. 512. INCOME TAX RETURNS PREPARED BY TAX AU-**
7 **THORITIES.**

8 Section 523(a) of title 11, United States Code, is
9 amended—

10 (1) in paragraph (1)(B)—

11 (A) in clause (i), by striking “or” at the
12 end; and

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

14 “(iii) did not satisfy the requirements
15 of applicable nonbankruptcy law or was
16 not filed in the manner prescribed by ap-
17 plicable nonbankruptcy law; or”; and

18 (2) by adding at the end the following flush
19 sentence:

20 “For purposes of this subsection, the term ‘return’ does
21 not include a return made pursuant to section 6020(b)
22 of the Internal Revenue Code of 1986, or similar State
23 or local law.”.

1 **SEC. 513. THE DISCHARGE OF THE ESTATE'S LIABILITY FOR**
2 **UNPAID TAXES.**

3 The second sentence of section 505(b) of title 11,
4 United States Code, is amended by inserting “the estate,”
5 after “misrepresentation,”.

6 **SEC. 514. STANDARDS FOR TAX DISCLOSURE.**

7 Section 1125(a)(1) of title 11, United States Code,
8 is amended—

9 (1) by inserting “including, with respect to a
10 plan, a full discussion of the potential material Fed-
11 eral and State tax consequences of the plan with re-
12 spect to the debtor, any successor to the debtor, and
13 a hypothetical investor representative of the holders
14 of claims or interests in the case,” after “records,”;

15 (2) by inserting “such” after “enable”; and

16 (3) by striking “hypothetical reasonable inves-
17 tor typical of holders of claims or interests” and in-
18 serting “hypothetical investor”.

19 **SEC. 515. SETOFF OF TAX REFUNDS.**

20 Section 362(b) of title 11, United States Code, as
21 amended by section 204, is amended—

22 (1) in paragraph (18), by striking “or” at the
23 end;

24 (2) in paragraph (19), by striking the period at
25 the end and inserting “, or”;

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

3 “(20) under subsection (a), of the setoff of an
4 income tax refund by a governmental unit, with re-
5 spect to a taxable period that ends before the order
6 for relief against an income tax liability for a taxable
7 period that ends before the order for relief, unless
8 before that setoff, an action is commenced under
9 section 505(a) to determine the amount or legality
10 of that tax liability.”; and

11 (4) in the flush material following paragraph
12 (19), by adding at the end the following: “In any
13 case referred to in paragraph (19) in which the
14 setoff of an income tax refund is not permitted by
15 reason of a pending action to determine the amount
16 or legality of a tax liability, the governmental unit
17 involved may hold the refund pending the resolution
18 of the action.”.

19 **TITLE VI—MISCELLANEOUS**

20 **SEC. 601. EXECUTORY CONTRACTS AND UNEXPIRED** 21 **LEASES.**

22 Section 365(d)(4) of title 11, United States Code, is
23 amended to read as follows:

24 “(4)(A) Subject to subparagraph (B), in any case
25 under any chapter of this title, an unexpired lease of non-

1 residential real property under which the debtor is the les-
2 see shall be deemed rejected and the trustee shall imme-
3 diately surrender that nonresidential real property to the
4 lessor if the trustee does not assume or reject the unex-
5 pired lease by the earlier of—

6 “(i) the date that is 120 days after the date of
7 the order for relief; or

8 “(ii) the date of the entry of an order confirm-
9 ing a plan.

10 “(B) The court may extend the period determined
11 under subparagraph (A) only upon a motion of the les-
12 sor.”.

13 **SEC. 602. ALLOWANCE OF CLAIMS OR INTERESTS.**

14 Section 502(b)(6) of title 11, United States Code, is
15 amended to read as follows:

16 “(6)(A) if that claim is the claim of a lessor for
17 damages resulting from the termination of a lease of
18 real property, that claim exceeds an amount equal to
19 the sum of—

20 “(i) monetary obligations under the lease
21 (including rent, percentage rent, additional
22 rent, common area maintenance charges, taxes,
23 utilities, reasonable attorneys’ fees, and other
24 costs), without acceleration, for the period be-

1 ginning immediately after that termination of
2 the lease and ending on the later of—

3 “(I) 1 year after the date of that ter-
4 mination; or

5 “(II) the date on which 15 percent of
6 the remaining term of the lease would have
7 tolled, but for the termination of the lease,
8 but not later than 3 years after the date
9 of that termination;

10 “(ii) any unpaid monetary obligations due
11 under the lease, without acceleration, as of the
12 date of filing of the petition; and

13 “(iii) all costs (including tenant improve-
14 ments and brokers’ fees or commissions) that
15 are reasonably incurred (or will, as of the date
16 of the determination of the sum under this sub-
17 paragraph, be reasonably incurred) during the
18 1-year period beginning on the date of the ter-
19 mination of the lease; except that

20 “(B) any mitigation that is required by law re-
21 sulting from the termination of the lease shall be ap-
22 plied against the claim of the lessor without regard
23 to the limitations imposed under clauses (i) through
24 (iii) of subparagraph (A);”.

1 **SEC. 603. EXPEDITED APPEALS OF BANKRUPTCY CASES TO**
2 **COURTS OF APPEALS.**

3 (a) IN GENERAL.—Section 158 of title 28, United
4 States Code, is amended—

5 (1) by redesignating subsection (d) as sub-
6 section (e);

7 (2) by inserting after subsection (c) the follow-
8 ing new subsection:

9 “(d)(1) Any final judgment, decision, order, or decree
10 of a bankruptcy judge entered for a case in accordance
11 with section 157 may be appealed by any party in such
12 case to the appropriate court of appeals if—

13 “(A) an appeal from such judgment, decision,
14 order, or decree is first filed with the appropriate
15 district court of the United States; and

16 “(B) the decision on the appeal described under
17 subparagraph (A) is not filed by a district court
18 judge within 30 days after the date such appeal is
19 filed with the district court.

20 “(2) On the date that an appeal is filed with a court
21 of appeals under paragraph (1), the chief judge for such
22 court of appeals shall issue an order to the clerk for the
23 district court from which the appeal is filed. Such order
24 shall direct the clerk to enter the final judgment, decision,
25 order, or decree of the bankruptcy judge as the final judg-
26 ment, decision, order, or decree of the district court.”; and

1 (3) in subsection (e) (as redesignated by para-
2 graph (1) of this section) by striking “subsections
3 (a) and (b)” and inserting “subsections (a), (b), and
4 (d)”.

5 (b) **TECHNICAL AND CONFORMING AMENDMENTS.—**

6 (1) Section 305(e) of title 11, United States
7 Code, is amended by striking “section 158(d)” and
8 inserting “section 158(e)”.

9 (2) Section 1334(d) of title 28, United States
10 Code, is amended by striking “section 158(d)” and
11 inserting “section 158(e)”.

12 (3) Section 1452(b) of title 28, United States
13 Code, is amended by striking “section 158(d)” and
14 inserting “section 158(e)”.

15 **SEC. 604. CREDITORS AND EQUITY SECURITY HOLDERS**

16 **COMMITTEES.**

17 Section 1102(a)(2) of title 11, United States Code,
18 is amended by inserting before the first sentence the fol-
19 lowing: “On its own motion or on request of a party in
20 interest, and after notice and hearing, the court may order
21 a change in the membership of a committee appointed
22 under this subsection, if the court determines that the
23 change is necessary to ensure adequate representation of
24 creditors or equity security holders.”.

1 **SEC. 605. REPEAL OF SUNSET PROVISION.**

2 Section 302 of the Bankruptcy Judges, United States
3 Trustees, and Family Farmer Bankruptcy Act of 1986
4 (28 U.S.C. 581 note) is amended by striking subsection
5 (f).

6 **SEC. 606. CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

7 Section 304 of title 11, United States Code, as
8 amended by section 210, is amended by adding at the end
9 the following:

10 “(e)(1) In this subsection—

11 “(A) the term ‘domestic insurance company’
12 means a domestic insurance company, as that term
13 is used in section 109(b)(2);

14 “(B) the term ‘foreign insurance company’
15 means a foreign insurance company, as that term is
16 used in section 109(b)(3);

17 “(C) the term ‘United States claimant’ means
18 a beneficiary of any deposit referred to in paragraph
19 (2)(A) or any multibeneficiary trust referred to in
20 subparagraph (B) or (C) of paragraph (2);

21 “(D) the term ‘United States creditor’ means,
22 with respect to a foreign insurance company—

23 “(i) a United States claimant; or

24 “(ii) any business entity that operates in
25 the United States and that is a creditor; and

1 “(E) the term ‘United States policyholder’
2 means a holder of an insurance policy issued in the
3 United States.

4 “(2) Notwithstanding subsections (b) and (c), the
5 court may not grant relief under subsection (b) to a for-
6 eign insurance company that is not engaged in the busi-
7 ness of insurance or reinsurance in the United States with
8 respect to any claim made by a United States creditor
9 against—

10 “(A) a deposit required by an applicable State
11 insurance law;

12 “(B) a multibeneficiary trust required by an ap-
13 plicable State insurance law to protect United States
14 policyholders or claimants against a foreign insur-
15 ance company; or

16 “(C) a multibeneficiary trust authorized under
17 an applicable State insurance law to allow a domes-
18 tic insurance company that cedes reinsurance to the
19 debtor to reflect the reinsurance as an asset or de-
20 duction from liability in the ceding insurer’s finan-
21 cial statements.”.

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