

105TH CONGRESS
2^D SESSION

H. R. 3150

AN ACT

To amend title 11 of the United States Code, and
for other purposes.

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To amend title 11 of the United States Code, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs-Based Bankruptcy

Sec. 101. Needs-based bankruptcy.

Sec. 102. Adequate income shall be committed to a chapter 13 plan that pays
unsecured creditors.

Sec. 103. Definition of inappropriate use.

Sec. 104. Debtor participation in credit counseling program.

Sec. 105. Who may be a debtor under chapter 11.

Subtitle B—Adequate Protections for Consumers

Sec. 111. Notice of alternatives.

Sec. 112. Debtor financial management training test program.

Sec. 113. Definitions.

Sec. 114. Disclosures.

Sec. 115. Debtor’s bill of rights.

Sec. 116. Enforcement.

Sec. 117. Sense of the Congress.

Sec. 118. Charitable contributions.

Sec. 119. Reinforce the fresh start.

Sec. 119A. Chapter 11 discharge of debts arising from tobacco-related debts.

Subtitle C—Adequate Protections for Secured Creditors

Sec. 121. Discouraging bad faith repeat filings.

Sec. 122. Definition of household goods.

Sec. 123. Debtor retention of personal property security.

Sec. 124. Relief from the automatic stay when the debtor does not complete in-
tended surrender of consumer debt collateral.

Sec. 125. Giving secured creditors fair treatment in chapter 13.

Sec. 126. Prompt relief from the automatic stay in individual cases.

Sec. 127. Stopping abusive conversions from chapter 13.

Sec. 128. Restraining abusive purchases on secured credit.

Sec. 129. Fair valuation of collateral.

Sec. 130. Protection of holders of claims secured by debtor’s principal resi-
dence.

Sec. 131. Aircraft equipment and vessels.

Subtitle D—Adequate Protections for Unsecured Creditors

Sec. 141. Debts incurred to pay nondischargeable debts.

Sec. 142. Credit extensions on the eve of bankruptcy presumed nondischarge-
able.

- Sec. 143. Fraudulent debts are nondischargeable in chapter 13 cases.
- Sec. 144. Applying the codebtor stay only when it protects the debtor.
- Sec. 145. Debts for alimony, maintenance, and support.
- Sec. 146. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 147. Other exceptions to discharge.
- Sec. 148. Fees arising from certain ownership interests.
- Sec. 149. Protection of child support and alimony.
- Sec. 150. Adequate protection for investors.
- Sec. 151. Higher priority for debts for alimony, maintenance, and support.

Subtitle E—Adequate Protections for Lessors

- Sec. 161. Giving debtors the ability to keep leased personal property by assumption.
- Sec. 162. Adequate protection of lessors and purchase money secured creditors.
- Sec. 163. Adequate protection for lessors.

Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

- Sec. 171. Extend period between bankruptcy discharges.

Subtitle G—Exemptions

- Sec. 181. Exemptions.
- Sec. 182. Limitation.

TITLE II—BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Provisions

- Sec. 201. Limitation relating to the use of fee examiners.
- Sec. 202. Sharing of compensation.
- Sec. 203. Chapter 12 made permanent law.
- Sec. 204. Meetings of creditors and equity security holders.
- Sec. 205. Creditors' and equity security holders' committees.
- Sec. 206. Postpetition disclosure and solicitation.
- Sec. 207. Preferences.
- Sec. 208. Venue of certain proceedings.
- Sec. 209. Period for filing plan under chapter 11.
- Sec. 210. Period for filing plan under chapter 12.
- Sec. 211. Cases ancillary to foreign proceedings involving foreign insurance companies that are engaged in the business of insurance or reinsurance in the United States.
- Sec. 212. Rejection of executory contracts affecting intellectual property rights to recordings of artistic performance.
- Sec. 213. Unexpired leases of nonresidential real property.
- Sec. 214. Definition of disinterested person.
- Sec. 215. Defaults based on nonmonetary obligations.

Subtitle B—Specific Provisions

CHAPTER 1—SMALL BUSINESS BANKRUPTCY

- Sec. 231. Definitions.
- Sec. 232. Flexible rules for disclosure statement and plan.
- Sec. 233. Standard form disclosure statement and plan.
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- Sec. 236. Duties in small business cases.
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- Sec. 238. Plan confirmation deadline.
- Sec. 239. Prohibition against extension of time.
- Sec. 240. Duties of the United States trustee and bankruptcy administrator.
- Sec. 241. Scheduling conferences.
- Sec. 242. Serial filer provisions.
- Sec. 243. Expanded grounds for dismissal or conversion and appointment of trustee.
- Sec. 244. Study of operation of title 11 of the United States Code with respect to small businesses.

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- Sec. 252. Payment of interest.

TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 301. Petition and proceedings related to petition.
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TITLE IV—BANKRUPTCY ADMINISTRATION

Subtitle A—General Provisions

- Sec. 401. Adequate preparation time for creditors before the meeting of creditors in individual cases.
- Sec. 402. Creditor representation at first meeting of creditors.
- Sec. 403. Filing proofs of claim.
- Sec. 404. Audit procedures.
- Sec. 405. Giving creditors fair notice in chapter 7 and 13 cases.
- Sec. 406. Debtor to provide tax returns and other information.
- Sec. 407. Dismissal for failure to file schedules timely or provide required information.
- Sec. 408. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 409. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 410. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 411. Jurisdiction of courts of appeals.
- Sec. 412. Establishment of official forms.
- Sec. 413. Elimination of certain fees payable in chapter 11 bankruptcy cases.
- Sec. 414. Study of bankruptcy impact of credit extended to dependent students.

Subtitle B—Data Provisions

- Sec. 441. Improved bankruptcy statistics.
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- Sec. 501. Treatment of certain liens.
- Sec. 502. Enforcement of child and spousal support.
- Sec. 503. Effective notice to Government.
- Sec. 504. Notice of request for a determination of taxes.
- Sec. 505. Rate of interest on tax claims.

- Sec. 506. Tolling of priority of tax claim time periods.
 Sec. 507. Assessment defined.
 Sec. 508. Chapter 13 discharge of fraudulent and other taxes.
 Sec. 509. Chapter 11 discharge of fraudulent taxes.
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 Sec. 511. Periodic payment of taxes in chapter 11 cases.
 Sec. 512. Avoidance of statutory tax liens prohibited.
 Sec. 513. Payment of taxes in the conduct of business.
 Sec. 514. Tardily filed priority tax claims.
 Sec. 515. Income tax returns prepared by tax authorities.
 Sec. 516. Discharge of the estate's liability for unpaid taxes.
 Sec. 517. Requirement to file tax returns to confirm chapter 13 plans.
 Sec. 518. Standards for tax disclosure.
 Sec. 519. Setoff of tax refunds.

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 601. Amendment to add a chapter 6 to title 11, United States Code.
 Sec. 602. Amendments to other chapters in title 11, United States Code.

TITLE VII—MISCELLANEOUS

- Sec. 701. Technical amendments.
 Sec. 702. Application of amendments.

1 **TITLE I—CONSUMER**
 2 **BANKRUPTCY PROVISIONS**
 3 **Subtitle A—Needs-Based**
 4 **Bankruptcy**

5 **SEC. 101. NEEDS-BASED BANKRUPTCY.**

6 Title 11, United States Code, is amended—

7 (1) in section 101 as follows:

8 (A) by inserting after paragraph (10) the
 9 following:

10 “(10A) ‘current monthly total income’ means
 11 the average monthly income from all sources derived
 12 which the debtor, or in a joint case, the debtor and
 13 the debtor’s spouse, receive without regard to wheth-
 14 er it is taxable income, in the six months preceding

1 the date of determination, and includes any amount
2 paid by anyone other than the debtor or, in a joint
3 case, the debtor and the debtor's spouse, on a regu-
4 lar basis to the household expenses of the debtor or
5 the debtor's dependents and, in a joint case, the
6 debtor's spouse if not otherwise a dependent;"; and

7 (B) by inserting after paragraph (40) the
8 following:

9 "(40A) 'national median family income' and
10 'national median household income for 1 earner'
11 shall mean during any calendar year, the national
12 median family income and the national median
13 household income for 1 earner which the Bureau of
14 the Census has reported as of January 1 of such cal-
15 endar year for the most recent previous calendar
16 year;";

17 (2) in section 104(b)(1) by striking "109(e)"
18 and inserting "subsections (b), (e), and (h) of sec-
19 tion 109";

20 (3) in section 109(b)—

21 (A) in paragraph (2) by striking "or" at
22 the end;

23 (B) in paragraph (3) by striking the period
24 and inserting "; or"; and

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

1 “(4) an individual or, in a joint case, an indi-
2 vidual and such individual’s spouse, who have in-
3 come available to pay creditors as determined under
4 subsection (h).”;

5 (4) by adding at the end of section 109 the fol-
6 lowing:

7 “(h)(1) An individual or, in a joint case, an individual
8 and such individual’s spouse, have income available to pay
9 creditors if the individual, or, in a joint case, the individual
10 and the individual’s spouse combined, as of the date of
11 the order for relief, have—

12 “(A) current monthly total income of not less
13 than the highest national median family income re-
14 ported for a family of equal or lesser size or, in the
15 case of a household of 1 person, of not less than the
16 national median household income for 1 earner, as
17 of the date of the order for relief;

18 “(B) projected monthly net income greater than
19 \$50; and

20 “(C) projected monthly net income sufficient to
21 repay twenty percent or more of unsecured nonprior-
22 ity claims during a five-year repayment plan.

23 “(2) Projected monthly net income shall be sufficient
24 under paragraph (1)(C) if, when multiplied by 60 months,

1 it equals or exceeds 20 percent of the total amount sched-
2 uled as payable to unsecured nonpriority creditors.

3 “(3) ‘Projected monthly net income’ means current
4 monthly total income less—

5 “(A) the expense allowances under the applica-
6 ble National Standards, Local Standards and Other
7 Necessary Expenses allowance (excluding payments
8 for debts), issued by the Internal Revenue Service,
9 for the debtor, the debtor’s dependents, and, in a
10 joint case, the debtor’s spouse if not otherwise a de-
11 pendent, in the area in which the debtor resides as
12 determined by the Internal Revenue Service allow-
13 ance for such expenses in effect as of the date of the
14 order for relief;

15 “(B) the average monthly payment on account
16 of secured creditors, which shall be calculated as the
17 total of all amounts scheduled as contractually pay-
18 able to secured creditors in each month of the 60
19 months following the date of the petition by the
20 debtor, or, in a joint case, by the debtor and the
21 debtor’s spouse combined, and dividing that total by
22 60 months; and

23 “(C) the average monthly payment on account
24 of priority creditors, which shall be calculated as the
25 total amount of debts entitled to priority, reasonably

1 estimated by the debtor as of the date of the peti-
2 tion, and dividing that total by 60 months.

3 “(4) In the event that the debtor establishes extraor-
4 dinary circumstances that require allowance for additional
5 expenses or adjustment of current monthly total income,
6 projected monthly net income for purposes of this section
7 shall be the amount calculated under paragraph (3) less
8 such additional expenses or income adjustment as such ex-
9 traordinary circumstances require.

10 “(A) This paragraph shall not apply unless the
11 debtor files with the petition—

12 “(i) a written statement that this para-
13 graph applies in determining the debtor’s eligi-
14 bility for relief under chapter 7 of this title;

15 “(ii) if adjustment of current monthly total
16 income is claimed, an explanation of any income
17 that has been lost in the 6 months preceding
18 the date of determination and any replacement
19 income that has been offered or secured, or is
20 expected, and an itemization of such lost and
21 replacement income;

22 “(iii) if allowance for additional expenses is
23 claimed, a list itemizing each additional expense
24 which exceeds the expenses allowances provided
25 under paragraph (3)(A);

1 “(iv) a detailed description of the extraor-
2 ordinary circumstances that explain why each loss
3 of income described under clause (ii) will not be
4 replaced or each additional expense itemized
5 under clause (iii) requires allowance; and

6 “(v) a sworn statement signed by the debt-
7 or and, if the debtor is represented by counsel,
8 by the debtor’s attorney, that the information
9 required under this paragraph is true and cor-
10 rect.

11 “(B) Until the trustee or any party in interest
12 objects to the debtor’s statement that this paragraph
13 applies and the court rejects or modifies the debtor’s
14 statement, the projected monthly net income in the
15 debtor’s statement shall be the projected monthly
16 net income for the purposes of this section. If an ob-
17 jection is filed with the court within 60 days after
18 the debtor has provided all the information required
19 under subsections (a)(1) and (c)(1)(A) of section
20 521, the court, after notice and hearing, shall deter-
21 mine whether such extraordinary circumstances exist
22 and shall establish the amount of the additional ex-
23 pense allowance, if any. The burden of proving such
24 extraordinary circumstances shall be on the debtor.”;

25 (5) in section 704—

1 (A) by striking “and” at the end of para-
2 graph (8);

3 (B) by striking the period at the end of
4 paragraph (9) and inserting “; and”; and

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

6 “(10) with respect to an individual debtor, re-
7 view all materials provided by the debtor under sub-
8 sections (a)(1) and (c)(1) of section 521, investigate
9 and verify the debtor’s projected monthly net income
10 and within 30 days after such materials are so pro-
11 vided—

12 “(A) file a report with the court as to
13 whether the debtor qualifies for relief under this
14 chapter under section 109(b)(4); and

15 “(B) if the trustee determines that the
16 debtor does not qualify for such relief, the
17 trustee shall provide a copy of such report to
18 the parties in interest.”;

19 (6) in section 1302(b)—

20 (A) in paragraph (4) by striking “and” at
21 the end;

22 (B) in paragraph (5) by striking the period
23 and inserting a semicolon; and

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

1 “(6) investigate and verify the debtor’s monthly
2 net income and other information provided by the
3 debtor pursuant to sections 521 and 1322, and pur-
4 suant to section 111, if applicable; and

5 “(7) file annual reports with the court, with
6 copies to holders of claims under the plan, as to
7 whether a modification of the amount paid creditors
8 under the plan is appropriate because of changes in
9 the debtor’s monthly net income.”.

10 **SEC. 102. ADEQUATE INCOME SHALL BE COMMITTED TO A**
11 **CHAPTER 13 PLAN THAT PAYS UNSECURED**
12 **CREDITORS.**

13 Title 11, United States Code, is amended—

14 (1) in section 101 by inserting after paragraph
15 (39) the following:

16 “(39A) ‘monthly net income’ means the amount
17 determined by taking the current monthly total in-
18 come of the debtor less—

19 “(A) the expense allowances under the ap-
20 plicable National Standards, Local Standards
21 and Other Necessary Expenses allowance (ex-
22 cluding payments for debts), issued by the In-
23 ternal Revenue Service, for the debtor, the
24 debtor’s dependents, and, in a joint case, the
25 debtor’s spouse if not otherwise a dependent, in

1 the area in which the debtor resides as deter-
2 mined by the Internal Revenue Service allow-
3 ance for such expenses in effect as of the date
4 it is being determined;

5 “(B) the average monthly payment on ac-
6 count of secured creditors, which shall be cal-
7 culated as of the date of determination as the
8 total of all amounts then remaining to be paid
9 on account of secured claims pursuant to the
10 plan less any of such amounts to be paid from
11 sources other than the debtor’s income, divided
12 by the total months remaining under the plan;
13 and

14 “(C) the average monthly payment on ac-
15 count of priority creditors, which shall be cal-
16 culated as the total of all amounts then remain-
17 ing to be paid on account of priority claims pur-
18 suant to the plan less any of such amounts to
19 be paid from sources other than the debtor’s in-
20 come, divided by the total months remaining
21 under the plan;”;

22 (2) in section 104(b)(1) by striking “and
23 523(a)(2)(C)” and inserting “523(a)(2)(C), and
24 1325(b)(1)”; and

25 (3) by adding after section 110 the following:

1 **“§ 111. Adjustment to monthly net income**

2 “(a) Monthly net income for purposes of a plan under
3 chapter 13 of this title shall be adjusted under this section
4 when the debtor’s extraordinary circumstances require ad-
5 justment as determined herein. Under this section, month-
6 ly net income shall be determined by subtracting there-
7 from such loss of income or additional expenses as the
8 debtor’s extraordinary circumstances require as deter-
9 mined under this section. This section shall not apply un-
10 less—

11 “(1) the debtor files with the court and with the
12 trustee at the times required in subsection (b) a
13 statement of extraordinary circumstances as fol-
14 lows—

15 “(A) a written statement that this section
16 applies in determining the debtor’s monthly net
17 income;

18 “(B) if applicable, an explanation of any
19 income that has been lost in the six months
20 preceding the date of determination and any re-
21 placement income which has been secured or is
22 expected, and an itemization of such lost and
23 replacement income;

24 “(C) if applicable, a list itemizing each ad-
25 ditional expense which exceeds the expense al-

1 allowance provided in determining monthly net
2 income under section 101(39A);

3 “(D) if applicable, a detailed description of
4 the extraordinary circumstances which explains
5 why each of the additional expenses itemized
6 under paragraph (C) requires allowance; and

7 “(E) a sworn statement signed by the
8 debtor and, if the debtor is represented by
9 counsel, by the debtor’s attorney, of the amount
10 of monthly net income that the debtor has pur-
11 suant to this subsection and that the informa-
12 tion provided under this subsection is true and
13 correct; and

14 “(2) until the trustee or any party in interest
15 objects to the debtor’s request that this section be
16 applied and the court rejects or modifies the debtor’s
17 statement, the monthly net income in the debtor’s
18 statement shall be the monthly net income for the
19 purposes of the debtor’s plan. If an objection is filed
20 with the court within the times provided in sub-
21 section (b), the court, after notice and hearing, shall
22 determine whether such extraordinary circumstances
23 asserted by the debtor exist and establish the
24 amount of the loss of income and such additional ex-
25 pense allowance, if any. The burden of proving such

1 extraordinary circumstances and the amount of the
2 loss of income and the additional expense allowance,
3 if any, shall be on the debtor. The court may award
4 to the party that prevails with respect to such objec-
5 tion a reasonable attorney’s fee and costs incurred
6 by the prevailing party in connection with such ob-
7 jection if the court finds that the position of the
8 nonprevailing party was not substantially justified,
9 but the court shall not award such fee or such costs
10 if special circumstances make the award unjust.

11 “(b) For the purposes of chapter 13 of this title, the
12 statement of extraordinary circumstances shall be filed
13 with the court and served on the trustee on or before 45
14 days before each anniversary of the confirmation of the
15 plan in order to be applicable during the next year of the
16 plan. Any objection thereto shall be filed 30 days after
17 the statement is filed with the trustee. Whenever a state-
18 ment is timely filed with the trustee, the trustee shall give
19 notice to creditors that such statement has been filed and
20 the amount of monthly net income stated therein within
21 15 days of receipt of the statement.”;

22 (4) in section 1322(a)—

23 (A) by striking “and” at the end of para-
24 graph (2);

1 (B) by striking the period at the end of
2 paragraph (3) and inserting “; and”; and

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

4 “(4) state, under penalties of perjury, the
5 amount of monthly net income, which may be as ad-
6 justed under section 111, if applicable, of this title
7 and the amount of monthly net income which will be
8 paid per month to unsecured nonpriority creditors
9 under the plan.”; and

10 (5) by amending section 1325(b)(1)(B) to read
11 as follows:

12 “(B) the plan provides—

13 “(i) that payments to unsecured nonprior-
14 ity creditors who are not insiders shall equal or
15 exceed \$50 in each month of the plan;

16 “(ii) that during the applicable commit-
17 ment period beginning on the date that the first
18 payment is due under the plan, the total
19 amount of monthly net income received by the
20 debtor shall be paid to unsecured nonpriority
21 creditors under the plan less only payments
22 pursuant to section 1326(b); the ‘applicable
23 commitment period’ shall be not less than 5
24 years if the debtor’s current monthly total in-
25 come is not less than the highest national me-

1 dian family income reported for a family of
2 equal or lesser size or, in the case of a house-
3 hold of 1 person, is not less than the national
4 median household income for 1 earner, as of
5 the date of confirmation of the plan and shall
6 be not less than 3 years if the debtor's current
7 monthly total income is less than the highest
8 national median family income reported for a
9 family of equal or lesser size or, in the case of
10 a household of 1 person, is less than the na-
11 tional median household income for 1 earner, as
12 of the date of confirmation of the plan;

13 “(iii) that the amount payable to each
14 class of unsecured nonpriority claims under the
15 plan shall be increased or decreased during the
16 plan proportionately to the extent the debtor's
17 monthly net income during the plan increases
18 or decreases as reasonably determined by the
19 trustee, subject to section 111 of this title, no
20 less frequently than as of each anniversary of
21 the confirmation of the plan based on monthly
22 net income as of 45 days before such anniver-
23 sary; and

24 “(iv) nothing in subparagraph (i) or (ii)
25 shall prevent the payment of obligations de-

1 scribed in section 507(a)(7) at the times pro-
2 vided for in the plan, and the plan shall specify
3 how payments to other creditors under subpara-
4 graph (ii) will be accordingly adjusted.”; and
5 (6) by striking section 1325(b)(2).

6 **SEC. 103. DEFINITION OF INAPPROPRIATE USE.**

7 Section 707(b) of title 11, United States Code, is
8 amended to read as follows:

9 “(b)(1) After notice and a hearing, the court—

10 “(A) on its own motion or on the motion of the
11 United States trustee or any party in interest, shall
12 dismiss a case filed by an individual debtor under
13 this chapter; or

14 “(B) with the debtor’s consent, convert the case
15 to a case under chapter 13 of this title;

16 if the court finds that the granting of relief would be an
17 inappropriate use of the provisions of this chapter.

18 “(2) The court shall determine that inappropriate use
19 of the provisions of this chapter exists if—

20 “(A) the debtor is excluded from this chapter
21 pursuant to section 109 of this title; or

22 “(B) the totality of the circumstances of the
23 debtor’s financial situation demonstrates such inap-
24 propriate use.

1 “(3) In the case of a motion filed by a party in inter-
2 est other than the trustee or United States trustee under
3 paragraph (1) that is denied by the court, the court shall
4 award against the moving party a reasonable attorney’s
5 fee and costs that the debtor incurred in opposing the mo-
6 tion if the court finds that the position of the moving party
7 was not substantially justified, but the court shall not
8 award such fee and costs if special circumstances would
9 make the award unjust.

10 “(4)(A) If a trustee appointed under this title or the
11 United States Trustee files a motion under this subsection
12 and the case is subsequently dismissed or converted to an-
13 other chapter, the court shall award to such party in inter-
14 est a reasonable attorney’s fee and costs incurred in con-
15 nection with such motion, payable by the debtor, unless
16 the court finds that awarding such fee and costs would
17 impose an unreasonable hardship on the debtor, consider-
18 ing the debtor’s conduct.

19 “(B) The signature of the debtor’s attorney on any
20 petition, pleading, motion, or other paper filed with the
21 court in the case of the debtor shall constitute a certificate
22 that the attorney has—

23 “(i) performed a reasonable investigation into
24 the circumstances that gave rise to the petition,

1 schedules, and statement of financial affairs or the
2 pleading, as applicable; and

3 “(ii) determined that the petition schedules,
4 and statement of financial affairs or the pleading, as
5 applicable, including the choice of this chapter—

6 “(I) is well grounded in fact; and

7 “(II) is warranted by existing law or a
8 good-faith argument for the extension, modi-
9 fication, or reversal of existing law and does not
10 constitute an inappropriate use of the provi-
11 sions of this chapter.

12 “(C) If the court finds that the attorney for the debt-
13 or signed a paper in violation of subparagraph (B), at a
14 minimum, the court shall order—

15 “(i) the assessment of an appropriate civil pen-
16 alty against the attorney for the debtor; and

17 “(ii) the payment of the civil penalty to the
18 trustee or the United States Trustee.”.

19 **SEC. 104. DEBTOR PARTICIPATION IN CREDIT COUNSELING**
20 **PROGRAM.**

21 (a) WHO MAY BE A DEBTOR.—Section 109 of title
22 11, United States Code, as amended by section 102, is
23 amended by adding at the end the following:

24 “(i)(1) Subject to paragraph (2) and notwithstanding
25 any other provision of this section, an individual may not

1 be a debtor under this title unless such individual has,
2 during the 90-day period preceding the date of filing of
3 the petition, made a good-faith attempt to create a debt
4 repayment plan, through a credit counseling program of-
5 fered through credit counseling services described in sec-
6 tion 342(b)(2) that has been approved by—

7 “(A) the United States trustee; or

8 “(B) the bankruptcy administrator for the dis-
9 trict in which the petition is filed.

10 “(2) The United States trustee or bankruptcy admin-
11 istrator may not approve a program for inclusion on the
12 list under paragraph (1) unless the counseling service of-
13 fering the program offers the program without charge, or
14 at an appropriately reduced charge, if payment of the reg-
15 ular charge would impose a hardship on the debtor or the
16 debtor’s dependents.

17 “(3) The United States trustee or bankruptcy admin-
18 istrator shall designate any geographical areas in the
19 United States trustee region or judicial district, as the
20 case may be, as to which the United States trustee or
21 bankruptcy administrator has determined that credit
22 counseling services needed to comply with this subsection
23 are not available or are too geographically remote for debt-
24 ors residing within the designated geographical areas. The
25 clerk of the bankruptcy court for each judicial district

1 shall maintain a list of the designated areas within the
2 district.

3 “(4) The clerk shall exclude a particular counseling
4 service from the list maintained under section 342(b)(2)
5 of this title if the United States trustee or bankruptcy ad-
6 ministrator orders that the counseling service not be in-
7 cluded in the list.

8 “(5) The court may waive the requirement specified
9 in paragraph (1) if—

10 “(A) no credit counseling services are available
11 as designated under paragraphs (2) and (3);

12 “(B) the providers of credit counseling services
13 available in the district are unable or unwilling to
14 provide such services to the debtor in a timely man-
15 ner; or

16 “(C) foreclosure, garnishment, attachment,
17 eviction, levy of execution, or similar claim enforce-
18 ment procedure that would have deprived the indi-
19 vidual of property had commenced before the debtor
20 could complete a good-faith attempt to create such
21 a repayment plan.

22 “(6) A debtor who is subject to the exemption under
23 paragraph (5)(C) shall be required to make a good-faith
24 attempt to create a debt repayment plan outside the judi-
25 cial system in the manner prescribed in paragraph (1)

1 during the 30-day period beginning on the date of filing
2 of the petition of that debtor.

3 “(7) A debtor shall be exempted from the bad faith
4 presumption for repeat filing under section 362(c) of title
5 11 if the case is dismissed due to the creation of a debt
6 repayment plan.

7 “(8) Only the United States trustee may make a mo-
8 tion for dismissal on the ground that the debtor did not
9 comply with this subsection.”.

10 (b) DEBTOR’S DUTIES.—Section 521 of title 11,
11 United States Code, as amended by sections 406 and 407,
12 is amended by adding at the end the following:

13 “(g)(1) In addition to the requirements under sub-
14 section (a), an individual debtor shall file with the court—

15 “(A) a certificate from the credit counseling
16 services that provided the debtor services under sec-
17 tion 109(i), or a verified statement by the debtor as
18 to why such attempt was not required under section
19 109(i) or other substantial evidence of a good-faith
20 attempt to create a debt repayment plan outside the
21 bankruptcy system in the manner prescribed in sec-
22 tion 109(i); and

23 “(B) a copy of the debt repayment plan, if any,
24 developed under section 109(i) through the credit
25 counseling service referred to in paragraph (1).

1 “(2) Only the United States trustee may make a mo-
2 tion for dismissal on the ground that the debtor did not
3 comply with this subsection.”.

4 **SEC. 105. WHO MAY BE A DEBTOR UNDER CHAPTER 11.**

5 Section 109(d) of title 11, United States Code, is
6 amended by inserting “, or a person described in sub-
7 section (b)(4),” after “chapter 7”.

8 **Subtitle B—Adequate Protections**
9 **for Consumers**

10 **SEC. 111. NOTICE OF ALTERNATIVES.**

11 (a) Section 342(b) of title 11, United States Code,
12 is amended to read as follows:

13 “(b)(1) Before the commencement of a case under
14 this title by an individual whose debts are primarily con-
15 sumer debts, the individual shall be given or obtain (as
16 required to be certified under section 521(a)(1)(B)(viii))
17 a written notice that is prescribed by the United States
18 trustee for the district in which the petition is filed pursu-
19 ant to section 586 of title 28 and that contains the follow-
20 ing:

21 “(A) A brief description of chapters 7, 11, 12,
22 and 13 of this title and the general purpose, bene-
23 fits, and costs of proceeding under each of such
24 chapters.

1 “(B) A brief description of services that may be
2 available to the individual from an independent non-
3 profit debt counselling service.

4 “(C) The name, address, and telephone number
5 of each nonprofit debt counselling service (if any)—

6 “(i)(I) with an office located in the district
7 in which the petition is filed; or

8 “(II) that offers toll-free telephone commu-
9 nication to debtors in such district; and

10 “(ii) that offers its services to debtors
11 without charge, or at an appropriately reduced
12 charge if payment of any regular charge would
13 impose a hardship on the debtor or a dependent
14 of the debtor.

15 “(2) Any such nonprofit debt counselling service that
16 registers with the clerk of the bankruptcy court on or be-
17 fore December 10 of the preceding year shall be included
18 in such list unless the chief bankruptcy judge of the dis-
19 trict or on the motion of the United States trustee and,
20 after notice to the debt counselling service and opportunity
21 for a hearing, for good cause, orders that such debt coun-
22 selling service shall not be so listed.

23 “(3) The clerk shall make such notice available to in-
24 dividuals whose debts are primarily consumer debts.”.

1 (b) Section 586(a) of title 28, United States Code,
2 is amended—

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

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

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

8 “(7) on or before January 1 of each calendar
9 year, and also within 30 days of any change in the
10 nonprofit debt counselling services registered with
11 the bankruptcy court, prescribe and make available
12 on request the notice described in section 342(b)(1)
13 of title 11 for each district included in the region.”.

14 **SEC. 112. DEBTOR FINANCIAL MANAGEMENT TRAINING**
15 **TEST PROGRAM.**

16 (a) DEVELOPMENT OF FINANCIAL MANAGEMENT
17 AND TRAINING CURRICULUM AND MATERIALS.—The Di-
18 rector of the Executive Office for United States Trustees
19 (in this section referred to as the “Director”) shall consult
20 with a wide range of individuals who are experts in the
21 field of debtor education, including trustees who are ap-
22 pointed under chapter 13 of title 11 of the United States
23 Code and who operate financial management education
24 programs for debtors, and shall develop a financial man-
25 agement training curriculum and materials that can be

1 used to educate individual debtors on how to better man-
2 age their finances.

3 (b) TEST—(1) The Director shall select 3 judicial dis-
4 tricts of the United States in which to test the effective-
5 ness of the financial management training curriculum and
6 materials developed under subsection (a).

7 (2) For a 1-year period beginning not later than 180
8 days after the date of the enactment of this Act, such cur-
9 riculum and materials shall be made available by the Di-
10 rector, directly or indirectly, on request to individual debt-
11 ors in cases filed in such 1-year period under chapter 7
12 or 13 of title 11 of the United States Code.

13 (3) The bankruptcy courts in each of such districts
14 may require individual debtors in such cases to undergo
15 such financial management training as a condition to re-
16 ceiving a discharge in such case.

17 (c) EVALUATION.—(1) During the 1-year period re-
18 ferred to in subsection (b), the Director shall evaluate the
19 effectiveness of—

20 (A) the financial management training curricu-
21 lum and materials developed under subsection (a);
22 and

23 (B) a sample of existing consumer education
24 programs such as those described in the Report of
25 the National Bankruptcy Review Commission (Octo-

1 ber 20, 1997) that are representative of consumer
2 education programs carried out by the credit indus-
3 try, by trustees serving under chapter 13 of title 11
4 of the United States Code, and by consumer coun-
5 selling groups.

6 (2) Not later than 3 months after concluding such
7 evaluation, the Director shall submit a report to the
8 Speaker of the House of Representatives and the Presi-
9 dent pro tempore of the Senate, for referral to the appro-
10 priate committees of the Congress, containing the findings
11 of the Director regarding the effectiveness of such curricu-
12 lum, such materials, and such programs.

13 **SEC. 113. DEFINITIONS.**

14 (a) DEFINITIONS.—Section 101 of title 11, United
15 States Code, is amended—

16 (1) by inserting after paragraph (3) the follow-
17 ing:

18 “(3A) ‘assisted person’ means any person whose
19 debts consist primarily of consumer debts and whose
20 non-exempt assets are less than \$150,000;”;

21 (2) by inserting after paragraph (4) the follow-
22 ing:

23 “(4A) ‘bankruptcy assistance’ means any goods
24 or services sold or otherwise provided to an assisted
25 person with the express or implied purpose of pro-

1 viding information, advice, counsel, document prepa-
2 ration or filing, or attendance at a creditors' meeting
3 or appearing in a proceeding on behalf of another or
4 providing legal representation with respect to a pro-
5 ceeding under this title;” and

6 (3) by inserting after paragraph (12A) the fol-
7 lowing:

8 “(12B) ‘debt relief counselling agency’ means
9 any person who provides any bankruptcy assistance
10 to an assisted person in return for the payment of
11 money or other valuable consideration, or who is a
12 bankruptcy petition preparer pursuant to section
13 110 of this title, but does not include any person
14 that is any of the following or an officer, director,
15 employee or agent thereof—

16 “(A) any nonprofit organization which is
17 exempt from taxation under section 501(c)(3)
18 of the Internal Revenue Code of 1986;

19 “(B) any creditor of the person to the ex-
20 tent the creditor is assisting the person to re-
21 structure any debt owed by the person to the
22 creditor; or

23 “(C) any depository institution (as defined
24 in section 3 of the Federal Deposit Insurance
25 Act) or any Federal credit union or State credit

1 union (as those terms are defined in section
2 101 of the Federal Credit Union Act), or any
3 affiliate or subsidiary of such a depository insti-
4 tution or credit union;”.

5 (b) CONFORMING AMENDMENT.—In section
6 104(b)(1) by inserting “101(3),” after “sections”.

7 **SEC. 114. DISCLOSURES.**

8 (a) DISCLOSURES.—Subchapter II of chapter 5 of
9 title 11, United States Code, is amended by adding at the
10 end the following:

11 **“§ 526. Disclosures**

12 “(a) A debt relief counselling agency providing bank-
13 ruptcy assistance to an assisted person shall provide the
14 following notices to the assisted person:

15 “(1) the written notice required under section
16 342(b)(1) of this title; and

17 “(2) to the extent not covered in the written no-
18 tice described in paragraph (1) of this section and
19 no later than three business days after the first date
20 on which a debt relief counselling agency first offers
21 to provide any bankruptcy assistance services to an
22 assisted person, a clear and conspicuous written no-
23 tice advising assisted persons of the following—

24 “(A) all information the assisted person is
25 required to provide with a petition and there-

1 after during a case under this title must be
2 complete, accurate and truthful;

3 “(B) all assets and all liabilities must be
4 completely and accurately disclosed in the docu-
5 ments filed to commence the case, and the re-
6 placement value of each asset as defined in sec-
7 tion 506 of this title must be stated in those
8 documents where requested after reasonable in-
9 quiry to establish such value;

10 “(C) current monthly total income, pro-
11 jected monthly net income and, in a chapter 13
12 case, monthly net income must be stated after
13 reasonable inquiry; and

14 “(D) that information an assisted person
15 provides during their case may be audited pur-
16 suant to this title and that failure to provide
17 such information may result in dismissal of the
18 proceeding under this title or other sanction in-
19 cluding, in some instances, criminal sanctions.

20 “(b) A debt relief counselling agency providing bank-
21 ruptcy assistance to an assisted person shall provide each
22 assisted person at the same time as the notices required
23 under subsection (a)(1) with the following statement, to
24 the extent applicable, or one substantially similar. The
25 statement shall be clear and conspicuous and shall be in

1 a single document separate from other documents or no-
2 tices provided to the assisted person:

3 “‘IMPORTANT INFORMATION ABOUT BANK-
4 RUPTCY ASSISTANCE SERVICES FROM AN AT-
5 TORNEY OR BANKRUPTCY PETITION PREPARER

6 “‘If you decide to seek bankruptcy relief, you can
7 represent yourself, you can hire an attorney to represent
8 you, or you can get help in some localities from a bank-
9 ruptcy petition preparer who is not an attorney. THE
10 LAW REQUIRES AN ATTORNEY OR BANKRUPTCY
11 PETITION PREPARER TO GIVE YOU A WRITTEN
12 CONTRACT SPECIFYING WHAT THE ATTORNEY
13 OR BANKRUPTCY PETITION PREPARER WILL DO
14 FOR YOU AND HOW MUCH IT WILL COST. Ask to
15 see the contract before you hire anyone.

16 “‘The following information helps you understand
17 what must be done in a routine bankruptcy case to help
18 you evaluate how much service you need. Although bank-
19 ruptcy can be complex, many cases are routine.

20 “‘Before filing a bankruptcy case, either you or your
21 attorney should analyze your eligibility for different forms
22 of debt relief made available by the Bankruptcy Code and
23 which form of relief is most likely to be beneficial for you.
24 Be sure you understand the relief you can obtain and its
25 limitations. To file a bankruptcy case, documents called

1 a Petition, Schedules and Statement of Financial Affairs,
2 as well as in some cases a Statement of Intention need
3 to be prepared correctly and filed with the bankruptcy
4 court. You will have to pay a filing fee to the bankruptcy
5 court. Once your case starts, you will have to attend the
6 required first meeting of creditors where you may be ques-
7 tioned by a court official called a “trustee” and by credi-
8 tors.

9 “If you choose to file a chapter 7 case, you may be
10 asked by a creditor to reaffirm a debt. You may want help
11 deciding whether to do so.

12 “If you choose to file a chapter 13 case in which
13 you repay your creditors what you can afford over three
14 to seven years, you may also want help with preparing
15 your chapter 13 plan and with the confirmation hearing
16 on your plan which will be before a bankruptcy judge.

17 “If you select another type of relief under the Bank-
18 ruptcy Code other than chapter 7 or chapter 13, you will
19 want to find out what needs to be done from someone fa-
20 miliar with that type of relief.

21 “Your bankruptcy case may also involve litigation.
22 You are generally permitted to represent yourself in litiga-
23 tion in bankruptcy court, but only attorneys, not bank-
24 ruptcy petition preparers, can give you legal advice.’.

1 “(c) Except to the extent the debt relief counselling
2 agency provides the required information itself after rea-
3 sonably diligent inquiry of the assisted person or others
4 so as to obtain such information reasonably accurately for
5 inclusion on the petition, schedules or statement of finan-
6 cial affairs, a debt relief counselling agency providing
7 bankruptcy assistance to an assisted person, to the extent
8 permitted by nonbankruptcy law, shall provide each as-
9 sisted person at the time required for the notice required
10 under subsection (a)(1) reasonably sufficient information
11 (which may be provided orally or in a clear and conspicu-
12 ous writing) to the assisted person on how to provide all
13 the information the assisted person is required to provide
14 under this title pursuant to section 521, including—

15 “(1) how to value assets at replacement value,
16 determine current monthly total income, projected
17 monthly income and, in a chapter 13 case, net
18 monthly income, and related calculations;

19 “(2) how to complete the list of creditors, in-
20 cluding how to determine what amount is owed and
21 what address for the creditor should be shown; and

22 “(3) how to determine what property is exempt
23 and how to value exempt property at replacement
24 value as defined in section 506 of this title.

1 “(d) A debt relief counselling agency shall maintain
2 a copy of the notices required under subsection (a) of this
3 section for two years after the later of the date on which
4 the notice is given the assisted person.”.

5 (b) CONFORMING AMENDMENT.—The table of sec-
6 tion for chapter 5 of title 11, United States Code, is
7 amended by inserting after the item relating to section
8 525 the following:

“526. Disclosures.”.

9 **SEC. 115. DEBTOR’S BILL OF RIGHTS.**

10 (a) DEBTOR’S BILL OF RIGHTS.—Subchapter II of
11 chapter 5 of title 11, United States Code, as amended by
12 section 114, is amended by adding at the end the follow-
13 ing:

14 **“§ 527. Debtor’s bill of rights**

15 “(a) A debt relief counselling agency shall—

16 “(1) no later than three business days after the
17 first date on which a debt relief counselling agency
18 provides any bankruptcy assistance services to an
19 assisted person, execute a written contract with the
20 assisted person specifying clearly and conspicuously
21 the services the agency will provide the assisted per-
22 son and the basis on which fees or charges will be
23 made for such services and the terms of payment,
24 and give the assisted person a copy of the fully exe-

1 cuted and completed contract in a form the person
2 can keep;

3 “(2) disclose in any advertisement of bank-
4 ruptcy assistance services or of the benefits of bank-
5 ruptcy directed to the general public (whether in
6 general media, seminars or specific mailings, tele-
7 phonic or electronic messages or otherwise) that the
8 services or benefits are with respect to proceedings
9 under this title, clearly and conspicuously using the
10 following statement: ‘We are a debt relief counselling
11 agency. We help people file Bankruptcy petitions to
12 obtain relief under the Bankruptcy Code.’ or a sub-
13 stantially similar statement. An advertisement shall
14 be of bankruptcy assistance services if it describes or
15 offers bankruptcy assistance with a chapter 13 plan,
16 regardless of whether chapter 13 is specifically men-
17 tioned, including such statements as ‘federally super-
18 vised repayment plan’ or ‘Federal debt restructuring
19 help’ or other similar statements which would lead
20 a reasonable consumer to believe that help with
21 debts was being offered when in fact in most cases
22 the help available is bankruptcy assistance with a
23 chapter 13 plan; and

24 “(3) if an advertisement directed to the general
25 public indicates that the debt relief counselling agen-

1 cy provides assistance with respect to credit defaults,
2 mortgage foreclosures, lease eviction proceedings, ex-
3 cessive debt, debt collection pressure, or inability to
4 pay any consumer debt, disclose conspicuously in
5 that advertisement that the assistance is with re-
6 spect to or may involve proceedings under this title,
7 using the following statement: “We are a debt relief
8 counselling agency. We help people file Bankruptcy
9 petitions to obtain relief under the Bankruptcy
10 Code.” or a substantially similar statement.

11 “(b) A debt relief counselling agency shall not—

12 “(1) fail to perform any service which the debt
13 relief counseling agency has told the assisted person
14 or prospective assisted person the agency would pro-
15 vide that person in connection with the preparation
16 for or activities during a proceeding under this title;

17 “(2) make any statement, or counsel or advise
18 any assisted person to make any statement in any
19 document filed in a proceeding under this title,
20 which is untrue and misleading or which upon the
21 exercise of reasonable care, should be known by the
22 debt relief counselling agency to be untrue or mis-
23 leading;

24 “(3) misrepresent to any assisted person or pro-
25 spective assisted person, directly or indirectly, af-

1 firmatively or by material omission, what services
 2 the debt relief counselling agency can reasonably ex-
 3 pect to provide that person, or the benefits an as-
 4 sisted person may obtain or the difficulties the per-
 5 son may experience if the person seeks relief in a
 6 proceeding pursuant to this title; or

7 “(4) advise an assisted person or prospective
 8 assisted person to incur more debt in contemplation
 9 of that person filing a proceeding under this title or
 10 in order to pay an attorney or bankruptcy petition
 11 preparer fee or charge for services performed as part
 12 of preparing for or representing a debtor in a pro-
 13 ceeding under this title.”.

14 (b) CONFORMING AMENDMENT.—The table of sec-
 15 tion for chapter 5 of title 11, United States Code, as
 16 amended by section 114, is amended by inserting after the
 17 item relating to section 526, the following:

“527. Debtor’s bill of rights.”.

18 **SEC. 116. ENFORCEMENT.**

19 (a) ENFORCEMENT.—Subchapter II of chapter 5 of
 20 title 11, United States Code, as amended by sections 114
 21 and 115, is amended by adding at the end the following:

22 **“§ 528. Debt relief counselling agency enforcement**

23 “(a) ASSISTED PERSON WAIVERS INVALID.—Any
 24 waiver by any assisted person of any protection or right
 25 provided by or under section 526 or 527 of this title shall

1 be void and may not be enforced by any Federal or State
2 court or any other person.

3 “(b) NONCOMPLIANCE.—

4 “(1) Any contract between a debt relief counsel-
5 ling agency and an assisted person for bankruptcy
6 assistance which does not comply with the require-
7 ments of section 526 or 527 of this title shall be
8 treated as void and may not be enforced by any Fed-
9 eral or State court or by any other person.

10 “(2) Any debt relief counselling agency which
11 has been found, after notice and hearing, to have—

12 “(A) failed to comply with any provision of
13 section 526 or 527 with respect to a bankruptcy
14 case or related proceeding of an assisted per-
15 son;

16 “(B) provided bankruptcy assistance to an
17 assisted person in a case or related proceeding
18 which is dismissed or converted in lieu of dis-
19 missal under section 707 of this title or because
20 of a failure to file bankruptcy papers, including
21 papers specified in section 521 of this title; or

22 “(C) negligently or intentionally dis-
23 regarded the requirements of this title or the
24 Federal Rules of Bankruptcy Procedure appli-
25 cable to such debt relief counselling agency

1 shall be liable to the assisted person in the
2 amount of any fees and charges in connection
3 with providing bankruptcy assistance to such
4 person which the debt relief counselling agency
5 has already been paid on account of that pro-
6 ceeding and if the case has not been closed, the
7 court may in addition require the debt relief
8 counselling agency to continue to provide bank-
9 ruptcy assistance services in the pending case to
10 the assisted person without further fee or
11 charge or upon such other terms as the court
12 may order.

13 “(3) In addition to such other remedies as are
14 provided under State law, whenever the chief law en-
15 forcement officer of a State, or an official or agency
16 designated by a State, has reason to believe that any
17 person has violated or is violating section 526 or 527
18 of this title, the State—

19 “(A) may bring an action to enjoin such
20 violation;

21 “(B) may bring an action on behalf of its
22 residents to recover the actual damages of as-
23 sisted persons arising from such violation, in-
24 cluding any liability under paragraph (2); and

1 “(C) in the case of any successful action
2 under subparagraph (A) or (B), shall be award-
3 ed the costs of the action and reasonable attor-
4 ney fees as determined by the court.

5 “(4) The United States District Court for any
6 district located in the State shall have concurrent ju-
7 risdiction of any action under subparagraph (A) or
8 (B) of paragraph (3).

9 “(5) Notwithstanding any other provision of
10 Federal law, if the court, on its own motion or on
11 the motion of the United States trustee, finds that
12 a person intentionally violated section 526 or 527 of
13 this title, or engaged in a clear and consistent pat-
14 tern or practice of violating section 526 or 527 of
15 this title, the court may—

16 “(A) enjoin the violation of such section; or

17 “(B) impose an appropriate civil penalty
18 against such person.

19 “(c) RELATION TO STATE LAW.—This section and
20 sections 526 and 527 shall not annul, alter, affect or ex-
21 empt any person subject to those sections from complying
22 with any law of any State except to the extent that such
23 law is inconsistent with those sections, and then only to
24 the extent of the inconsistency.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tion for chapter 5 of title 11, United States Code, as
3 amended by sections 114 and 115, is amended by inserting
4 after the item relating to section 527, the following:

“528. Debt relief counselling agency enforcement.”.

5 **SEC. 117. SENSE OF THE CONGRESS.**

6 It is the sense of the Congress that States should de-
7 velop curricula relating to the subject of personal finance,
8 designed for use in elementary and secondary schools.

9 **SEC. 118. CHARITABLE CONTRIBUTIONS.**

10 (a) DEFINITIONS.—Section 548(d) of title 11, United
11 States Code, is amended by adding at the end the follow-
12 ing:

13 “(3) In this section, the term ‘charitable contribution’
14 means a charitable contribution as defined in section
15 170(c) of the Internal Revenue Code of 1986, if such con-
16 tribution—

17 “(A) is made by a natural person; and

18 “(B) consists of—

19 “(i) a financial instrument (as defined in
20 section 731(c)(2)(C) of the Internal Revenue
21 Code of 1986); or

22 “(ii) cash.

23 “(4) In this section, the term ‘qualified religious or
24 charitable entity or organization’ means—

1 “(A) an entity described in section 170(c)(1) of
2 the Internal Revenue Code of 1986; or

3 “(B) an entity or organization described in sec-
4 tion 170(c)(2) of the Internal Revenue Code of
5 1986.”.

6 (b) TREATMENT OF PREPETITION QUALIFIED CHAR-
7 ITABLE CONTRIBUTIONS.—

8 (1) IN GENERAL.—Section 548(a) of title 11,
9 United States Code, is amended—

10 (A) by inserting “(1)” after “(a)”;

11 (B) by striking “(1) made” and inserting
12 “(A) made”;

13 (C) by striking “(2)(A)” and inserting
14 “(B)(i)”;

15 (D) by striking “(B)(i)” and inserting
16 “(ii)(I)”;

17 (E) by striking “(ii) was” and inserting
18 “(II) was”;

19 (F) by striking “(iii)” and inserting
20 “(III)”;

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

22 “(2) A transfer of a charitable contribution to a
23 qualified religious or charitable entity or organization shall
24 not be considered to be a transfer covered under para-
25 graph (1)(B) in any case in which—

1 “(A) the amount of such contribution, together
2 with any other such contribution, does not exceed 15
3 percent of the gross annual income of the debtor for
4 the year in which the transfer of the contribution is
5 made; or

6 “(B) the contribution made by a debtor exceed-
7 ed the percentage amount of gross annual income
8 specified in subparagraph (A), if the transfer was
9 consistent with the practices of the debtor in making
10 charitable contributions.”.

11 (2) TRUSTEE AS LIEN CREDITOR AND AS SUC-
12 CESSOR TO CERTAIN CREDITORS AND PUR-
13 CHASERS.—Section 544(b) of title 11, United States
14 Code, is amended—

15 (A) by striking “(b) The trustee” and in-
16 serting “(b)(1) Except as provided in paragraph
17 (2), the trustee”; and

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

19 “(2) Paragraph (1) shall not apply to a transfer of
20 a charitable contribution (as defined in section 548(d)(3)
21 of this title) that is not covered under section
22 548(a)(1)(B) of this title by reason of section 548(a)(2)
23 of this title. Any claim by any person to recover a trans-
24 ferred contribution described in the preceding sentence

1 under Federal or State law in a Federal or State court
2 shall be preempted by the commencement of the case.”.

3 (3) CONFORMING AMENDMENTS.—Section 546
4 of title 11, United States Code, is amended—

5 (A) in subsection (e)—

6 (i) by striking “548(a)(2)” and insert-
7 ing “548(a)(1)(B)”; and

8 (ii) by striking “548(a)(1)” and in-
9 serting “548(a)(1)(A)”; and

10 (B) in subsection (f)—

11 (i) by striking “548(a)(2)” and insert-
12 ing “548(a)(1)(B)”; and

13 (ii) by striking “548(a)(1)” and in-
14 serting “548(a)(1)(A)”; and

15 (C) in the first subsection (g)—

16 (i) by striking “section 548(a)(1)”
17 and inserting “section 548(a)(1)(A)”; and

18 (ii) by striking “548(a)(2)” and in-
19 serting “548(a)(1)(B)”.

20 (c) TREATMENT OF POST-PETITION CHARITABLE
21 CONTRIBUTIONS UNDER CHAPTER 7.—Section 707 of
22 title 11, United States Code, is amended by adding at the
23 end the following:

24 “(c) In making a determination whether to dismiss
25 a case under this section, the court may not take into con-

1 sideration whether a debtor has made, or continues to
2 make, charitable contributions (that meet the definition
3 of ‘charitable contribution’ under section 548(d)(3)) to
4 any qualified religious or charitable entity or organization
5 (as defined in section 548(d)(4)).”.

6 (d) TREATMENT OF POST-PETITION CHARITABLE
7 CONTRIBUTIONS UNDER CHAPTER 13.—Section 111 of
8 title 11, United States Code, as added by section 102, is
9 amended by adding at the end the following:

10 “(c) For purposes of subsection (a), charitable con-
11 tributions (that meet the definition of ‘charitable contribu-
12 tion’ under section 548(d)(3)) to any qualified religious
13 or charitable entity or organization (defined in section
14 548(d)(4)), but not to exceed 15 percent of the debtor’s
15 gross income for the year in which such contributions are
16 made, shall be considered to be additional expenses of the
17 debtor required by extraordinary circumstances.”.

18 (e) RULE OF CONSTRUCTION.—Nothing in the
19 amendments made by this section is intended to limit the
20 applicability of the Religious Freedom Restoration Act of
21 1993 (42 U.S.C. 2000bb et seq.).

22 **SEC. 119. REINFORCE THE FRESH START.**

23 (a) RESTORATION OF AN EFFECTIVE DISCHARGE.—
24 Section 523(a)(17) of title 11, United States Code, is
25 amended—

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

3 (2) by striking “section 1915(b) or (f)” and in-
4 sserting “subsection (b) or (f)(2) of section 1915”,
5 and

6 (3) by inserting “(or a similar non-Federal
7 law)” after “title 28” each place it appears.

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

11 (1) in subsection (b)(2)—

12 (A) in subparagraph (A) by striking “and”
13 at the end;

14 (B) in subparagraph (B) by striking the
15 period at the end and inserting “; and”; and

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

17 “(C) retirement funds to the extent exempt
18 from taxation under section 401, 403, 408, 414,
19 457, or 501(a) of the Internal Revenue Code of
20 1986.”; and

21 (2) in subsection (d) by adding at the end the
22 following:

23 “(12) Retirement funds to the extent exempt
24 from taxation under 401, 403, 408, 414, 457, or
25 501(a) of the Internal Revenue Code of 1986.”.

1 (c) EFFECTIVE PROTECTION FOR UTILITY SERVICE
2 IN THE WAKE OF DEREGULATION.—Section 366 of title
3 11, United States Code, is amended by adding at the end
4 the following:

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

10 **SEC. 119A. CHAPTER 11 DISCHARGE OF DEBTS ARISING**
11 **FROM TOBACCO-RELATED DEBTS.**

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

14 “(5) The confirmation of a plan does not discharge
15 a debtor that is a corporation from any debt arising from
16 a judicial, administrative, or other action or proceeding
17 that is—

18 “(A) related to the consumption or consumer
19 purchase of a tobacco product; and

20 “(B) based in whole or in part on false pre-
21 tenses, a false representation, or actual fraud.”.

1 **Subtitle C—Adequate Protections**
2 **for Secured Creditors**

3 **SEC. 121. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

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

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

10 (3) by adding at the end the following new
11 paragraphs:

12 “(3) If a single or joint case is filed by or
13 against an individual debtor under chapter 7, 11, or
14 13, and if a single or joint case of that debtor was
15 pending within the previous 1-year period but was
16 dismissed, other than a case refiled under a chapter
17 other than chapter 7 after dismissal under section
18 707(b) of this title, the stay under subsection (a)
19 with respect to any action taken with respect to a
20 debt or property securing such debt or with respect
21 to any lease will terminate with respect to the debtor
22 on the 30th day after the filing of the later case.
23 Upon motion by a party in interest for continuation
24 of the automatic stay and upon notice and a hear-
25 ing, the court may extend the stay in particular

1 cases as to any or all creditors (subject to such con-
2 ditions or limitations as the court may then impose)
3 after notice and a hearing completed before the expi-
4 ration of the 30-day period only if the party in inter-
5 est demonstrates that the filing of the later case is
6 in good faith as to the creditors to be stayed. A case
7 is presumptively filed not in good faith (but such
8 presumption may be rebutted by clear and convinc-
9 ing evidence to the contrary)—

10 “(A) as to all creditors if—

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

15 “(ii) a previous case under any of
16 chapters 7, 11, or 13 in which the individ-
17 ual was a debtor was dismissed within
18 such 1-year period, after the debtor failed
19 to file or amend the petition or other docu-
20 ments as required by this title or the court
21 without substantial excuse (but mere inad-
22 vertence or negligence shall not be sub-
23 stantial excuse unless the dismissal was
24 caused by the negligence of the debtor’s at-
25 torney), failed to provide adequate protec-

1 tion as ordered by the court, or failed to
2 perform the terms of a plan confirmed by
3 the court; or

4 “(iii) there has not been a substantial
5 change in the financial or personal affairs
6 of the debtor since the dismissal of the
7 next most previous case under any of chap-
8 ters 7, 11, or 13 of this title, or any other
9 reason to conclude that the later case will
10 be concluded, if a case under chapter 7 of
11 this title, with a discharge, and if a chap-
12 ter 11 or 13 case, a confirmed plan which
13 will be fully performed;

14 “(B) as to any creditor that commenced an
15 action under subsection (d) in a previous case
16 in which the individual was a debtor if, as of
17 the date of dismissal of that case, that action
18 was still pending or had been resolved by termi-
19 nating, conditioning, or limiting the stay as to
20 actions of that creditor.

21 “(4) If a single or joint case is filed by or
22 against an individual debtor under this title, and if
23 2 or more single or joint cases of that debtor were
24 pending within the previous year but were dismissed,
25 other than a case refiled under section 707(b) of this

1 title, the stay under subsection (a) will not go into
2 effect upon the filing of the later case. On request
3 of a party in interest, the court shall promptly enter
4 an order confirming that no stay is in effect. If a
5 party in interest requests within 30 days of the fil-
6 ing of the later case, the court may order the stay
7 to take effect in the case as to any or all creditors
8 (subject to such conditions or limitations as the
9 court may impose), after notice and hearing, only if
10 the party in interest demonstrates that the filing of
11 the later case is in good faith as to the creditors to
12 be stayed. A stay imposed pursuant to the preceding
13 sentence will be effective on the date of entry of the
14 order allowing the stay to go into effect. A case is
15 presumptively not filed in good faith (but such pre-
16 sumption may be rebutted by clear and convincing
17 evidence to the contrary)—

18 “(A) as to all creditors if—

19 “(i) 2 or more previous cases under
20 this title in which the individual was a
21 debtor were pending within the 1-year pe-
22 riod;

23 “(ii) a previous case under this title in
24 which the individual was a debtor was dis-
25 missed within the time period stated in

1 this paragraph after the debtor failed to
2 file or amend the petition or other docu-
3 ments as required by this title or the court
4 without substantial excuse (but mere inad-
5 vertence or negligence shall not be sub-
6 stantial excuse unless the dismissal was
7 caused by the negligence of the debtor’s at-
8 torney), failed to pay adequate protection
9 as ordered by the court, or failed to per-
10 form the terms of a plan confirmed by the
11 court; or

12 “(iii) there has not been a substantial
13 change in the financial or personal affairs
14 of the debtor since the dismissal of the
15 next most previous case under this title, or
16 any other reason to conclude that the later
17 case will not be concluded, if a case under
18 chapter 7, with a discharge, and if a case
19 under chapter 11 or 13, with a confirmed
20 plan that will be fully performed; or

21 “(B) as to any creditor that commenced an
22 action under subsection (d) in a previous case
23 in which the individual was a debtor if, as of
24 the date of dismissal of that case, that action
25 was still pending or had been resolved by termi-

1 nating, conditioning, or limiting the stay as to
2 action of that creditor.

3 “(5)(A) If a request is made for relief from the
4 stay under subsection (a) with respect to real or per-
5 sonal property of any kind, and such request is
6 granted in whole or in part, the court may order in
7 addition that the relief so granted shall be in rem
8 either for a definite period not less than 1 year or
9 indefinitely. After the issuance of such an order, the
10 stay under subsection (a) shall not apply to any
11 property subject to such an in rem order in any case
12 of the debtor under this title. If such an order so
13 provides, such stay shall also not apply in any pend-
14 ing or later-filed case of any entity under this title
15 that claims or has an interest in the subject property
16 other than those entities identified in the court’s
17 order.

18 “(B) The court shall cause any order entered
19 pursuant to this paragraph with respect to real
20 property to be recorded in the applicable real prop-
21 erty records, which recording shall constitute notice
22 to all parties having or claiming an interest in such
23 real property for purpose of this section.

1 as to which a creditor has an allowed claim for the
2 purchase price secured in whole or in part by an in-
3 terest in that personal property unless, in the case
4 of an individual debtor, the debtor takes 1 of the fol-
5 lowing actions within 30 days after the first meeting
6 of creditors under section 341(a)—

7 “(A) enters into an agreement with the
8 creditor pursuant to section 524(c) of this title
9 with respect to the claim secured by such prop-
10 erty; or

11 “(B) redeems such property from the secu-
12 rity interest pursuant to section 722 of this
13 title.

14 “If the debtor fails to so act within the 30-day pe-
15 riod, the personal property affected shall no longer
16 be property of the estate, and the creditor may take
17 whatever action as to such property as is permitted
18 by applicable nonbankruptcy law, unless the court
19 determines on the motion of the trustee, and after
20 notice and a hearing, that such property is of con-
21 sequential value or benefit to the estate.”; and

22 (2) in section 722 by inserting “in full at the
23 time of redemption” before the period at the end.

1 **SEC. 124. RELIEF FROM THE AUTOMATIC STAY WHEN THE**
2 **DEBTOR DOES NOT COMPLETE INTENDED**
3 **SURRENDER OF CONSUMER DEBT COLLAT-**
4 **ERAL.**

5 Title 11, United States Code, is amended as fol-
6 lows—

7 (1) in section 362—

8 (A) by striking “(e), and (f)” in subsection
9 (c) and inserting in lieu thereof “(e), (f), and
10 (h)”; and

11 (B) by redesignating subsection (h) as sub-
12 section (i) and by inserting after subsection (g)
13 the following:

14 “(h) In an individual case pursuant to chapter 7, 11,
15 or 13 the stay provided by subsection (a) is terminated
16 with respect to property of the estate securing in whole
17 or in part a claim, or subject to an unexpired lease, if
18 the debtor fails within the applicable time set by section
19 521(a)(2) of this title—

20 “(1) to file timely any statement of intention
21 required under section 521(a)(2) of this title with
22 respect to that property or to indicate therein that
23 the debtor will either surrender the property or re-
24 tain it and, if retaining it, either redeem the prop-
25 erty pursuant to section 722 of this title, reaffirm
26 the debt it secures pursuant to section 524(c) of this

1 title, or assume the unexpired lease pursuant to sec-
2 tion 365(p) of this title if the trustee does not do
3 so, as applicable; or

4 “(2) to take timely the action specified in that
5 statement of intention, as it may be amended before
6 expiration of the period for taking action, unless the
7 statement of intention specifies reaffirmation and
8 the creditor refuses to reaffirm on the original con-
9 tract terms;

10 unless the court determines on the motion of the trustee,
11 and after notice and a hearing, that such property is of
12 consequential value or benefit to the estate.”;

13 (2) in section 521, as amended by sections 104,
14 406, and 407—

15 (A) in paragraph (2) by striking “con-
16 sumer”;

17 (B) in paragraph (2)(B)—

18 (i) by striking “forty-five days after
19 the filing of a notice of intent under this
20 section” and inserting “30 days after the
21 first date set for the meeting of creditors
22 under section 341(a)”;

23 (ii) by striking “forty-five day” the
24 second place it appears and inserting “30-
25 day”;

1 (C) in paragraph (2)(C) by inserting “ex-
2 cept as provided in section 362(h)” before the
3 semicolon; and

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

5 “(h) If the debtor fails timely to take the action speci-
6 fied in subsection (a)(6) of this section, or in paragraphs
7 (1) and (2) of section 362(h) of this title, with respect
8 to property which a lessor or bailor owns and has leased,
9 rented, or bailed to the debtor or as to which a creditor
10 holds a security interest not otherwise voidable under sec-
11 tion 522(f), 544, 545, 547, 548, or 549, nothing in this
12 title shall prevent or limit the operation of a provision in
13 the underlying lease or agreement which has the effect of
14 placing the debtor in default under such lease or agree-
15 ment by reason of the occurrence, pendency, or existence
16 of a proceeding under this title or the insolvency of the
17 debtor. Nothing in this subsection shall be deemed to jus-
18 tify limiting such a provision in any other circumstance.”.

19 **SEC. 125. GIVING SECURED CREDITORS FAIR TREATMENT**
20 **IN CHAPTER 13.**

21 Section 1325(a)(5)(B)(i) of title 11, United States
22 Code, is amended to read as follows:

23 “(i) the plan provides that the holder of
24 such claim retain the lien securing such claim
25 until the earlier of payment of the underlying

1 debt determined under nonbankruptcy law or
2 discharge under section 1328, and that if the
3 case under this chapter is dismissed or con-
4 verted without completion of the plan, such lien
5 shall also be retained by such holder to the ex-
6 tent recognized by applicable nonbankruptcy
7 law; and”.

8 **SEC. 126. PROMPT RELIEF FROM THE AUTOMATIC STAY IN**
9 **INDIVIDUAL CASES.**

10 Section 362(e) of title 11, United States Code, is
11 amended by inserting at the end the following:

12 “Notwithstanding the foregoing, in the case of an individ-
13 ual filing under chapter 7, 11, or 13, the stay under sub-
14 section (a) shall terminate 60 days after a request under
15 subsection (d) of this section, unless—

16 “(1) a final decision is rendered by the court
17 within such 60-day period; or

18 “(2) such 60-day period is extended either by
19 agreement of all parties in interest or by the court
20 for a specific time which the court finds is required
21 by compelling circumstances as described in findings
22 made by the court.”.

1 **SEC. 127. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**
2 **TER 13.**

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

5 (1) by striking in subparagraph (B) “in the
6 converted case, with allowed secured claims” and in-
7 serting in lieu thereof “only in a case converted to
8 chapter 11 or 12 but not in one converted to chapter
9 7, with allowed secured claims in cases under chap-
10 ters 11 and 12”; and

11 (2) in subparagraph (A) by striking “and” at
12 the end;

13 (3) in subparagraph (B) by striking the period
14 and inserting “; and”; and

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

16 “(C) with respect to a case converted from
17 chapter 13, the claim of any creditor holding secu-
18 rity as of the date of the petition shall continue to
19 be secured by that security unless the full amount
20 of that claim determined under applicable nonbank-
21 ruptcy law has been paid in full as of the date of
22 conversion, notwithstanding any valuation or deter-
23 mination of the amount of an allowed secured claim
24 made for the purposes of the case under chapter of
25 this title. Unless a prebankruptcy default has been
26 fully cured pursuant to the plan at the time of con-

1 version, in any proceeding under this title or other-
2 wise, the default shall have the effect given under
3 applicable nonbankruptcy law.”.

4 **SEC. 128. RESTRAINING ABUSIVE PURCHASES ON SECURED**
5 **CREDIT.**

6 Section 506 of title 11, United States Code, is
7 amended by adding at the end the following:

8 “(e) In an individual case under chapter 7, 11, 12,
9 or 13—

10 “(1) subsection (a) shall not apply to an al-
11 lowed claim to the extent attributable in whole or in
12 part to the purchase price of personal property ac-
13 quired by the debtor within 180 days of the filing of
14 the petition, except for the purpose of applying para-
15 graph (3) of this subsection;

16 “(2) if such allowed claim attributable to the
17 purchase price is secured only by the personal prop-
18 erty so acquired, the value of the personal property
19 and the amount of the allowed secured claim shall
20 be the sum of the unpaid principal balance of the
21 purchase price and accrued and unpaid interest and
22 charges at the contract rate;

23 “(3) if such allowed claim attributable to the
24 purchase price is secured by the personal property so
25 acquired and other property, the value of the secu-

1 rity may be determined under subsection (a), but the
2 value of the security and the amount of the allowed
3 secured claim shall be not less than the unpaid prin-
4 cipal balance of the purchase price of the personal
5 property acquired and unpaid interest and charges
6 at the contract rate; and

7 “(4) in any subsequent case under this title
8 that is filed by or against the debtor in the 2-year
9 period beginning on the date the petition is filed in
10 the original case, the value of the personal property
11 and the amount of the allowed secured claim shall
12 be deemed to be not less than the amount provided
13 under paragraphs (2) and (3).”.

14 **SEC. 129. FAIR VALUATION OF COLLATERAL.**

15 Section 506(a) of title 11, United States Code, is
16 amended by adding at the end the following:

17 “In the case of an individual debtor under chapters 7 and
18 13, such value with respect to personal property securing
19 an allowed claim shall be determined based on the replace-
20 ment value of such property as of the date of filing the
21 petition without deduction for costs of sale or marketing.
22 With respect to property acquired for personal, family, or
23 household purpose, replacement value shall mean the price
24 a retail merchant would charge for property of that kind

1 considering the age and condition of the property at the
2 time value is determined.”.

3 **SEC. 130. PROTECTION OF HOLDERS OF CLAIMS SECURED**

4 **BY DEBTOR’S PRINCIPAL RESIDENCE.**

5 Title 11, United States Code, is amended—

6 (1) in section 101 by inserting after paragraph
7 (13) the following:

8 “(13A) ‘debtor’s principal residence’ means a
9 residential structure including incidental property
10 when the structure contains 1 to 4 units, whether or
11 not that structure is attached to real property, and
12 includes, without limitation, an individual condomin-
13 ium or cooperative unit or mobile or manufactured
14 home or trailer;

15 “(13B) ‘incidental property’ means property in-
16 cidental to such residence including, without limita-
17 tion, property commonly conveyed with a principal
18 residence where the real estate is located, window
19 treatments, carpets, appliances and equipment lo-
20 cated in the residence, and easements, appur-
21 tenances, fixtures, rents, royalties, mineral rights, oil
22 and gas rights, escrow funds and insurance pro-
23 ceeds;”;

24 (2) in section 362(b)—

1 (A) in paragraph (17) by striking “or” at
2 the end thereof;

3 (B) in paragraph (18) by striking the pe-
4 riod at the end and inserting “; or”; and

5 (C) by inserting after paragraph (18) the
6 following:

7 “(19) under subsection (a), until a prepetition
8 default is cured fully in a case under chapter 13 of
9 this title by actual payment of all arrears as re-
10 quired by the plan, of the postponement, continu-
11 ation or other similar delay of a prepetition fore-
12 closure proceeding or sale in accordance with appli-
13 cable nonbankruptcy law, but nothing herein shall
14 imply that such postponement, continuation or other
15 similar delay is a violation of the stay under sub-
16 section (a).”; and

17 (3) by amending section 1322(b)(2) to read as
18 follows:

19 “(2) modify the rights of holders of secured
20 claims, other than a claim secured primarily by a se-
21 curity interest in property used as the debtor’s prin-
22 cipal residence at any time during 180 days prior to
23 the filing of the petition, or of holders of unsecured
24 claims, or leave unaffected the rights of holders of
25 any class of claims;”.

1 **SEC. 131. AIRCRAFT EQUIPMENT AND VESSELS.**

2 Section 1110(a)(1) of title 11, United States Code,
3 is amended—

4 (1) in subparagraph (A) by striking “that be-
5 come due on or after the date of the order”;

6 (2) in subparagraph (B)—

7 (A) in clause (i) by striking “and” at the
8 end; and

9 (B) in clause (ii)—

10 (i) by inserting “and within such 60-
11 day period” after “order”; and

12 (ii) in subclause (II) by striking the
13 period at the end and inserting “; and”;
14 and

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

16 “(iii) that occurs after the date of the
17 order and such 60-day period is cured in ac-
18 cordance with the terms of such security agree-
19 ment, lease, or conditional sale contract.”.

20 **Subtitle D—Adequate Protections**
21 **for Unsecured Creditors**

22 **SEC. 141. DEBTS INCURRED TO PAY NONDISCHARGEABLE**
23 **DEBTS.**

24 (a) **PRIORITY OF CLAIMS FOR DEBTS INCURRED TO**
25 **PAY NONDISCHARGEABLE DEBTS.**—Section 507(a) of

1 title 11, United States Code, is amended by adding at the
2 end the following:

3 “(10) Tenth, remaining allowed unsecured
4 claims for debts that are nondischargeable under
5 section 523(a)(19), but which shall be payable under
6 this paragraph in the higher order of priority (if
7 any) as the respective claims paid by incurring such
8 debts.”.

9 (b) NONDISCHARGEABILITY OF DEBTS INCURRED TO
10 PAY NONDISCHARGEABLE DEBTS.—Section 523(a) of
11 title 11, United States Code, is amended—

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

14 (2) in paragraph (18) by striking the period
15 and inserting “; or”; and

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

17 “(19) incurred to pay a debt that is non-
18 dischargeable by reason of any other provision of
19 this subsection or section 727, 1141, 1228(a),
20 1228(b), or 1328(b), except for any debt incurred to
21 pay such a nondischargeable debt in any case in
22 which—

23 “(A)(i) the debtor who paid the non-
24 dischargeable debt is a single custodial parent

1 who has 1 or more dependent children at the
2 time of the order for relief; or

3 “(ii) there is an allowed claim for alimony
4 to, maintenance for, or support of a spouse,
5 former spouse, or child of the debtor payable
6 under a judicial or administrative order to such
7 spouse or child (but not to any other person)
8 which was unpaid as of the date of the petition;
9 and

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

13 **SEC. 142. CREDIT EXTENSIONS ON THE EVE OF BANK-**
14 **RUPTCY PRESUMED NONDISCHARGEABLE.**

15 Section 523(a)(2)(C) of title 11, United States Code,
16 is amended to read as follows:

17 “(C) for purposes of subparagraph (A),
18 consumer debts owed to a single creditor, ex-
19 cluding debts incurred for necessities that do
20 not exceed \$250 in the aggregate, incurred by
21 an individual debtor on or within 90 days be-
22 fore the order for relief under this title are pre-
23 sumed to be nondischargeable.”.

1 **SEC. 143. FRAUDULENT DEBTS ARE NONDISCHARGEABLE**
2 **IN CHAPTER 13 CASES.**

3 Section 1328(a)(2) of title 11, United States Code,
4 is amended—

5 (1) by inserting “(2), (3)(B), (4),” after “para-
6 graph”; and

7 (2) by inserting “(6),” after “(5),”.

8 **SEC. 144. APPLYING THE CODEBTOR STAY ONLY WHEN IT**
9 **PROTECTS THE DEBTOR.**

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

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

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

14 “(2) When the debtor did not receive the consider-
15 ation for the claim held by a creditor, the stay provided
16 by subsection (a) does not apply to such creditor, notwith-
17 standing subsection (c), to the extent the creditor proceeds
18 against the individual which received such consideration
19 or against property not in the possession of the debtor
20 which secures such claim, but this subsection shall not
21 apply if the debtor is primarily obligated to pay the credi-
22 tor in whole or in part with respect to the claim under
23 a legally binding separation agreement, divorce decree, or
24 other order of a court of record, with respect to such indi-
25 vidual or the person who has possession of such property.

1 (2) in paragraph (19) by striking the period at
2 the end and inserting a semicolon; and

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

4 “(20) under subsection (a) with respect to the
5 withholding of income pursuant to an order as speci-
6 fied in section 466(b) of the Social Security Act; or

7 “(21) under subsection (a) with respect to the
8 withholding, suspension, or restriction of drivers’ li-
9 censes, professional and occupational licenses, and
10 recreational licenses pursuant to State law as speci-
11 fied in section 466(a)(15) of the Social Security Act
12 or with respect to the reporting of overdue support
13 owed by an absent parent to any consumer reporting
14 agency as specified in section 466(a)(7) of the Social
15 Security Act.”.

16 (c) CONTINUED LIABILITY OF PROPERTY.—Section
17 522(c) of title 11, United States Code, is amended by
18 striking “section 523(a)(1) or 523(a)(5)” and inserting
19 “paragraph (1), (5), or (18) of section 523(a)”.

20 (d) PRIORITY OF CLAIMS.—Section 507(a) of title
21 11, United States Code, as amended by section 141, is
22 amended—

23 (1) in the matter preceding paragraph (1) by
24 inserting before the colon the following:

1 “, except that, notwithstanding any other provision of this
2 title, any expense or claim entitled to priority under para-
3 graph (3) shall have first priority over any other expense
4 or claim that has priority under any other provision of
5 this subsection”;

6 (2) in paragraph (10) by striking “(10) Tenth”
7 and inserting “(11) Eleventh”;

8 (3) in paragraph (9) by striking “(9) Ninth”
9 and inserting “(10) Tenth”;

10 (4) in paragraph (8) by striking “(8) Eighth ”
11 and inserting “(9) Ninth”; and

12 (5) by inserting after paragraph (7) the follow-
13 ing:

14 “(8) Eighth, allowed unsecured claims for debts
15 that are nondischargeable under section
16 523(a)(18).”.

17 (e) CONTENTS OF PLANS.—Section 1322(b)(1) of
18 title 11, United States Code, is amended by striking the
19 semicolon at the end and inserting the following:

20 “and provide for the payment of any claim entitled
21 to priority under section 507(a)(3) of this title be-
22 fore the payment of any other claim entitled to pri-
23 ority under section 507(a), notwithstanding the pri-
24 orities established under section 507(a);”.

1 (f) CONFIRMATION OF PLANS.—Title 11 of the
2 United States Code is amended—

3 (1) in section 1129(a) by adding at the end the
4 following:

5 “(14) If the debtor is required by a judicial or
6 administrative order to pay alimony to, maintenance
7 for, or support of a spouse, former spouse, or child
8 of the debtor, the debtor has paid all amounts pay-
9 able under such order for alimony, maintenance, or
10 support that are due after the date the petition is
11 filed.”;

12 (2) in section 1225(a)—

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

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

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

18 “(7) the debtor is required by a judicial or ad-
19 ministrative order to pay alimony to, maintenance
20 for, or support of a spouse, former spouse, or child
21 of the debtor, the debtor has paid all amounts pay-
22 able under such order for alimony, maintenance, or
23 support that are due after the date the petition is
24 filed.”; and

25 (3) in section 1325(a)—

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

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

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

6 “(7) if the debtor is required by a judicial or
7 administrative order to pay alimony to, maintenance
8 for, or support of a spouse, former spouse, or child
9 of the debtor, the debtor has paid all amounts pay-
10 able under such order for alimony, maintenance, or
11 support that are due after the date the petition is
12 filed.”.

13 (g) DISCHARGE.—Title 11 United States Code is
14 amended—

15 (1) in section 1228(a) by inserting “and only
16 after a debtor who is required by a judicial or ad-
17 ministrative order to pay alimony to, maintenance
18 for, or support of a spouse, former spouse, or child
19 of the debtor, certifies that all amounts payable
20 under such order for alimony, maintenance, or sup-
21 port that are due after the date the petition is filed
22 have been paid,” after “this title,”; and

23 (2) in section 1328(a) by inserting “and only
24 after a debtor who is required by a judicial or ad-
25 ministrative order to pay alimony to, maintenance

1 for, or support of a spouse, former spouse, or child
2 of the debtor, certifies that all amounts payable
3 under such order for alimony, maintenance, or sup-
4 port that are due after the date the petition is filed
5 have been paid,” after “plan,” the 1st place it ap-
6 pears.

7 (h) CONFORMING AMENDMENTS.—Section 456(b) of
8 the Social Security Act (42 U.S.C. 656(b)) is amended—

9 (1) by inserting “, including interest,” after
10 “Code)”;

11 (2) by striking “and” and inserting “or”; and

12 (3) by striking “released by a discharge” and
13 inserting “dischargeable”.

14 **SEC. 146. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**
15 **ALIMONY, MAINTENANCE, AND SUPPORT.**

16 Section 523(a)(5) of title 11, United States Code, is
17 amended to read as follows:

18 “(5) to a spouse, former spouse, or child of the
19 debtor for alimony to, maintenance for, or support
20 of such spouse or child, or to a spouse, former
21 spouse, or child of the debtor, to the extent such
22 debt is the result of a property settlement agree-
23 ment, a hold harmless agreement, or any other type
24 of debt that is not in the nature of alimony, mainte-
25 nance, or support in connection with or incurred by

1 the debtor in the course of a separation agreement,
2 divorce decree, any modifications thereof, or other
3 order of a court of record, determination made in
4 accordance with State or territorial law by a govern-
5 mental unit, but not to the extent that such debt is
6 assigned to another entity, voluntarily, by operation
7 of law, or otherwise (other than debts assigned pur-
8 suant to section 408(a)(3) of the Social Security
9 Act, or such debt that has been assigned to the Fed-
10 eral government, or to a State or political subdivi-
11 sion of such State, or the creditor's attorney);”.

12 **SEC. 147. OTHER EXCEPTIONS TO DISCHARGE.**

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

15 (1) by striking subsection (a)(15), as added by
16 section 304(e)(1) of Public Law 103–394;

17 (2) in subsection (a)(7) by inserting “an order
18 of disgorgement or restitution obtained by a govern-
19 mental unit,” after “such debt is for”; and

20 (3) in subsection (c)(1) by striking “(6), or
21 (15)” and inserting “or (6)”.

22 **SEC. 148. FEES ARISING FROM CERTAIN OWNERSHIP IN-**
23 **TERESTS.**

24 (a) EXCEPTION TO DISCHARGE.—Section 523(a)(16)
25 of title 11, United States Code, is amended—

1 (1) by striking “dwelling” the 1st place it ap-
2 pears;

3 (2) by striking “ownership or” and inserting
4 “ownership,”;

5 (3) by striking “housing” the 1st place it ap-
6 pears; and

7 (4) by striking “but only” and all that follows
8 through “such period,” and inserting “or a lot in a
9 homeowners association, for as long as the debtor or
10 the trustee has a legal, equitable, or possessory own-
11 ership interest in such unit, such corporation, or
12 such lot,”.

13 (b) EXECUTORY CONTRACTS.—Section 365 of title
14 11, United States Code, as amended by section 161, is
15 amended by adding at the end the following:

16 “(q) A debt of a kind described in section 523(a)(16)
17 of this title shall not be considered to be a debt arising
18 from an executory contract.”

19 **SEC. 149. PROTECTION OF CHILD SUPPORT AND ALIMONY.**

20 (a) AMENDMENT.—Title 11 of the United States
21 Code, as amended by section 116, is amended by inserting
22 after section 528 the following:

1 **“§ 529. Protection of child support and alimony pay-**
2 **ments after discharge**

3 “Notwithstanding the provisions of the constitution
4 or law of any State providing a different priority, any
5 debts of the individual who has received a discharge under
6 this title to a spouse, former spouse, or child for alimony
7 to, maintenance for, or support of such spouse or child,
8 in connection with a separation agreement, divorce decree,
9 or other order of a court of record, determination made
10 in accordance with State or territorial law by a govern-
11 mental unit, or property settlement agreement, but not to
12 the extent that such debt—

13 “(1) is assigned to another entity, voluntarily,
14 by operation of law, or otherwise; or

15 “(2) includes a liability designated as alimony,
16 maintenance, or support, unless such liability is ac-
17 tually in the nature of alimony, maintenance, or sup-
18 port,

19 shall have priority in payment and collection over a credi-
20 tor’s claim which is not discharged in the individual’s case
21 pursuant to paragraph (2), (4), or (19) of section 523(a)
22 of this title, but such priority shall not affect the priority
23 of any consensual lien, mortgage, or security interest se-
24 curing such creditor’s claim except with respect to any
25 property of the debtor acquired after the date of the filing
26 of the petition. A creditor that receives a payment, or col-

1 lects money or property, in satisfaction of all or part of
2 any debt excepted from discharge under paragraph (2),
3 (4), or (14) of section 523(a) of this title shall not later
4 than 20 days after receiving such payment or collecting
5 such money or property, distribute such payment, such
6 money, or such property ratably to individuals who then
7 hold debts entitled to priority under section 507(a)(3) of
8 this title. Not later than 2 years after receiving such pay-
9 ment or collecting such money or property, such creditor
10 shall make the distribution required by this section to all
11 individuals whose identity is known to such creditor at the
12 time of distribution.”.

13 (b) CONFORMING AMENDMENT.—The table of sec-
14 tions of chapter 5 of title 11, United States Code, as
15 amended by section 116, is amended by inserting after the
16 item relating to section 528 the following:

“529. Protection of child support and alimony payments after discharge.”.

17 **SEC. 150. ADEQUATE PROTECTION FOR INVESTORS.**

18 (a) DEFINITION.—Section 101 of title 11, United
19 States Code, is amended by inserting after paragraph (48)
20 the following:

21 “(48A) ‘securities self regulatory organization’
22 means either a securities association registered with
23 the Securities and Exchange Commission pursuant
24 to section 15A of the Securities Exchange Act of
25 1934 or a national securities exchange registered

1 with the Securities and Exchange Commission pur-
2 suant to section 6 of the Securities Exchange Act of
3 1934;”.

4 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
5 United States Code, as amended by sections 130 and 146,
6 is amended—

7 (1) in paragraph (20) by striking “or” at the
8 end;

9 (2) in paragraph (21) by striking the period at
10 the end and inserting “; or”; and

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

12 “(22) under subsection (a) of this section, of
13 the commencement or continuation of an investiga-
14 tion or action by a securities self regulatory organi-
15 zation to enforce such organization’s regulatory
16 power; of the enforcement of an order or decision,
17 other than for monetary sanctions, obtained in an
18 action by the securities self regulatory organization
19 to enforce such organization’s regulatory power; or
20 of any act taken by the securities self regulatory or-
21 ganization to delist, delete, or refuse to permit
22 quotation of any stock that does not meet applicable
23 regulatory requirements.”.

1 **SEC. 151. HIGHER PRIORITY FOR DEBTS FOR ALIMONY,**
2 **MAINTENANCE, AND SUPPORT.**

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

5 (1) by striking paragraph (7);

6 (2) in paragraph (6) by striking “(6) Sixth”
7 and inserting “(7) Seventh”;

8 (3) in paragraph (5) by striking “(5) Fifth”
9 and inserting “(6) Sixth”;

10 (4) in paragraph (4) by striking “(4) Fourth”
11 and inserting “(5) Fifth”;

12 (5) in paragraph (3) by striking “(3) Third”
13 and inserting “(4) Fourth”; and

14 (6) by inserting after paragraph (2) the follow-
15 ing:

16 “(3) Third, allowed claims for debts to a
17 spouse, former spouse, or child of the debtor for ali-
18 mony to, maintenance for, or support of such spouse
19 or child, in connection with a separation agreement,
20 divorce decree or other order of a court of record,
21 determination made in accordance with State or ter-
22 ritorial law by a governmental unit, or property set-
23 tlement agreement, but not to the extent that such
24 debt—

25 “(A) is assigned to another entity, volun-
26 tarily, by operation of law, or otherwise; or

1 “(B) includes a liability designed as ali-
2 mony, maintenance, or support, unless such li-
3 ability is actually in the nature of alimony,
4 maintenance, or support.”.

5 **Subtitle E—Adequate Protections**
6 **for Lessors**

7 **SEC. 161. GIVING DEBTORS THE ABILITY TO KEEP LEASED**
8 **PERSONAL PROPERTY BY ASSUMPTION.**

9 Section 365 of title 11, United States Code, is
10 amended by adding at the end the following:

11 “(p)(1) If a lease of personal property is rejected or
12 not timely assumed by the trustee under subsection (d),
13 the leased property is no longer property of the estate and
14 the stay under section 362(a) of this title is automatically
15 terminated.

16 “(2) In the case of an individual under chapter 7,
17 the debtor may notify the creditor in writing that the debt-
18 or desires to assume the lease. Upon being so notified,
19 the creditor may, at its option, notify the debtor that it
20 is willing to have the lease assumed by the debtor and
21 may condition such assumption on cure of any outstanding
22 default on terms set by the lessor. If within 30 days of
23 such notice the debtor notifies the lessor in writing that
24 the lease is assumed, the liability under the lease will be
25 assumed by the debtor and not by the estate. The stay

1 under section 362 of this title and the injunction under
2 section 524(a)(2) of this title shall not be violated by noti-
3 fication of the debtor and negotiation of cure under this
4 subsection.

5 “(3) In a case under chapter 11 of this title in which
6 the debtor is an individual and in a case under chapter
7 13 of this title, if the debtor is the lessee with respect
8 to personal property and the lease is not assumed in the
9 plan confirmed by the court, the lease is deemed rejected
10 as of the conclusion of the hearing on confirmation. If the
11 lease is rejected, the stay under section 362 of this title
12 and any stay under section 1301 is automatically termi-
13 nated with respect to the property subject to the lease.”.

14 **SEC. 162. ADEQUATE PROTECTION OF LESSORS AND PUR-**
15 **CHASE MONEY SECURED CREDITORS.**

16 Title 11, United States Code, is amended by adding
17 after section 1307 the following:

18 **“§ 1307A. Adequate protection in chapter 13 cases**

19 “(a)(1) On or before 30 days after the filing of a case
20 under this chapter, the debtor shall make cash payments
21 in the amount described below to any lessor of personal
22 property and to any creditor holding a claim secured by
23 personal property to the extent such claim is attributable
24 to the purchase of such property by the debtor. The debtor

1 or the plan shall continue such payments until the earlier
2 of—

3 “(A) the time at which the creditor begins to
4 receive actual payments under the plan; or

5 “(B) the debtor relinquishes possession of such
6 property to the lessor or creditor, or to any third
7 party acting under claim of right, as applicable.

8 “(2) Such cash payments shall be in the amount of
9 any weekly, biweekly, monthly or other periodic payment
10 scheduled as payable under the contract between the debt-
11 or and creditor; shall be paid at the times at which such
12 payments are scheduled to be made; and shall not include
13 any arrearages, penalties, or default or delinquency
14 charges. Such payments shall be deemed to be adequate
15 protection payments under section 362 of this title.

16 “(b) The court may, after notice and hearing, change
17 the amount and timing of the adequate protection pay-
18 ment under subsection (a), but in no event shall it be pay-
19 able less frequently than monthly or in an amount less
20 than the reasonable depreciation of such property month
21 to month.

22 “(c) Notwithstanding section 1326(b) of this title, if
23 a confirmed plan provides for payments to a creditor or
24 lessor described in subsection (a) and provides that pay-
25 ments to such creditor or lessor under the plan will be

1 deferred until payment of amounts described in section
2 1326(b) of this title, the payments required hereunder
3 shall nonetheless be continued in addition to plan pay-
4 ments until actual payments to the creditor begin under
5 the plan.

6 “(d) Notwithstanding sections 362, 542, and 543 of
7 this title, a lessor or creditor described in subsection (a)
8 may retain possession of property described in subsection
9 (a) which was obtained rightfully prior to the date of filing
10 of the petition until the first such adequate protection pay-
11 ment is received by the lessor or creditor. Such retention
12 of possession and any acts reasonably related thereto shall
13 not violate the stay imposed under section 362(a) of this
14 title, nor any obligations imposed under section 542 or
15 543 of this title.

16 “(e) On or before 60 days after the filing of a case
17 under this chapter, a debtor retaining possession of per-
18 sonal property subject to a lease or securing a claim attrib-
19 utable in whole or in part to the purchase price of that
20 property shall provide each creditor or lessor reasonable
21 evidence of the maintenance of any required insurance
22 coverage with respect to the use or ownership of such
23 property and continue to do so for so long as the debtor
24 retains possession of such property.”.

1 **SEC. 163. ADEQUATE PROTECTION FOR LESSORS.**

2 Section 362(b)(10) of title 11, United States Code,
3 is amended by striking “nonresidential”.

4 **Subtitle F—Bankruptcy Relief Less**
5 **Frequently Available for Repeat**
6 **Filers**

7 **SEC. 171. EXTEND PERIOD BETWEEN BANKRUPTCY DIS-**
8 **CHARGES.**

9 Title 11, United States Code, is amended—

10 (1) in section 727(a)(8) by striking “six” and
11 inserting “10”; and

12 (2) in section 1328 by adding at the end the
13 following:

14 “(f) Notwithstanding subsections (a) and (b), the
15 court shall not grant a discharge of all debts provided for
16 by the plan or disallowed under section 502 of this title
17 if the debtor has received a discharge in any case filed
18 under this title within 5 years of the order for relief under
19 this chapter.”.

20 **Subtitle G—Exemptions**

21 **SEC. 181. EXEMPTIONS.**

22 Section 522(b)(2)(A) of title 11, United States Code,
23 is amended—

24 (1) by striking “180” and inserting “365”; and

25 (2) by striking “, or for a longer portion of
26 such 180-day period than in any other place”.

1 **SEC. 182. LIMITATION.**

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

4 (1) in subsection (b)(2)(A) by inserting “sub-
5 ject to subsection (n),” before “any property”; and

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

7 “(n) For purposes of subsection (b)(2)(A) and not-
8 withstanding subsection (a), the value of an interest in—

9 (1) real or personal property that the debtor
10 or a dependent of the debtor uses as a residence;

11 (2) a cooperative that owns property that the
12 debtor or a dependent of the debtor uses as a resi-
13 dence; or

14 (3) a burial plot for the debtor or a dependent
15 of the debtor;

16 shall be reduced to the extent such value is attributable
17 to any portion of any property that the debtor disposed
18 of in the 365-day period ending of the date of the filing
19 of the petition, with the intent to hinder, delay, or defraud
20 a creditor and that the debtor could not exempt, or that
21 portion that the debtor could not exempt, under subsection
22 (b) if on such date the debtor had held the property so
23 disposed of.”.

1 **TITLE II—BUSINESS**
2 **BANKRUPTCY PROVISIONS**
3 **Subtitle A—General Provisions**

4 **SEC. 201. LIMITATION RELATING TO THE USE OF FEE**
5 **EXAMINERS.**

6 Section 330 of title 11, United States Code, is
7 amended by adding at the end the following:

8 “(e) A person appointed to examine a request for
9 compensation or reimbursement payable under this section
10 may not be paid on the basis of the amount of any reduc-
11 tion recommended by such person in the amount or rate
12 of such compensation or such reimbursement.”.

13 **SEC. 202. SHARING OF COMPENSATION.**

14 Section 504 of title 11, United States Code, is
15 amended by adding at the end the following:

16 “(e) This section shall not apply with respect to shar-
17 ing, or agreeing to share, compensation with a bona fide
18 public service attorney referral program that operates in
19 accordance with non-Federal law regulating attorney re-
20 ferral services and with rules of professional responsibility
21 applicable to attorney acceptance of referrals.”.

22 **SEC. 203. CHAPTER 12 MADE PERMANENT LAW.**

23 Section 302(f) of the Bankruptcy Judges, United
24 States Trustees, and Family Farmer Bankruptcy Act of
25 1986 (11 U.S.C. 1201 note) is repealed.

1 **SEC. 204. MEETINGS OF CREDITORS AND EQUITY SECURITY**
2 **HOLDERS.**

3 Section 341 of title 11, United States Code, is
4 amended by adding at the end the following:

5 “(e) Notwithstanding subsections (a) and (b), the
6 court, on the request of a party in interest and after notice
7 and a hearing, for cause may order that the United States
8 trustee not convene a meeting of creditors or equity secu-
9 rity holders if the debtor has filed a plan as to which the
10 debtor solicited acceptances prior to the commencement
11 of the case.”.

12 **SEC. 205. CREDITORS’ AND EQUITY SECURITY HOLDERS’**
13 **COMMITTEES.**

14 Section 1102(b) of title 11, United States Code, is
15 amended by adding at the end the following:

16 “(3)(A) The court on its own motion or, subject to
17 subparagraph (B), on request of a party in interest, and
18 after notice and a hearing, may order a change in member-
19 ship of a committee appointed under subsection (a) if nec-
20 essary to ensure adequate representation of creditors or
21 of equity security holders.

22 “(B) A request to change the membership of a com-
23 mittee appointed under subsection (a) may be made under
24 subparagraph (A) by a party in interest only after such
25 request is submitted to and denied by the United States
26 trustee.”.

1 **SEC. 206. POSTPETITION DISCLOSURE AND SOLICITATION.**

2 Section 1125 of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(g) Notwithstanding subsection (b), an acceptance
5 or rejection of the plan may be solicited from a holder
6 of a claim or interest if such solicitation complies with ap-
7 plicable nonbankruptcy law and if such holder was solie-
8 ited before the commencement of the case in a manner
9 complying with applicable nonbankruptcy law.”.

10 **SEC. 207. PREFERENCES.**

11 Section 547(c) of title 11, United States Code, is
12 amended—

13 (1) by amending paragraph (2) to read as fol-
14 lows:

15 “(2) to the extent that such transfer was in
16 payment of a debt incurred by the debtor in the or-
17 dinary course of business or financial affairs of the
18 debtor and the transferee, and such transfer was—

19 “(A) made in the ordinary course of busi-
20 ness or financial affairs of the debtor and the
21 transferee; or

22 “(B) made according to ordinary business
23 terms;”;

24 (2) in paragraph (7) by striking “or” at the
25 end;

1 (3) in paragraph (8) by striking the period at
2 the end and inserting “; or”; and

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

4 “(9) if, in a case filed by a debtor whose debts
5 are not primarily consumer debts, the aggregate
6 value of all property that constitutes or is affected
7 by such transfer is less than \$5000.”.

8 **SEC. 208. VENUE OF CERTAIN PROCEEDINGS.**

9 Section 1409(b) of title 28, United States Code, is
10 amended by inserting “, or a nonconsumer debt against
11 a noninsider of less than \$10,000,” after “\$5,000”.

12 **SEC. 209. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

13 Section 1121(d) of title 11, United States Code, is
14 amended—

15 (1) by striking “On” and inserting “(1) Subject
16 to paragraph (1), on”; and

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

18 “(2)(A) Such 120-day period may not be extended
19 beyond a date that is 18 months after the date of the order
20 for relief under this chapter.

21 “(B) Such 180-day period may not be extended be-
22 yond a date that is 20 months after the date of the order
23 for relief under this chapter.”.

1 **SEC. 210. PERIOD FOR FILING PLAN UNDER CHAPTER 12.**

2 (a) EXTENSION OF PERIOD.—Section 1221 of title
3 11, United States Code, is amended by inserting “to any
4 period not later than 150 days after the order for relief”
5 after “period”.

6 (b) RELIEF FROM THE STAY.—Section 362(d) of
7 title 11, United States Code, is amended—

8 (1) in paragraph (2) by striking “or” at the
9 end;

10 (2) in paragraph (3) by striking the period at
11 the end and inserting “; or”; and

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

13 “(4) with respect to a stay of an act against
14 property under subsection (a) of a debtor in a case
15 under chapter 12, by a creditor whose claim is se-
16 cured by an interest in such property, unless the
17 debtor has filed a plan in accordance with section
18 1221.”.

19 (c) SPECIAL TREATMENT OF SECURED CLAIMS.—(1)
20 Chapter 12 of title 11, United States Code, is amended
21 by inserting after section 1231 the following:

22 **“§ 1232. Special treatment of secured claims**

23 “(a)(1) A claim secured by a lien on property of the
24 estate shall be allowed or disallowed under section 502 of
25 this title the same as if the holder of such claim had re-

1 course against the debtor on account of such claim, wheth-
2 er or not such holder has such recourse, unless—

3 “(A) subject to paragraph (2), the holder of
4 such claim elects to apply subsection (b); or

5 “(B) such holder does not have such recourse,
6 and such property is sold under section 363 of this
7 title or is to be sold under the plan.

8 “(2) A holder of a claim may not elect to apply sub-
9 section (b) if—

10 “(A) such claim is of inconsequential value; or

11 “(B) the holder of a claim has recourse against
12 the debtor on account of such claim, and such prop-
13 erty is sold under section 363 of this title or is to
14 be sold under the plan.

15 “(b) If such an election is made to apply this sub-
16 section, then notwithstanding section 506(a) of this title,
17 such claim is a secured claim to the extent such claim is
18 allowed.”.

19 (2) The table of sections of chapter 12 of title 11,
20 United States Code, is amended by inserting after the
21 item relating to section 1231 the following:

“1232. Special treatment of secured claims.”.

1 **SEC. 211. CASES ANCILLARY TO FOREIGN PROCEEDINGS**
2 **INVOLVING FOREIGN INSURANCE COMPA-**
3 **NIES THAT ARE ENGAGED IN THE BUSINESS**
4 **OF INSURANCE OR REINSURANCE IN THE**
5 **UNITED STATES.**

6 Section 304 of title 11, United States Code, is
7 amended—

8 (1) in subsection (b) by striking “provisions of
9 subsection (c)” and inserting “subsections (c) and
10 (d)”; and

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

12 “(d) The court may not grant to a foreign representa-
13 tive of the estate of an insurance company that is not or-
14 ganized under the law of a State and that is engaged in
15 the business of insurance, or reinsurance, in the United
16 States relief under subsection (b) with respect to property
17 that is—

18 “(1) a deposit required by a State law relating
19 to insurance or reinsurance;

20 “(2) a multibeneficiary trust required by a
21 State law relating to insurance or reinsurance to
22 protect holders of insurance policies issued in the
23 United States or to protect holders or claimants
24 against such policies; or

25 “(3) a multibeneficiary trust authorized by a
26 State law relating to insurance or reinsurance to

1 allow a person engaged in the business of insurance
2 in the United States—

3 “(A) to cede reinsurance to such an insur-
4 ance company; and

5 “(B) to treat so ceded reinsurance as an
6 asset, or deduction from liability, in financial
7 statements of such person.”.

8 **SEC. 212. REJECTION OF EXECUTORY CONTRACTS AFFECT-**
9 **ING INTELLECTUAL PROPERTY RIGHTS TO**
10 **RECORDINGS OF ARTISTIC PERFORMANCE.**

11 Section 365(n) of title 11, United States Code, is
12 amended at the end the following:

13 “(5) Where the court finds that a personal serv-
14 ices contract is property of the estate, the trustee
15 may not reject an executory contract for personal
16 services in which advances are paid for the creation
17 of copyrighted sound recordings in the future if a
18 material purpose for commencing a case under this
19 title is to reject such contract, unless, absent such
20 rejection, economic rehabilitation of the debtor’s fi-
21 nances, including such contract, cannot be
22 achieved.”.

1 **SEC. 213. UNEXPIRED LEASES OF NONRESIDENTIAL REAL**
2 **PROPERTY.**

3 Section 365(d)(4) of title 11, United States Code, is
4 amended to read as follows:

5 “(4) In a case under any chapter of this title, if the
6 trustee does not assume or reject an unexpired lease of
7 nonresidential real property under which the debtor is the
8 lessee before the earlier of (A) 120 days after the date
9 of the order for relief, or (B) the entry of an order con-
10 firming a plan, then such lease is deemed rejected, and
11 the trustee shall immediately surrender such nonresiden-
12 tial real property to the lessor but in no event shall such
13 time period exceed 120 days. Notwithstanding the imme-
14 diately preceding sentence, and provided no plan has been
15 confirmed, upon motion of the trustee, and after notice
16 and a hearing, the court may within such 120-day period
17 extend the 120-day period by a period not to exceed 150
18 days, contingent upon written consent of the affected les-
19 sor or with the approval of the court, and provided the
20 trustee has timely performed all post-petition lease obliga-
21 tions, but in no circumstance shall such period extend be-
22 yond the earlier of (i) 270 days from the date of the order
23 for relief or (ii) the entry of an order approving a dislo-
24 sure statement, without the consent of the lessor.”.

1 **SEC. 214. DEFINITION OF DISINTERESTED PERSON.**

2 Section 101(14) of title 11, United States Code, is
3 amended to read as follows:

4 “(14) ‘disinterested person’ means a person
5 that—

6 “(A) is not a creditor, an equity security
7 holder, or an insider;

8 “(B) is not and was not, within 2 years be-
9 fore the date of the filing of the petition, a di-
10 rector, officer, or employee of the debtor; and

11 “(C) does not have an interest materially
12 adverse to the interest of the estate or of any
13 class of creditors or equity security holders, by
14 reason of any direct or indirect relationship to,
15 connection with, or interest in, the debtor, or
16 for any other reason;”.

17 **SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGA-**
18 **TIONS.**

19 (a) EXECUTORY CONTRACTS AND UNEXPIRED
20 LEASES.—Section 365 of title 11, United States Code, is
21 amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1)(A) by striking the
24 semicolon at the end and inserting the follow-
25 ing:

1 “other than a default that is a breach of a provision
2 relating to—

3 “(i) the satisfaction of any provision (other
4 than a penalty rate or penalty provision) relat-
5 ing to a default arising from any failure to per-
6 form nonmonetary obligations under an unex-
7 pired lease of real property, if it is impossible
8 for the trustee to cure such default by perform-
9 ing nonmonetary acts at and after the time of
10 assumption; or

11 “(ii) the satisfaction of any provision
12 (other than a penalty rate or penalty provision)
13 relating to a default arising from any failure to
14 perform nonmonetary obligations under an ex-
15 ecutory contract, if it is impossible for the
16 trustee to cure such default by performing non-
17 monetary acts at and after the time of assump-
18 tion and if the court determines, based on the
19 equities of the case, that this subparagraph
20 should not apply with respect to such default;”;
21 and

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

24 “(D) the satisfaction of any penalty rate or
25 penalty provision relating to a default arising from

1 a failure to perform nonmonetary obligations under
2 an executory contract or under an unexpired lease of
3 real or personal property.”;

4 (2) in subsection (c)—

5 (A) in paragraph (2) by adding “or” at the
6 end;

7 (B) in paragraph (3) by striking “; or” at
8 the end and inserting a period; and

9 (C) by striking paragraph (4);

10 (3) in subsection (d)—

11 (A) by striking paragraphs (5) through
12 (9); and

13 (B) by redesignating paragraph (10) as
14 paragraph(5); and

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

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

21 (1) in subparagraph (A) by inserting “or of a
22 kind that section 365(b)(1)(A) of this title expressly
23 does not require to be cured” before the semicolon
24 at the end;

1 (2) in subparagraph (C) by striking “and” at
2 the end;

3 (3) by redesignating subparagraph (D) as sub-
4 paragraph (E); and

5 (4) by inserting after subparagraph (C) the fol-
6 lowing:

7 “(D) if such claim or such interest arises
8 from any failure to perform a nonmonetary ob-
9 ligation, compensates the holder of such claim
10 or such interest (other than the debtor or an in-
11 sider) for any actual pecuniary loss incurred by
12 such holder as a result of such failure; and”.

13 **Subtitle B—Specific Provisions**

14 **CHAPTER 1—SMALL BUSINESS**

15 **BANKRUPTCY**

16 **SEC. 231. DEFINITIONS.**

17 (a) DEFINITIONS.—Section 101 of title 11, United
18 States Code, is amended by striking paragraph (51C) and
19 inserting the following:

20 “(51C) ‘small business case’ means a case filed
21 under chapter 11 of this title in which the debtor is
22 a small business debtor;

23 “(51D) ‘small business debtor’ means—

24 “(A) a person (including affiliates of such
25 person that are also debtors under this title)

1 that has aggregate noncontingent, liquidated se-
2 cured and unsecured debts as of the date of the
3 petition or the order for relief in an amount not
4 more than \$5,000,000 (excluding debts owed to
5 1 or more affiliates or insiders); or

6 “(B) a debtor of the kind described in
7 paragraph (51B) but without regard to the
8 amount of such debtor’s debts,

9 except that if a group of affiliated debtors has ag-
10 gregate noncontingent liquidated secured and unse-
11 cured debts greater than \$5,000,000 (excluding debt
12 owed to 1 or more affiliates or insiders), then no
13 member of such group is a small business debtor;”.

14 (b) CONFORMING AMENDMENT.—Section 1102(a)(3)
15 of title 11, United States Code, is amended by inserting
16 “debtor” after “small business”.

17 **SEC. 232. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**
18 **AND PLAN.**

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

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

23 “(1) in determining whether a disclosure state-
24 ment provides adequate information, the court shall
25 consider the complexity of the case, the benefit of

1 additional information to creditors and other parties
2 in interest, and the cost of providing additional in-
3 formation;

4 “(2) the court may determine that the plan
5 itself provides adequate information and that a sepa-
6 rate disclosure statement is not necessary;

7 “(3) the court may approve a disclosure state-
8 ment submitted on standard forms approved by the
9 court or adopted pursuant to section 2075 of title
10 28; and

11 “(4)(A) the court may conditionally approve a
12 disclosure statement subject to final approval after
13 notice and a hearing;

14 “(B) acceptances and rejections of a plan may
15 be solicited based on a conditionally approved disclo-
16 sure statement if the debtor provides adequate infor-
17 mation to each holder of a claim or interest that is
18 solicited, but a conditionally approved disclosure
19 statement shall be mailed not less than 20 days be-
20 fore the date of the hearing on confirmation of the
21 plan; and

22 “(C) the hearing on the disclosure statement
23 may be combined with the hearing on confirmation
24 of a plan.”.

1 **SEC. 233. STANDARD FORM DISCLOSURE STATEMENT AND**
2 **PLAN.**

3 The Advisory Committee on Bankruptcy Rules of the
4 Judicial Conference of the United States shall, within a
5 reasonable period of time after the date of the enactment
6 of this Act, propose for adoption standard form disclosure
7 statements and plans of reorganization for small business
8 debtors (as defined in section 101) of title 11, United
9 States Code, as amended by this Act), designed to achieve
10 a practical balance between—

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

15 (2) economy and simplicity for debtors.

16 **SEC. 234. UNIFORM NATIONAL REPORTING REQUIRE-**
17 **MENTS.**

18 (a) REPORTING REQUIRED.—(1) Title 11 of the
19 United States Code is amended by inserting after section
20 307 the following:

21 **“§ 308. Debtor reporting requirements**

22 “A small business debtor shall file periodic financial
23 and other reports containing information including—

24 “(1) the debtor’s profitability, that is, approxi-
25 mately how much money the debtor has been earn-

1 ing or losing during current and recent fiscal peri-
2 ods;

3 “(2) reasonable approximations of the debtor’s
4 projected cash receipts and cash disbursements over
5 a reasonable period;

6 “(3) comparisons of actual cash receipts and
7 disbursements with projections in prior reports;

8 “(4) whether the debtor is—

9 “(A) in compliance in all material respects
10 with postpetition requirements imposed by this
11 title and the Federal Rules of Bankruptcy Pro-
12 cedure; and

13 “(B) timely filing tax returns and paying
14 taxes and other administrative claims when due,
15 and, if not, what the failures are and how, at
16 what cost, and when the debtor intends to rem-
17 edy such failures; and

18 “(5) such other matters as are in the best inter-
19 ests of the debtor and creditors, and in the public
20 interest in fair and efficient procedures under chap-
21 ter 11 of this title.”.

22 (2) The table of sections of chapter 3 of title 11,
23 United States Code, is amended by inserting after the
24 item relating to section 307 the following:

“308. Debtor reporting requirements.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect 60 days after the date on
3 which rules are prescribed pursuant to section 2075, title
4 28, United States Code to establish forms to be used to
5 comply with section 308 of title 11, United States Code,
6 as added by subsection (a).

7 **SEC. 235. UNIFORM REPORTING RULES AND FORMS FOR**
8 **SMALL BUSINESS CASES.**

9 (a) PROPOSAL OF RULES AND FORMS.—The Advi-
10 sory Committee on Bankruptcy Rules of the Judicial Con-
11 ference of the United States shall propose for adoption
12 amended Federal Rules of Bankruptcy Procedure and Of-
13 ficial Bankruptcy Forms to be used by small business
14 debtors to file periodic financial and other reports contain-
15 ing information, including information relating to—

16 (1) the debtor's profitability;

17 (2) the debtor's cash receipts and disburse-
18 ments; and

19 (3) whether the debtor is timely filing tax re-
20 turns and paying taxes and other administrative
21 claims when due.

22 (b) PURPOSE.—The rules and forms proposed under
23 subsection (a) shall be designed to achieve a practical bal-
24 ance between—

1 (1) the reasonable needs of the bankruptcy
2 court, the United States trustee or bankruptcy ad-
3 ministrator, creditors, and other parties in interest
4 for reasonably complete information;

5 (2) the small business debtor’s interest that re-
6 quired reports be easy and inexpensive to complete;
7 and

8 (3) the interest of all parties that the required
9 reports help the small business debtor to understand
10 its financial condition and plan its future.

11 **SEC. 236. DUTIES IN SMALL BUSINESS CASES.**

12 (a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the
13 United States Code is amended by inserting after section
14 1114 the following:

15 **“§ 1115. Duties of trustee or debtor in possession in**
16 **small business cases**

17 “In a small business case, a trustee or the debtor in
18 possession, in addition to the duties provided in this title
19 and as otherwise required by law, shall—

20 “(1) append to the voluntary petition or, in an
21 involuntary case, file within 3 days after the date of
22 the order for relief—

23 “(A) its most recent balance sheet, state-
24 ment of operations, cash-flow statement, Fed-
25 eral income tax return; or

1 “(B) a statement made under penalty of
2 perjury that no balance sheet, statement of op-
3 erations, or cash-flow statement has been pre-
4 pared and no Federal tax return has been filed;

5 “(2) attend, through its senior management
6 personnel and counsel, meetings scheduled by the
7 court or the United States trustee, including initial
8 debtor interviews, scheduling conferences, and meet-
9 ings of creditors convened under section 341 of this
10 title;

11 “(3) timely file all schedules and statements of
12 financial affairs, unless the court, after notice and a
13 hearing, grants an extension, which shall not extend
14 such time period to a date later than 30 days after
15 the date of the order for relief, absent extraordinary
16 and compelling circumstances;

17 “(4) file all postpetition financial and other re-
18 ports required by the Federal Rules of Bankruptcy
19 Procedure or by local rule of the district court;

20 “(5) subject to section 363(c)(2), maintain in-
21 surance customary and appropriate to the industry;

22 “(6)(A) timely file tax returns;

23 “(B) subject to section 363(c)(2), timely pay all
24 administrative expense tax claims, except those

1 being contested by appropriate proceedings being
2 diligently prosecuted; and

3 “(C) subject to section 363(c)(2), establish 1 or
4 more separate deposit accounts not later than 10
5 business days after the date of order for relief (or
6 as soon thereafter as possible if all banks contacted
7 decline the business) and deposit therein, not later
8 than 1 business day after receipt thereof, all taxes
9 payable for periods beginning after the date the case
10 is commenced that are collected or withheld by the
11 debtor for governmental units; and

12 “(7) allow the United States trustee or bank-
13 ruptcy administrator, or its designated representa-
14 tive, to inspect the debtor’s business premises,
15 books, and records at reasonable times, after reason-
16 able prior written notice, unless notice is waived by
17 the debtor.”.

18 (b) TECHNICAL AMENDMENT.—The table of sections
19 of chapter 11, United States Code, is amended by insert-
20 ing after the item relating to section 1114 the following:

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

21 **SEC. 237. PLAN FILING AND CONFIRMATION DEADLINES.**

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

24 “(e) In a small business case—

1 “(1) only the debtor may file a plan until after
2 90 days after the date of the order for relief, unless
3 shortened on request of a party in interest made
4 during the 90-day period, or unless extended as pro-
5 vided by this subsection, after notice and hearing the
6 court, for cause, orders otherwise;

7 “(2) the plan, and any necessary disclosure
8 statement, shall be filed not later than 90 days after
9 the date of the order for relief; and

10 “(3) the time periods specified in paragraphs
11 (1) and (2), and the time fixed in section 1129(e)
12 of this title, within which the plan shall be confirmed
13 may be extended only if—

14 “(A) the debtor, after providing notice to
15 parties in interest (including the United States
16 trustee), demonstrates by a preponderance of
17 the evidence that it is more likely than not that
18 the court will confirm a plan within a reason-
19 able time;

20 “(B) a new deadline is imposed at the time
21 the extension is granted; and

22 “(C) the order extending time is signed be-
23 fore the existing deadline has expired.”.

1 **SEC. 238. PLAN CONFIRMATION DEADLINE.**

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

4 “(e) In a small business case, the plan shall be con-
5 firmed not later than 150 days after the date of the order
6 for relief unless such 150-day period is extended as pro-
7 vided in section 1121(e)(3) of this title.”.

8 **SEC. 239. PROHIBITION AGAINST EXTENSION OF TIME.**

9 Section 105(d) of title 11, United States Code, is
10 amended—

11 (1) in paragraph (2)(B)(vi) by striking the pe-
12 riod at the end and inserting “; and”; and

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

14 “(3) in a small business case, not extend the
15 time periods specified in sections 1121(e) and
16 1129(e) of this title except as provided in section
17 1121(e)(3) of this title.”.

18 **SEC. 240. DUTIES OF THE UNITED STATES TRUSTEE AND**
19 **BANKRUPTCY ADMINISTRATOR.**

20 (a) DUTIES OF THE UNITED STATES TRUSTEE.—
21 Section 586(a) of title 28, United States Code, as amend-
22 ed by section 111, is amended—

23 (1) in paragraph (3)—

24 (A) in subparagraph (G) by striking “and”
25 at the end;

1 (B) by redesignating subparagraph (H) as
2 subparagraph (I); and

3 (C) by inserting after subparagraph (G)
4 the following:

5 “(H) in small business cases (as defined in
6 section 101 of title 11), performing the addi-
7 tional duties specified in title 11 pertaining to
8 such cases;”;

9 (2) in paragraph (6) by striking “and” at the
10 end;

11 (3) in paragraph (7) by striking the period at
12 the end and inserting “; and”; and

13 (4) by inserting after paragraph (7) the follow-
14 ing:

15 “(8) in each of such small business cases—

16 “(A) conduct an initial debtor interview as
17 soon as practicable after the entry of order for
18 relief but before the first meeting scheduled
19 under section 341(a) of title 11 at which time
20 the United States trustee shall begin to inves-
21 tigate the debtor’s viability, inquire about the
22 debtor’s business plan, explain the debtor’s obli-
23 gations to file monthly operating reports and
24 other required reports, attempt to develop an

1 agreed scheduling order, and inform the debtor
2 of other obligations;

3 “(B) when determined to be appropriate
4 and advisable, visit the appropriate business
5 premises of the debtor and ascertain the state
6 of the debtor’s books and records and verify
7 that the debtor has filed its tax returns; and

8 “(C) review and monitor diligently the
9 debtor’s activities, to identify as promptly as
10 possible whether the debtor will be unable to
11 confirm a plan; and

12 “(9) in cases in which the United States trustee
13 finds material grounds for any relief under section
14 1112 of title 11, the United States trustee shall
15 apply promptly to the court for relief.”.

16 (b) DUTIES OF THE BANKRUPTCY ADMINIS-
17 TRATOR.—In a small business case (as defined in section
18 101 of title 11 of the United States Code), the bankruptcy
19 administrator shall perform the duties specified in section
20 586(a)(6) of title 28 of the United States Code.

21 **SEC. 241. SCHEDULING CONFERENCES.**

22 Section 105(d) of title 11, United States Code, is
23 amended—

24 (1) in the matter preceding paragraph (1) by
25 striking “, may”;

1 (2) by amending paragraph (1) to read as fol-
2 lows:

3 “(1) shall hold such status conferences as are
4 necessary to further the expeditious and economical
5 resolution of the case; and”;

6 (3) in paragraph (2) by striking “unless incon-
7 sistent with another provision of this title or with
8 applicable Federal Rules of Bankruptcy Procedure,”
9 and inserting “may”.

10 **SEC. 242. SERIAL FILER PROVISIONS.**

11 Section 362 of title 11, United States Code, is
12 amended—

13 (1) in subsection (i) as so redesignated by sec-
14 tion 124—

15 (A) by striking “An” and inserting “(1)
16 Except as provided in paragraph (2), an”;

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

18 “(2) If such violation is based on an action taken by
19 an entity in the good-faith belief that subsection (h) ap-
20 plies to the debtor, then recovery under paragraph (1)
21 against such entity shall be limited to actual damages.”;
22 and

23 (2) by inserting after subsection (i), as redesign-
24 nated by section 124, the following:

1 “(j) The filing of a petition under chapter 11 of this
2 title operates as a stay of the acts described in subsection
3 (a) only in an involuntary case involving no collusion by
4 the debtor with creditors and in which the debtor—

5 “(1) is a debtor in a small business case pend-
6 ing at the time the petition is filed;

7 “(2) was a debtor in a small business case
8 which was dismissed for any reason by an order that
9 became final in the 2-year period ending on the date
10 of the order for relief entered with respect to the pe-
11 tition;

12 “(3) was a debtor in a small business case in
13 which a plan was confirmed in the 2-year period
14 ending on the date of the order for relief entered
15 with respect to the petition; or

16 “(4) is an entity that has succeeded to substan-
17 tially all of the assets or business of a small business
18 debtor described in subparagraph (A), (B), or (C);
19 unless the debtor proves, by a preponderance of the
20 evidence, that the filing of such petition resulted
21 from circumstances beyond the control of the debtor
22 not foreseeable at the time the case then pending
23 was filed; and that it is more likely than not that
24 the court will confirm a feasible plan, but not a liq-
25 uidating plan, within a reasonable time.”.

1 **SEC. 243. EXPANDED GROUNDS FOR DISMISSAL OR CON-**
2 **VERSION AND APPOINTMENT OF TRUSTEE.**

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

6 “(b)(1) Except as provided in paragraph (2), in sub-
7 section (c), and in section 1104(a)(3) of this title, on re-
8 quest of a party in interest, and after notice and a hear-
9 ing, the court shall convert a case under this chapter to
10 a case under chapter 7 of this title or dismiss a case under
11 this chapter, whichever is in the best interest of creditors
12 and the estate, if the movant establishes cause.

13 “(2) The relief provided in paragraph (1) shall not
14 be granted if the debtor or another party in interest ob-
15 jects and establishes, by a preponderance of the evidence
16 that—

17 “(A) it is more likely than not that a plan will
18 be confirmed within a time as fixed by this title or
19 by order of the court entered pursuant to section
20 1121(e)(3), or within a reasonable time if no time
21 has been fixed; and

22 “(B) if the reason is an act or omission of the
23 debtor that—

24 “(i) there exists a reasonable justification
25 for the act or omission; and

1 “(ii) the act or omission will be cured with-
2 in a reasonable time fixed by the court not to
3 exceed 30 days after the court decides the mo-
4 tion, unless the movant expressly consents to a
5 continuance for a specific period of time, or
6 compelling circumstances beyond the control of
7 the debtor justify an extension.

8 “(3) For purposes of this subsection, cause in-
9 cludes—

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

12 “(B) gross mismanagement of the estate;

13 “(C) failure to maintain appropriate insurance;

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

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

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

21 “(G) failure to attend the meeting of creditors
22 convened under section 341(a) of this title or an ex-
23 amination ordered under rule 2004 of the Federal
24 Rules of Bankruptcy Procedure;

1 “(H) failure timely to provide information or
2 attend meetings reasonably requested by the United
3 States trustee;

4 “(I) failure timely to pay taxes due after the
5 date of the order for relief or to file tax returns due
6 after the order for relief;

7 “(J) failure to file a disclosure statement, or to
8 file or confirm a plan, within the time fixed by this
9 title or by order of the court;

10 “(K) failure to pay any fees or charges required
11 under chapter 123 of title 28;

12 “(L) revocation of an order of confirmation
13 under section 1144 of this title;

14 “(M) inability to effectuate substantial con-
15 summation of a confirmed plan;

16 “(N) material default by the debtor with re-
17 spect to a confirmed plan; and

18 “(O) termination of a plan by reason of the oc-
19 currence of a condition specified in the plan.

20 “(4) The court shall commence the hearing on any
21 motion under this subsection not later than 30 days after
22 filing of the motion, and shall decide the motion within
23 15 days after commencement of the hearing, unless the
24 movant expressly consents to a continuance for a specific
25 period of time or compelling circumstances prevent the

1 court from meeting the time limits established by this
2 paragraph.”.

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

6 (1) in paragraph (1) by striking “or” at the
7 end;

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

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

11 “(3) if grounds exist to convert or dismiss the
12 case under section 1112 of this title, but the court
13 determines that the appointment of a trustee is in
14 the best interests of creditors and the estate.”.

15 **SEC. 244. STUDY OF OPERATION OF TITLE 11 OF THE**
16 **UNITED STATES CODE WITH RESPECT TO**
17 **SMALL BUSINESSES.**

18 Not later than 2 years after the date of the enact-
19 ment of this Act, the Small Business Administration, in
20 consultation with the Attorney General, the Director of
21 the Administrative Office of United States Trustees, and
22 the Director of the Administrative Office of the United
23 States Courts, shall—

24 (1) conduct a study to determine—

1 (A) the internal and external factors that
2 cause small businesses to become debtors in
3 cases under title 11 of the United States Code
4 and that cause certain small businesses to suc-
5 cessfully complete cases under chapter 11 of
6 such title; and

7 (B) how Federal laws relating to bank-
8 ruptcy can be made more effective and efficient
9 in assisting small businesses to remain viable;
10 and

11 (2) submit to the Speaker of the House of Rep-
12 resentatives and the President pro tempore of the
13 Senate a report summarizing such study.

14 **CHAPTER 2—SINGLE ASSET REAL ESTATE**

15 **SEC. 251. SINGLE ASSET REAL ESTATE DEFINED.**

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

18 “(51B) ‘single asset real estate’ means undevel-
19 oped real property or other real property constitut-
20 ing a single property or project, other than residen-
21 tial real property with fewer than 4 residential units,
22 on which is located a single development or project
23 which property or project generates substantially all
24 of the gross income of a debtor and on which no
25 substantial business is being conducted by a debtor,

1 or by a commonly controlled group of entities all of
2 which are concurrently debtors in a case under chap-
3 ter 11 of this title, other than the business of oper-
4 ating the real property and activities incidental
5 thereto;”.

6 **SEC. 252. PAYMENT OF INTEREST.**

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

9 (1) by inserting “or 30 days after the court de-
10 termines that the debtor is subject to this para-
11 graph, whichever is later” after “90-day period”;
12 and

13 (2) by amending subparagraph (B) to read as
14 follows:

15 “(B) the debtor has commenced monthly
16 payments (which payments may, in the debtor’s
17 sole discretion, notwithstanding section
18 363(c)(2) of this title, be made from rents or
19 other income generated before or after the com-
20 mencement of the case by or from the property)
21 to each creditor whose claim is secured by such
22 real estate (other than a claim secured by a
23 judgment lien or by an unmatured statutory
24 lien), which payments are in an amount equal
25 to interest at the then-applicable nondefault

1 contract rate of interest on the value of the
2 creditor's interest in the real estate; or".

3 **TITLE III—MUNICIPAL**
4 **BANKRUPTCY PROVISIONS**

5 **SEC. 301. PETITION AND PROCEEDINGS RELATED TO**
6 **PETITION.**

7 (a) TECHNICAL AMENDMENT RELATING TO MUNICI-
8 PALITIES.—Section 921(d) of title 11, United States
9 Code, is amended by inserting “notwithstanding section
10 301(b)” before the period at the end.

11 (b) CONFORMING AMENDMENT.—Section 301 of title
12 11, United States Code, is amended—

13 (1) by inserting “(a)” before “A voluntary”;
14 and

15 (2) by amending the last sentence to read as
16 follows:

17 “(b) The commencement of a voluntary case under
18 a chapter of this title constitutes an order for relief under
19 such chapter.”.

20 **SEC. 302. APPLICABILITY OF OTHER SECTIONS TO**
21 **CHAPTER 9.**

22 Section 901 of title 11, United States Code, is
23 amended—

24 (1) by inserting “555, 556,” after “553,”; and

25 (2) by inserting “559, 560,” after “557,”.

1 **TITLE IV—BANKRUPTCY**
2 **ADMINISTRATION**
3 **Subtitle A—General Provisions**

4 **SEC. 401. ADEQUATE PREPARATION TIME FOR CREDITORS**
5 **BEFORE THE MEETING OF CREDITORS IN IN-**
6 **DIVIDUAL CASES.**

7 Section 341(a) of title 11, United States Code, is
8 amended by inserting after the first sentence the follow-
9 ing: “If the debtor is an individual in a voluntary case
10 under chapter 7, 11, or 13, the meeting of creditors shall
11 not be convened earlier than 60 days (or later than 90
12 days) after the date of the order for relief, unless the
13 court, after notice and hearing, determines unusual cir-
14 cumstances justify an earlier meeting.”.

15 **SEC. 402. CREDITOR REPRESENTATION AT FIRST MEETING**
16 **OF CREDITORS.**

17 Section 341(e) of title 11, United States Code, is
18 amended by inserting after the first sentence the follow-
19 ing: “Notwithstanding any local court rule, provision of
20 a State constitution, any other State or Federal nonbank-
21 ruptcy law, or other requirement that representation at
22 the meeting of creditors under subsection (a) be by an at-
23 torney, a creditor holding a consumer debt or its rep-
24 resentatives (which representatives may include an entity
25 or an employee of an entity and may be a representative

1 for more than 1 creditor) shall be permitted to appear at
2 and participate in the meeting of creditors in a case under
3 chapter 7 or 13 either alone or in conjunction with an
4 attorney for the creditor. Nothing in this subsection shall
5 be construed to require any creditor to be represented by
6 an attorney at any meeting of creditors.”.

7 **SEC. 403. FILING PROOFS OF CLAIM.**

8 Section 501 of title 11, United States Code, is
9 amended by adding at the end the following:

10 “(e) In a case under chapter 7 or 13, a proof of claim
11 or interest is deemed filed under this section for any claim
12 or interest that appears in the schedules filed under sec-
13 tion 521(a)(1) of this title, except a claim or interest that
14 is scheduled as disputed, contingent, or unliquidated.”.

15 **SEC. 404. AUDIT PROCEDURES.**

16 (a) AMENDMENT.—Section 586 of title 28, United
17 States Code, as amended by sections 111 and 240, is
18 amended—

19 (1) by amending subsection (a)(6) to read as
20 follows:

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

24 (2) by inserting at the end the following:

1 “(f)(1) The Attorney General shall establish proce-
2 dures for the auditing of the accuracy and completeness
3 of petitions, schedules, and other information which the
4 debtor is required to provide under sections 521 and 1322,
5 and, if applicable, section 111, of title 11 in individual
6 cases filed under chapter 7 or 13 of such title. Such audits
7 shall be in accordance with generally accepted auditing
8 standards and performed by independent certified public
9 accountants or independent licensed public accountants.
10 Such procedures shall—

11 “(A) establish a method of selecting appropriate
12 qualified persons to contract with the United States
13 trustee to perform such audits;

14 “(B) establish a method of randomly selecting
15 cases to be audited according to generally accepted
16 audit standards, provided that no less than 1 out of
17 every 100 cases in each Federal judicial district shall
18 be selected for audit;

19 “(C) require audits for schedules of income and
20 expenses which reflect higher than average variances
21 from the statistical norm of the district in which the
22 schedules were filed;

23 “(D) establish procedures for reporting the re-
24 sults of such audits and any material misstatement
25 of income, expenditures or assets of a debtor to the

1 Attorney General, the United States Attorney and
2 the court, as appropriate, and for providing public
3 information no less than annually on the aggregate
4 results of such audits including the percentage of
5 cases, by district, in which a material misstatement
6 of income or expenditures is reported; and

7 “(E) establish procedures for fully funding such
8 audits.

9 “(2) The United States trustee for each district is
10 authorized to contract with auditors to perform audits in
11 cases designated by the United States trustee according
12 to the procedures established under paragraph (1) of this
13 subsection.

14 “(3) According to procedures established under para-
15 graph (1), upon request of a duly appointed auditor, the
16 debtor shall cause the accounts, papers, documents, finan-
17 cial records, files and all other papers, things or property
18 belonging to the debtor as the auditor requests and which
19 are reasonably necessary to facilitate an audit to be made
20 available for inspection and copying.

21 “(4) The report of each such audit shall be filed with
22 the court, the Attorney General, and the United States
23 Attorney, as required under procedures established by the
24 Attorney General under paragraph (1). If a material
25 misstatement of income or expenditures or of assets is re-

1 ported, a statement specifying such misstatement shall be
2 filed with the court and the United States trustee shall
3 give notice thereof to the creditors in the case and, in an
4 appropriate case, in the opinion of the United States trust-
5 ee, requires investigation with respect to possible criminal
6 violations, the United States Attorney for the district.”.

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

10 **SEC. 405. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7**
11 **AND 13 CASES.**

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

14 (1) in subsection (c)—

15 (A) by striking “, but the failure of such
16 notice to contain such information shall not in-
17 validate the legal effect of such notice”; and

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

19 “If the credit agreement between the debtor and the credi-
20 tor or the last communication before the filing of the peti-
21 tion in a voluntary case from the creditor to a debtor who
22 is an individual states an account number of the debtor
23 which is the current account number of the debtor with
24 respect to any debt held by the creditor against the debtor,
25 the debtor shall include such account number in any notice

1 to the creditor required to be given under this title. If the
2 creditor has specified to the debtor an address at which
3 the creditor wishes to receive correspondence regarding
4 the debtor's account, any notice to the creditor required
5 to be given by the debtor under this title shall be given
6 at such address. For the purposes of this section, 'notice'
7 shall include, but shall not be limited to, any correspond-
8 ence from the debtor to the creditor after the commence-
9 ment of the case, any statement of the debtor's intention
10 under section 521(a)(2) of this title, notice of the com-
11 mencement of any proceeding in the case to which the
12 creditor is a party, and any notice of the hearing under
13 section 1324.'";

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

15 “(d) At any time, a creditor in a case of an individual
16 debtor under chapter 7 or 13 may file with the court and
17 serve on the debtor a notice of the address to be used to
18 notify the creditor in that case. Five days after receipt
19 of such notice, if the court or the debtor is required to
20 give the creditor notice, such notice shall be given at that
21 address.

22 “(e) An entity may file with the court a notice stating
23 its address for notice in cases under chapters 7 and 13.
24 After 30 days following the filing of such notice, any notice
25 in any case filed under chapter 7 or 13 given by the court

1 shall be to that address unless specific notice is given
2 under subsection (d) with respect to a particular case.

3 “(f) Notice given to a creditor other than as provided
4 in this section shall not be effective notice until it has been
5 brought to the attention of the creditor. If the creditor
6 has designated a person or department to be responsible
7 for receiving notices concerning bankruptcy cases and has
8 established reasonable procedures so that bankruptcy no-
9 tices received by the creditor will be delivered to such de-
10 partment or person, notice will not be brought to the at-
11 tention of the creditor until received by such person or
12 department. No sanction under section 362(h) of this title
13 or any other sanction which a court may impose on ac-
14 count of violations of the stay under section 362(a) of this
15 title or failure to comply with section 542 or 543 of this
16 title may be imposed on any action of the creditor unless
17 the action takes place after the creditor has received notice
18 of the commencement of the case effective under this sec-
19 tion.”.

20 **SEC. 406. DEBTOR TO PROVIDE TAX RETURNS AND OTHER**
21 **INFORMATION.**

22 Section 521 of title 11, United States Code, is
23 amended—

24 (1) by inserting “(a)” before “The”;

1 (2) by amending paragraph (1) to read as fol-
2 lows:

3 “(1) file—

4 “(A) a list of creditors, and

5 “(B) unless the court orders otherwise—

6 “(i) a schedule of assets and liabil-
7 ities;

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

10 “(iii) a statement of the debtor’s fi-
11 nancial affairs;

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

17 “(v) a statement of the amount of
18 projected monthly net income, itemized to
19 show how calculated;

20 “(vi) if applicable, any statement
21 under paragraphs (3) and (4) of section
22 109(h);

23 “(vii) a statement disclosing any rea-
24 sonably anticipated increase in income or
25 expenditures over the next 12 months; and

1 “(viii) a certificate, if applicable—

2 “(I) of an attorney whose name
3 is on the petition as the attorney for
4 the debtor, or of any bankruptcy peti-
5 tion preparer who signed the petition
6 pursuant to section 110(b)(1) of this
7 title, indicating that such attorney or
8 bankruptcy petition preparer delivered
9 to the debtor any notice required by
10 section 342(b)(1) of this title; or

11 “(II) if no attorney for the debt-
12 or is indicated and no bankruptcy pe-
13 tition preparer signed the petition of
14 the debtor, that such notice was ob-
15 tained and read by the debtor;”;

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

17 “(b) At any time, a creditor in a case of an individual
18 debtor under chapter 7 or 13 may file with the court and
19 serve on the debtor notice that the creditor requests the
20 petition, schedules, and statement of financial affairs filed
21 by the debtor in the case. At any time, a creditor in a
22 case under chapter 13 of this title may file with the court
23 and serve on the debtor notice that the creditor requests
24 the plan filed by the debtor in the case. Within 10 days
25 of the first such request in a case under this subsection

1 for the petition, schedules, and statement of financial af-
2 fairs and the first such request for the plan under this
3 subsection, the debtor shall serve on that creditor a con-
4 formed copy of the requested documents or plan and any
5 amendments thereto as of that date, and shall thereafter
6 promptly serve on that creditor at the time filed with the
7 court—

8 “(1) any requested document or plan which is
9 not filed with the court at the time requested; and

10 “(2) any amendment to any requested docu-
11 ment or plan.

12 “(c)(1) An individual debtor in a case under chapter
13 7 or 13 shall provide to the United States trustee—

14 “(A) copies of all Federal tax returns (including
15 any schedules and attachments) filed by the debtor
16 for the 3 most recent tax years preceding the order
17 for relief;

18 “(B) at the time the debtor files them with the
19 Commissioner of Internal Revenue, all Federal tax
20 returns (including any schedules and attachments)
21 for the debtor’s tax years ending while such case is
22 pending; and

23 “(C) at the time the debtor files them with the
24 Commissioner of Internal Revenue, all amendments

1 to the tax returns (including schedules and attach-
2 ments) described in subparagraphs (A) and (B).

3 “(2)(A) The United States trustee shall make such
4 Federal tax returns (including schedules, attachments,
5 and amendments) available to any party in interest for
6 inspection and copying not later than 10 days after receiv-
7 ing a request by such party.

8 “(B) If the United States trustee does not comply
9 with subparagraph (A), on the motion of such party, the
10 court shall issue an order compelling the United States
11 trustee to comply with subparagraph (A).

12 “(d) A debtor in a case under chapter 13 of this title
13 shall file, from a time which is the later of 90 days after
14 the close of the debtor’s tax year or 1 year after the order
15 for relief unless a plan has then been confirmed, and
16 thereafter on or before 45 days before each anniversary
17 of the confirmation of the plan until the case is closed,
18 a statement subject to the penalties of perjury by the debt-
19 or of the debtor’s income and expenditures in the preced-
20 ing tax year and monthly net income, showing how cal-
21 culated. Such statement shall disclose the amount and
22 sources of income of the debtor, the identity of any per-
23 sons responsible with the debtor for the support of any
24 dependents of the debtor, and any persons who contrib-
25 uted and the amount contributed to the household in

1 which the debtor resides. Such tax returns, amendments
2 and statement of income and expenditures shall be avail-
3 able to the United States trustee, any bankruptcy admin-
4 istrator, any trustee and any party in interest for inspec-
5 tion and copying.”.

6 **SEC. 407. DISMISSAL FOR FAILURE TO FILE SCHEDULES**
7 **TIMELY OR PROVIDE REQUIRED INFORMA-**
8 **TION.**

9 Section 521 of title 11, United States Code, as
10 amended by section 406, is amended by adding at the end
11 the following:

12 “(e) Notwithstanding section 707(a) of this title, if
13 an individual debtor in a voluntary case under chapter 7
14 or 13 fails to provide all of the information required under
15 subsections (a)(1) and (c)(1)(A) within 45 days after the
16 filing of the petition, the case shall be automatically dis-
17 missed effective on the 46th day after the filing of the
18 petition without the need for any order of court, but any
19 party in interest may request the court to enter an order
20 dismissing the case and the court shall, if so requested,
21 enter an order of dismissal within 5 days of such request.
22 Upon request of the debtor made within 45 days after the
23 filing of the petition, the court may allow the debtor up
24 to an additional 15 days to provide the information re-

1 quired under subsections (a)(1) and (c)(1)(A) if the court
2 finds compelling justification for doing so.

3 “(f) If an individual debtor in a case under chapter
4 7 or 13 fails to perform any of the duties imposed by sub-
5 sections (b), (c)(1)(B), (c)(1)(C), and (d), any party in
6 interest may request that the court order the debtor to
7 comply. Within 10 days of such request the court shall
8 order that the debtor do so within a period of time set
9 by the court no longer than 30 days. If the debtor does
10 not comply with that order within the period of time set
11 by the court, the court shall, on request of any party in
12 interest certifying that the debtor has not so complied,
13 enter an order dismissing the case within 5 days of such
14 request.”.

15 **SEC. 408. ADEQUATE TIME TO PREPARE FOR HEARING ON**
16 **CONFIRMATION OF THE PLAN.**

17 Section 1324 of title 11, United States Code, is
18 amended—

19 (1) by striking “After” and inserting the follow-
20 ing:

21 “(a) Except as provided in subsection (b) and after”;
22 and

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

24 “(b) The hearing on confirmation of the plan may
25 be held not earlier than 20 days, and not later than 45

1 days, after the meeting of creditors under section 341(a)
2 of this title.”.

3 **SEC. 409. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**

4 **IN CERTAIN CASES.**

5 Title 11, United States Code, is amended—

6 (1) by amending section 1322(d) to read as fol-
7 lows:

8 “(d) If the current monthly total income of the debtor
9 and in a joint case, the debtor and the debtor’s spouse
10 combined, is not less than the highest national median
11 family income reported for a family of equal or lesser size
12 or, in the case of a household of 1 person, not less than
13 the national median household income for 1 earner, the
14 plan may not provide for payments over a period that is
15 longer than 5 years, unless the court, for cause, approves
16 a longer period, but the court may not approve a period
17 that exceeds 7 years. If the current monthly total income
18 of the debtor or in a joint case, the debtor and the debtor’s
19 spouse combined, is less than the highest national median
20 family income reported for a family of equal or lesser size,
21 or in the case of a household of 1 person less than the
22 national median household income for 1 earner, the plan
23 may not provide for payments over a period that is longer
24 than 3 years, unless the court, for cause, approves a longer

1 period, but the court may not approve a period that is
2 longer than 5 years.”;

3 (2) in section 1329—

4 (A) by striking in subsection (c) “three
5 years” and inserting “the applicable commit-
6 ment period under section 1325(b)(1)(B)(ii)”
7 and by striking “five years” and inserting
8 “maximum duration period”; and

9 (B) by inserting at the end of subsection
10 (c) the following:

11 “The maximum duration period shall be 5 years if the cur-
12 rent monthly total income of the debtor, and in a joint
13 case, the debtor and the debtor’s spouse combined, is not
14 less than the highest national median family income re-
15 ported for a family of equal or lesser size or, in the case
16 of a household of 1 person, not less than the national me-
17 dian household income for 1 earner, as of the date of the
18 modification and shall be 3 years if the current monthly
19 total income is less than the highest national median fam-
20 ily income reported for a family of equal or lesser size or,
21 in the case of a household of 1 person, less than the na-
22 tional median household income for 1 earner as of the date
23 of the modification.”.

1 **SEC. 410. SENSE OF THE CONGRESS REGARDING EXPAN-**
2 **SION OF RULE 9011 OF THE FEDERAL RULES**
3 **OF BANKRUPTCY PROCEDURE.**

4 It is the sense of the Congress that rule 9011 of the
5 Federal Rules of Bankruptcy Procedure (11 U.S.C. App)
6 should be modified to include a requirement that all docu-
7 ments (including schedules), signed and unsigned, submit-
8 ted to the court or to a trustee by debtors who represent
9 themselves and debtors who are represented by an attor-
10 ney be submitted only after the debtor or the debtor's at-
11 torney has made reasonable inquiry to verify that the in-
12 formation contained in such documents is well grounded
13 in fact, and is warranted by existing law or a good-faith
14 argument for the extension, modification, or reversal of
15 existing law.

16 **SEC. 411. JURISDICTION OF COURTS OF APPEALS.**

17 (a) JURISDICTION.—Title 28 of the United States
18 Code is amended—

19 (1) by striking section 158;

20 (2) by inserting after section 1292 the follow-
21 ing:

22 **“§ 1293. Bankruptcy appeals**

23 “The courts of appeals (other the United States
24 Court of Appeals for the Federal Circuit) shall have juris-
25 diction of appeals from the following:

1 “(1) Final orders and judgments of bankruptcy
2 courts entered under—

3 “(A) section 157(b) of this title in core
4 proceedings arising under title 11, or arising in
5 or related to a case under title 11; or

6 “(B) section 157(c)(2) of this title in pro-
7 ceedings referred to such courts.

8 “(2) Final orders and judgments of district
9 courts entered under section 157 of this title in—

10 “(A) core proceedings arising under title
11 11, or arising in or related to a case under title
12 11; or

13 “(B) proceedings that are not core pro-
14 ceedings, but that are otherwise related to a
15 case under title 11.

16 “(3) Orders and judgments of bankruptcy
17 courts or district courts entered under section 105
18 of title 11, or the refusal to enter an order or judg-
19 ment under such section.

20 “(4) Orders of bankruptcy courts or district
21 courts entered under section 1104(a) or 1121(d) of
22 title 11, or the refusal to enter an order under such
23 section.

24 “(5) An interlocutory order of a bankruptcy
25 court or district court entered in a case under title

1 11, in a proceeding arising under title 11, or in a
2 proceeding arising in or related to a case under title
3 11, if—

4 “(A) such court is of the opinion that—

5 “(i) such order involves a controlling
6 question of law as to which there is sub-
7 stantial ground for difference of opinion;
8 and

9 “(ii) an immediate appeal from such
10 order may materially advance the ultimate
11 termination of such case or such proceed-
12 ing; or

13 “(B) the court of appeals that would have
14 jurisdiction of an appeal of a final order entered
15 in such case or such proceeding permits, in its
16 discretion, appeal to be taken from such inter-
17 locutory order.”; and

18 (3) in—

19 (A) the table of sections for chapter 6 by
20 striking the item relating to section 158; and

21 (B) the table of sections for chapter 83 by
22 inserting after the item relating to section 1292
23 the following:

“1293. Bankruptcy appeals.”.

24 (b) CONFORMING AMENDMENTS.—(1) Section 305(c)
25 of title 11, the United States Code, is amended by striking

1 “158(d), 1291, or 1292” and inserting “1291, 1292, or
2 1293”.

3 (2) Title 28, United States Code, is amended—

4 (A) in subsections (b)(1) and (c)(2) of section
5 157 by striking “section 158” and inserting “section
6 1293”;

7 (B) in section 1334(d) by striking “158(d),
8 1291, or 1292” and inserting “1291, 1292, or
9 1293”; and

10 (C) in section 1452(b) by striking “158(d),
11 1291, or 1292” and inserting “1291, 1292, or
12 1293”.

13 **SEC. 412. ESTABLISHMENT OF OFFICIAL FORMS.**

14 The Judicial Conference of the United States shall
15 establish official forms to facilitate compliance with the
16 amendments made by sections 101 and 102.

17 **SEC. 413. ELIMINATION OF CERTAIN FEES PAYABLE IN**
18 **CHAPTER 11 BANKRUPTCY CASES.**

19 (a) AMENDMENTS.—Section 1930(a)(6) of title 28,
20 United States Code, is amended—

21 (1) in the 1st sentence by striking “until the
22 case is converted or dismissed, whichever occurs
23 first”; and

24 (2) in the 2d sentence—

1 (A) by striking “The” and inserting “Until
2 the plan is confirmed or the case is converted
3 (whichever occurs first) the”; and

4 (B) by striking “less than \$300,000;” and
5 inserting “less than \$300,000. Until the case is
6 converted, dismissed, or closed (whichever oc-
7 curs first and without regard to confirmation of
8 the plan) the fee shall be”.

9 (b) DELAYED EFFECTIVE DATE.—The amendments
10 made by subsection (a) shall take effect on October 1,
11 1999.

12 **SEC. 414. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**
13 **TENDED TO DEPENDENT STUDENTS.**

14 Not later than 1 year after the date of the enactment
15 of this Act, the Comptroller General of the United States
16 shall—

17 (1) conduct a study regarding the impact that
18 the extension of credit to individuals who are—

19 (A) claimed as dependents for purposes of
20 the Internal Revenue Code of 1986; and

21 (B) enrolled in post-secondary educational
22 institutions,

23 has on the rate of cases filed under title 11 of the
24 United States Code; and

1 (2) submit to the Speaker of the House of Rep-
2 representatives and the President pro tempore of the
3 Senate a report summarizing such study.

4 **Subtitle B—Data Provisions**

5 **SEC. 441. IMPROVED BANKRUPTCY STATISTICS.**

6 (a) AMENDMENT.—Title 28, United States Code, is
7 amended by adding after section 158 the following new
8 section:

9 **“§ 159. Bankruptcy statistics**

10 “The Director of the Executive Office for United
11 States Trustees shall compile statistics regarding individ-
12 ual debtors with primarily consumer debts seeking relief
13 under chapters 7, 11, and 13 of title 11. The Executive
14 Office for United States Trustees shall compile such sta-
15 tistics, in such form as shall be determined by such Office,
16 in consultation with the Administrative Office of the
17 United States Courts, and make them public, and report
18 annually to the Congress on the information collected, and
19 on its analysis thereof, no later than October 31 of each
20 year. Such compilation shall be itemized by chapter of title
21 11, shall be presented in the aggregate and for each dis-
22 trict, and shall include the following:

23 “(1) Total assets and total liabilities of such
24 debtors, and in each category of assets and liabil-
25 ities, as reported in the schedules prescribed pursu-

1 ant to section 2075 of this title and filed by such
2 debtors.

3 “(2) The current monthly total income, pro-
4 jected monthly net income, and average income and
5 average expenses of such debtors as reported on the
6 schedules and statements the debtor has filed under
7 sections 111, 521, and 1322 of title 11.

8 “(3) The aggregate amount of debt discharged
9 in the reporting period, determined as the difference
10 between the total amount of debt and obligations of
11 a debtor reported on the schedules and the amount
12 of such debt reported in categories which are pre-
13 dominantly nondischargeable.

14 “(4) The average time between the filing of the
15 petition and the closing of the case.

16 “(5) The number of cases in the reporting pe-
17 riod in which a reaffirmation was filed and the total
18 number of reaffirmations filed in that period, and of
19 those cases in which a reaffirmation was filed, the
20 number in which the debtor was not represented by
21 an attorney, and of those the number of cases in
22 which the reaffirmation was approved by the court.

23 “(6) With respect to cases filed under chapter
24 13 of title 11—

1 “(2) periodic reports by debtors in possession or
2 trustees, as the case may be, in cases under chapter
3 11 of title 11.

4 “(b) REPORTS.—All reports referred to in subsection
5 (a) shall be designed (and the requirements as to place
6 and manner of filing shall be established) so as to facili-
7 tate compilation of data and maximum possible access of
8 the public, both by physical inspection at 1 or more central
9 filing locations, and by electronic access through the Inter-
10 net or other appropriate media.

11 “(c) REQUIRED INFORMATION.—The information re-
12 quired to be filed in the reports referred to in subsection
13 (b) shall be that which is in the best interests of debtors
14 and creditors, and in the public interest in reasonable and
15 adequate information to evaluate the efficiency and practi-
16 cality of the Federal bankruptcy system. In issuing rules
17 proposing the forms referred to in subsection (a), the At-
18 torney General shall strike the best achievable practical
19 balance between—

20 “(1) the reasonable needs of the public for in-
21 formation about the operational results of the Fed-
22 eral bankruptcy system; and

23 “(2) economy, simplicity, and lack of undue
24 burden on persons with a duty to file reports.

1 “(d) FINAL REPORTS.—Final reports proposed for
2 adoption by trustees under chapters 7, 12, and 13 of title
3 11 shall, in addition to such other matters as are required
4 by law or as the Attorney General in the discretion of the
5 Attorney General, shall propose, include with respect to
6 a case under such title—

7 “(1) information about the length of time the
8 case was pending;

9 “(2) assets abandoned;

10 “(3) assets exempted;

11 “(4) receipts and disbursements of the estate;

12 “(5) expenses of administration;

13 “(6) claims asserted;

14 “(7) claims allowed; and

15 “(8) distributions to claimants and claims dis-
16 charged without payment,

17 in each case by appropriate category and, in cases under
18 chapters 12 and 13 of title 11, date of confirmation of
19 the plan, each modification thereto, and defaults by the
20 debtor in performance under the plan.

21 “(e) PERIODIC REPORTS.—Periodic reports proposed
22 for adoption by trustees or debtors in possession under
23 chapter 11 of title 11 shall, in addition to such other mat-
24 ters as are required by law or as the Attorney General,

1 in the discretion of the Attorney General, shall propose,
2 include—

3 “(1) information about the standard industry
4 classification, published by the Department of Com-
5 merce, for the businesses conducted by the debtor;

6 “(2) length of time the case has been pending;

7 “(3) number of full-time employees as at the
8 date of the order for relief and at end of each re-
9 porting period since the case was filed;

10 “(4) cash receipts, cash disbursements and
11 profitability of the debtor for the most recent period
12 and cumulatively since the date of the order for re-
13 lief;

14 “(5) compliance with title 11, whether or not
15 tax returns and tax payments since the date of the
16 order for relief have been timely filed and made;

17 “(6) all professional fees approved by the court
18 in the case for the most recent period and cumula-
19 tively since the date of the order for relief (sepa-
20 rately reported, in for the professional fees incurred
21 by or on behalf of the debtor, between those that
22 would have been incurred absent a bankruptcy case
23 and those not); and

24 “(7) plans of reorganization filed and confirmed
25 and, with respect thereto, by class, the recoveries of

1 the holders, expressed in aggregate dollar values
2 and, in the case of claims, as a percentage of total
3 claims of the class allowed.”.

4 (b) TECHNICAL AMENDMENT.—The table of sections
5 of chapter 39 of title 28, United States Code, is amended
6 by adding at the end the following:

“589b. Bankruptcy data.”.

7 **SEC. 443. SENSE OF THE CONGRESS REGARDING AVAIL-**
8 **ABILITY OF BANKRUPTCY DATA.**

9 It is the sense of the Congress that—

10 (1) the national policy of the United States
11 should be that all data held by bankruptcy clerks in
12 electronic form, to the extent such data reflects only
13 public records (as defined in section 107 of title 11
14 of the United States Code), should be released in a
15 usable electronic form in bulk to the public subject
16 to such appropriate privacy concerns and safeguards
17 as the Judicial Conference of the United States may
18 determine; and

19 (2) there should be established a bankruptcy
20 data system in which—

21 (A) a single set of data definitions and
22 forms are used to collect data nationwide; and

23 (B) data for any particular bankruptcy
24 case are aggregated in the same electronic
25 record.

1 **TITLE V—TAX PROVISIONS**

2 **SEC. 501. TREATMENT OF CERTAIN LIENS.**

3 (a) TREATMENT OF CERTAIN LIENS.—Section 724
4 of title 11, United States Code, is amended—

5 (1) in subsection (b), in the matter preceding
6 paragraph (1), by inserting “(other than to the ex-
7 tent that there is a properly perfected unavoidable
8 tax lien arising in connection with an ad valorem tax
9 on real or personal property of the estate)” after
10 “under this title”;

11 (2) in subsection (b)(2), after “507(a)(1)”, in-
12 sert “(except that such expenses, other than claims
13 for wages, salaries, or commissions which arise after
14 the filing of a petition, shall be limited to expenses
15 incurred under chapter 7 of this title and shall not
16 include expenses incurred under chapter 11 of this
17 title)”; and

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

19 “(e) Before subordinating a tax lien on real or per-
20 sonal property of the estate, the trustee shall—

21 “(1) exhaust the unencumbered assets of the
22 estate; and

23 “(2) in a manner consistent with section 506(c)
24 of this title, recover from property securing an al-
25 lowed secured claim the reasonable, necessary costs

1 and expenses of preserving or disposing of that prop-
2 erty.

3 “(f) Notwithstanding the exclusion of ad valorem tax
4 liens set forth in this section and subject to the require-
5 ments of subsection (e)—

6 “(1) claims for wages, salaries, and commis-
7 sions that are entitled to priority under section
8 507(a)(3) of this title; or

9 “(2) claims for contributions to an employee
10 benefit plan entitled to priority under section
11 507(a)(4) of this title,

12 may be paid from property of the estate which secures
13 a tax lien, or the proceeds of such property.”.

14 (b) DETERMINATION OF TAX LIABILITY.—Section
15 505(a)(2) of title 11, United States Code, is amended—

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

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

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

21 “(C) the amount or legality of any amount aris-
22 ing in connection with an ad valorem tax on real or
23 personal property of the estate, if the applicable pe-
24 riod for contesting or redetermining that amount

1 under any law (other than a bankruptcy law) has ex-
2 pired.”.

3 **SEC. 502. ENFORCEMENT OF CHILD AND SPOUSAL SUP-**
4 **PORT.**

5 Section 522(c)(1) of title 11, United States Code, is
6 amended to read as follows:

7 “(1) a debt of a kind specified in paragraph (1)
8 or (5) of section 523(a) of this title, and such prop-
9 erty shall be liable for a debt of a kind specified in
10 such paragraph (5) notwithstanding any State law
11 to the contrary;”.

12 **SEC. 503. EFFECTIVE NOTICE TO GOVERNMENT.**

13 (a) EFFECTIVE NOTICE TO GOVERNMENTAL
14 UNITS.—Section 342 of title 11, United States Code, as
15 amended by section 405, is amended by adding at the end
16 the following:

17 “(g) If a debtor lists a governmental unit as a credi-
18 tor in a list or schedule, any notice required to be given
19 by the debtor under this title, any rule, any applicable law,
20 or any order of the court, shall identify the department,
21 agency, or instrumentality through which the debtor is in-
22 debted. The debtor shall identify (with information such
23 as a taxpayer identification number, loan, account or con-
24 tract number, or real estate parcel number, where applica-
25 ble), and describe the underlying basis for the govern-

1 mental unit’s claim. If the debtor’s liability to a govern-
2 mental unit arises from a debt or obligation owed or in-
3 curred by another individual, entity, or organization, or
4 under a different name, the debtor shall identify such indi-
5 vidual, entity, organization, or name.

6 “(h) The clerk shall keep and update quarterly, in
7 the form and manner as the Director of the Administra-
8 tive Office of the United States Courts prescribes, and
9 make available to debtors, a register in which a govern-
10 mental unit may designate a safe harbor mailing address
11 for service of notice in cases pending in the district. A
12 governmental unit may file a statement with the clerk des-
13 ignating a safe harbor address to which notices are to be
14 sent, unless such governmental unit files a notice of
15 change of address.”.

16 (b) ADOPTION OF RULES PROVIDING NOTICE.—The
17 Advisory Committee on Bankruptcy Rules of the Judicial
18 Conference shall, within a reasonable period of time after
19 the date of the enactment of this Act, propose for adoption
20 enhanced rules for providing notice to State, Federal, and
21 local government units that have regulatory authority over
22 the debtor or which may be creditors in the debtor’s case.
23 Such rules shall be reasonably calculated to ensure that
24 notice will reach the representatives of the governmental
25 unit, or subdivision thereof, who will be the proper persons

1 authorized to act upon the notice. At a minimum, the rules
2 should require that the debtor—

3 (1) identify in the schedules and the notice, the
4 subdivision, agency, or entity in respect of which
5 such notice should be received;

6 (2) provide sufficient information (such as case
7 captions, permit numbers, taxpayer identification
8 numbers, or similar identifying information) to per-
9 mit the governmental unit or subdivision thereof, en-
10 titled to receive such notice, to identify the debtor or
11 the person or entity on behalf of which the debtor
12 is providing notice where the debtor may be a suc-
13 cessor in interest or may not be the same as the per-
14 son or entity which incurred the debt or obligation;
15 and

16 (3) identify, in appropriate schedules, served to-
17 gether with the notice, the property in respect of
18 which the claim or regulatory obligation may have
19 arisen, if any, the nature of such claim or regulatory
20 obligation and the purpose for which notice is being
21 given.

22 (c) EFFECT OF FAILURE OF NOTICE.—Section 342
23 of title 11, United States Code, as amended by subsection
24 (a) and section 405, is amended by adding at the end the
25 following:

1 “(i)(1) A notice that does not comply with sub-
2 sections (d) and (e) shall have no effect unless the debtor
3 demonstrates, by clear and convincing evidence, that time-
4 ly notice was given in a manner reasonably calculated to
5 satisfy the requirements of this section was given, and
6 that—

7 “(A) either the notice was timely sent to the
8 safe harbor address provided in the register main-
9 tained by the clerk of the district in which the case
10 was pending for such purposes; or

11 “(B) no safe harbor address was provided in
12 such list for the governmental unit and that an offi-
13 cer of the governmental unit who is responsible for
14 the matter or claim had actual knowledge of the case
15 in sufficient time to act.

16 “(2) No sanction under section 362(h) of this title
17 or any other sanction which a court may impose on ac-
18 count of violations of the stay under section 362(a) of this
19 title or failure to comply with section 542 or 543 of this
20 title may be imposed unless the action takes place after
21 notice of the commencement of the case as required by
22 this section has been received.”.

1 **SEC. 504. NOTICE OF REQUEST FOR A DETERMINATION OF**
2 **TAXES.**

3 Section 505(b) of title 11, United States Code, is
4 amended by striking “Unless” at the beginning of the sec-
5 ond sentence thereof and inserting “If the request is made
6 in the manner designated by the governmental unit and
7 unless”.

8 **SEC. 505. RATE OF INTEREST ON TAX CLAIMS.**

9 Chapter 5 of title 11, United States Code, is amended
10 by adding at the end the following:

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

12 “Notwithstanding any provision of this title that re-
13 quires the payment of interest on a claim, if interest is
14 required to be paid on a tax claim, the rate of interest
15 shall be as follows:

16 “(1) In the case of ad valorem tax claims,
17 whether secured or unsecured, other unsecured tax
18 claims where interest is required to be paid under
19 section 726(a)(5) of this title and secured tax claims
20 the rate shall be determined under applicable non-
21 bankruptcy law.

22 “(2) In the case of unsecured claims for taxes
23 arising before the date of the order for relief and
24 paid under a plan of reorganization, the minimum
25 rate of interest to be applied during the period after
26 the filing of the petition shall be the Federal short-

1 term rate rounded to the nearest full percent, deter-
2 mined under section 1274(d) of the Internal Reve-
3 nue Code of 1986, for the calendar month in which
4 the plan is confirmed, plus 3 percentage points.”.

5 **SEC. 506. TOLLING OF PRIORITY OF TAX CLAIM TIME**
6 **PERIODS.**

7 Section 507(a)(9)(A) of title 11, United States Code,
8 as so redesignated, is amended—

9 (1) in clause (i) by inserting after “petition”
10 and before the semicolon “, plus any time, plus 6
11 months, during which the stay of proceedings was in
12 effect in a prior case under this title”; and

13 (2) amend clause (ii) to read as follows:

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

17 “(I) any time plus 30 days dur-
18 ing which an offer in compromise with
19 respect of such tax, was pending or in
20 effect during such 240-day period;

21 “(II) any time plus 30 days dur-
22 ing which an installment agreement
23 with respect of such tax was pending
24 or in effect during such 240-day pe-
25 riod, up to 1 year; and

1 “(III) any time plus 6 months
2 during which a stay of proceedings
3 against collections was in effect in a
4 prior case under this title during such
5 240-day period.”.

6 **SEC. 507. ASSESSMENT DEFINED.**

7 (a) ASSESSMENT DEFINED FOR PRIORITY PUR-
8 POSES.—Section 101 of title 11, United States Code, is
9 amended by inserting after paragraph (2) the following:

10 “(3) ‘assessment’—

11 “(A) for purposes of State and local taxes,
12 means that point in time when all actions re-
13 quired have been taken so that thereafter a tax-
14 ing authority may commence an action to col-
15 lect the tax; and

16 “(B) for Federal tax purposes has the
17 meaning given such term in the Internal Reve-
18 nue Code of 1986,

19 and ‘assessed’ and ‘assessable’ shall be interpreted
20 in light of the definition of assessment in this para-
21 graph;”.

22 (b) ASSESSMENT DEFINED FOR THE STAY OF PRO-
23 CEEDINGS.—Section 362(b)(9)(D) of title 11, United
24 States Code, is amended by inserting after “the making
25 of an assessment” the following: “as defined by applicable

1 nonbankruptcy law notwithstanding the definition of an
2 ‘assessment’ elsewhere in this title”.

3 **SEC. 508. CHAPTER 13 DISCHARGE OF FRAUDULENT AND**
4 **OTHER TAXES.**

5 Section 1328(a)(2) of title 11, United States Code,
6 is amended by inserting “(1),” after “paragraph”.

7 **SEC. 509. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

8 Section 1141(d) of title 11, United States Code, as
9 amended by section 119A, is amended by adding at the
10 end the following:

11 “(6) Notwithstanding the provisions of paragraph
12 (1), the confirmation of a plan does not discharge a debtor
13 which is a corporation from any debt for a tax or customs
14 duty with respect to which the debtor made a fraudulent
15 return or willfully attempted in any manner to evade or
16 defeat such tax.”.

17 **SEC. 510. STAY OF TAX PROCEEDINGS.**

18 (a) SECTION 362 STAY LIMITED TO PREPETITION
19 TAXES.—Section 362(a)(8) of title 11, United States
20 Code, is amended by striking the period at the end and
21 inserting “, in respect of a tax liability for a taxable period
22 ending before the order for relief.”.

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

1 (1) in subparagraph (C) by striking “or” at the
2 end;

3 (2) in subparagraph (D) by striking the period
4 at the end and inserting “; or”; and

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

6 “(E) the appeal of a decision by a court or
7 administrative tribunal which determines a tax
8 liability of the debtor without regard to whether
9 such determination was made prepetition or
10 postpetition.”.

11 **SEC. 511. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**

12 **CASES.**

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

15 (1) in subparagraph (B) by striking “and” at
16 the end; and

17 (2) in subparagraph (C)—

18 (A) by striking “deferred cash payments,
19 over a period not exceeding six years after the
20 date of assessment of such claim,” and insert-
21 ing “regular installment payments in cash, but
22 in no case with a balloon provision, and no
23 more than three months apart, beginning no
24 later than the effective date of the plan and
25 ending on the earlier of five years after the pe-

1 tition date or the last date payments are to be
2 made under the plan to unsecured creditors,”;

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 which
7 would be described in section 507(a)(8) of this
8 title but for its secured status, the holder of
9 such claim will receive on account of such claim
10 cash payments of not less than is required in
11 subparagraph (C) and over a period no greater
12 than is required in such subparagraph.”.

13 **SEC. 512. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**
14 **ITED.**

15 Section 545(2) of title 11, United States Code, is
16 amended by striking the semicolon at the end and insert-
17 ing “, except where such purchaser is a purchaser de-
18 scribed in section 6323 of the Internal Revenue Code of
19 1986 or similar provision of State or local law;”.

20 **SEC. 513. PAYMENT OF TAXES IN THE CONDUCT OF**
21 **BUSINESS.**

22 (a) **PAYMENT OF TAXES REQUIRED.**—Section 960 of
23 title 28, United States Code, is amended—

24 (1) by inserting “(a)” before “Any”; and

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

1 “(b) Such taxes shall be paid when due in the conduct
2 of such business unless—

3 “(1) the tax is a property tax secured by a lien
4 against property that is abandoned within a reason-
5 able time after the lien attaches, by the trustee of
6 a bankruptcy estate, pursuant to section 554 of title
7 11; or

8 “(2) payment of the tax is excused under a spe-
9 cific provision of title 11.

10 “(c) In a case pending under chapter 7 of title 11,
11 payment of a tax may be deferred until final distribution
12 is made under section 726 of title 11 if—

13 “(1) the tax was not incurred by a trustee duly
14 appointed under chapter 7 of title 11; or

15 “(2) before the due date of the tax, the court
16 has made a finding of probable insufficiency of
17 funds of the estate to pay in full the administrative
18 expenses allowed under section 503(b) of title 11
19 that have the same priority in distribution under
20 section 726(b) of title 11 as such tax.”.

21 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—
22 Section 503(b)(1)(B) of title 11, United States Code, is
23 amended in clause (i) by inserting after “estate,” and be-
24 fore “except” the following: “whether secured or unse-

1 cured, including property taxes for which liability is in rem
2 only, in personam or both.”.

3 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE
4 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of
5 title 11, United States Code, is amended by adding at the
6 end the following:

7 “(D) notwithstanding the requirements of sub-
8 section (a) of this section, a governmental unit shall
9 not be required to file a request for the payment of
10 a claim described in subparagraph (B) or (C);”.

11 (d) PAYMENT OF TAXES AND FEES AS SECURED
12 CLAIMS.—Section 506 of title 11, United States Code, is
13 amended—

14 (1) in subsection (b) by inserting “or State
15 statute” after “agreement”; and

16 (2) in subsection (c) by inserting “, including
17 the payment of all ad valorem property taxes in re-
18 spect of the property” before the period at the end.

19 **SEC. 514. TARDILY FILED PRIORITY TAX CLAIMS.**

20 Section 726(a)(1) of title 11, United States Code, is
21 amended by striking “before the date on which the trustee
22 commences distribution under this section” and inserting
23 “on or before the earlier of 10 days after the mailing to
24 creditors of the summary of the trustee’s final report or

1 the date on which the trustee commences final distribution
2 under this section”.

3 **SEC. 515. INCOME TAX RETURNS PREPARED BY TAX**
4 **AUTHORITIES.**

5 Section 523(a)(1)(B) of title 11, United States Code,
6 is amended—

7 (1) by inserting “or equivalent report or no-
8 tice,” after “a return,”;

9 (2) in clause (i)—

10 (A) by inserting “or given” after “filed”;

11 and

12 (B) by striking “or” at the end;

13 (3) in clause (ii)—

14 (A) by inserting “or given” after “filed”;

15 and

16 (B) by inserting “, report, or notice” after
17 “return”; and

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

19 “(iii) for purposes of this subsection,
20 a return—

21 “(I) must satisfy the require-
22 ments of applicable nonbankruptcy
23 law, and includes a return prepared
24 pursuant to section 6020(a) of the In-
25 ternal Revenue Code of 1986, or simi-

1 lar State or local law, or a written
 2 stipulation to a judgment entered by a
 3 nonbankruptcy tribunal, but does not
 4 include a return made pursuant to
 5 section 6020(b) of the Internal Reve-
 6 nue Code of 1986, or similar State or
 7 local law; and

8 “(II) must have been filed in a
 9 manner permitted by applicable non-
 10 bankruptcy law; or”.

11 **SEC. 516. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**
 12 **PAID TAXES.**

13 Section 505(b) of title 11, United States Code, is
 14 amended in the second sentence by inserting “the estate,”
 15 after “misrepresentation,”.

16 **SEC. 517. REQUIREMENT TO FILE TAX RETURNS TO CON-**
 17 **FIRM CHAPTER 13 PLANS.**

18 (a) **FILING OF PREPETITION TAX RETURNS RE-**
 19 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of
 20 title 11, United States Code, as amended by section 146,
 21 is amended—

22 (1) in paragraph (6) by striking “and” at the
 23 end;

24 (2) in paragraph (7) by striking the period at
 25 the end and inserting “; and”; and

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

2 “(8) if the debtor has filed all Federal, State,
3 and local tax returns as required by section 1308 of
4 this title.”.

5 (b) ADDITIONAL TIME PERMITTED FOR FILING TAX
6 RETURNS.—(1) Chapter 13 of title 11, United States
7 Code, is amended by adding at the end the following:

8 **“§ 1308. Filing of prepetition tax returns**

9 “(a) On or before the day prior to the day on which
10 the first meeting of the creditors is convened under section
11 341(a) of this title, the debtor shall have filed with appro-
12 priate tax authorities all tax returns for all taxable periods
13 ending in the 6-year period ending on the date of filing
14 of the petition.

15 “(b) If the tax returns required by subsection (a)
16 have not been filed by the date on which the first meeting
17 of creditors is convened under section 341(a) of this title,
18 the trustee may continue such meeting for a reasonable
19 period of time, to allow the debtor additional time to file
20 any unfiled returns, but such additional time shall be no
21 more than—

22 “(1) for returns that are past due as of the
23 date of the filing of the petition, 120 days from such
24 date;

1 “(2) for returns which are not past due as of
2 the date of the filing of the petition, the later of 120
3 days from such date or the due date for such re-
4 turns under the last automatic extension of time for
5 filing such returns to which the debtor is entitled,
6 and for which request has been timely made, accord-
7 ing to applicable nonbankruptcy law; and

8 “(3) upon notice and hearing, and order en-
9 tered before the lapse of any deadline fixed accord-
10 ing to this subsection, where the debtor dem-
11 onstrates, by clear and convincing evidence, that the
12 failure to file the returns as required is because of
13 circumstances beyond the control of the debtor, the
14 court may extend the deadlines set by the trustee as
15 provided in this subsection for—

16 “(A) a period of no more than 30 days for
17 returns described in paragraph (1) of this sub-
18 section; and

19 “(B) for no more than the period of time
20 ending on the applicable extended due date for
21 the returns described in paragraph (2).

22 “(c) For purposes of this section only, a return in-
23 cludes a return prepared pursuant to section 6020 (a) or
24 (b) of the Internal Revenue Code of 1986 or similar State

1 or local law, or a written stipulation to a judgment entered
2 by a nonbankruptcy tribunal.”.

3 (2) The table of sections of chapter 13 of title 11,
4 United States Code, is amended by inserting after the
5 item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”.

6 (c) DISMISSAL OR CONVERSION ON FAILURE TO
7 COMPLY.—Section 1307 of title 11, United States Code,
8 is amended—

9 (1) by redesignating subsections (e) and (f) as
10 subsections (f) and (g), respectively; and

11 (2) by inserting after subsection (d) the follow-
12 ing:

13 “(e) Upon the failure of the debtor to file tax returns
14 under section 1308 of this title, on request of a party in
15 interest or the United States trustee and after notice and
16 a hearing, the court shall dismiss a case or convert a case
17 under this chapter to a case under chapter 7 of this title,
18 whichever is in the best interests of creditors and the es-
19 tate.”.

20 (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of
21 title 11, United States Code, is amended by striking the
22 period at the end and inserting “, and except that in a
23 case under chapter 13 of this title, a claim of a govern-
24 mental unit for a tax in respect of a return filed under
25 section 1308 of this title shall be timely if it is filed on

1 or before 60 days after such return or returns were filed
2 as required.”.

3 (e) RULES FOR OBJECTIONS TO CLAIMS AND TO
4 CONFIRMATION.—It is the sense of the Congress that the
5 Advisory Committee on Bankruptcy Rules of the Judicial
6 Conference should, within a reasonable period of time
7 after the date of the enactment of this Act, propose for
8 adoption amended Federal Rules of Bankruptcy Proce-
9 dure which provide that—

10 (1) notwithstanding the provisions of Rule
11 3015(f), in cases under chapter 13 of title 11,
12 United States Code, a governmental unit may object
13 to the confirmation of a plan on or before 60 days
14 after the debtor files all tax returns required under
15 sections 1308 and 1325(a)(7) of title 11, United
16 States Code; and

17 (2) in addition to the provisions of Rule 3007,
18 in a case under chapter 13 of title 11, United States
19 Code, no objection to a tax in respect of a return re-
20 quired to be filed under such section 1308 shall be
21 filed until such return has been filed as required.

22 **SEC. 518. STANDARDS FOR TAX DISCLOSURE.**

23 Section 1125(a) of title 11, United States Code, is
24 amended in paragraph (1)—

1 (1) by inserting after “records,” the following:
2 “including a full discussion of the potential material
3 Federal, State, and local tax consequences of the
4 plan to the debtor, any successor to the debtor, and
5 a hypothetical investor domiciled in the State in
6 which the debtor resides or has its principal place of
7 business typical of the holders of claims or interests
8 in the case,”;

9 (2) by inserting “such” after “enable”; and

10 (3) by striking “reasonable” where it appears
11 after “hypothetical” and by striking “typical of hold-
12 ers of claims or interests” after “investor”.

13 **SEC. 519. SETOFF OF TAX REFUNDS.**

14 Section 362(b) of title 11, United States Code, as
15 amended by sections 130, 146, and 150 is amended—

16 (1) in paragraph (21) by striking “or”;

17 (2) in paragraph (22) by striking the period at
18 the end and inserting “; or”; and

19 (3) by inserting after paragraph (22) (as so re-
20 designated) the following:

21 “(23) under subsection (a) of the setoff of an
22 income tax refund, by a governmental unit, in re-
23 spect of a taxable period which ended before the
24 order for relief against an income tax liability for a

1 taxable period which also ended before the order for
2 relief, unless—

3 “(A) prior to such setoff, an action to de-
4 termine the amount or legality of such tax li-
5 ability under section 505(a) was commenced; or

6 “(B) where the setoff of an income tax re-
7 fund is not permitted because of a pending ac-
8 tion to determine the amount or legality of a
9 tax liability, the governmental unit may hold
10 the refund pending the resolution of the ac-
11 tion.”.

12 **TITLE VI—ANCILLARY AND**
13 **OTHER CROSS-BORDER CASES**

14 **SEC. 601. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11,**
15 **UNITED STATES CODE.**

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

18 **“CHAPTER 6—ANCILLARY AND OTHER**
19 **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);

11 “(2) an individual, or to an individual and such
12 individual’s spouse, who have debts within the limits
13 specified in under section 109(e) and who are citi-
14 zens of the United States or aliens lawfully admitted
15 for permanent residence in the United States; or

16 “(3) an entity subject to a proceeding under the
17 Securities Investor Protection Act, a stockbroker
18 subject to subchapter III of chapter 7 of this title,
19 or a commodity broker subject to subchapter IV of
20 chapter 7 of this title.

21 “SUBCHAPTER I—GENERAL PROVISIONS

22 “§ 602. **Definitions**

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

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

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

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

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

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

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

17 “(7) ‘within the territorial jurisdiction of the
18 United States’ when used with reference to property
19 of a debtor refers to tangible property located within
20 the territory of the United States and intangible
21 property deemed under applicable nonbankruptcy
22 law to be located within that territory, including any
23 property subject to attachment or garnishment that
24 may properly be seized or garnished by an action in
25 a Federal or State court in the United States.

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

2 “To the extent that this chapter conflicts with an ob-
3 ligation of the United States arising out of any treaty or
4 other form of agreement to which it is a party with 1 or
5 more other countries, the requirements of the treaty or
6 agreement prevail.

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

8 “A case under this chapter is commenced by the filing
9 of a petition for recognition of a foreign proceeding under
10 section 615.

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

12 “A trustee or another entity (including an examiner)
13 authorized by the court may be authorized by the court
14 to act in a foreign country on behalf of an estate created
15 under section 541. An entity authorized to act under this
16 section may act in any way permitted by the applicable
17 foreign law.

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

19 “Nothing in this chapter prevents the court from re-
20 fusing to take an action governed by this chapter if the
21 action would be manifestly contrary to the public policy
22 of the United States.

23 **“§ 607. Additional assistance**

24 “(a) Subject to the specific limitations stated else-
25 where in this chapter the court, upon recognition of a for-
26 eign proceeding, to provide additional assistance to a for-

1 eign representative under this title or under other laws
2 of the United States.

3 “(b) In determining whether to provide additional as-
4 sistance under this title or under other laws of the United
5 States, the court shall consider whether such additional
6 assistance, consistent with the principles of comity, will
7 reasonably assure—

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

10 “(2) protection of claim holders in the United
11 States against prejudice and inconvenience in the
12 processing of claims in such foreign proceeding;

13 “(3) prevention of preferential or fraudulent
14 dispositions of property of the debtor;

15 “(4) distribution of proceeds of the debtor’s
16 property substantially in accordance with the order
17 prescribed by this title; and

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

21 **“§ 608. Interpretation**

22 “In interpreting this chapter, the court shall consider
23 its international origin, and the need to promote an appli-
24 cation of this chapter that is consistent with the applica-
25 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, and shall be subject to the laws of the United States
13 of general applicability.

14 “(c) Subject to section 610 of this title, a foreign rep-
15 resentative is subject to laws of general application.

16 “(d) Recognition under this chapter is prerequisite to
17 the granting of comity or cooperation to a foreign rep-
18 resentative in any State or Federal court in the United
19 States. Any request for comity or cooperation by a foreign
20 representative in any court shall be accompanied by a
21 sworn statement setting forth whether recognition under
22 section 615 has been sought and the status of any such
23 petition.

24 “(e) Upon denial of recognition under this chapter,
25 the court may issue appropriate orders necessary to pre-

1 vent an attempt to obtain comity or cooperation from
2 courts in the United States without such recognition.

3 **“§ 610. Limited jurisdiction**

4 “The sole fact that a foreign representative files a
5 petition under section 615 does not subject the foreign
6 representative to the jurisdiction of any court in the
7 United States for any other purpose.

8 **“§ 611. Commencement of case under section 301 or**
9 **303**

10 “(a) Upon recognition, a foreign representative may
11 commence—

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

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

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

1 **“§ 612. Participation of a foreign representative in a**
2 **case under this title**

3 “Upon recognition of a foreign proceeding, the for-
4 eign representative in that proceeding is entitled to par-
5 ticipate as a party in interest in a case regarding the debt-
6 or under this title.

7 **“§ 613. Access of foreign creditors to a case under**
8 **this title**

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

12 “(b)(1) Subsection (a) of this section does not change
13 or codify present law as to the priority of claims under
14 section 507 or 726 of this title, except that the claim of
15 a foreign creditor under those sections shall not be given
16 a lower priority than that of general unsecured claims
17 without priority solely because the holder of such claim
18 is a foreign creditor.

19 “(2)(A) Subsection (a) of this section and paragraph
20 (1) of this subsection do not change or codify present law
21 as to the allowability of foreign revenue claims or other
22 foreign public law claims in a proceeding under this title.

23 “(B) Allowance and priority as to a foreign tax claim
24 or other foreign public law claim shall be governed by any
25 applicable tax treaty of the United States, under the con-
26 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) Such 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 “(d) Any rule of procedure or order of the court as
2 to notice or the filing of a claim shall provide such addi-
3 tional time to creditors with foreign addresses as is rea-
4 sonable under the circumstances.

5 “SUBCHAPTER III—RECOGNITION OF A
6 FOREIGN PROCEEDING AND RELIEF

7 **“§ 615. Application for recognition of a foreign pro-**
8 **ceeding**

9 “(a) A foreign representative applies to the court for
10 recognition of the foreign proceeding in which the foreign
11 representative has been appointed by filing a petition for
12 recognition.

13 “(b) A petition for recognition shall be accompanied
14 by—

15 “(1) a certified copy of the decision commenc-
16 ing the foreign proceeding and appointing the for-
17 eign representative;

18 “(2) a certificate from the foreign court affirm-
19 ing the existence of the foreign proceeding and of
20 the appointment of the foreign representative; or

21 “(3) in the absence of evidence referred to in
22 paragraphs (1) and (2), any other evidence accept-
23 able to the court of the existence of the foreign pro-
24 ceeding and of the appointment of the foreign rep-
25 resentative.

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 or not they have been legalized.

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

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

2 “(a) Subject to section 606, after notice and a hear-
3 ing an order recognizing a foreign proceeding shall be en-
4 tered if—

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

8 “(2) the foreign representative applying for rec-
9 ognition is a person or body 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 case under this chapter may be closed in the
6 manner 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 authorized 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, authorized 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, authorized 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) The court may, at the request of the foreign rep-
2 resentative or an entity affected by relief granted under
3 section 619 or 621, or at its own motion, modify or termi-
4 nate such relief.

5 “(d) Section 1104(d) shall apply to the appointment
6 of an examiner under this chapter. Any examiner shall
7 comply with the qualification requirements imposed on a
8 trustee by section 322.

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

10 “(a) Upon recognition of a foreign proceeding, the
11 foreign representative has standing in a pending case
12 under another chapter of this title to initiate actions under
13 sections 522, 544, 545, 547, 548, 550, and 724(a).

14 “(b) When the foreign proceeding is a foreign
15 nonmain proceeding, the court must be satisfied that an
16 action under subsection (a) of this section relates to assets
17 that, under United States law, should be administered in
18 the foreign nonmain proceeding.

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

20 “Upon recognition of a foreign proceeding, the for-
21 eign representative may intervene in any proceedings in
22 a State or Federal court in the United States in which
23 the debtor is a party.

1 “SUBCHAPTER IV—COOPERATION WITH FOR-
2 EIGN COURTS AND FOREIGN REPRESENTA-
3 TIVES

4 **“§ 625. Cooperation and direct communication be-**
5 **tween the court and foreign courts or for-**
6 **oreign representatives**

7 “(a) Consistent with section 601, the court shall co-
8 operate to the maximum extent possible with foreign
9 courts or foreign representatives, either directly or
10 through the trustee.

11 “(b) The court is entitled to communicate directly
12 with, or to request information or assistance directly from,
13 foreign courts or foreign representatives, subject to the
14 rights of parties in interest to notice and participation.

15 **“§ 626. Cooperation and direct communication be-**
16 **tween the trustee and foreign courts or**
17 **foreign representatives**

18 “(a) Consistent with section 601, the trustee or other
19 person, including an examiner, authorized by the court,
20 shall, subject to the supervision of the court, cooperate to
21 the maximum extent possible with foreign courts or for-
22 eign representatives.

23 “(b) The trustee or other person, including an exam-
24 iner, authorized by the court is entitled, subject to the su-

1 pervision of the court, to communicate directly with for-
2 eign courts or foreign representatives.

3 **“§ 627. Forms of cooperation**

4 “Cooperation referred to in sections 625 and 626
5 may be implemented by any appropriate means, includ-
6 ing—

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

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

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

13 “(4) approval or implementation of agreements
14 concerning the coordination of proceedings; and

15 “(5) coordination of concurrent proceedings re-
16 garding the same debtor.

17 **“SUBCHAPTER V—CONCURRENT PROCEEDINGS**

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

20 “After recognition of a foreign main proceeding, a
21 case under another chapter of this title may be commenced
22 only if the debtor has assets in the United States. The
23 effects of that case shall be restricted to the assets of the
24 debtor that are within the territorial jurisdiction of the
25 United States and, to the extent necessary to implement

1 cooperation and coordination under sections 625, 626, and
2 627, to other assets of the debtor that are within the juris-
3 diction of the court under sections 541(a) of this title, and
4 1334(e) of title 28, to the extent that such other assets
5 are not subject to the jurisdiction and control of a foreign
6 proceeding that has been recognized under this chapter.

7 **“§ 629. Coordination of a case under this title and a**
8 **foreign proceeding**

9 “Where a foreign proceeding and a case under an-
10 other chapter of this title are taking place concurrently
11 regarding the same debtor, the court shall seek coopera-
12 tion and coordination under sections 625, 626, and 627,
13 and the following shall apply:

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

17 “(A) any relief granted under sections 619
18 or 621 must be consistent with the relief grant-
19 ed in the case in the United States; and

20 “(B) even if the foreign proceeding is rec-
21 ognized as a foreign main proceeding, section
22 620 does not apply.

23 “(2) When a case in the United States under
24 this title commences after recognition, or after the

1 filing of the petition for recognition, of the foreign
2 proceeding—

3 “(A) any relief in effect under sections 619
4 or 621 shall be reviewed by the court and shall
5 be modified or terminated if inconsistent with
6 the case in the United States; and

7 “(B) if the foreign proceeding is a foreign
8 main proceeding, the stay and suspension re-
9 ferred to in section 620(a) shall be modified or
10 terminated if inconsistent with the relief grant-
11 ed in the case in the United States.

12 “(3) In granting, extending, or modifying relief
13 granted to a representative of a foreign nonmain
14 proceeding, the court must be satisfied that the re-
15 lief relates to assets that, under the law of the
16 United States, should be administered in the foreign
17 nonmain proceeding or concerns information re-
18 quired in that proceeding.

19 “(4) In achieving cooperation and coordination
20 under sections 628 and 629, the court may grant
21 any of the relief authorized under section 305.

22 **“§ 630. Coordination of more than 1 foreign proceed-**
23 **ing**

24 “In matters referred to in section 601, with respect
25 to more than 1 foreign proceeding regarding the debtor,

1 the court shall seek cooperation and coordination under
2 sections 625, 626, and 627, and the following shall apply:

3 “(1) Any relief granted under section 619 or
4 621 to a representative of a foreign nonmain pro-
5 ceeding after recognition of a foreign main proceed-
6 ing must be consistent with the foreign main pro-
7 ceeding.

8 “(2) If a foreign main proceeding is recognized
9 after recognition, or after the filing of a petition for
10 recognition, of a foreign nonmain proceeding, any
11 relief in effect under section 619 or 621 shall be re-
12 viewed by the court and shall be modified or termi-
13 nated if inconsistent with the foreign main proceed-
14 ing.

15 “(3) If, after recognition of a foreign nonmain
16 proceeding, another foreign nonmain proceeding is
17 recognized, the court shall grant, modify, or termi-
18 nate relief for the purpose of facilitating coordina-
19 tion of the proceedings.

20 **“§ 631. Presumption of insolvency based on recogni-**
21 **tion of a foreign main proceeding**

22 “‘In the absence of evidence to the contrary, recogni-
23 tion of a foreign main proceeding is for the purpose of
24 commencing a proceeding under section 303, proof that
25 the debtor is generally not paying its debts.

1 **“§ 632. Rule of payment in concurrent proceedings**

2 “Without prejudice to secured claims or rights in
3 rem, a creditor who has received payment with respect to
4 its claim in a foreign proceeding pursuant to a law relating
5 to insolvency may not receive a payment for the same
6 claim in a case under any other chapter of this title re-
7 garding the debtor, so long as the payment to other credi-
8 tors of the same class is proportionately less than the pay-
9 ment the creditor has already received.”.

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

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

13 **SEC. 602. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11,**
14 **UNITED STATES CODE.**

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

17 (1) in subsection (a), by inserting before the pe-
18 riod the following: “and this chapter, sections 307,
19 555 through 557, 559, and 560 apply in a case
20 under chapter 6”; and

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

22 “(j) Chapter 6 applies only in a case under that chap-
23 ter, except that section 605 applies to trustees and to any
24 other entity authorized by the court, including an exam-
25 iner, under chapters 7, 11, and 12, to debtors in posses-

1 sion under chapters 11 and 12, and to debtors or trustees
2 under chapters 9 and 13 who are authorized to act under
3 section 605.”.

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

7 “(23) ‘foreign proceeding’ means a collective ju-
8 dicial or administrative proceeding in a foreign state,
9 including an interim proceeding, pursuant to a law
10 relating to insolvency in which proceeding the assets
11 and affairs of the debtor are subject to control or
12 supervision by a foreign court, for the purpose of re-
13 organization or liquidation;

14 “(24) ‘foreign representative’ means a person
15 or body, including a person or body appointed on an
16 interim basis, authorized in a foreign proceeding to
17 administer the reorganization or the liquidation of
18 the debtor’s assets or affairs or to act as a rep-
19 resentative of the foreign proceeding;”.

20 (c) AMENDMENTS TO TITLE 28, UNITED STATES
21 CODE.—

22 (1) PROCEDURES.—Section 157(b)(2) of title
23 28, United States Code, is amended—

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

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

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

4 “(P) recognition of foreign proceedings and
5 other matters under chapter 6 of title 11.”.

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

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

14 **TITLE VII—MISCELLANEOUS**

15 **SEC. 701. TECHNICAL AMENDMENTS.**

16 Title 11 of the United States Code is amended—

17 (1) in section 109(b)(2) by striking “subsection
18 (c) or (d) of”;

19 (2) in section 541(b)(4) by adding “or” at the
20 end; and

21 (3) in section 552(b)(1) by striking “product”
22 each place it appears and inserting “products”.

23 **SEC. 702. APPLICATION OF AMENDMENTS.**

24 Except as otherwise provided in this Act, the amend-
25 ments made by this this Act shall apply only with respect

- 1 to cases commenced under title 11 of the United States
- 2 Code after the date of the enactment of this Act.

Passed the House of Representatives June 10, 1998.

Attest:

Clerk.