

106TH CONGRESS  
1ST SESSION

# H. R. 833

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1999

Mr. GEKAS (for himself, Mr. BOUCHER, Mr. MCCOLLUM, Mr. MORAN of Virginia, Mr. ARMEY, Mr. FROST, Mr. MENENDEZ, Ms. PRYCE of Ohio, Mrs. FOWLER, Mr. KENNEDY of Rhode Island, Mr. DREIER, Mr. CANADY of Florida, Mr. GOODLATTE, Mr. CHABOT, Mr. BRYANT, Mr. ROTHMAN, Mrs. BONO, Mr. ANDREWS, Mr. BAKER, Mr. BEREUTER, Mr. CUNNINGHAM, Mr. DOOLEY of California, Ms. DUNN, Ms. HOOLEY of Oregon, Mrs. KELLY, Mr. LARGENT, Mr. MALONEY of Connecticut, Mr. RILEY, Mr. ROEMER, Mr. SESSIONS, Mr. SMITH of Washington, Mrs. TAUSCHER, Ms. VELÁZQUEZ, Mr. WYNN, Mr. DAVIS of Virginia, Mr. DAVIS of Florida, and Mr. HALL of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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 1999”.

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. Conversion.

Sec. 102. Dismissal or conversion.

Sec. 103. Notice of alternatives.

Sec. 104. Debtor financial management training test program.

**Subtitle B—Consumer Bankruptcy Protections**

Sec. 105. Definitions.

Sec. 106. Disclosures.

Sec. 107. Debtor’s bill of rights.

Sec. 108. Enforcement.

Sec. 109. Sense of the congress.

Sec. 110. Discouraging abuse reaffirmation practices.

Sec. 111. Promotion alternative dispute resolution.

Sec. 112. Enhanced disclosure for credit extensions secured by a dwelling.

Sec. 113. Dual use debit card.

Sec. 114. Enhanced disclosures under an open-end credit plan.

Sec. 115. Protection of savings earmarked for the postsecondary education of  
children.

Sec. 116. Effect of discharge.

Sec. 117. Automatic stay.

Sec. 118. Reinforce the fresh start.

Sec. 119. Discouraging bad faith repeat filings.

Sec. 120. Curbing abusive filings.

Sec. 121. Debtor retention of personal property security.

Sec. 122. Relief from the automatic stay when the debtor does not complete in-  
tended surrender of consumer debt collateral.

Sec. 123. Giving secured creditors fair treatment in chapter 13.

Sec. 124. Restraining abusive purchases on secured credit.

Sec. 125. Fair valuation of collateral.

Sec. 126. Exemptions.

Sec. 127. Limitation.

Sec. 128. Rolling stock equipment.

Sec. 129. Discharge under chapter 13.

Sec. 130. Bankruptcy judgeships.

Sec. 131. Additional amendments to title 11, United States Code.

Sec. 132. Amendment to section 1325 of title 11, United States Code.

Sec. 133. Application of the codebtor stay only when the stay protects the  
debtor.

Sec. 134. Adequate protection for investors.

- Sec. 135. Limitation on luxury goods.
- Sec. 136. Giving debtors the ability to keep leased personal property by assumption.
- Sec. 137. Adequate protection of lessors and purchase money secured creditors.
- Sec. 139. Automatic stay.
- Sec. 140. Extend period between bankruptcy discharges.
- Sec. 141. Definition of domestic support obligation.
- Sec. 142. Priorities for claims for domestic support obligations.
- Sec. 143. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec. 144. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 145. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 146. Continued liability of property.
- Sec. 147. Protection of domestic support claims against preferential transfer motions.
- Sec. 148. Definition of household goods and antiques.
- Sec. 149. Nondischargeable debts.

#### TITLE II—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 201. Reenactment of chapter 12.
- Sec. 202. Meetings of creditors and equity security holders.
- Sec. 203. Protection of retirement savings in bankruptcy.
- Sec. 204. Protection of refinance of security interest.
- Sec. 205. Executory contracts and unexpired leases.
- Sec. 206. Creditors and equity security holders committees.
- Sec. 207. Amendment to section 546 of title 11, United States Code.
- Sec. 208. Limitation.
- Sec. 209. Amendment to section 330(a) of title 11, United States Code.
- Sec. 210. Postpetition disclosure and solicitation.
- Sec. 211. Preferences.
- Sec. 212. Venue of certain proceedings.
- Sec. 213. Period for filing plan under chapter 11.
- Sec. 214. Fees arising from certain ownership interests.
- Sec. 215. Claims relating to insurance deposits in cases ancillary to foreign proceedings.
- Sec. 216. Defaults based on nonmonetary obligations.

#### TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 301. Definition of disinterested person.
- Sec. 302. Miscellaneous improvements.

#### TITLE IV—SMALL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 401. Flexible rules for disclosure Statement and plan.
- Sec. 402. Definitions.
- Sec. 403. Standard form disclosure Statement and plan.
- Sec. 404. Uniform national reporting requirements.
- Sec. 405. Uniform reporting rules and forms for small business cases.
- Sec. 406. Duties in small business cases.
- Sec. 407. Plan filing and confirmation deadlines.
- Sec. 408. Plan confirmation deadline.
- Sec. 409. Prohibition against extension of time.

- Sec. 410. Duties of the United States trustee.
- Sec. 411. Scheduling conferences.
- Sec. 412. Serial filer provisions.
- Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee.
- Sec. 414. Study of operation of title 11 of the United States Code with respect to small businesses.
- Sec. 415. Payment of interest.

#### TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 501. Petition and proceedings related to petition.
- Sec. 502. Applicability of other sections to chapter 9.

#### TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

- Sec. 601. Creditor representation at first meeting of creditors.
- Sec. 602. Audit procedures.
- Sec. 603. Giving creditors fair notice in chapter 7 and 13 cases.
- Sec. 604. Dismissal for failure to timely file schedules or provide required information.
- Sec. 605. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 606. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal rules of bankruptcy procedure.
- Sec. 608. Elimination of certain fees payable in chapter 11 bankruptcy cases.
- Sec. 609. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 610. Prompt relief from stay in individual cases.
- Sec. 611. Stopping abusive conversions from chapter 13.

#### TITLE VII—BANKRUPTCY DATA

- Sec. 701. Improved bankruptcy statistics.
- Sec. 702. Uniform rules for the collection of bankruptcy data.
- Sec. 703. Sense of the Congress regarding availability of bankruptcy data.

#### TITLE VIII—BANKRUPTCY TAX PROVISIONS

- Sec. 801. Treatment of certain liens.
- Sec. 802. Effective notice to government.
- Sec. 803. Notice of request for a determination of taxes.
- Sec. 804. Rate of interest on tax claims.
- Sec. 805. Tolling of priority of tax claim time periods.
- Sec. 806. Priority property taxes incurred.
- Sec. 807. Chapter 13 discharge of fraudulent and other taxes.
- Sec. 808. Chapter 11 discharge of fraudulent taxes.
- Sec. 809. Stay of tax proceedings.
- Sec. 810. Periodic payment of taxes in chapter 11 cases.
- Sec. 811. Avoidance of statutory tax liens prohibited.
- Sec. 812. Payment of taxes in the conduct of business.
- Sec. 813. Tardily filed priority tax claims.
- Sec. 814. Income tax returns prepared by tax authorities.
- Sec. 815. Discharge of the estate's liability for unpaid taxes.
- Sec. 816. Requirement to file tax returns to confirm chapter 13 plans.
- Sec. 817. Standards for tax disclosure.
- Sec. 818. Setoff of tax refunds.

## TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 901. Amendment to add chapter 15 to title 11, United States Code.
- Sec. 902. Amendments to other chapters in title 11, United States Code.

## TITLE X—FINANCIAL CONTRACT PROVISIONS

- Sec. 1001. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 1002. Authority of the corporation with respect to failed and failing institutions.
- Sec. 1003. Amendments relating to transfers of qualified financial contracts.
- Sec. 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 1005. Clarifying amendment relating to master agreements.
- Sec. 1006. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 1007. Bankruptcy code amendments.
- Sec. 1008. Recordkeeping requirements.
- Sec. 1009. Exemptions from contemporaneous execution requirement.
- Sec. 1010. Damage measure.
- Sec. 1011. SIPC stay.
- Sec. 1012. Asset-backed securitizations.
- Sec. 1013. Federal reserve collateral requirements.
- Sec. 1014. Severability; effective date; application of amendments.

## TITLE XI—TECHNICAL CORRECTIONS

- Sec. 1101. Definitions.
- Sec. 1102. Adjustment of dollar amounts.
- Sec. 1103. Extension of time.
- Sec. 1104. Technical amendments.
- Sec. 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 1106. Limitation on compensation of professional persons.
- Sec. 1107. Special tax provisions.
- Sec. 1108. Effect of conversion.
- Sec. 1109. Amendment to table of sections.
- Sec. 1110. Allowance of administrative expenses.
- Sec. 1111. Priorities.
- Sec. 1112. Exemptions.
- Sec. 1113. Exceptions to discharge.
- Sec. 1114. Effect of discharge.
- Sec. 1115. Protection against discriminatory treatment.
- Sec. 1116. Property of the estate.
- Sec. 1117. Preferences.
- Sec. 1118. Postpetition transactions.
- Sec. 1119. Disposition of property of the estate.
- Sec. 1120. General provisions.
- Sec. 1121. Appointment of elected trustee.
- Sec. 1122. Abandonment of railroad line.
- Sec. 1123. Contents of plan.
- Sec. 1124. Discharge under chapter 12.
- Sec. 1125. Bankruptcy cases and proceedings.
- Sec. 1126. Knowing disregard of bankruptcy law or rule.
- Sec. 1127. Transfers made by nonprofit charitable corporations.
- Sec. 1128. Prohibition on certain actions for failure to incur finance charges.

Sec. 1129. Protection of valid purchase money security interests.  
 Sec. 1130. Trustees.

TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF  
 AMENDMENTS

Sec. 1201. Effective date; application of amendments.

1                   **TITLE I—CONSUMER**  
 2                   **BANKRUPTCY PROVISIONS**  
 3                   **Subtitle A—Needs based**  
 4                   **bankruptcy**

5 **SEC. 101. CONVERSION.**

6           Section 706(e) of title 11, United States Code, is  
 7 amended by inserting “or consents to” after “requests”.

8 **SEC. 102. DISMISSAL OR CONVERSION.**

9           (a) IN GENERAL.—Section 707 of title 11, United  
 10 States Code, is amended—

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

13 **“§ 707. Dismissal of a case or conversion to a case**  
 14                   **under chapter 13”;**

15           and

16                   (2) in subsection (b)—

17                           (A) by inserting “(1)” after “(b)”; and

18                           (B) in paragraph (1), as redesignated by  
 19                   subparagraph (A) of this paragraph—

20                                   (i) in the first sentence—

1 (I) by striking “but not at the re-  
2 quest or suggestion” and inserting “,  
3 panel trustee or”;

4 (II) by inserting “, or, with the  
5 debtor’s consent, convert such a case  
6 to a case under chapter 13 of this  
7 title,” after “consumer debts”; and

8 (III) by striking “substantial  
9 abuse” and inserting “abuse”; and

10 (ii) by striking the last sentence and  
11 inserting the following:

12 “(2)(A)(i) In considering under paragraph (1) wheth-  
13 er the granting of relief would be an abuse of the provi-  
14 sions of this chapter, the court shall presume abuse exists  
15 if the debtor’s current monthly income less amounts set  
16 forth in clauses (ii), (iii), and (iv), and multiplied by 60  
17 months is not less than 25 percent of the debtor’s non-  
18 priority unsecured claims in the case or \$5,000, whichever  
19 is less.

20 “(ii) The debtor’s monthly expenses shall be the ap-  
21 plicable monthly expenses under National Standards,  
22 Local Standards, and Other Necessary Expenses allow-  
23 ance (excluding payments for debts) issued by the Internal  
24 Revenue Service for the area in which the debtor resides,  
25 as in effect on the date of the entry of the order for relief,

1 for the debtor, the dependents of the debtor, and the  
2 spouse of the debtor in a joint case, if the spouse is not  
3 otherwise a dependent.

4 “(iii) The debtor’s average monthly payments on ac-  
5 count of secured debts shall be calculated as the total of  
6 all amounts scheduled as contractually due to secured  
7 creditors in each month of the 60 months following the  
8 date of the petition, and dividing that total by 60 months.

9 “(iv) The debtor’s expenses for payment of all prior-  
10 ity claims (including priority child support and alimony  
11 claims), which shall be calculated as the total amount of  
12 debts entitled to priority, and dividing the total by 60  
13 months.

14 “(B) In any proceeding brought under this sub-  
15 section, the presumption of abuse may be rebutted only  
16 by demonstrating extraordinary circumstances that re-  
17 quire additional expenses or adjustment of current month-  
18 ly total income. In order to establish extraordinary cir-  
19 cumstances, the debtor must itemize each additional ex-  
20 pense or adjustment of income and provide documentation  
21 for such expenses and a detailed explanation of the ex-  
22 traordinary circumstances which make such expenses nec-  
23 essary and reasonable. The debtor, and the attorney for  
24 the debtor if the debtor has an attorney, shall attest under  
25 oath to the accuracy of any information provided to dem-



1 onstrate that additional expenses or adjustment to income  
2 are required. The presumption of abuse may be rebutted  
3 only if such additional expenses or adjustments to income  
4 cause the debtor's current monthly income less the  
5 amounts set forth in clauses (ii), (iii), and (iv) of subpara-  
6 graph (A) when multiplied by 60 to be less than 25 per-  
7 cent of the debtor's nonpriority unsecured claims \$5,000,  
8 whichever is less.

9       “(C) As part of the schedule of current income and  
10 expenditures required under section 521 of this title, the  
11 debtor shall include a statement of the debtor's current  
12 monthly income, and the calculations which determine  
13 whether a presumption arises under subparagraph (A)(i),  
14 showing how each amount is calculated. The bankruptcy  
15 rules promulgated under section 2075 of title 28, United  
16 States Code, shall prescribe a form for such statement and  
17 may provide general rules on its content.

18       “(3) In considering under paragraph (1) whether the  
19 granting of relief would be an abuse of the provisions of  
20 this chapter in a case in which the presumption in sub-  
21 paragraph (A)(i) does not apply or has been rebutted, the  
22 court shall consider—

23               “(A) whether the debtor filed the petition in  
24       bad faith; or

1           “(B) the totality of the circumstances (includ-  
2           ing whether the debtor seeks to reject a personal  
3           services contract and the financial need for such re-  
4           jection as sought by the debtor) of the debtor’s fi-  
5           nancial situation demonstrates abuse.”.

6           (b) DEFINITION.—Title 11, United States Code, is  
7           amended—

8           (1) in section 101 by inserting after paragraph  
9           (10) the following:

10           “(10A) ‘currently monthly income’ means the  
11           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 180 days preceding  
15           the date of determination, and includes any amount  
16           paid by anyone other than the debtor or, in a joint  
17           case, the debtor and the debtor’s spouse, on a regu-  
18           lar basis to the household expenses of the debtor or  
19           the debtor’s dependents and, in a joint case, the  
20           debtor’s spouse if not otherwise a dependent;”;

21           (2) in section 704—

22           (i) in paragraph (8) by striking “and” at  
23           the end;

24           (ii) in paragraph (9) by striking the period  
25           at the end and inserting “; and”; and

1 (iii) by adding at the end the following:

2 “(10) With respect to an individual debtor under this  
3 chapter, the panel trustee or bankruptcy administrator  
4 shall review all materials filed by the debtor and, 10 days  
5 prior to the first meeting of creditors, file with the court  
6 a statement as to whether the debtor’s case would be pre-  
7 sumed to be an abuse under section 707(b) of this title,  
8 and the court shall provide a copy of such statement to  
9 all creditors within 5 days. If, based on the filing of such  
10 statement with the court, the panel trustee or bankruptcy  
11 administrator determines that the debtor’s case should be  
12 presumed to be an abuse under section 707(b) of this title  
13 and the debtor’s current monthly income, when multiplied  
14 by 12, is not less than the highest national median family  
15 income reported for a family of equal or lesser size, or  
16 in the case of a household of 1 person, the national median  
17 household income for 1 earner, the panel trustee or bank-  
18 ruptcy administrator shall within 30 days file a motion  
19 to dismiss or convert under section 707(b) of this title,  
20 or file a statement setting forth the reasons the trustee  
21 does not believe that such a motion would be appropriate.

22 “(3)(A) If a panel trustee appointed under section  
23 586(a)(1) of title 28 brings a motion for dismissal or con-  
24 version under this subsection and the court grants that  
25 motion and finds that the action of the counsel for the

1 debtor in filing under this chapter was not substantially  
2 justified, the court shall order the counsel for the debtor  
3 to reimburse the trustee for all reasonable costs in pros-  
4 ecuting the motion, including reasonable attorneys' fees.

5       “(B) If the court finds that the attorney for the debt-  
6 or violated Rule 9011, at a minimum, the court shall  
7 order—

8               “(i) the assessment of an appropriate civil pen-  
9 alty against the counsel for the debtor; and

10              “(ii) the payment of the civil penalty to the  
11 panel trustee or the United States trustee.

12       “(C) In the case of a petition referred to in subpara-  
13 graph (B), the signature of an attorney shall constitute  
14 a certificate that the attorney has—

15              “(i) performed a reasonable investigation into  
16 the circumstances that gave rise to the petition; and

17              “(ii) determined that the petition—

18                      “(I) is well grounded in fact; and

19                      “(II) is warranted by existing law or a  
20 good faith argument for the extension, modi-  
21 fication, or reversal of existing law and does not  
22 constitute an abuse under paragraph (1) of this  
23 subsection.

24       “(4)(A) Except as provided in subparagraph (B), the  
25 court may award a debtor all reasonable costs in contest-

1 ing a motion brought by a party in interest (other than  
2 a panel trustee or United States trustee) under this sub-  
3 section (including reasonable attorneys' fees) if—

4 “(i) the court does not grant the motion; and

5 “(ii) the court finds that—

6 “(I) the position of the party that brought  
7 the motion was not substantially justified; or

8 “(II) the party brought the motion solely  
9 for the purpose of coercing a debtor into  
10 waiving a right guaranteed to the debtor under  
11 this title.

12 “(B) A party in interest that has a claim of an aggre-  
13 gate amount less than \$1,000 shall not be subject to sub-  
14 paragraph (A).

15 “(5) However, only the judge, United States trustee,  
16 bankruptcy administrator or panel trustee may bring a  
17 motion under this section if the debtor and the debtor's  
18 spouse combined, as of the date of the order for relief,  
19 have current monthly total income equal to or less than  
20 the national median household monthly income calculated  
21 on a monthly basis for a household of equal size. However,  
22 for a household of more than 4 individuals, the median  
23 income shall be that of a household of 4 individuals plus  
24 \$583 for each additional member of that household.”.

1 (c) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 7 of title 11, United States  
3 Code, is amended by striking the item relating to section  
4 707 and inserting the following:

“707. Dismissal of a case or conversion to a case under chapter 13.”.

5 **SEC. 103. NOTICE OF ALTERNATIVES.**

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

8 “(b) Before the commencement of a case under this  
9 title by an individual whose debts are primarily consumer  
10 debts, that individual shall be given or obtain (as required  
11 in section 521(a)(1), as part of the certification process  
12 under subchapter 1 of chapter 5) a written notice pre-  
13 scribed by the United States trustee for the district in  
14 which the petition is filed pursuant to section 586 of title  
15 28. The notice shall contain the following:

16 “(1) A brief description of chapters 7, 11, 12,  
17 and 13 and the general purpose, benefits, and costs  
18 of proceeding under each of those chapters.

19 “(2) A brief description of services that may be  
20 available to that individual from a credit counseling  
21 service that is approved by the United States trustee  
22 for that district.”.

1 **SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING**  
2 **TEST PROGRAM.**

3 (a) DEVELOPMENT OF FINANCIAL MANAGEMENT  
4 AND TRAINING CURRICULUM AND MATERIALS.—The Di-  
5 rector of the Executive Office for United States Trustees  
6 (in this section referred to as the “Director”) shall consult  
7 with a wide range of individuals who are experts in the  
8 field of debtor education, including trustees who are ap-  
9 pointed under chapter 13 of title 11 of the United States  
10 Code and who operate financial management education  
11 programs for debtors, and shall develop a financial man-  
12 agement training curriculum and materials that can be  
13 used to educate individual debtors on how to better man-  
14 age their finances.

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

19 (2) For a 1-year period beginning not later than 270  
20 days after the date of the enactment of this Act, such cur-  
21 riculum and materials shall be made available by the Di-  
22 rector, directly or indirectly, on request to individual debt-  
23 ors in cases filed in such 1-year period under chapter 7  
24 or 13 of title 11 of the United States Code.

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

4           (A) the financial management training curricu-  
5 lum and materials developed under subsection (a);  
6 and

7           (B) a sample of existing consumer education  
8 programs such as those described in the Report of  
9 the National Bankruptcy Review Commission (Octo-  
10 ber 20, 1997) that are representative of consumer  
11 education programs carried out by the credit indus-  
12 try, by trustees serving under chapter 13 of title 11  
13 of the United States Code, and by consumer coun-  
14 selling groups.

15       (2) Not later than 3 months after concluding such  
16 evaluation, the Director shall submit a report to the  
17 Speaker of the House of Representatives and the Presi-  
18 dent pro tempore of the Senate, for referral to the appro-  
19 priate committees of the Congress, containing the findings  
20 of the Director regarding the effectiveness of such curricu-  
21 lum, such materials, and such programs.



1     **Subtitle B—Consumer Bankruptcy**  
2                     **Protections**

3     **SEC. 105. DEFINITIONS.**

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

6                     (1) by inserting after paragraph (3) the follow-  
7 ing:

8                             “(3A) ‘assisted person’ means any person whose  
9 debts consist primarily of consumer debts and whose  
10 non-exempt assets are less than \$150,000;”;

11                     (2) by inserting after paragraph (4) the follow-  
12 ing:

13                             “(4A) ‘bankruptcy assistance’ means any goods  
14 or services sold or otherwise provided to an assisted  
15 person with the express or implied purpose of pro-  
16 viding information, advice, counsel, document prepa-  
17 ration or filing, or attendance at a creditors’ meeting  
18 or appearing in a proceeding on behalf of another or  
19 providing legal representation with respect to a pro-  
20 ceeding under this title;”;

21                     (3) by inserting after paragraph (12A) the fol-  
22 lowing:

23                             “(12B) ‘debt relief agency’ means any person  
24 who provides any bankruptcy assistance to an as-  
25 sisted person in return for the payment of money or

1 other valuable consideration, or who is a bankruptcy  
2 petition preparer pursuant to section 110 of this  
3 title, but does not include any person that is any of  
4 the following or an officer, director, employee or  
5 agent thereof—

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

9 “(B) any creditor of the person to the ex-  
10 tent the creditor is assisting the person to re-  
11 structure any debt owed by the person to the  
12 creditor; or

13 “(C) any depository institution (as defined  
14 in section 3 of the Federal Deposit Insurance  
15 Act) or any Federal credit union or State credit  
16 union (as those terms are defined in section  
17 101 of the Federal Credit Union Act), or any  
18 affiliate or subsidiary of such a depository insti-  
19 tution or credit union;”.

20 (b) CONFORMING AMENDMENT.—In section  
21 104(b)(1) by inserting “101(3),” after “sections”.

22 **SEC. 106. DISCLOSURES.**

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

1 **“§ 526. Disclosures**

2       “(a) A debt relief agency providing bankruptcy assist-  
3       ance to an assisted person shall provide the following no-  
4       tices to the assisted person:

5               “(1) the written notice required under section  
6       342(b)(1) of this title; and

7               “(2) to the extent not covered in the written no-  
8       tice described in paragraph (1) of this section and  
9       no later than three business days after the first date  
10       on which a debt relief agency first offers to provide  
11       any bankruptcy assistance services to an assisted  
12       person, a clear and conspicuous written notice advis-  
13       ing assisted persons of the following—

14               “(A) all information the assisted person is  
15       required to provide with a petition and there-  
16       after during a case under this title must be  
17       complete, accurate and truthful;

18               “(B) all assets and all liabilities must be  
19       completely and accurately disclosed in the docu-  
20       ments filed to commence the case, and the re-  
21       placement value of each asset as defined in sec-  
22       tion 506 of this title must be stated in those  
23       documents where requested after reasonable in-  
24       quiry to establish such value;

25               “(C) current monthly total income, pro-  
26       jected monthly net income and, in a chapter 13

1 case, monthly net income must be stated after  
2 reasonable inquiry; and

3 “(D) that information an assisted person  
4 provides during their case may be audited pur-  
5 suant to this title and that failure to provide  
6 such information may result in dismissal of the  
7 proceeding under this title or other sanction in-  
8 cluding, in some instances, criminal sanctions.

9 “(b) A debt relief agency providing bankruptcy assist-  
10 ance to an assisted person shall provide each assisted per-  
11 son at the same time as the notices required under sub-  
12 section (a)(1) with the following statement, to the extent  
13 applicable, or one substantially similar. The statement  
14 shall be clear and conspicuous and shall be in a single  
15 document separate from other documents or notices pro-  
16 vided to the assisted person:

17 “‘IMPORTANT INFORMATION ABOUT BANK-  
18 RUPTCY ASSISTANCE SERVICES FROM AN AT-  
19 TORNEY OR BANKRUPTCY PETITION PREPARER

20 “‘If you decide to seek bankruptcy relief, you can  
21 represent yourself, you can hire an attorney to represent  
22 you, or you can get help in some localities from a bank-  
23 ruptcy petition preparer who is not an attorney. THE  
24 LAW REQUIRES AN ATTORNEY OR BANKRUPTCY  
25 PETITION PREPARER TO GIVE YOU A WRITTEN

1 CONTRACT SPECIFYING WHAT THE ATTORNEY  
2 OR BANKRUPTCY PETITION PREPARER WILL DO  
3 FOR YOU AND HOW MUCH IT WILL COST. Ask to  
4 see the contract before you hire anyone.

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

9       “‘Before filing a bankruptcy case, either you or your  
10 attorney should analyze your eligibility for different forms  
11 of debt relief made available by the Bankruptcy Code and  
12 which form of relief is most likely to be beneficial for you.  
13 Be sure you understand the relief you can obtain and its  
14 limitations. To file a bankruptcy case, documents called  
15 a Petition, Schedules and Statement of Financial Affairs,  
16 as well as in some cases a Statement of Intention need  
17 to be prepared correctly and filed with the bankruptcy  
18 court. You will have to pay a filing fee to the bankruptcy  
19 court. Once your case starts, you will have to attend the  
20 required first meeting of creditors where you may be ques-  
21 tioned by a court official called a “trustee” and by credi-  
22 tors.

23       “‘If you choose to file a chapter 7 case, you may be  
24 asked by a creditor to reaffirm a debt. You may want help

1 deciding whether to do so and a creditor is not permitted  
2 to coerce you into reaffirming your debts.

3 “If you choose to file a chapter 13 case in which  
4 you repay your creditors what you can afford over three  
5 to five years, you may also want help with preparing your  
6 chapter 13 plan and with the confirmation hearing on your  
7 plan which will be before a bankruptcy judge.

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

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

16 “(c) Except to the extent the debt relief agency pro-  
17 vides the required information itself after reasonably dili-  
18 gent inquiry of the assisted person or others so as to ob-  
19 tain such information reasonably accurately for inclusion  
20 on the petition, schedules or statement of financial affairs,  
21 a debt relief agency providing bankruptcy assistance to an  
22 assisted person, to the extent permitted by nonbankruptcy  
23 law, shall provide each assisted person at the time re-  
24 quired for the notice required under subsection (a)(1) rea-  
25 sonably sufficient information (which may be provided

1 orally or in a clear and conspicuous writing) to the as-  
 2 sisted person on how to provide all the information the  
 3 assisted person is required to provide under this title pur-  
 4 suant to section 521, including—

5           “(1) how to value assets at replacement value,  
 6 determine current monthly total income, projected  
 7 monthly income and, in a chapter 13 case, net  
 8 monthly income, and related calculations;

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

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

15           “(d) A debt relief agency shall maintain a copy of  
 16 the notices required under subsection (a) of this section  
 17 for two years after the later of the date on which the no-  
 18 tice is given the assisted person.”.

19           (b) CONFORMING AMENDMENT.—The table of sec-  
 20 tions for chapter 5 of title 11, United States Code, is  
 21 amended by inserting after the item relating to section  
 22 525 the following:

“526. Disclosures.”.

23 **SEC. 107. DEBTOR’S BILL OF RIGHTS.**

24           (a) DEBTOR’S BILL OF RIGHTS.—Subchapter II of  
 25 chapter 5 of title 11, United States Code, as amended by

1 section 106, is amended by adding at the end the follow-  
2 ing:

3 **“§ 527. Debtor’s bill of rights**

4 “(a) A debt relief agency shall—

5 “(1) no later than five business days after the  
6 first date on which a debt relief agency provides any  
7 bankruptcy assistance services to an assisted person,  
8 but prior to such assisted person’s petition under  
9 this title being filed, execute a written contract with  
10 the assisted person specifying clearly and conspicu-  
11 ously the services the agency will provide the as-  
12 sisted person and the basis on which fees or charges  
13 will be made for such services and the terms of pay-  
14 ment, and give the assisted person a copy of the  
15 fully executed and completed contract in a form the  
16 person can keep;

17 “(2) disclose in any advertisement of bank-  
18 ruptcy assistance services or of the benefits of bank-  
19 ruptcy directed to the general public (whether in  
20 general media, seminars or specific mailings, tele-  
21 phonic or electronic messages or otherwise) that the  
22 services or benefits are with respect to proceedings  
23 under this title, clearly and conspicuously using the  
24 following statement: ‘We are a debt relief agency.  
25 We help people file Bankruptcy petitions to obtain



1 relief under the Bankruptcy Code.’ or a substantially  
2 similar statement. An advertisement shall be of  
3 bankruptcy assistance services if it describes or of-  
4 fers bankruptcy assistance with a chapter 13 plan,  
5 regardless of whether chapter 13 is specifically men-  
6 tioned, including such statements as ‘federally super-  
7 vised repayment plan’ or ‘Federal debt restructuring  
8 help’ or other similar statements which would lead  
9 a reasonable consumer to believe that help with  
10 debts was being offered when in fact in most cases  
11 the help available is bankruptcy assistance with a  
12 chapter 13 plan; and

13 “(3) if an advertisement directed to the general  
14 public indicates that the debt relief agency provides  
15 assistance with respect to credit defaults, mortgage  
16 foreclosures, lease eviction proceedings, excessive  
17 debt, debt collection pressure, or inability to pay any  
18 consumer debt, disclose conspicuously in that adver-  
19 tisement that the assistance is with respect to or  
20 may involve proceedings under this title, using the  
21 following statement: ‘We are a debt relief agency.  
22 We help people file Bankruptcy petitions to obtain  
23 relief under the Bankruptcy Code.’ or a substantially  
24 similar statement.

25 “(b) A debt relief agency shall not—

1           “(1) fail to perform any service which the debt  
2 relief agency has told the assisted person or prospec-  
3 tive assisted person the agency would provide that  
4 person in connection with the preparation for or ac-  
5 tivities during a proceeding under this title;

6           “(2) make any statement, or counsel or advise  
7 any assisted person to make any statement in any  
8 document filed in a proceeding under this title,  
9 which is untrue and misleading or which upon the  
10 exercise of reasonable care, should be known by the  
11 debt relief agency to be untrue or misleading;

12           “(3) misrepresent to any assisted person or pro-  
13 spective assisted person, directly or indirectly, af-  
14 firmatively or by material omission, what services  
15 the debt relief agency can reasonably expect to pro-  
16 vide that person, or the benefits an assisted person  
17 may obtain or the difficulties the person may experi-  
18 ence if the person seeks relief in a proceeding pursu-  
19 ant to this title; or

20           “(4) advise an assisted person or prospective  
21 assisted person to incur more debt in contemplation  
22 of that person filing a proceeding under this title or  
23 in order to pay an attorney or bankruptcy petition  
24 preparer fee or charge for services performed as part

1 of preparing for or representing a debtor in a pro-  
2 ceeding under this title.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions for chapter 5 of title 11, United States Code, as  
5 amended by section 106, is amended by inserting after the  
6 item relating to section 526, the following:

“527. Debtor’s bill of rights.”.

7 **SEC. 108. ENFORCEMENT.**

8 (a) ENFORCEMENT.—Subchapter II of chapter 5 of  
9 title 11, United States Code, as amended by sections 106  
10 and 107, is amended by adding at the end the following:

11 **“§ 528. Debt relief agency enforcement**

12 “(a) ASSISTED PERSON WAIVERS INVALID.—Any  
13 waiver by any assisted person of any protection or right  
14 provided by or under section 526 or 527 of this title shall  
15 be void and may not be enforced by any Federal or State  
16 court or any other person.

17 “(b) NONCOMPLIANCE.—

18 “(1) Any contract between a debt relief agency  
19 and an assisted person for bankruptcy assistance  
20 which does not comply with the material require-  
21 ments of section 526 or 527 of this title shall be  
22 treated as void and may not be enforced by any Fed-  
23 eral or State court or by any other person.

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

1           “(A) negligently failed to comply with any  
2           provision of section 526 or 527 with respect to  
3           a bankruptcy case or related proceeding of an  
4           assisted person;

5           “(B) provided bankruptcy assistance to an  
6           assisted person in a case or related proceeding  
7           which is dismissed or converted because the  
8           debt relief agency’s negligent failure to file  
9           bankruptcy papers, including papers specified in  
10          section 521 of this title; or

11          “(C) negligently or intentionally dis-  
12          regarded the material requirements of this title  
13          or the Federal Rules of Bankruptcy Procedure  
14          applicable to such debt relief agency shall be  
15          liable to the assisted person in the amount of  
16          any fees and charges in connection with provid-  
17          ing bankruptcy assistance to such person which  
18          the debt relief agency has already been paid on  
19          account of that proceeding.

20          “(3) In addition to such other remedies as are  
21          provided under State law, whenever the chief law en-  
22          forcement officer of a State, or an official or agency  
23          designated by a State, has reason to believe that any  
24          person has violated or is violating section 526 or 527  
25          of this title, the State—

1           “(A) may bring an action to enjoin such  
2 violation;

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

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

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

15           “(5) Notwithstanding any other provision of  
16 Federal law, if the court, on its own motion or on  
17 the motion of the United States trustee, finds that  
18 a person intentionally violated section 526 or 527 of  
19 this title, or engaged in a clear and consistent pat-  
20 tern or practice of violating section 526 or 527 of  
21 this title, the court may—

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

23           “(B) impose an appropriate civil penalty  
24 against such person.

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

7       (b) CONFORMING AMENDMENT.—The table of sec-  
 8 tions for chapter 5 of title 11, United States Code, as  
 9 amended by sections 106 and 107, is amended by inserting  
 10 after the item relating to section 527, the following:

“528. Debt relief agency enforcement.”.

11 **SEC. 109. SENSE OF THE CONGRESS.**

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

15 **SEC. 110. DISCOURAGING ABUSE REAFFIRMATION PRACTICES.**

16       Section 524(c)(2) of title 11, United States Code, is  
 17 amended—  
 18 amended—

19       (1) in subparagraph (A) by striking “and” at  
 20 the end;

21       (2) in subparagraph (B) by adding “and” at  
 22 the end; and

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

24       “(C) if the consideration for such agreement is  
 25 based on a wholly unsecured consumer debt, such

1 agreement contains a clear and conspicuous state-  
2 ment which advises the debtor—

3 “(i) that the debtor is entitled to a hearing  
4 before the court at which the debtor shall ap-  
5 pear in person and at which the court will de-  
6 cide whether the agreement is an undue hard-  
7 ship, not in the debtor’s best interest, and not  
8 the result of a threat by the creditor to take  
9 any action that cannot be legally taken or that  
10 is not intended to be taken; and

11 “(ii) that if the debtor is represented by  
12 counsel, the debtor may waive the debtor’s right  
13 to such a hearing by signing a statement  
14 waiving the hearing, stating that the debtor is  
15 represented by counsel, and identifying such  
16 counsel;”;

17 (3) in subsection (6)(A)—

18 (A) by striking “and” at the end of clause

19 (i);

20 (B) by striking the period at the end of  
21 clause (ii) and inserting “; and”;

22 (C) by adding at the end thereof the fol-  
23 lowing:

24 “(iii) not entered into by the debtor as the  
25 result of a threat by the creditor to take any

1           action that cannot be legally taken or that is  
2           not intended to be taken.”; and

3           (4) in the 3d sentence of subsection (d)—

4                   (A) by striking “of this section” and in-  
5                   serting a comma; and

6                   (B) by inserting after “such agreement”  
7           the following:

8           “or if the consideration for such agreement is based on  
9           a wholly unsecured consumer debt (except for debts owed  
10          to creditors defined in section 461(b)(10(A)(iv) of title 12,  
11          United States Code) and the debtor has not waived the  
12          debtor’s right to a hearing on the agreement in accordance  
13          with subsection (c)(2)(C) of this section”.

14   **SEC. 111. PROMOTION ALTERNATIVE DISPUTE RESOLU-**  
15                   **TION.**

16          (a) REDUCTION OF CLAIM.—Section 502 of title 11,  
17          United States Code, is amended by adding at the end the  
18          following:

19               “(k)(1) The court, on the motion of the debtor and  
20          after a hearing, may reduce a claim filed under this sec-  
21          tion based in whole on unsecured consumer debts by not  
22          more than 20 percent, if the debtor can prove by clear  
23          and convincing evidence that the claim was filed by a cred-  
24          itor who unreasonably refused to negotiate a reasonable  
25          alternative repayment schedule proposed by an approved



1 credit counseling agency acting on behalf of the debtor,  
2 if—

3 “(A) such offer was made at least 60 days be-  
4 fore the filing of the petition;

5 “(B) such offer provided for payment of at least  
6 60 percent of the amount of the debtor over a period  
7 not to exceed the repayment period of the loan, or  
8 a reasonable extension thereof; and

9 “(C) no part of the debt under the alternative  
10 repayment schedule is nondischargeable.

11 “(2) The debtor shall have the burden of proving that  
12 the proposed alternative repayment schedule was made in  
13 the 60-day period specified in subparagraph (A) and that  
14 the creditor unreasonably refused to consider the debtor’s  
15 proposal.”.

16 (b) LIMITATION ON AVOIDABILITY.—Section 547 of  
17 title 11, United States Code, is amended by adding at the  
18 end the following:

19 “(h) The trustee may not avoid a transfer if such  
20 transfer was made as a part of an alternative repayment  
21 plan between the debtor and any creditor of the debtor  
22 created by an approved credit counseling agency.”.

1 **SEC. 112. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
2 **SIONS SECURED BY A DWELLING.**

3 (a) **STUDY REQUIRED.**—During the period beginning  
4 180 days after the date of enactment of this Act and end-  
5 ing 18 months after the date of the enactment, the Board  
6 of Governors of the Federal Reserve System (in this sec-  
7 tion referred to as the “Board”) shall conduct a study and  
8 submit to Congress a report (including recommendations  
9 for any appropriate legislation) regarding—

10 (1) whether a consumer engaging in an open-  
11 end credit transaction (as defined pursuant to sec-  
12 tion 103 of the Truth in Lending Act) secured by the  
13 consumer’s principal dwelling is provided adequate  
14 information under Federal law, including under sec-  
15 tion 127A of the Truth in Lending Act, regarding  
16 the tax deductibility of interest paid on such trans-  
17 action; and

18 (2) whether a consumer engaging in a closed-  
19 end credit transaction (as defined pursuant to sec-  
20 tion 103 of the Truth in Lending Act) secured by  
21 the consumer’s principal dwelling is provided ade-  
22 quate information regarding the tax deductibility of  
23 interest paid on such transaction.

24 In conducting such study, the Board shall specifically con-  
25 sider whether additional disclosures are necessary with re-  
26 spect to such open-end or closed-end credit transactions

1 in which the amount of the credit extended exceeds the  
2 fair market value of the dwelling.

3 (b) REGULATIONS.—If the Board determines that ad-  
4 ditional disclosures are necessary in connection with trans-  
5 actions described in subsection (a), the Board, pursuant  
6 to its authority under the Truth in Lending Act, may pro-  
7 mulgate regulations that would require such additional  
8 disclosures. Any such regulations promulgated by the  
9 Board under this section shall not take effect before the  
10 end of the 36-month period after the date of the enact-  
11 ment of this Act.

12 **SEC. 113. DUAL USE DEBIT CARD.**

13 (a) STUDY REQUIRED.—The Board of Governors of  
14 the Federal Reserve System (in this section referred to  
15 as the “Board”) shall conduct a study of existing protec-  
16 tions provided to consumers to limit their liability for un-  
17 authorized use or a debit card or similar access device.

18 (b) SPECIFIC CONSIDERATIONS.—In conducting the  
19 study required by subsection (a), the Board shall specifi-  
20 cally consider the following—

21 (1) the extent to which existing provisions of  
22 section 909 of the Electronic Fund Transfer Act and  
23 the Board’s implementing regulations provide ade-  
24 quate unauthorized use liability protection for con-  
25 sumers;

1           (2) the extent to which any voluntary industry  
2 rules have enhanced the level of protection afforded  
3 consumers in connection with such unauthorized use  
4 liability; and

5           (3) whether amendments to the Electronic  
6 Funds Transfer Act or the Board's implementing  
7 regulations thereto are necessary to provide ade-  
8 quate protection for consumers in this area.

9           (c) REPORT AND REGULATIONS.—Not later than 2  
10 years after the date of the enactment of this Act, the  
11 Board shall make public a report on its findings with re-  
12 spect to the adequacy of existing protections afforded con-  
13 sumers with respect to unauthorized-use liability for debit  
14 cards and similar access devices. If the Board determines  
15 that such protections are inadequate, the Board, pursuant  
16 to its authority under the Electronic Funds Transfer Act,  
17 may issue regulations to address such inadequacy. Any  
18 regulations issued by the Board shall not be effective be-  
19 fore 36 months after the date of the enactment of this  
20 Act.

21 **SEC. 114. ENHANCED DISCLOSURES UNDER AN OPEN-END**  
22 **CREDIT PLAN.**

23           (a) INITIAL AND ANNUAL MINIMUM PAYMENT DIS-  
24 CLOSURE.—Section 127(a) of the Truth in Lending Act

1 (15 U.S.C. 1637(a)) is amended by adding at the end the  
2 following:

3 “(9) In the case of any credit or charge card  
4 account under an open-end consumer credit plan on  
5 which a minimum monthly or periodic payment will  
6 be required, other than an account described in  
7 paragraph (8)—

8 “(A) the following statement: ‘The mini-  
9 mum payment amount shown on your billing  
10 statement is the smallest payment which you  
11 can make in order to keep the account in good  
12 standing. This payment option is offered as a  
13 convenience and you may make larger payments  
14 at any time. Making only the minimum pay-  
15 ment each month will increase the amount of  
16 interest you pay and the length of time it takes  
17 to repay your outstanding balance.’;

18 “(B) if the plan provides that the con-  
19 sumer will be permitted to forgo making a mini-  
20 mum payment during a specified billing cycle, a  
21 statement, if applicable, that if the consumer  
22 chooses to forgo making the minimum payment,  
23 finance charges will continue to accrue; and

24 “(C) an example, based on an annual per-  
25 centage rate and method for determining mini-

1           mum periodic payments recently in effect for  
2           that creditor, and a \$500 outstanding balance,  
3           showing the estimated minimum periodic pay-  
4           ment, and the estimated period of time it would  
5           take to repay the \$500 outstanding balance if  
6           the consumer paid only the minimum periodic  
7           payment on each monthly or periodic statement  
8           and obtained no additional extensions of credit.

9           “(10) With respect to one billing cycle per cal-  
10          endar year, the creditor shall transmit the informa-  
11          tion required under paragraph (9) to each consumer  
12          to whom the creditor is required to transmit a state-  
13          ment pursuant to subsection (b) for such billing  
14          cycle. The creditor shall also transmit to such con-  
15          sumer for such cycle a worksheet prescribed by the  
16          Board to assist the consumer in determining the  
17          consumer’s household income and debt obligations.”.

18          (b) PERIOD MINIMUM PAYMENT DISCLOSURES.—  
19          Section 127(b) of the Truth in Lending Act (15 U.S.C.  
20          1637(b)) is amended by adding at the end the following:

21                 “(11) The following statement: ‘The minimum  
22                 payment amount shown on your billing statement is  
23                 the smallest payment which you can make in order  
24                 to keep the account in good standing. This payment  
25                 option is offered as a convenience and you may

1       make larger payments at any time. Making only the  
2       minimum payment each month will increase the  
3       amount of interest you pay and the length of time  
4       it takes to repay your outstanding balance.’”.

5       (c) ENFORCEMENT.—Section 127 of the Truth in  
6 Lending Act (15 U.S.C. 1637) is amended by adding at  
7 the end the following:

8       “(h) In promulgating regulations to implement the  
9 disclosure of an example required under subsection  
10 (a)(9)(C) and (a)(10), the Board shall set forth a model  
11 disclosure to accompany the example stating that the cred-  
12 it features shown are only an example which does not obli-  
13 gate the creditor, but is intended to illustrate the approxi-  
14 mate length of time it could take to repay using the as-  
15 sumptions set forth in subsection (a)(9)(C) without regard  
16 to any other factors that could impact an approximate re-  
17 payment period, including other credit features or the con-  
18 sumer’s payment or other behavior with respect to the ac-  
19 count. Compliance with the disclosures required under  
20 subsection (a)(9)(C) and (a)(10) shall be enforced exclu-  
21 sively by the Federal agencies set forth in section 108.”.

22       (d) REGULATORY IMPLEMENTATION.—The Board of  
23 Governors of the Federal Reserve System (in this section  
24 referred to as the “Board”) shall promulgate regulations  
25 implementing the amendments made by subsections (a)

1 and (b). Such regulations shall take effect no earlier than  
2 the end of the 36-month period beginning on the date of  
3 the enactment of this Act.

4 (e) STUDY REQUIRED.—The Board shall conduct a  
5 study to determine whether consumers have adequate in-  
6 formation about borrowing activities which may result in  
7 financial problems. In studying this issue, the Board shall  
8 consider the extent to which—

9 (1) consumers, in establishing new credit ar-  
10 rangements, are aware of their existing payment ob-  
11 ligations, the need to consider those obligations in  
12 deciding to take on new credit, and how taking on  
13 excessive credit can result in financial difficulty;

14 (2) minimum periodic payment features offered  
15 in connection with open-end credit plans impact con-  
16 sumer default rates;

17 (3) consumers always make only the minimum  
18 payment throughout the life of the plan;

19 (4) consumers are aware that making only min-  
20 imum payments will increase the cost and repayment  
21 period of an open-end loan; and

22 (5) the availability of low minimum payment  
23 options is a cause of consumers experiencing finan-  
24 cial difficulty.



1 (f) REPORT TO CONGRESS.—Before the end of the  
2 2-year period beginning on the date of the enactment of  
3 this Act, the Board shall submit to Congress a report con-  
4 taining the findings of the Board in connection with the  
5 study required under subsection (b).

6 (g) REGULATIONS.—The Board shall, by regulation  
7 promulgated pursuant to its authority under the Truth in  
8 Lending Act, require additional disclosures to consumers  
9 regarding minimum payment features, including periodic  
10 statement disclosures, if the Board determines that such  
11 disclosures are necessary based on its findings. Any such  
12 regulations promulgated by the Board shall not take effect  
13 earlier than January 1, 2001.

14 **SEC. 115. PROTECTION OF SAVINGS EARMARKED FOR THE**  
15 **POSTSECONDARY EDUCATION OF CHILDREN.**

16 (a) IN GENERAL.—Section 522(b) of title 11, United  
17 States Code, as amended by section 330, is amended—

18 (1) in paragraph (2)—

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

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

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

24 “(D) postsecondary education accounts as de-  
25 scribed as follows:

1           “(i) except as provided under applicable  
2 State law or except as provided in paragraph  
3 (5), any funds placed in a qualified tuition pro-  
4 gram (as described in section 529(b) of the In-  
5 ternal Revenue Code of 1986) at least 365 days  
6 before the date of entry of the order for relief  
7 and which has not been pledged or promised to  
8 any person in connection with any extension of  
9 credit; or

10           “(ii) except as provided in paragraph (5),  
11 any funds placed in an education individual re-  
12 tirement account (as defined in section  
13 530(b)(1) of the Internal Revenue Code of  
14 1986) at least 365 days before the date of entry  
15 of the order for relief and which has not been  
16 pledged or promised to any person in connec-  
17 tion with any extension of credit;” and

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

19           “(5) For purposes of paragraph (3)(D), funds placed  
20 in a qualified tuition program or in an education individ-  
21 ual retirement account shall not be exempt under this  
22 subsection—

23           “(A) unless the debtor has one or more depend-  
24 ent children less than 22 years of age;

1           “(B) if the amounts in such postsecondary ac-  
2           counts do not exceed the lesser of \$50,000 (in the  
3           aggregate) in accounts attributable to each such de-  
4           pendent child or \$100,000 (in the aggregate) attrib-  
5           utable to all such dependent children;

6           “(C) to the extent such funds contributed to  
7           such account exceed \$500 per year per child; and

8           “(D) any individual (other than the dependent  
9           child of the debtor to whom such account is attrib-  
10          utable) has any ownership right to such funds, or  
11          the right to obtain ownership in the future of any  
12          amount of such funds (other than upon the death or  
13          serious mental impairment of such child), or direct  
14          the application of such funds for any purpose other  
15          than the postsecondary education of such child.”.

16 **SEC. 116. EFFECT OF DISCHARGE.**

17          Section 524 of title 11, United States Code, is  
18          amended by adding at the end the following:

19          “(i) The willful failure of a creditor to credit pay-  
20          ments received under a plan confirmed under this title (in-  
21          cluding a plan of reorganization confirmed under chapter  
22          11 of this title) in the manner required by the plan (in-  
23          cluding crediting the amounts required under the plan)  
24          shall constitute a violation of an injunction under sub-  
25          section (a)(2).

1 “(j)(1) An individual who is injured by the failure of  
2 a creditor to comply with the requirements for a reaffirma-  
3 tion agreement under subsections (c) and (d), or by any  
4 willful violation of the injunction under subsection (a)(2),  
5 shall be entitled to recover—

6 “(A) the greater of—

7 “(i) the amount of actual damages; or

8 “(ii) \$1,000; and

9 “(B) costs and attorneys’ fees.

10 “(2) An action to recover for a violation specified in  
11 paragraph (1) may not be brought as a class action.”.

12 **SEC. 117. AUTOMATIC STAY.**

13 Section 362(h) of title 11, United States Code, is  
14 amended to read as follows:

15 “(h)(1) An individual who is injured by any willful  
16 violation of a stay provided in this section shall be entitled  
17 to recover—

18 “(A) actual damages; and

19 “(B) reasonable costs, including attorneys’ fees.

20 “(2) An action to recover for a violation specified in  
21 paragraph (1) may not be brought as a class action.”.

22 **SEC. 118. 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 **SEC. 119. DISCOURAGING BAD FAITH REPEAT FILINGS.**

9           Section 362(c) of title 11, United States Code, is  
10 amended—

11           (1) in paragraph (1) by striking “and” at the  
12 end;

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

15           (3) by adding at the end the following new  
16 paragraphs:

17           “(3) If a single or joint case is filed by or  
18 against an individual debtor under chapter 7, 11, or  
19 13, and if a single or joint case of the debtor was  
20 pending within the previous 1-year period but was  
21 dismissed, other than a case refiled under a chapter  
22 other than chapter 7 after dismissal under section  
23 707(b) of this title, the stay under subsection (a)  
24 with respect to any action taken with respect to a  
25 debt or property securing such debt or with respect

1 to any lease will terminate with respect to the debtor  
2 on the 30th day after the filing of the later case.  
3 Upon motion by a party in interest for continuation  
4 of the automatic stay and upon notice and a hear-  
5 ing, the court may extend the stay in particular  
6 cases as to any or all creditors (subject to such con-  
7 ditions or limitations as the court may then impose)  
8 after notice and a hearing completed before the expi-  
9 ration of the 30-day period only if the party in inter-  
10 est demonstrates that the filing of the later case is  
11 in good faith as to the creditors to be stayed. A case  
12 is presumptively filed not in good faith (but such  
13 presumption may be rebutted by clear and convinc-  
14 ing evidence to the contrary)—

15 “(A) as to all creditors if—

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

20 “(ii) a previous case under any of  
21 chapters 7, 11, or 13 in which the individ-  
22 ual was a debtor was dismissed within  
23 such 1-year period, after the debtor failed  
24 to file or amend the petition or other docu-  
25 ments as required by this title or the court

1 without substantial excuse (but mere inad-  
2 vertence or negligence shall not be sub-  
3 stantial excuse unless the dismissal was  
4 caused by the negligence of the debtor's at-  
5 torney), failed to provide adequate protec-  
6 tion as ordered by the court, or failed to  
7 perform the terms of a plan confirmed by  
8 the court; or

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

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

1           “(4) If a single or joint case is filed by or  
2           against an individual debtor under this title, and if  
3           2 or more single or joint cases of the debtor were  
4           pending within the previous year but were dismissed,  
5           other than a case refiled under section 707(b) of this  
6           title, the stay under subsection (a) will not go into  
7           effect upon the filing of the later case. On request  
8           of a party in interest, the court shall promptly enter  
9           an order confirming that no stay is in effect. If a  
10          party in interest requests within 30 days of the fil-  
11          ing of the later case, the court may order the stay  
12          to take effect in the case as to any or all creditors  
13          (subject to such conditions or limitations as the  
14          court may impose), after notice and hearing, only if  
15          the party in interest demonstrates that the filing of  
16          the later case is in good faith as to the creditors  
17          to be stayed. A stay imposed pursuant to the preced-  
18          ing sentence will be effective on the date of entry  
19          of the order allowing the stay to go into effect. A  
20          case is presumptively not filed in good faith (but  
21          such presumption may be rebutted by clear and con-  
22          vincing evidence to the contrary)—

23                           “(A) as to all creditors if—

24   “(i) 2 or more previous cases under  
25   this title in which the individual was a



1 debtor were pending within the 1-year pe-  
2 riod;

3 “(ii) a previous case under this title in  
4 which the individual was a debtor was dis-  
5 missed within the time period stated in  
6 this paragraph after the debtor failed to  
7 file or amend the petition or other docu-  
8 ments as required by this title or the court  
9 without substantial excuse (but mere inad-  
10 vertence or negligence shall not be sub-  
11 stantial excuse unless the dismissal was  
12 caused by the negligence of the debtor’s at-  
13 torney), failed to pay adequate protection  
14 as ordered by the court, or failed to per-  
15 form the terms of a plan confirmed by the  
16 court; or

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

1           “(B) as to any creditor that commenced an  
2           action under subsection (d) in a previous case  
3           in which the individual was a debtor if, as of  
4           the date of dismissal of such case, such action  
5           was still pending or had been resolved by termi-  
6           nating, conditioning, or limiting the stay as to  
7           action of such creditor.”.

8 **SEC. 120. CURBING ABUSIVE FILINGS.**

9           (a) IN GENERAL.—Section 362(d) of title 11, United  
10 States Code, is amended—

11           (1) in paragraph (2), by striking “or” at the  
12           end;

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

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

16           “(4) with respect to a stay of an act against  
17           real property under subsection (a), by a creditor  
18           whose claim is secured by an interest in such real  
19           estate, if the court finds that the filing of the bank-  
20           ruptcy petition was part of a scheme to delay,  
21           hinder, and defraud creditors that involved either—

22           “(A) transfer of all or part ownership of,  
23           or other interest in, the real property without  
24           the consent of the secured creditor or court ap-  
25           proval; or

1                   “(B) multiple bankruptcy filings affecting  
2                   the real property.

3 If recorded in compliance with applicable State laws gov-  
4 erning notices of interests or liens in real property, an  
5 order entered pursuant to this subsection shall be binding  
6 in any other case under this title purporting to affect the  
7 real property filed not later than 2 years after that record-  
8 ing, except that a debtor in a subsequent case may move  
9 for relief from such order based upon changed cir-  
10 cumstances or for good cause shown, after notice and a  
11 hearing.”.

12           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
13 United States Code, is amended—

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

16           (2) in paragraph (18) by striking the period at  
17           the end; and

18           (3) by inserting after paragraph (18) the fol-  
19           lowing:

20           “(19) under subsection (a), of any act to en-  
21           force any lien against or security interest in real  
22           property following the entry of an order under sec-  
23           tion 362(d)(4) of this title as to that property in any  
24           prior bankruptcy case for a period of 2 years after  
25           entry of such an order. The debtor in a subsequent

1 case, however, may move the court for relief from  
2 such order based upon changed circumstances or for  
3 other good cause shown, after notice and a hearing;  
4 or

5 “(20) under subsection (a), of any act to en-  
6 force any lien against or security interest in real  
7 property—

8 “(A) if the debtor is ineligible under sec-  
9 tion 109(g) of this title to be a debtor in a  
10 bankruptcy case; or

11 “(B) if the bankruptcy case was filed in  
12 violation of a bankruptcy court order in a prior  
13 bankruptcy case prohibiting the debtor from  
14 being a debtor in another bankruptcy case.”.

15 **SEC. 121. DEBTOR RETENTION OF PERSONAL PROPERTY**  
16 **SECURITY.**

17 Title 11, United States Code, is amended—

18 (1) in section 521—

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

21 (B) in paragraph (5) by striking the period  
22 at the end and inserting “; and”; and

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

24 “(6) in an individual case under chapter 7 of  
25 this title, not retain possession of personal property

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 45 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 45-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. 122. 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  
6 follows—

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)”;

11 (B) by redesignating subsection (h), as  
12 amended by section 117, as subsection (i) and  
13 by inserting after subsection (g) 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.”; and

13 (2) in section 521, as amended by sections 121  
14 and 604—

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) of this title”; and

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) of this title”  
3 before the semicolon; and

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

5 “(c) 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 of this title, noth-  
12 ing in this title shall prevent or limit the operation of a  
13 provision in the underlying lease or agreement which has  
14 the effect of placing the debtor in default under such lease  
15 or agreement by reason of the occurrence, pendency, or  
16 existence of a proceeding under this title or the insolvency  
17 of the debtor. Nothing in this subsection shall be deemed  
18 to justify limiting such a provision in any other cir-  
19 cumstance.”.

20 **SEC. 123. GIVING SECURED CREDITORS FAIR TREATMENT**

21 **IN CHAPTER 13.**

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

24 “(i) the plan provides that the holder of  
25 such claim retain the lien securing such claim



1           until the earlier of payment of the underlying  
2           debt determined under nonbankruptcy law or  
3           discharge under section 1328 of this title, and  
4           that if the case under this chapter is dismissed  
5           or converted without completion of the plan,  
6           such lien shall also be retained by such holder  
7           to the extent recognized by applicable nonbank-  
8           ruptcy law; and”.

9   **SEC. 124. RESTRAINING ABUSIVE PURCHASES ON SECURED**  
10                                   **CREDIT.**

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

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

15                   “(1) subsection (a) shall not apply to an al-  
16           lowed claim to the extent attributable in whole or in  
17           part to the purchase price of personal property ac-  
18           quired by the debtor within 5 years of the filing of  
19           the petition, except for the purpose of applying para-  
20           graph (3) of this subsection;

21                   “(2) if such allowed claim attributable to the  
22           purchase price is secured only by the personal prop-  
23           erty so acquired, the value of the personal property  
24           and the amount of the allowed secured claim shall  
25           be the sum of the unpaid principal balance of the

1 purchase price and accrued and unpaid interest and  
2 charges at the contract rate;

3 “(3) if such allowed claim attributable to the  
4 purchase price is secured by the personal property so  
5 acquired and other property, the value of the secu-  
6 rity may be determined under subsection (a), but the  
7 value of the security and the amount of the allowed  
8 secured claim shall be not less than the unpaid prin-  
9 cipal balance of the purchase price of the personal  
10 property acquired and unpaid interest and charges  
11 at the contract rate; and

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

19 **SEC. 125. FAIR VALUATION OF COLLATERAL.**

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

22 “In the case of an individual debtor under chapters 7 and  
23 13, such value with respect to personal property securing  
24 an allowed claim shall be determined based on the replace-  
25 ment value of such property as of the date of filing the

1 petition without deduction for costs of sale or marketing.  
2 With respect to property acquired for personal, family, or  
3 household purpose, replacement value shall mean the price  
4 a retail merchant would charge for property of that kind  
5 considering the age and condition of the property at the  
6 time value is determined.”.

7 **SEC. 126. EXEMPTIONS.**

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

10 (1) by striking “180” and inserting “730”; and

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

13 **SEC. 127. LIMITATION.**

14 Section 522 of title 11, United States Code, is  
15 amended—

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

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

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

21 “(1) real or personal property that the debtor  
22 or a dependent of the debtor uses as a residence;

23 “(2) a cooperative that owns property that the  
24 debtor or a dependent of the debtor uses as a resi-  
25 dence; or

1           “(3) a burial plot for the debtor or a dependent  
2           of the debtor;  
3 shall be reduced to the extent such value is attributable  
4 to any portion of any property that the debtor disposed  
5 of in the 730-day period ending of the date of the filing  
6 of the petition, with the intent to hinder, delay, or defraud  
7 a creditor and that the debtor could not exempt, or that  
8 portion that the debtor could not exempt, under subsection  
9 (b) if on such date the debtor had held the property so  
10 disposed of.”.

11 **SEC. 128. ROLLING STOCK EQUIPMENT.**

12           (a) IN GENERAL.—Section 1168 of title 11, United  
13 States Code, is amended to read as follows:

14 **“§ 1168. Rolling stock equipment**

15           “(a)(1) The right of a secured party with a security  
16 interest in or of a lessor or conditional vendor of equip-  
17 ment described in paragraph (2) to take possession of such  
18 equipment in compliance with an equipment security  
19 agreement, lease, or conditional sale contract, and to en-  
20 force any of its other rights or remedies under such secu-  
21 rity agreement, lease, or conditional sale contract, to sell,  
22 lease, or otherwise retain or dispose of such equipment,  
23 is not limited or otherwise affected by any other provision  
24 of this title or by any power of the court, except that the

1 right to take possession and enforce those other rights and  
2 remedies shall be subject to section 362 of this title, if—

3 “(A) before the date that is 60 days after the  
4 date of commencement of a case under this chapter,  
5 the trustee, subject to the court’s approval, agrees to  
6 perform all obligations of the debtor under such se-  
7 curity agreement, lease, or conditional sale contract;  
8 and

9 “(B) any default, other than a default of a kind  
10 described in section 365(b)(2) of this title, under  
11 such security agreement, lease, or conditional sale  
12 contract—

13 “(i) that occurs before the date of com-  
14 mencement of the case and is an event of de-  
15 fault therewith is cured before the expiration of  
16 such 60-day period;

17 “(ii) that occurs or becomes an event of  
18 default after the date of commencement of the  
19 case and before the expiration of such 60-day  
20 period is cured before the later of—

21 “(I) the date that is 30 days after the  
22 date of the default or event of the default;  
23 or

24 “(II) the expiration of such 60-day  
25 period; and

1           “(iii) that occurs on or after the expiration  
2           of such 60-day period is cured in accordance  
3           with the terms of such security agreement,  
4           lease, or conditional sale contract, if cure is per-  
5           mitted under that agreement, lease, or condi-  
6           tional sale contract.

7           “(2) The equipment described in this paragraph—

8           “(A) is rolling stock equipment or accessories  
9           used on rolling stock equipment, including super-  
10          structures or racks, that is subject to a security in-  
11          terest granted by, leased to, or conditionally sold to  
12          a debtor; and

13          “(B) includes all records and documents relat-  
14          ing to such equipment that are required, under the  
15          terms of the security agreement, lease, or conditional  
16          sale contract, that is to be surrendered or returned  
17          by the debtor in connection with the surrender or re-  
18          turn of such equipment.

19          “(3) Paragraph (1) applies to a secured party, lessor,  
20          or conditional vendor acting in its own behalf or acting  
21          as trustee or otherwise in behalf of another party.

22          “(b) The trustee and the secured party, lessor, or  
23          conditional vendor whose right to take possession is pro-  
24          tected under subsection (a) may agree, subject to the

1 court's approval, to extend the 60-day period specified in  
2 subsection (a)(1).

3       “(c)(1) In any case under this chapter, the trustee  
4 shall immediately surrender and return to a secured party,  
5 lessor, or conditional vendor, described in subsection  
6 (a)(1), equipment described in subsection (a)(2), if at any  
7 time after the date of commencement of the case under  
8 this chapter such secured party, lessor, or conditional ven-  
9 dor is entitled pursuant to subsection (a)(1) to take pos-  
10 session of such equipment and makes a written demand  
11 for such possession of the trustee.

12       “(2) At such time as the trustee is required under  
13 paragraph (1) to surrender and return equipment de-  
14 scribed in subsection (a)(2), any lease of such equipment,  
15 and any security agreement or conditional sale contract  
16 relating to such equipment, if such security agreement or  
17 conditional sale contract is an executory contract, shall be  
18 deemed rejected.

19       “(d) With respect to equipment first placed in service  
20 on or prior to October 22, 1994, for purposes of this  
21 section—

22               “(1) the term ‘lease’ includes any written agree-  
23 ment with respect to which the lessor and the debt-  
24 or, as lessee, have expressed in the agreement or in  
25 a substantially contemporaneous writing that the

1 agreement is to be treated as a lease for Federal in-  
2 come tax purposes; and

3 “(2) the term ‘security interest’ means a pur-  
4 chase-money equipment security interest.

5 “(e) With respect to equipment first placed in service  
6 after October 22, 1994, for purposes of this section, the  
7 term ‘rolling stock equipment’ includes rolling stock equip-  
8 ment that is substantially rebuilt and accessories used on  
9 such equipment.”.

10 (b) AIRCRAFT EQUIPMENT AND VESSELS.—Section  
11 1110 of title 11, United States Code, is amended to read  
12 as follows:

13 **“§ 1110. Aircraft equipment and vessels**

14 “(a)(1) Except as provided in paragraph (2) and sub-  
15 ject to subsection (b), the right of a secured party with  
16 a security interest in equipment described in paragraph  
17 (3), or of a lessor or conditional vendor of such equipment,  
18 to take possession of such equipment in compliance with  
19 a security agreement, lease, or conditional sale contract,  
20 and to enforce any of its other rights or remedies, under  
21 such security agreement, lease, or conditional sale con-  
22 tract, to sell, lease, or otherwise retain or dispose of such  
23 equipment, is not limited or otherwise affected by any  
24 other provision of this title or by any power of the court.



1       “(2) The right to take possession and to enforce the  
2 other rights and remedies described in paragraph (1) shall  
3 be subject to section 362 of this title if—

4               “(A) before the date that is 60 days after the  
5 date of the order for relief under this chapter, the  
6 trustee, subject to the approval of the court, agrees  
7 to perform all obligations of the debtor under such  
8 security agreement, lease, or conditional sale con-  
9 tract; and

10              “(B) any default, other than a default of a kind  
11 specified in section 365(b)(2) of this title, under  
12 such security agreement, lease, or conditional sale  
13 contract—

14                      “(i) that occurs before the date of the  
15 order is cured before the expiration of such 60-  
16 day period;

17                      “(ii) that occurs after the date of the order  
18 and before the expiration of such 60-day period  
19 is cured before the later of—

20                              “(I) the date that is 30 days after the  
21 date of the default; or

22                              “(II) the expiration of such 60-day  
23 period; and

24                              “(iii) that occurs on or after the expiration  
25 of such 60-day period is cured in compliance

1 with the terms of such security agreement,  
2 lease, or conditional sale contract, if a cure is  
3 permitted under that agreement, lease, or con-  
4 tract.

5 “(3) The equipment described in this paragraph—

6 “(A) is—

7 “(i) an aircraft, aircraft engine, propeller,  
8 appliance, or spare part (as defined in section  
9 40102 of title 49) that is subject to a security  
10 interest granted by, leased to, or conditionally  
11 sold to a debtor that, at the time such trans-  
12 action is entered into, holds an air carrier oper-  
13 ating certificate issued pursuant to chapter 447  
14 of title 49 for aircraft capable of carrying 10 or  
15 more individuals or 6,000 pounds or more of  
16 cargo; or

17 “(ii) a documented vessel (as defined in  
18 section 30101(1) of title 46) that is subject to  
19 a security interest granted by, leased to, or con-  
20 ditionally sold to a debtor that is a water car-  
21 rier that, at the time such transaction is en-  
22 tered into, holds a certificate of public conven-  
23 ience and necessity or permit issued by the De-  
24 partment of Transportation; and

1           “(B) includes all records and documents relat-  
2           ing to such equipment that are required, under the  
3           terms of the security agreement, lease, or conditional  
4           sale contract, to be surrendered or returned by the  
5           debtor in connection with the surrender or return of  
6           such equipment.

7           “(4) Paragraph (1) applies to a secured party, lessor,  
8           or conditional vendor acting in its own behalf or acting  
9           as trustee or otherwise in behalf of another party.

10          “(b) The trustee and the secured party, lessor, or  
11          conditional vendor whose right to take possession is pro-  
12          tected under subsection (a) may agree, subject to the ap-  
13          proval of the court, to extend the 60-day period specified  
14          in subsection (a)(1).

15          “(c)(1) In any case under this chapter, the trustee  
16          shall immediately surrender and return to a secured party,  
17          lessor, or conditional vendor, described in subsection  
18          (a)(1), equipment described in subsection (a)(3), if at any  
19          time after the date of the order for relief under this chap-  
20          ter such secured party, lessor, or conditional vendor is en-  
21          titled pursuant to subsection (a)(1) to take possession of  
22          such equipment and makes a written demand for such pos-  
23          session to the trustee.

24          “(2) At such time as the trustee is required under  
25          paragraph (1) to surrender and return equipment de-

1 scribed in subsection (a)(3), any lease of such equipment,  
2 and any security agreement or conditional sale contract  
3 relating to such equipment, if such security agreement or  
4 conditional sale contract is an executory contract, shall be  
5 deemed rejected.

6 “(d) With respect to equipment first placed in service  
7 on or before October 22, 1994, for purposes of this  
8 section—

9 “(1) the term ‘lease’ includes any written agree-  
10 ment with respect to which the lessor and the debt-  
11 or, as lessee, have expressed in the agreement or in  
12 a substantially contemporaneous writing that the  
13 agreement is to be treated as a lease for Federal in-  
14 come tax purposes; and

15 “(2) the term ‘security interest’ means a pur-  
16 chase-money equipment security interest.”.

17 **SEC. 129. DISCHARGE UNDER CHAPTER 13.**

18 Section 1328(a) of title 11, United States Code, is  
19 amended by striking paragraphs (1) through (3) and in-  
20 serting the following:

21 “(1) provided for under section 1322(b)(5) of  
22 this title;

23 “(2) of the kind specified in paragraph (2), (4),  
24 (3)(B), (5), (8), or (9) of section 523(a) of this title;

1           “(3) for restitution, or a criminal fine, included  
2           in a sentence on the debtor’s conviction of a crime;  
3           or

4           “(4) for restitution, or damages, awarded in a  
5           civil action against the debtor as a result of willful  
6           or malicious injury by the debtor that caused per-  
7           sonal injury to an individual or the death of an indi-  
8           vidual.”.

9   **SEC. 130. BANKRUPTCY JUDGESHIPS.**

10          (a) **SHORT TITLE.**—This section may be cited as the  
11          “Bankruptcy Judgeship Act of 1999”.

12          (b) **TEMPORARY JUDGESHIPS.**—

13                  (1) **APPOINTMENTS.**—The following judgeship  
14                  positions shall be filled in the manner prescribed in  
15                  section 152(a)(1) of title 28, United States Code, for  
16                  the appointment of bankruptcy judges provided for  
17                  in section 152(a)(2) of such title:

18                          (A) One additional bankruptcy judgeship  
19                          for the eastern district of California.

20                          (B) Four additional bankruptcy judgeships  
21                          for the central district of California.

22                          (C) One additional bankruptcy judgeship  
23                          for the southern district of Florida.

24                          (D) Two additional bankruptcy judgeships  
25                          for the district of Maryland.

1           (E) One additional bankruptcy judgeship  
2 for the eastern district of Michigan.

3           (F) One additional bankruptcy judgeship  
4 for the southern district of Mississippi.

5           (G) One additional bankruptcy judgeship  
6 for the district of New Jersey.

7           (H) One additional bankruptcy judgeship  
8 for the eastern district of New York.

9           (I) One additional bankruptcy judgeship  
10 for the northern district of New York.

11          (J) One additional bankruptcy judgeship  
12 for the southern district of New York.

13          (K) One additional bankruptcy judgeship  
14 for the eastern district of Pennsylvania.

15          (L) One additional bankruptcy judgeship  
16 for the middle district of Pennsylvania.

17          (M) One additional bankruptcy judgeship  
18 for the western district of Tennessee.

19          (N) One additional bankruptcy judgeship  
20 for the eastern district of Virginia.

21          (2) VACANCIES.—The first vacancy occurring in  
22 the office of a bankruptcy judge in each of the judi-  
23 cial districts set forth in paragraph (1) that—

24               (A) results from the death, retirement, res-  
25  ignation, or removal of a bankruptcy judge; and

1 (B) occurs 5 years or more after the ap-  
2 pointment date of a bankruptcy judge ap-  
3 pointed under paragraph (1);

4 shall not be filled.

5 (c) EXTENSIONS.—

6 (1) IN GENERAL.—The temporary bankruptcy  
7 judgeship positions authorized for the northern dis-  
8 trict of Alabama, the district of Delaware, the dis-  
9 trict of Puerto Rico, the district of South Carolina,  
10 and the eastern district of Tennessee under section  
11 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy  
12 Judgeship Act of 1992 (28 U.S.C. 152 note) are ex-  
13 tended until the first vacancy occurring in the office  
14 of a bankruptcy judge in the applicable district re-  
15 sulting from the death, retirement, resignation, or  
16 removal of a bankruptcy judge and occurring—

17 (A) 8 years or more after November 8,  
18 1993, with respect to the northern district of  
19 Alabama;

20 (B) 10 years or more after October 28,  
21 1993, with respect to the district of Delaware;

22 (C) 8 years or more after August 29,  
23 1994, with respect to the district of Puerto  
24 Rico;

1 (D) 8 years or more after June 27, 1994,  
2 with respect to the district of South Carolina;  
3 and

4 (E) 8 years or more after November 23,  
5 1993, with respect to the eastern district of  
6 Tennessee.

7 (2) APPLICABILITY OF OTHER PROVISIONS.—  
8 All other provisions of section 3 of the Bankruptcy  
9 Judgeship Act of 1992 remain applicable to such  
10 temporary judgeship position.

11 (d) TECHNICAL AMENDMENT.—The first sentence of  
12 section 152(a)(1) of title 28, United States Code, is  
13 amended to read as follows: “Each bankruptcy judge to  
14 be appointed for a judicial district as provided in para-  
15 graph (2) shall be appointed by the United States court  
16 of appeals for the circuit in which such district is lo-  
17 cated.”.

18 (e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—  
19 Section 156 of title 28, United States Code, is amended  
20 by adding at the end the following new subsection:

21 “(g)(1) In this subsection, the term ‘travel  
22 expenses’—

23 “(A) means the expenses incurred by a bank-  
24 ruptcy judge for travel that is not directly related to  
25 any case assigned to such bankruptcy judge; and



1           “(B) shall not include the travel expenses of a  
2 bankruptcy judge if—

3           “(i) the payment for the travel expenses is  
4 paid by such bankruptcy judge from the per-  
5 sonal funds of such bankruptcy judge; and

6           “(ii) such bankruptcy judge does not re-  
7 ceive funds (including reimbursement) from the  
8 United States or any other person or entity for  
9 the payment of such travel expenses.

10          “(2) Each bankruptcy judge shall annually submit  
11 the information required under paragraph (3) to the chief  
12 bankruptcy judge for the district in which the bankruptcy  
13 judge is assigned.

14          “(3)(A) Each chief bankruptcy judge shall submit an  
15 annual report to the Director of the Administrative Office  
16 of the United States Courts on the travel expenses of each  
17 bankruptcy judge assigned to the applicable district (in-  
18 cluding the travel expenses of the chief bankruptcy judge  
19 of such district).

20          “(B) The annual report under this paragraph shall  
21 include—

22           “(i) the travel expenses of each bankruptcy  
23 judge, with the name of the bankruptcy judge to  
24 whom the travel expenses apply;

1           “(ii) a description of the subject matter and  
2           purpose of the travel relating to each travel expense  
3           identified under clause (i), with the name of the  
4           bankruptcy judge to whom the travel applies; and

5           “(iii) the number of days of each travel de-  
6           scribed under clause (ii), with the name of the bank-  
7           ruptcy judge to whom the travel applies.

8           “(4)(A) The Director of the Administrative Office of  
9           the United States Courts shall—

10           “(i) consolidate the reports submitted under  
11           paragraph (3) into a single report; and

12           “(ii) annually submit such consolidated report  
13           to Congress.

14           “(B) The consolidated report submitted under this  
15           paragraph shall include the specific information required  
16           under paragraph (3)(B), including the name of each bank-  
17           ruptcy judge with respect to clauses (i), (ii), and (iii) of  
18           paragraph (3)(B).”.

19     **SEC. 131. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**  
20                     **STATES CODE.**

21           (a) Section 507(a) of title 11, United States Code,  
22           is amended by inserting after paragraph (9) the following:

23           “(10) Tenth, allowed claims for death or per-  
24           sonal injuries resulting from the operation of a  
25           motor vehicle or vessel if such operation was unlaw-

1       ful because the debtor was intoxicated from using al-  
2       cohol, a drug or another substance.”.

3       (b) Section 523(a)(9) of title 11, United States Code,  
4       is amended by inserting “or vessel” after “vehicle”.

5       **SEC. 132. AMENDMENT TO SECTION 1325 OF TITLE 11,**  
6                               **UNITED STATES CODE.**

7       Section 1325(b)(2) of title 11, United States Code,  
8       is amended by inserting after “received by the debtor”,  
9       “(other than child support payments, foster care pay-  
10       ments, or disability payments for a dependent child made  
11       in accordance with applicable nonbankruptcy law and  
12       which is reasonably necessary to be expended)”.

13       **SEC. 133. APPLICATION OF THE CODEBTOR STAY ONLY**  
14                               **WHEN THE STAY PROTECTS THE DEBTOR.**

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

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

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

19               “(2)(A) Notwithstanding subsection (c) and except as  
20       provided in subparagraph (B), in any case in which the  
21       debtor did not receive the consideration for the claim held  
22       by a creditor, the stay provided by subsection (a) shall  
23       apply to that creditor for a period not to exceed 30 days  
24       beginning on the date of the order for relief, to the extent  
25       the creditor proceeds against—

1           “(i) the individual that received that consider-  
2           ation; or

3           “(ii) property not in the possession of the debt-  
4           or that secures that claim.

5           “(B) Notwithstanding subparagraph (A), the stay  
6           provided by subsection (a) shall apply in any case in which  
7           the debtor is primarily obligated to pay the creditor in  
8           whole or in part with respect to a claim described in sub-  
9           paragraph (A) under a legally binding separation or prop-  
10          erty settlement agreement or divorce or dissolution decree  
11          with respect to—

12           “(i) an individual described in subparagraph  
13          (A)(i); or

14           “(ii) property described in subparagraph (A)(ii).

15          “(3) Notwithstanding subsection (c), the stay pro-  
16          vided by subsection (a) shall terminate as of the date of  
17          confirmation of the plan, in any case in which the plan  
18          of the debtor provides that the debtor’s interest in per-  
19          sonal property subject to a lease with respect to which the  
20          debtor is the lessee will be surrendered or abandoned or  
21          no payments will be made under the plan on account of  
22          the debtor’s obligations under the lease.”.

1 **SEC. 134. ADEQUATE PROTECTION FOR INVESTORS.**

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

5 “(48A) ‘securities self regulatory organization’  
6 means either a securities association registered with  
7 the Securities and Exchange Commission pursuant  
8 to section 15A of the Securities Exchange Act of  
9 1934 or a national securities exchange registered  
10 with the Securities and Exchange Commission pur-  
11 suant to section 6 of the Securities Exchange Act of  
12 1934;”.

13 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
14 United States Code, as amended by section 120, is  
15 amended—

16 (1) in paragraph (19) by striking “or” at the  
17 end;

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

20 (3) by inserting after paragraph (20) the fol-  
21 lowing:

22 “(21) under subsection (a), of the commence-  
23 ment or continuation of an investigation or action by  
24 a securities self regulatory organization to enforce  
25 such organization’s regulatory power; of the enforce-  
26 ment of an order or decision, other than for mone-

1 tary sanctions, obtained in an action by the securi-  
2 ties self regulatory organization to enforce such or-  
3 ganization’s regulatory power; or of any act taken by  
4 the securities self regulatory organization to delist,  
5 delete, or refuse to permit quotation of any stock  
6 that does not meet applicable regulatory require-  
7 ments.”.

8 **SEC. 135. LIMITATION ON LUXURY GOODS.**

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

11 “(C)(i) for purposes of subparagraph (A), con-  
12 sumer debts owed to a single creditor and aggregat-  
13 ing more than \$250 for ‘luxury goods or services’ in-  
14 curred by an individual debtor on or within 90 days  
15 before the order for relief under this title, or cash  
16 advances aggregating more than \$250 that are ex-  
17 tensions of consumer credit under an open end cred-  
18 it plan obtained by an individual debtor on or within  
19 90 days before the order for relief under this title,  
20 are presumed to be nondischargeable; and

21 “(ii) for purposes of this subparagraph—

22 “(I) the term ‘luxury goods or services’  
23 does not include goods or services reasonably  
24 necessary for the support or maintenance of the  
25 debtor or a dependent of the debtor; and

1           “(II) the term ‘an extension of consumer  
2           credit under an open end credit plan’ has the  
3           same meaning such term has for purposes of  
4           the Consumer Credit Protection Act;”.

5 **SEC. 136. GIVING DEBTORS THE ABILITY TO KEEP LEASED**  
6 **PERSONAL PROPERTY BY ASSUMPTION.**

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

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

14          “(2) In the case of an individual under chapter 7,  
15 the debtor may notify the creditor in writing that the debt-  
16 or desires to assume the lease. Upon being so notified,  
17 the creditor may, at its option, notify the debtor that it  
18 is willing to have the lease assumed by the debtor and  
19 may condition such assumption on cure of any outstanding  
20 default on terms set by the contract. If within 30 days  
21 of such notice the debtor notifies the lessor in writing that  
22 the lease is assumed, the liability under the lease will be  
23 assumed by the debtor and not by the estate. The stay  
24 under section 362 of this title and the injunction under  
25 section 524(a)(2) of this title shall not be violated by noti-

1 fication of the debtor and negotiation of cure under this  
2 subsection.

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

12 **SEC. 137. ADEQUATE PROTECTION OF LESSORS AND PUR-**  
13 **CHASE MONEY SECURED CREDITORS.**

14 (a) IN GENERAL.—Chapter 13 of title 11, United  
15 States Code, is amended by adding after section 1307 the  
16 following:

17 **“§ 1307A. Adequate protection in chapter 13 cases**

18 “(a)(1)(A) On or before the date that is 30 days after  
19 the filing of a case under this chapter, the debtor shall  
20 make cash payments in an amount determined under  
21 paragraph (2)(A), to—

22 “(i) any lessor of personal property; and

23 “(ii) any creditor holding a claim secured by  
24 personal property to the extent that the claim is at-



1       tributable to the purchase of that property by the  
2       debtor.

3       “(B) The debtor or the plan shall continue making  
4 the adequate protection payments until the earlier of the  
5 date on which—

6               “(i) the creditor begins to receive actual pay-  
7       ments under the plan; or

8               “(ii) the debtor relinquishes possession of the  
9       property referred to in subparagraph (A) to—

10                       “(I) the lessor or creditor; or

11                       “(II) any third party acting under claim of  
12       right, as applicable.

13       “(2) The payments referred to in paragraph (1)(A)  
14 shall be the contract amount.

15       “(b)(1) Subject to the limitations under paragraph  
16 (2), the court may, after notice and hearing, change the  
17 amount and timing of the dates of payment of payments  
18 made under subsection (a).

19       “(2)(A) The payments referred to in paragraph (1)  
20 shall be payable not less frequently than monthly.

21       “(B) The amount of payments referred to in para-  
22 graph (1) shall not be less than the amount of any weekly,  
23 biweekly, monthly, or other periodic payment schedules as  
24 payable under the contract between the debtor and credi-  
25 tor.

1       “(c) Notwithstanding section 1326(b), the payments  
2 referred to in subsection (a)(1)(A) shall be continued in  
3 addition to plan payments under a confirmed plan until  
4 actual payments to the creditor begin under that plan, if  
5 the confirmed plan provides—

6               “(1) for payments to a creditor or lessor de-  
7 scribed in subsection (a)(1); and

8               “(2) for the deferral of payments to such credi-  
9 tor or lessor under the plan until the payment of  
10 amounts described in section 1326(b).

11       “(d) Notwithstanding sections 362, 542, and 543, a  
12 lessor or creditor described in subsection (a) may retain  
13 possession of property described in that subsection that  
14 was obtained in accordance with applicable law before the  
15 date of filing of the petition until the first payment under  
16 subsection (a)(1)(A) is received by the lessor or creditor.

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

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 13 of title 11, United States  
3 Code, is amended by inserting after the item relating to  
4 section 1307 the following:

“1307A. Adequate protection in chapter 13 cases.”.

5 **SEC. 139. AUTOMATIC STAY.**

6 Section 362(b) of title 11, United States Code, as  
7 amended by sections 120 and 134, is amended—

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

10 (2) in paragraph (21), by striking the period at  
11 the end and inserting a semicolon; and

12 (3) by inserting after paragraph (21) the fol-  
13 lowing:

14 “(22) under subsection (a) of any transfer that  
15 is not avoidable under section 544 of this title and  
16 that is not avoidable under section 549 of this title;

17 “(23) under subsection (a)(3), of the continu-  
18 ation of any eviction, unlawful detainer action, or  
19 similar proceeding by a lessor against a debtor in-  
20 volving residential real property in which the debtor  
21 resides as a tenant under a rental agreement and  
22 the debtor has not paid rent to the lessor pursuant  
23 to the terms of the lease agreement or applicable  
24 State law after the commencement and during the  
25 course of the case;

1           “(24) under subsection (a)(3), of the com-  
2           mencement or continuation of any eviction, unlawful  
3           detainer action, or similar proceeding by a lessor  
4           against a debtor involving residential real property  
5           in which the debtor resides as a tenant under a rent-  
6           al agreement that has terminated pursuant to the  
7           lease agreement or applicable State law;

8           “(25) under subsection (a)(3), of any eviction,  
9           unlawful detainer action, or similar proceeding, if  
10          the debtor has previously filed within the last year  
11          and failed to pay post-petition rent during the  
12          course of that case; or

13          “(26) under subsection (a)(3), of eviction ac-  
14          tions based on endangerment to property or person  
15          or the use of illegal drugs.”.

16 **SEC. 140. EXTEND PERIOD BETWEEN BANKRUPTCY DIS-**  
17 **CHARGES.**

18          Title 11, United States Code, is amended—

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

21               (2) in section 1328 by adding at the end the  
22               following:

23               “(f) Notwithstanding subsections (a) and (b), the  
24               court shall not grant a discharge of all debts provided for  
25               by the plan or disallowed under section 502 of this title

1 if the debtor has received a discharge in any case filed  
2 under this title within 5 years of the order for relief under  
3 this chapter.”.

4 **SEC. 141. DEFINITION OF DOMESTIC SUPPORT OBLIGA-**  
5 **TION.**

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

8 (1) by striking paragraph (12A); and

9 (2) by inserting after paragraph (14) the fol-  
10 lowing:

11 (14A) ‘domestic support obligation’ means a debt  
12 that accrues before or after the entry of an order for  
13 relief under this title that is—

14 “(A) owed to or recoverable by—

15 “(i) a spouse, former spouse, or child  
16 of the debtor or that child’s legal guardian;  
17 or

18 “(ii) a governmental unit;

19 “(B) in the nature of alimony, mainte-  
20 nance, or support (including assistance provided  
21 by a governmental unit) of such spouse, former  
22 spouse, or child, without regard to whether such  
23 debt is expressly so designated;

24 “(C) established or subject to establish-  
25 ment before or after entry of an order for relief

1 under this title, by reason of applicable provi-  
2 sions of—

3 “(i) a separation agreement, divorce  
4 decree, or property settlement agreement;

5 “(ii) an order of a court of record; or

6 “(iii) a determination made in accord-  
7 ance with applicable nonbankruptcy law by  
8 a governmental unit; and

9 “(D) not assigned to a nongovernmental  
10 entity, unless that obligation is assigned volun-  
11 tarily by the spouse, former spouse, child, or  
12 parent solely for the purpose of collecting the  
13 debt.”.

14 **SEC. 142. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
15 **PORT OBLIGATIONS.**

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

18 (1) by striking paragraph (7);

19 (2) by redesignating paragraphs (1) through  
20 (6) as paragraphs (2) through (7), respectively;

21 (3) in paragraph (2), as redesignated, by strik-  
22 ing “First” and inserting “Second”;

23 (4) in paragraph (3), as redesignated, by strik-  
24 ing “Second” and inserting “Third”;

1           (5) in paragraph (4), as redesignated, by strik-  
2           ing “Third” and inserting “Fourth”;

3           (6) in paragraph (5), as redesignated, by strik-  
4           ing “Fourth” and inserting “Fifth”;

5           (7) in paragraph (6), as redesignated, by strik-  
6           ing “Fifth” and inserting “Sixth”;

7           (8) in paragraph (7), as redesignated, by strik-  
8           ing “Sixth” and inserting “Seventh”; and

9           (9) by inserting before paragraph (2), as redesi-  
10          gnated, the following:

11          “(1) First, allowed claims for domestic support obli-  
12          gations to be paid in the following order on the condition  
13          that funds received under this paragraph by a govern-  
14          mental unit in a case under this title be applied:

15                 “(A) Claims that, as of the date of entry of the  
16                 order for relief, are owed directly to a spouse, former  
17                 spouse, or child of the debtor, or the parent of such  
18                 child, without regard to whether the claim is filed by  
19                 the spouse, former spouse, child, or parent, or is  
20                 filed by a governmental unit on behalf of that per-  
21                 son.

22                 “(B) Claims that, as of the date of entry of the  
23                 order for relief, are assigned by a spouse, former  
24                 spouse, child of the debtor, or the parent of that  
25                 child to a governmental unit or are owed directly to

1 a governmental unit under applicable nonbankruptcy  
2 law.”.

3 **SEC. 143. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
4 **DISCHARGE IN CASES INVOLVING DOMESTIC**  
5 **SUPPORT OBLIGATIONS.**

6 Title 11, United States Code, is amended—

7 (1) in section 1129(a), by adding at the end the  
8 following:

9 “(14) If the debtor is required by a judicial or  
10 administrative order or statute to pay a domestic  
11 support obligation, the debtor has paid all amounts  
12 payable under such order or statute for such obliga-  
13 tion that become payable after the date on which the  
14 petition is filed.”;

15 (2) in section 1325(a)—

16 (A) in paragraph (5), by striking “and” at  
17 the end;

18 (B) in paragraph (6), by striking the pe-  
19 riod at the end and inserting “; and”; and

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

21 “(7) if the debtor is required by a judicial or  
22 administrative order or statute to pay a domestic  
23 support obligation, the debtor has paid all amounts  
24 payable under such order for such obligation that



1       become payable after the date on which the petition  
2       is filed.”; and

3               (3) in section 1328(a), as amended by section  
4       129, in the matter preceding paragraph (1), by in-  
5       serting “, and with respect to a debtor who is re-  
6       quired by a judicial or administrative order to pay  
7       a domestic support obligation, certifies that all  
8       amounts payable under such order or statute that  
9       are due on or before the date of the certification (in-  
10      cluding amounts due before or after the petition was  
11      filed) have been paid” after “completion by the debt-  
12      or of all payments under the plan”.

13 **SEC. 144. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
14 **SUPPORT OBLIGATION PROCEEDINGS.**

15       Section 362(b) of title 11, United States Code, as  
16      amended by sections 120, 134, and 139, is amended—

17               (1) by striking paragraph (2) and inserting the  
18      following:

19                       “(2) under subsection (a)—

20                               “(A) of the commencement or continuation  
21                               of an action or proceeding for—

22                                       “(i) the establishment of paternity as  
23                                       a part of an effort to collect domestic sup-  
24                                       port obligations; or

1                   “(ii) the establishment or modification  
2                   of an order for domestic support obliga-  
3                   tions; or

4                   “(B) the collection of a domestic support  
5                   obligation from property that is not property of  
6                   the estate;”;

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

9                   (3) in paragraph (26), by striking the period at  
10                  the end and inserting a semicolon; and

11                  (4) by inserting after paragraph (26) the fol-  
12                  lowing:

13                  “(27) under subsection (a) with respect to the  
14                  withholding of income pursuant to an order as speci-  
15                  fied in section 466(b) of the Social Security Act (42  
16                  U.S.C. 666(b)); or

17                  “(28) under subsection (a) with respect to—

18                         “(A) the withholding, suspension, or re-  
19                         striction of drivers’ licenses, professional and  
20                         occupational licenses, and recreational licenses  
21                         pursuant to State law, as specified in section  
22                         466(a)(16) of the Social Security Act (42  
23                         U.S.C. 666(a)(16)) or with respect to the re-  
24                         porting of overdue support owed by an absent  
25                         parent to any consumer reporting agency as

1 specified in section 466(a)(7) of the Social Se-  
2 curity Act (42 U.S.C. 666(a)(7));

3 “(B) the interception of tax refunds, as  
4 specified in sections 464 and 466(a)(3) of the  
5 Social Security Act (42 U.S.C. 664 and  
6 666(a)(3)); or

7 “(C) the enforcement of medical obliga-  
8 tions as specified under title IV of the Social  
9 Security Act (42 U.S.C. 601 et seq.).”.

10 **SEC. 145. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**  
11 **ALIMONY, MAINTENANCE, AND SUPPORT.**

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

14 (1) in subsection (a), by striking paragraph (5)  
15 and inserting the following:

16 “(5) for a domestic support obligation;”;

17 (2) in subsection (c), by striking “(6), or (15)”  
18 and inserting “or (6)”; and

19 (3) in paragraph (15), by striking “govern-  
20 mental unit” and all through the end of the para-  
21 graph and inserting a semicolon.

22 **SEC. 146. CONTINUED LIABILITY OF PROPERTY.**

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

1 (1) in subsection (c), by striking paragraph (1)  
2 and inserting the following:

3 “(1) a debt of a kind specified in paragraph (1)  
4 or (5) of section 523(a) (in which case, notwith-  
5 standing any provision of applicable nonbankruptcy  
6 law to the contrary, such property shall be liable for  
7 a debt of a kind specified in section 523(a)(5);”;

8 (2) in subsection (f)(1)(A), by striking the dash  
9 and all that follows through the end of the subpara-  
10 graph and inserting “of a kind that is specified in  
11 section 523(a)(5); or”.

12 **SEC. 147. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
13 **AGAINST PREFERENTIAL TRANSFER MO-**  
14 **TIONS.**

15 Section 547(c)(7) of title 11, United States Code, is  
16 amended to read as follows:

17 “(7) to the extent such transfer was a bona fide  
18 payment of a debt for a domestic support obligation;  
19 or”.

20 **SEC. 148. DEFINITION OF HOUSEHOLD GOODS AND AN-**  
21 **TIQUES.**

22 Section 522(f)(1)(B) of title 11, United States Code,  
23 is amended as follows:

24 (1) by inserting “(i)” after “(B)”; and

25 (2) by striking “(i)” and inserting “(aa)”; and

- 1 (3) by striking “(ii)” and inserting “(bb)”;
- 2 (4) by striking “(iii)” and inserting “(cc)”;
- 3 (5) by adding at the end thereof the following:

4 “(ii) ‘household goods’ shall mean for the  
5 purposes of this subparagraph (B) clothing;  
6 furniture; appliances; one radio; one television;  
7 one VCR; linens; china; crockery; kitchenware;  
8 educational materials and educational equip-  
9 ment primarily for the use of minor dependent  
10 children of the debtor, but only one personal  
11 computer only if used primarily for the edu-  
12 cation or entertainment of such minor children;  
13 medical equipment and supplies; furniture ex-  
14 clusively for the use of minor children, elderly  
15 or disabled dependents of the debtor; and per-  
16 sonal effects (including wedding rings and the  
17 toys and hobby equipment of minor dependent  
18 children) of the debtor and his or her depend-  
19 ents: *Provided*, That the following are not in-  
20 cluded within the scope of the term ‘household  
21 goods’:

22 “(aa) works of art (unless by or of the  
23 debtor or his or her dependents);

1           “(bb) electronic entertainment equip-  
2           ment (except one television, one radio, and  
3           one VCR);

4           “(cc) items acquired as antiques;

5           “(dd) jewelry (except wedding rings);

6           “(ee) a computer (except as otherwise  
7           provided for in this section), motor vehicle  
8           (including a tractor or lawn tractor), boat,  
9           or a motorized recreational device, convey-  
10          ance, vehicle, watercraft, or aircraft.”.

11 **SEC. 149. NONDISCHARGEABLE DEBTS.**

12          Section 523(a) of title 11, United States Code, is  
13 amended by inserting after paragraph (14) the following:

14           “(14A) incurred to pay a debt that is non-  
15          dischargeable by reason of section 727, 1141,  
16          1228(a), 1228(b), or 1328(b), or any other provision  
17          of this subsection, if the debtor incurred the debt to  
18          pay such a nondischargeable debt with the intent to  
19          discharge in bankruptcy the newly-created debt, ex-  
20          cept that all debts incurred to pay nondischargeable  
21          debts, without regard to intent, are nondischargeable  
22          if incurred within 90 days of the filing of the peti-  
23          tion;”.

1           **TITLE II—DISCOURAGING**  
2                   **BANKRUPTCY ABUSE**

3 **SEC. 201. REENACTMENT OF CHAPTER 12.**

4           (a) REENACTMENT.—Chapter 12 of title 11 of the  
5 United States Code, as in effect on March 31, 1999, is  
6 hereby reenacted.

7           (b) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall take effect on March 31, 1999.

9 **SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
10                   **HOLDERS.**

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

13           “(e) Notwithstanding subsections (a) and (b), the  
14 court, on the request of a party in interest and after notice  
15 and a hearing, for cause may order that the United States  
16 trustee not convene a meeting of creditors or equity secu-  
17 rity holders if the debtor has filed a plan as to which the  
18 debtor solicited acceptances prior to the commencement  
19 of the case.”.

20 **SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
21                   **RUPTCY.**

22           (a) IN GENERAL.—Section 522 of title 11, United  
23 States Code, is amended—

24                   (1) in subsection (b)—

25                           (A) in paragraph (2)—

1 (i) by striking “(2)(A) any property”

2 and inserting:

3 “(3) Property listed in this paragraph is—

4 “(A) any property”;

5 (ii) in subparagraph (A), by striking

6 “and” at the end;

7 (iii) in subparagraph (B), by striking

8 the period at the end and inserting “;

9 and”; and

10 (iv) by adding at the end the follow-

11 ing:

12 “(C) retirement funds to the extent that those

13 funds are in a fund or account that is exempt from

14 taxation under section 401, 403, 408, 408A, 414,

15 457, or 501(a) of the Internal Revenue Code of

16 1986.”;

17 (B) by striking paragraph (1) and insert-

18 ing:

19 “(2) Property listed in this paragraph is property

20 that is specified under subsection (d), unless the State law

21 that is applicable to the debtor under paragraph (3)(A)

22 specifically does not so authorize.”;

23 (C) in the matter preceding paragraph

24 (2)—



1 (i) by striking “(b)” and inserting  
2 “(b)(1)”;

3 (ii) by striking “paragraph (2)” both  
4 places it appears and inserting “paragraph  
5 (3)”;

6 (iii) by striking “paragraph (1)” each  
7 place it appears and inserting “paragraph  
8 (2)”;

9 (iv) by striking “Such property is—”;  
10 and

11 (D) by adding at the end of the subsection  
12 the following:

13 “(4) For purposes of paragraph (3)(C), the following  
14 shall apply:

15 “(A) If the retirement funds are in a retirement  
16 fund that has received a favorable determination  
17 pursuant to section 7805 of the Internal Revenue  
18 Code of 1986, and that determination is in effect as  
19 of the date of the commencement of the case under  
20 section 301, 302, or 303 of this title, those funds  
21 shall be presumed to be exempt from the estate.

22 “(B) If the retirement funds are in a retirement  
23 fund that has not received a favorable determination  
24 pursuant to such section 7805, those funds are ex-

1       empt from the estate if the debtor demonstrates  
2       that—

3               “(i) no prior determination to the contrary  
4               has been made by a court or the Internal Reve-  
5               nue Service; and

6               “(ii) the retirement fund is in substantial  
7               compliance with the applicable requirements of  
8               the Internal Revenue Code of 1986.

9               “(C) A direct transfer of retirement funds from  
10              1 fund or account that is exempt from taxation  
11              under section 401, 403, 408, 408A, 414, 457, or  
12              501(a) of the Internal Revenue Code of 1986, pur-  
13              suant to section 401(a)(31) of the Internal Revenue  
14              Code of 1986, or otherwise, shall not cease to qualify  
15              for exemption under paragraph (3)(C) by reason of  
16              that direct transfer.

17              “(D)(i) Any distribution that qualifies as an eli-  
18              gible rollover distribution within the meaning of sec-  
19              tion 402(c) of the Internal Revenue Code of 1986 or  
20              that is described in clause (ii) shall not cease to  
21              qualify for exemption under paragraph (3)(C) by  
22              reason of that distribution.

23              “(ii) A distribution described in this clause is  
24              an amount that—

1           “(I) has been distributed from a fund or  
2           account that is exempt from taxation under sec-  
3           tion 401, 403, 408, 408A, 414, 457, or 501(a)  
4           of the Internal Revenue Code of 1986; and

5           “(II) to the extent allowed by law, is de-  
6           posited in such a fund or account not later than  
7           60 days after the distribution of that amount.”;  
8           and

9           (2) in subsection (d)—

10           (A) in the matter preceding paragraph (1),  
11           by striking “subsection (b)(1)” and inserting  
12           “subsection (b)(2)”; and

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

14           “(12) Retirement funds to the extent that those  
15           funds are in a fund or account that is exempt from tax-  
16           ation under section 401, 403, 408, 408A, 414, 457, or  
17           501(a) of the Internal Revenue Code of 1986.”.

18           (b) *AUTOMATIC STAY*.—Section 362(b) of title 11,  
19           United States Code, as amended by sections 120, 134,  
20           139, and 144 is amended—

21           (1) in paragraph (27), by striking “or” at the  
22           end;

23           (2) in paragraph (28), by striking the period  
24           and inserting “; or”;

1           (3) by inserting after paragraph (28) the fol-  
2           lowing:

3           “(29) under subsection (a), of withholding of  
4           income from a debtor’s wages and collection of  
5           amounts withheld, pursuant to the debtor’s agree-  
6           ment authorizing that withholding and collection for  
7           the benefit of a pension, profit-sharing, stock bonus,  
8           or other plan established under section 401, 403,  
9           408, 408A, 414, 457, or 501(a) of the Internal Rev-  
10          enue Code of 1986 that is sponsored by the em-  
11          ployer of the debtor, or an affiliate, successor, or  
12          predecessor of such employer—

13                 “(A) to the extent that the amounts with-  
14                 held and collected are used solely for payments  
15                 relating to a loan from a plan that satisfies the  
16                 requirements of section 408(b)(1) of the Em-  
17                 ployee Retirement Income Security Act of 1974  
18                 or is subject to section 72(p) of the Internal  
19                 Revenue Code of 1986; or

20                 “(B) in the case of a loan from a thrift  
21                 savings plan described in subchapter III of title  
22                 5, that satisfies the requirements of section  
23                 8433(g) of such title.”; and

24           (4) by adding at the end of the flush material  
25           following paragraph (19) the following: “Paragraph

1 (19) does not apply to any amount owed to a plan  
2 referred to in that paragraph that is incurred under  
3 a loan made during the 1-year period preceding the  
4 filing of a petition. Nothing in paragraph (19) may  
5 be construed to provide that any loan made under  
6 a governmental plan under section 414(d), or a con-  
7 tract or account under section 403(b), of the Inter-  
8 nal Revenue Code of 1986 constitutes a claim or a  
9 debt under this title.”.

10 (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of  
11 title 11, United States Code, is amended—

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

14 (2) by striking the period at the end of para-  
15 graph (18) and inserting “; or”; and

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

17 “(19) owed to a pension, profit-sharing, stock  
18 bonus, or other plan established under section 401,  
19 403, 408, 408A, 414, 457, or 501(c) of the Internal  
20 Revenue Code of 1986, pursuant to—

21 “(A) a loan permitted under section  
22 408(b)(1) of the Employee Retirement Income  
23 Security Act of 1974) or subject to section  
24 72(p) of the Internal Revenue Code of 1986; or

1           “(B) a loan from the thrift savings plan  
2           described in subchapter III of title 5, that satis-  
3           fies the requirements of section 8433(g) of such  
4           title.

5 Paragraph (19) does not apply to any amount owed to  
6 a plan referred to in that paragraph that is incurred under  
7 a loan made during the 1-year period preceding the filing  
8 of a petition. Nothing in paragraph (19) may be construed  
9 to provide that any loan made under a governmental plan  
10 under section 414(d), or a contract or account under sec-  
11 tion 403(b), of the Internal Revenue Code of 1986 con-  
12 stitutes a claim or a debt under this title.”.

13           (d) PLAN CONTENTS.—Section 1322 of title 11,  
14 United States Code, is amended by adding at the end the  
15 following:

16           “(f) A plan may not materially alter the terms of a  
17 loan described in section 362(b)(19) of this title.”.

18 **SEC. 204. PROTECTION OF REFINANCE OF SECURITY IN-**  
19 **TEREST.**

20           Subparagraphs (A), (B), and (C) of section 547(e)(2)  
21 of title 11, United States Code, are amended by striking  
22 “10” each place it appears and inserting “30”.

1 **SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED**  
2 **LEASES.**

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

5 “(4)(A) Subject to subparagraph (B), in any case  
6 under any chapter of this title, an unexpired lease of non-  
7 residential real property under which the debtor is the les-  
8 see shall be deemed rejected and the trustee shall imme-  
9 diately surrender that nonresidential real property to the  
10 lessor if the trustee does not assume or reject the unex-  
11 pired lease by the earlier of—

12 “(i) the date that is 180 days after the date of  
13 the order for relief; or

14 “(ii) the date of the entry of an order confirm-  
15 ing a plan.

16 “(B) The court may extend the period determined  
17 under subparagraph (A) only upon a motion of the les-  
18 sor.”.

19 **SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS**  
20 **COMMITTEES.**

21 Section 1102(a)(2) of title 11, United States Code,  
22 is amended by inserting before the first sentence the fol-  
23 lowing: “On its own motion or on request of a party in  
24 interest, and after notice and hearing, the court may order  
25 a change in the membership of a committee appointed  
26 under this subsection, if the court determines that the

1 change is necessary to ensure adequate representation of  
2 creditors or equity security holders.”.

3 **SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11,**  
4 **UNITED STATES CODE.**

5 Section 546 of title 11, United States Code, is  
6 amended by inserting at the end thereof:

7 “(I) Notwithstanding section 545 (2) and (3) of  
8 this title, the trustee may not avoid a  
9 warehouseman’s lien for storage, transportation or  
10 other costs incidental to the storage and handling of  
11 goods, as provided by section 7–209 of the Uniform  
12 Commercial Code.”.

13 **SEC. 208. LIMITATION.**

14 Section 546(c)(1)(B) of title 11, United States Code,  
15 is amended by striking “20” and inserting “45”.

16 **SEC. 209. AMENDMENT TO SECTION 330(a) OF TITLE 11,**  
17 **UNITED STATES CODE.**

18 Section 330(a) of title 11, United States Code, is  
19 amended—

20 (1) in subsection (3)(A) after the word “award-  
21 ed”, by inserting “to an examiner, chapter 11 trust-  
22 ee, or professional person”; and

23 (2) by adding at the end of subsection (3)(A)  
24 the following:



1           “(3)(B) In determining the amount of reason-  
2           able compensation to be awarded a trustee, the court  
3           shall treat such compensation as a commission based  
4           on the results achieved.”.

5 **SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.**

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

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

14 **SEC. 211. PREFERENCES.**

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

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

19                 “(2) to the extent that such transfer was in  
20                 payment of a debt incurred by the debtor in the or-  
21                 dinary course of business or financial affairs of the  
22                 debtor and the transferee, and such transfer was—

23                         “(A) made in the ordinary course of busi-  
24                         ness or financial affairs of the debtor and the  
25                         transferee; or

1           “(B) made according to ordinary business  
2           terms;”;

3           (2) in paragraph (7) by striking “or” at the  
4           end;

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

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

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

12 **SEC. 212. VENUE OF CERTAIN PROCEEDINGS.**

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

16 **SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

17          Section 1121(d) of title 11, United States Code, is  
18          amended—

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

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

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

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

4 **SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP IN-**  
5 **TERESTS.**

6       Section 523(a)(16) of title 11, United States Code,  
7 is amended—

8           (1) by striking “dwelling” the first place it ap-  
9 pears;

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

12          (3) by striking “housing” the first place it ap-  
13 pears; and

14          (4) by striking “but only” and all that follows  
15 through “such period,” and inserting “or a lot in a  
16 homeowners association, for as long as the debtor or  
17 the trustee has a legal, equitable, or possessory own-  
18 ership interest in such unit, such corporation, or  
19 such lot, and until such time as the debtor or trustee  
20 has surrendered any legal, equitable or possessory  
21 interest in such unit, such corporation, or such lot,”.

1 **SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN**  
2 **CASES ANCILLARY TO FOREIGN PROCEED-**  
3 **INGS.**

4 Section 304 of title 11, United States Code, is  
5 amended to read as follows:

6 **“§ 304. Cases ancillary to foreign proceedings**

7 “(a) For purposes of this section—

8 “(1) the term ‘domestic insurance company’  
9 means a domestic insurance company, as such term  
10 is used in section 109(b)(2);

11 “(2) the term ‘foreign insurance company’  
12 means a foreign insurance company, as such term is  
13 used in section 109(b)(3);

14 “(3) the term ‘United States claimant’ means a  
15 beneficiary of any deposit referred to in subsection  
16 (b) or any multibeneficiary trust referred to in sub-  
17 section (b);

18 “(4) the term ‘United States creditor’ means,  
19 with respect to a foreign insurance company—

20 “(i) a United States claimant; or

21 “(ii) any business entity that operates in  
22 the United States and that is a creditor; and

23 “(5) the term ‘United States policyholder’  
24 means a holder of an insurance policy issued in the  
25 United States.

1 “(b) The court may not grant relief under chapter  
2 15 of this title with respect to any deposit, escrow, trust  
3 fund, or other security required or permitted under any  
4 applicable State insurance law or regulation for the benefit  
5 of claim holders in the United States.”.

6 **SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
7 **TIONS.**

8 (a) EXECUTORY CONTRACTS AND UNEXPIRED  
9 LEASES.—Section 365 of title 11, United States Code, is  
10 amended—

11 (1) in subsection (b)—

12 (A) in paragraph (1)(A) by striking the  
13 semicolon at the end and inserting the follow-  
14 ing:

15 “other than a default that is a breach of a provision  
16 relating to—

17 “(i) the satisfaction of any provision (other  
18 than a penalty rate or penalty provision) relat-  
19 ing to a default arising from any failure to per-  
20 form nonmonetary obligations under an unex-  
21 pired lease of real property (excluding executory  
22 contracts that transfer a right or interest under  
23 a filed or issued patent, copyright, trademark,  
24 trade dress, or trade secret), if it is impossible  
25 for the trustee to cure such default by perform-

1           ing nonmonetary acts at and after the time of  
2           assumption; or

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

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

16                   “(D) the satisfaction of any penalty rate or  
17          penalty provision relating to a default arising from  
18          a failure to perform nonmonetary obligations under  
19          an executory contract (excluding executory contracts  
20          that transfer a right or interest under a filed or  
21          issued patent, copyright, trademark, trade dress, or  
22          trade secret) or under an unexpired lease of real or  
23          personal property.”;

24                   (2) in subsection (c)—

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

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

5 (C) by striking paragraph (4);

6 (3) in subsection (d)—

7 (A) by striking paragraphs (5) through  
8 (9); and

9 (B) by redesignating paragraph (10) as  
10 paragraph (5); and

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

14 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-  
15 tion 1124(2) of title 11, United States Code, is  
16 amended—

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

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

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

1 (4) by inserting after subparagraph (C) the fol-  
2 lowing:

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

9 **TITLE III—GENERAL BUSINESS**  
10 **BANKRUPTCY PROVISIONS**

11 **SEC. 301. DEFINITION OF DISINTERESTED PERSON.**

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

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

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

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

21 “(C) does not have an interest materially  
22 adverse to the interest of the estate or of any  
23 class of creditors or equity security holders, by  
24 reason of any direct or indirect relationship to,



1 connection with, or interest in, the debtor, or  
2 for any other reason;”.

3 **SEC. 302. MISCELLANEOUS IMPROVEMENTS.**

4 (a) WHO MAY BE A DEBTOR.—Section 109 of title  
5 11, United States Code, is amended by adding at the end  
6 the following:

7 “(h)(1) Subject to paragraphs (2) and (3) and not-  
8 withstanding any other provision of this section, an indi-  
9 vidual may not be a debtor under this title unless that  
10 individual has, during the 90-day period preceding the  
11 date of filing of the petition of that individual, received  
12 credit counseling, including, at a minimum, participation  
13 in an individual or group briefing that outlined the oppor-  
14 tunities for available credit counseling and assisted that  
15 individual in performing an initial budget analysis,  
16 through a credit counseling program (offered through an  
17 approved credit counseling service described in section  
18 111(a)).

19 “(2)(A) Paragraph (1) shall not apply with respect  
20 to a debtor who resides in a district for which the United  
21 States trustee or bankruptcy administrator of the bank-  
22 ruptcy court of that district determines that the approved  
23 credit counseling services for that district are not reason-  
24 ably able to provide adequate services to the additional  
25 individuals who would otherwise seek credit counseling

1 from those programs by reason of the requirements of  
2 paragraph (1).

3 “(B) Each United States trustee or bankruptcy ad-  
4 ministrator that makes a determination described in sub-  
5 paragraph (A) shall review that determination not later  
6 than one year after the date of that determination, and  
7 not less frequently than every year thereafter.

8 “(3)(A) Subject to subparagraph (B), the require-  
9 ments of paragraph (1) shall not apply with respect to  
10 a debtor who submits to the court a certification that—

11 “(i) describes exigent circumstances that merit  
12 a waiver of the requirements of paragraph (1);

13 “(ii) states that the debtor requested credit  
14 counseling services from an approved credit counsel-  
15 ing service, but was unable to obtain the services re-  
16 ferred to in paragraph (1) during the 5-day period  
17 beginning on the date on which the debtor made  
18 that request; and

19 “(iii) is satisfactory to the court.

20 “(B) With respect to a debtor, an exemption under  
21 subparagraph (A) shall cease to apply to that debtor on  
22 the date on which the debtor meets the requirements of  
23 paragraph (1), but in no case may the exemption apply  
24 to that debtor after the date that is 30 days after the debt-  
25 or files a petition.”.

1 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
2 11, United States Code, is amended—

3 (1) in paragraph (9), by striking “or” at the  
4 end;

5 (2) in paragraph (10), by striking the period  
6 and inserting “; or”; and

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

8 “(11) after the filing of the petition, the debtor  
9 failed to complete an instructional course concerning  
10 personal financial management described in section  
11 111.”.

12 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
13 11, United States Code, is amended by adding at the end  
14 the following:

15 “(f) The court shall not grant a discharge under this  
16 section to a debtor, unless after filing a petition the debtor  
17 has completed an instructional course concerning personal  
18 financial management described in section 111.

19 “(g) Subsection (f) shall not apply with respect to  
20 a debtor who resides in a district for which the United  
21 States trustee or bankruptcy administrator of the bank-  
22 ruptcy court of that district determines that the approved  
23 instructional courses are not adequate to service the addi-  
24 tional individuals who would be required to complete the

1 instructional course by reason of the requirements of this  
2 section.

3 “(h) Each United States trustee or bankruptcy ad-  
4 ministrator that makes a determination described in sub-  
5 section (g) shall review that determination not later than  
6 1 year after the date of that determination, and not less  
7 frequently than every year thereafter.

8 (d) DEBTOR’S DUTIES.—Section 521 of title 11,  
9 United States Code, as amended by sections 121, 604, and  
10 122, is amended by adding at the end the following:

11 “(d) In addition to the requirements under subsection  
12 (a), an individual debtor shall file with the court—

13 “(1) a certificate from the credit counseling  
14 service that provided the debtor services under sec-  
15 tion 109(h); and

16 “(2) a copy of the debt repayment plan, if any,  
17 developed under section 109(h) through the credit  
18 counseling service referred to in paragraph (1).”.

19 (e) EXCEPTIONS TO DISCHARGE.—Section 523(d) of  
20 title 11, United States Code, as amended by section 202  
21 of this Act, is amended by striking paragraph (3)(A)(i)  
22 and inserting the following:

23 “(i) within the applicable period of time pre-  
24 scribed under section 109(h), the debtor received

1 credit counseling through a credit counseling pro-  
2 gram in accordance with section 109(h); and”.

3 (f) GENERAL PROVISIONS.—

4 (1) IN GENERAL.—Chapter 1 of title 11, United  
5 States Code, is amended by adding at the end the  
6 following:

7 **“§ 111. Credit counseling services; financial manage-  
8 ment instructional courses**

9 “(a) The clerk of each district shall maintain a list  
10 of credit counseling services that provide 1 or more pro-  
11 grams described in section 109(h) and a list of instruc-  
12 tional courses concerning personal financial management  
13 that have been approved by—

14 “(1) the United States trustee; or

15 “(2) the bankruptcy administrator for the dis-  
16 trict.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions at the beginning of chapter 1 of title 11,  
19 United States Code, is amended by adding at the  
20 end the following:

“111. Credit counseling services; financial management instructional courses.”.

21 (g) DEFINITIONS.—Section 101 of title 11, United  
22 States Code, as amended by section 317 of this Act, is  
23 amended—

24 (1) by inserting after paragraph (13) the fol-  
25 lowing:

1 “(13A) ‘debtor’s principal residence’—

2 “(A) means a residential structure, includ-  
3 ing incidental property, without regard to  
4 whether that structure is attached to real prop-  
5 erty; and

6 “(B) includes an individual condominium  
7 or cooperative unit;”; and

8 (2) by inserting after paragraph (27A), as  
9 added by section 318 of this Act, the following:

10 “(27B) ‘incidental property’ means, with re-  
11 spect to a debtor’s principal residence—

12 “(A) property commonly conveyed with a  
13 principal residence in the area where the real  
14 estate is located;

15 “(B) all easements, rights, appurtenances,  
16 fixtures, rents, royalties, mineral rights, oil or  
17 gas rights or profits, water rights, escrow  
18 funds, or insurance proceeds; and

19 “(C) all replacements or additions;”.

20 (h) LIMITATION.—Section 362 of title 11, United  
21 States Code, is amended by adding at the end the follow-  
22 ing:

23 “(j) If 1 case commenced under chapter 7, 11, or 13  
24 of this title is dismissed due to the creation of a debt re-  
25 payment plan, then for purposes of section 362(c)(3) of

1 this title the subsequent case commenced under any such  
2 chapter shall not be presumed to be filed not in good  
3 faith.”.

4 **SEC. 303. EXTENSIONS.**

5 Section 302(d)(3) of the Bankruptcy, Judges, United  
6 States Trustees, and Family Farmer Bankruptcy Act of  
7 1986 (28 U.S.C. 581 note) is amended—

8 (1) in subparagraph (A), in the matter follow-  
9 ing clause (ii), by striking “or October 1, 2002,  
10 whichever occurs first”; and

11 (2) in subparagraph (F)—

12 (A) in clause (i)—

13 (i) in subclause (II), by striking “or  
14 October 1, 2002, whichever occurs first”;  
15 and

16 (ii) in the matter following subclause  
17 (II), by striking “October 1, 2003, or”;  
18 and

19 (B) in clause (ii), in the matter following  
20 subclause (II)—

21 (i) by striking “before October 1,  
22 2003, or”; and

23 (ii) by striking “, whichever occurs  
24 first”.

1       **TITLE IV—SMALL BUSINESS**  
2       **BANKRUPTCY PROVISIONS**

3       **SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**  
4               **AND PLAN.**

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

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

9               “(1) in determining whether a disclosure state-  
10 ment provides adequate information, the court shall  
11 consider the complexity of the case, the benefit of  
12 additional information to creditors and other parties  
13 in interest, and the cost of providing additional in-  
14 formation;

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

18               “(3) the court may approve a disclosure state-  
19 ment submitted on standard forms approved by the  
20 court or adopted pursuant to section 2075 of title  
21 28; and

22               “(4)(A) the court may conditionally approve a  
23 disclosure statement subject to final approval after  
24 notice and a hearing;



1           “(B) acceptances and rejections of a plan may  
2           be solicited based on a conditionally approved disclo-  
3           sure statement if the debtor provides adequate infor-  
4           mation to each holder of a claim or interest that is  
5           solicited, but a conditionally approved disclosure  
6           statement shall be mailed not less than 20 days be-  
7           fore the date of the hearing on confirmation of the  
8           plan; and

9           “(C) the hearing on the disclosure statement  
10          may be combined with the hearing on confirmation  
11          of a plan.”.

12 **SEC. 402. DEFINITIONS.**

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

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

19           “(51D) ‘small business debtor’ means—

20                   “(A) a person (including affiliates of such  
21                   person that are also debtors under this title)  
22                   that has aggregate noncontingent, liquidated se-  
23                   cured and unsecured debts as of the date of the  
24                   petition or the order for relief in an amount not  
25                   more than \$4,000,000 (excluding debts owed to

1           1 or more affiliates or insiders) a case in which  
2           the United States trustee has appointed under  
3           section 1102(a)(1) of this title a committee of  
4           unsecured creditors that ‘the court has deter-  
5           mined’ is sufficiently active and representative  
6           to provide effective oversight of the debtor, ex-  
7           cept that if a group of affiliated debtors has ag-  
8           gregate noncontingent liquidated secured and  
9           unsecured debts greater than \$4,000,000 (ex-  
10          cluding debt owed to 1 or more affiliates or in-  
11          siders), then no member of such group is a  
12          small business debtor;”.

13          (b) EFFECT OF DISCHARGE.—Section 524 of title 11,  
14          United States Code, as amended by section 402, is amend-  
15          ed by adding at the end the following:

16          “(k)(1) An individual who is injured by the willful  
17          failure of a creditor to substantially comply with the re-  
18          quirements specified in subsections (c) and (d), or by any  
19          willful violation of the injunction operating under sub-  
20          section (a)(2), shall be entitled to recover—

21                  “(A) the greater of—

22                          “(i) the amount of actual damages; or

23                          “(ii) \$1,000; and

24                  “(B) costs and attorneys’ fees.

1 “(2) An action to recover for a violation specified in  
2 paragraph (1) may not be brought as a class action.”.

3 (c) CONFORMING AMENDMENT.—Section 1102(a)(3)  
4 of title 11, United States Code, is amended by inserting  
5 “debtor” after “small business”.

6 **SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND**  
7 **PLAN.**

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

16 (1) the reasonable needs of the courts, the  
17 United States trustee, creditors, and other parties in  
18 interest for reasonably complete information; and

19 (2) economy and simplicity for debtors.

20 **SEC. 404. UNIFORM NATIONAL REPORTING REQUIRE-**  
21 **MENTS.**

22 (a) REPORTING REQUIRED.—(1) Title 11 of the  
23 United States Code is amended by inserting after section  
24 307 the following:

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

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

4 “(1) the debtor’s profitability, that is, approxi-  
5 mately how much money the debtor has been earn-  
6 ing or losing during current and recent fiscal peri-  
7 ods;

8 “(2) reasonable approximations of the debtor’s  
9 projected cash receipts and cash disbursements over  
10 a reasonable period;

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

13 “(4) whether the debtor is—

14 “(A) in compliance in all material respects  
15 with postpetition requirements imposed by this  
16 title and the Federal Rules of Bankruptcy Pro-  
17 cedure; and

18 “(B) timely filing tax returns and paying  
19 taxes and other administrative claims when due,  
20 and, if not, what the failures are and how, at  
21 what cost, and when the debtor intends to rem-  
22 edy such failures; and

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

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

“308. Debtor reporting requirements.”.

4           (b) **EFFECTIVE DATE.**—The amendments made by  
5 subsection (a) shall take effect 60 days after the date on  
6 which rules are prescribed pursuant to section 2075, title  
7 28, United States Code to establish forms to be used to  
8 comply with section 308 of title 11, United States Code,  
9 as added by subsection (a).

10 **SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR**  
11 **SMALL BUSINESS CASES.**

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

19                   (1) the debtor’s profitability;

20                   (2) the debtor’s cash receipts and disburse-  
21 ments; and

22                   (3) whether the debtor is timely filing tax re-  
23 turns and paying taxes and other administrative  
24 claims when due.

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

4 (1) the reasonable needs of the bankruptcy  
5 court, the United States trustee, creditors, and other  
6 parties in interest for reasonably complete informa-  
7 tion;

8 (2) the small business debtor’s interest that re-  
9 quired reports be easy and inexpensive to complete;  
10 and

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

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

15 (a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the  
16 United States Code is amended by inserting after section  
17 1114 the following:

18 **“§ 1115. Duties of trustee or debtor in possession in**  
19 **small business cases**

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

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

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

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

8           “(2) attend, through its senior management  
9           personnel and counsel, meetings scheduled by the  
10          court or the United States trustee, including initial  
11          debtor interviews, scheduling conferences, and meet-  
12          ings of creditors convened under section 341 of this  
13          title unless the court waives this requirement after  
14          notice and hearing, upon a finding of extraordinary  
15          and compelling circumstances;

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

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

1           “(5) subject to section 363(c)(2) of this title,  
2           maintain insurance customary and appropriate to  
3           the industry;

4           “(6)(A) timely file tax returns;

5           “(B) subject to section 363(c)(2) of this title,  
6           timely pay all administrative expense tax claims, ex-  
7           cept those being contested by appropriate proceed-  
8           ings being diligently prosecuted; and

9           “(C) subject to section 363(c)(2) of this title,  
10          establish 1 or more separate deposit accounts not  
11          later than 10 business days after the date of order  
12          for relief (or as soon thereafter as possible if all  
13          banks contacted decline the business) and deposit  
14          therein, not later than 1 business day after receipt  
15          thereof, all taxes payable for periods beginning after  
16          the date the case is commenced that are collected or  
17          withheld by the debtor for governmental units unless  
18          the court waives this requirement after notice and  
19          hearing, upon a finding of extraordinary and com-  
20          pelling circumstances; and

21          “(7) allow the United States trustee, or its des-  
22          ignated representative, to inspect the debtor’s busi-  
23          ness premises, books, and records at reasonable  
24          times, after reasonable prior written notice, unless  
25          notice is waived by the debtor.”.



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

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

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

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

7 “(e) In a small business case—

8 “(1) only the debtor may file a plan until after  
9 90 days after the date of the order for relief, unless  
10 shortened on request of a party in interest made  
11 during the 90-day period, or unless extended as pro-  
12 vided by this subsection, after notice and hearing the  
13 court, for cause, orders otherwise;

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

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

21 “(A) the debtor, after providing notice to  
22 parties in interest (including the United States  
23 trustee), demonstrates by a preponderance of  
24 the evidence that it is more likely than not that

1 the court will confirm a plan within a reason-  
2 able time;

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

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

7 **SEC. 408. PLAN CONFIRMATION DEADLINE.**

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

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

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

15 Section 105(d) of title 11, United States Code, is  
16 amended—

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

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

20 “(3) in a small business case, not extend the  
21 time periods specified in sections 1121(e) and  
22 1129(e) of this title except as provided in section  
23 1121(e)(3) of this title.”.

1 **SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.**

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

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

5 (1) in paragraph (3)—

6 (A) in subparagraph (G) by striking “and”  
7 at the end;

8 (B) by redesignating subparagraph (H) as  
9 subparagraph (I); and

10 (C) by inserting after subparagraph (G)  
11 the following:

12 “(H) in small business cases (as defined in  
13 section 101 of title 11), performing the addi-  
14 tional duties specified in title 11 pertaining to  
15 such cases;”;

16 (2) in paragraph (6) by striking “and” at the  
17 end;

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

20 (4) by inserting after paragraph (7) the follow-  
21 ing:

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

23 “(A) conduct an initial debtor interview as  
24 soon as practicable after the entry of order for  
25 relief but before the first meeting scheduled  
26 under section 341(a) of title 11 at which time

1 the United States trustee shall begin to inves-  
2 tigate the debtor's viability, inquire about the  
3 debtor's business plan, explain the debtor's obli-  
4 gations to file monthly operating reports and  
5 other required reports, attempt to develop an  
6 agreed scheduling order, and inform the debtor  
7 of other obligations;

8 “(B) when determined to be appropriate  
9 and advisable, visit the appropriate business  
10 premises of the debtor and ascertain the state  
11 of the debtor's books and records and verify  
12 that the debtor has filed its tax returns; and

13 “(C) review and monitor diligently the  
14 debtor's activities, to identify as promptly as  
15 possible whether the debtor will be unable to  
16 confirm a plan; and

17 “(9) in cases in which the United States trustee  
18 finds material grounds for any relief under section  
19 1112 of title 11, the United States trustee shall  
20 apply promptly to the court for relief.”.

21 **SEC. 411. 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. 412. 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. 413. 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  
9 includes—

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. 414. 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 Administrator of the Small Business  
20 Administration, in consultation with the Attorney General,  
21 the Director of the Administrative Office of United States  
22 Trustees, and the Director of the Administrative Office  
23 of the United States Courts, shall—

24 (1) conduct a study to determine—

1 (A) the internal and external factors that  
2 cause small businesses, especially sole propri-  
3 etorships, to become debtors in cases under title  
4 11 of the United States Code and that cause  
5 certain small businesses to successfully com-  
6 plete cases under chapter 11 of such title; and

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

11 (2) submit to the President pro tempore of the  
12 Senate and the Speaker of the House of Representa-  
13 tives a report summarizing that study.

14 **SEC. 415. PAYMENT OF INTEREST.**

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

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

21 (2) by amending subparagraph (B) to read as  
22 follows:

23 “(B) the debtor has commenced monthly  
24 payments (which payments may, in the debtor’s  
25 sole discretion, notwithstanding section

1           363(c)(2) of this title, be made from rents or  
2           other income generated before or after the com-  
3           mencement of the case by or from the property)  
4           to each creditor whose claim is secured by such  
5           real estate (other than a claim secured by a  
6           judgment lien or by an unmatured statutory  
7           lien), which payments are in an amount equal  
8           to interest at the then-applicable nondefault  
9           contract rate of interest on the value of the  
10          creditor’s interest in the real estate; or”.

11                           **TITLE V—MUNICIPAL**  
12                           **BANKRUPTCY PROVISIONS**

13   **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
14                           **TION.**

15           (a) **TECHNICAL AMENDMENT RELATING TO MUNICI-**  
16   **PALITIES.**—Section 921(d) of title 11, United States  
17   Code, is amended by inserting “notwithstanding section  
18   301(b)” before the period at the end.

19           (b) **CONFORMING AMENDMENT.**—Section 301 of title  
20   11, United States Code, is amended—

21                   (1) by inserting “(a)” before “A voluntary”;

22                   and

23                   (2) by amending the last sentence to read as  
24                   follows:

1 “(b) The commencement of a voluntary case under  
2 a chapter of this title constitutes an order for relief under  
3 such chapter.”.

4 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
5 **TER 9.**

6 Section 901 of title 11, United States Code, is  
7 amended—

8 (1) by inserting “555, 556,” after “553,”; and

9 (2) by inserting “559, 560,” after “557,”.

10 **TITLE VI—STREAMLINING THE**  
11 **BANKRUPTCY SYSTEM**

12 **SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING**  
13 **OF CREDITORS.**

14 Section 341(e) of title 11, United States Code, is  
15 amended by inserting after the first sentence the follow-  
16 ing: “Notwithstanding any local court rule, provision of  
17 a State constitution, any other Federal or State law that  
18 is not a bankruptcy law, or other requirement that rep-  
19 resentation at the meeting of creditors under subsection  
20 (a) be by an attorney, a creditor holding a consumer debt  
21 or any representative of the creditor (which may include  
22 an entity or an employee of an entity and may be a rep-  
23 resentative for more than one creditor) shall be permitted  
24 to appear at and participate in the meeting of creditors  
25 in a case under chapter 7 or 13, either alone or in conjunc-

1 tion with an attorney for the creditor. Nothing in this sub-  
2 section shall be construed to require any creditor to be  
3 represented by an attorney at any meeting of creditors.”.

4 **SEC. 602. AUDIT PROCEDURES.**

5 (a) AMENDMENTS.—Section 586 of title 28, United  
6 States Code, is amended—

7 (1) in subsection (a) by amending striking  
8 paragraph (6) to read as follows:

9 “(6) make such reports as the Attorney General  
10 directs, including the results of audits performed  
11 under subsection (f); and”;

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

13 “(f)(1)(A) The Attorney General shall establish pro-  
14 cedures to determine the accuracy, veracity, and complete-  
15 ness of petitions, schedules, and other information which  
16 the debtor is required to provide under sections 521 and  
17 1322 of title 11, and, if applicable, section 111 of title  
18 11, in individual cases filed under chapter 7 or 13 of such  
19 title. Such audits shall be in accordance with generally ac-  
20 cepted auditing standards and performed by independent  
21 certified public accountants or independent licensed public  
22 accountants.

23 “(B) Those procedures shall—

1           “(i) establish a method of selecting appropriate  
2 qualified persons to contract to perform those au-  
3 dits;

4           “(ii) establish a method of randomly selecting  
5 cases to be audited, except that not less than 1 out  
6 of every 250 cases in each Federal judicial district  
7 shall be selected for audit;

8           “(iii) require audits for schedules of income and  
9 expenses which reflect greater than average  
10 variances from the statistical norm of the district in  
11 which the schedules were filed; and

12           “(iv) establish procedures for providing, not less  
13 frequently than annually, public information con-  
14 cerning the aggregate results of such audits includ-  
15 ing the percentage of cases, by district, in which a  
16 material misstatement of income or expenditures is  
17 reported.

18           “(2) The United States trustee for each district is  
19 authorized to contract with auditors to perform audits in  
20 cases designated by the United States trustee according  
21 to the procedures established under paragraph (1).

22           “(3)(A) The report of each audit conducted under  
23 this subsection shall be filed with the court and transmit-  
24 ted to the United States trustee. Each report shall clearly  
25 and conspicuously specify any material misstatement of

1 income or expenditures or of assets identified by the per-  
2 son performing the audit. In any case where a material  
3 misstatement of income or expenditures or of assets has  
4 been reported, the clerk of the bankruptcy court shall give  
5 notice of the misstatement to the creditors in the case.

6 “(B) If a material misstatement of income or expend-  
7 itures or of assets is reported, the United States trustee  
8 shall—

9 “(i) report the material misstatement, if appro-  
10 priate, to the United States Attorney pursuant to  
11 section 3057 of title 18, United States Code; and

12 “(ii) if advisable, take appropriate action, in-  
13 cluding but not limited to commencing an adversary  
14 proceeding to revoke the debtor’s discharge pursuant  
15 to section 727(d) of title 11, United States Code.”.

16 (b) AMENDMENTS TO SECTION 521 OF TITLE 11,  
17 U.S.C.—Section 521(a) of title 11, United States Code,  
18 as amended by section 604, is amended in paragraphs (3)  
19 and (4) by adding “or an auditor appointed pursuant to  
20 section 586 of title 28, United States Code” after “serving  
21 in the case”.

22 (c) AMENDMENTS TO SECTION 727 OF TITLE 11,  
23 U.S.C.—Section 727(d) of title 11, United States Code,  
24 is amended—



1 (1) by deleting “or” at the end of paragraph  
2 (2);

3 (2) by substituting “; or” for the period at the  
4 end of paragraph (3); and

5 (3) by adding the following at the end the fol-  
6 lowing:

7 “(4) the debtor has failed to explain  
8 satisfactorily—

9 “(A) a material misstatement in an audit  
10 performed pursuant to section 586(f) of title  
11 28, United States Code; or

12 “(B) a failure to make available for inspec-  
13 tion all necessary accounts, papers, documents,  
14 financial records, files, and all other papers,  
15 things, or property belonging to the debtor that  
16 are requested for an audit conducted pursuant  
17 to section 586(f) of title 28, United States  
18 Code.”.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect 18 months after the date of  
21 enactment of this Act.

22 **SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7**  
23 **AND 13 CASES.**

24 (a) NOTICE.—Section 342 of title 11, United States  
25 Code, is amended—

1 (1) in subsection (c)—

2 (A) by striking “, but the failure of such  
3 notice to contain such information shall not in-  
4 validate the legal effect of such notice”; and

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

6 “If the credit agreement between the debtor and the credi-  
7 tor or the last communication before the filing of the peti-  
8 tion in a voluntary case from the creditor to a debtor who  
9 is an individual states an account number of the debtor  
10 which is the current account number of the debtor with  
11 respect to any debt held by the creditor against the debtor,  
12 the debtor shall include such account number in any notice  
13 to the creditor required to be given under this title. If the  
14 creditor has specified to the debtor an address at which  
15 the creditor wishes to receive correspondence regarding  
16 the debtor’s account, any notice to the creditor required  
17 to be given by the debtor under this title shall be given  
18 at such address. For the purposes of this section, ‘notice’  
19 shall include, but shall not be limited to, any correspond-  
20 ence from the debtor to the creditor after the commence-  
21 ment of the case, any statement of the debtor’s intention  
22 under section 521(a)(2) of this title, notice of the com-  
23 mencement of any proceeding in the case to which the  
24 creditor is a party, and any notice of the hearing under  
25 section 1324 of this title.”;

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

2           “(d) At any time, a creditor in a case of an individual  
3 debtor under chapter 7 or 13 may file with the court and  
4 serve on the debtor a notice of the address to be used to  
5 notify the creditor in that case. Five days after receipt  
6 of such notice, if the court or the debtor is required to  
7 give the creditor notice, such notice shall be given at that  
8 address.

9           “(e) An entity may file with the court a notice stating  
10 its address for notice in cases under chapters 7 and 13.  
11 After 30 days following the filing of such notice, any notice  
12 in any case filed under chapter 7 or 13 given by the court  
13 shall be to that address unless specific notice is given  
14 under subsection (d) with respect to a particular case.

15           “(f) Notice given to a creditor other than as provided  
16 in this section shall not be effective notice until it has been  
17 brought to the attention of the creditor. If the creditor  
18 has designated a person or department to be responsible  
19 for receiving notices concerning bankruptcy cases and has  
20 established reasonable procedures so that bankruptcy no-  
21 tices received by the creditor will be delivered to such de-  
22 partment or person, notice will not be brought to the at-  
23 tention of the creditor until received by such person or  
24 department. No sanction under section 362(h) of this title  
25 or any other sanction which a court may impose on ac-

1 count of violations of the stay under section 362(a) of this  
2 title or failure to comply with section 542 or 543 of this  
3 title may be imposed on any action of the creditor unless  
4 the action takes place after the creditor has received notice  
5 of the commencement of the case effective under this sec-  
6 tion.”.

7 (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
8 United States Code, as amended by sections 121, 604,  
9 122, 301, and 302, is amended—

10 (1) by inserting “(a)” before “The debtor  
11 shall—”;

12 (2) by striking paragraph (1) and inserting the  
13 following:

14 “(1) file—

15 “(A) a list of creditors; and

16 “(B) unless the court orders otherwise—

17 “(i) a schedule of assets and liabil-  
18 ities;

19 “(ii) a schedule of current income and  
20 current expenditures;

21 “(iii) a statement of the debtor’s fi-  
22 nancial affairs and, if applicable, a  
23 certificate—

24 “(I) of an attorney whose name  
25 is on the petition as the attorney for

1 the debtor or any bankruptcy petition  
2 preparer signing the petition pursuant  
3 to section 110(b)(1) of this title indi-  
4 cating that such attorney or bank-  
5 ruptcy petition preparer delivered to  
6 the debtor any notice required by sec-  
7 tion 342(b) of this title; or

8 “(II) if no attorney for the debt-  
9 or is indicated and no bankruptcy pe-  
10 tition preparer signed the petition, of  
11 the debtor that such notice was ob-  
12 tained and read by the debtor;

13 “(iv) copies of any Federal tax re-  
14 turns, including any schedules or attach-  
15 ments, filed by the debtor for the 3-year  
16 period preceding the order for relief;

17 “(v) copies of all payment advices or  
18 other evidence of payment, if any, received  
19 by the debtor from any employer of the  
20 debtor in the period 60 days prior to the  
21 filing of the petition;

22 “(vi) a statement of the amount of  
23 projected monthly net income, itemized to  
24 show how calculated; and

1           “(vii) a statement disclosing any rea-  
2           sonably anticipated increase in income or  
3           expenditures over the 12-month period fol-  
4           lowing the date of filing;” and

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

6           “(e)(1) At any time, a creditor, in the case of an indi-  
7           vidual under chapter 7 or 13, may file with the court no-  
8           tice that the creditor requests the petition, schedules, and  
9           a statement of affairs filed by the debtor in the case and  
10          the court shall make those documents available to the  
11          creditor who requests those documents.

12          “(2) At any time, a creditor in a case under chapter  
13          13 may file with the court notice that the creditor requests  
14          the plan filed by the debtor in the case, and the court  
15          shall make such plan available to the creditor who requests  
16          such plan at a reasonable cost and not later than 5 days  
17          after such request.

18          “(f) An individual debtor in a case under chapter 7  
19          or 13 shall file with the court—

20                 “(1) at the time filed with the taxing authority,  
21                 all tax returns, including any schedules or attach-  
22                 ments, with respect to the period from the com-  
23                 mencement of the case until such time as the case  
24                 is closed;

1           “(2) at the time filed with the taxing authority,  
2           all tax returns, including any schedules or attach-  
3           ments, that were not filed with the taxing authority  
4           when the schedules under subsection (a)(1) were  
5           filed with respect to the period that is 3 years before  
6           the order for relief;

7           “(3) any amendments to any of the tax returns,  
8           including schedules or attachments, described in  
9           paragraph (1) or (2); and

10           “(4) in a case under chapter 13, a statement  
11           subject to the penalties of perjury by the debtor of  
12           the debtor’s income and expenditures in the preced-  
13           ing tax year and monthly income, that shows how  
14           the amounts are calculated—

15           “(A) beginning on the date that is the  
16           later of 90 days after the close of the debtor’s  
17           tax year or 1 year after the order for relief, un-  
18           less a plan has been confirmed; and

19           “(B) thereafter, on or before the date that  
20           is 45 days before each anniversary of the con-  
21           firmation of the plan until the case is closed.

22           “(d)(1) A statement referred to in subsection (c)(4)  
23 shall disclose—

24           “(A) the amount and sources of income of the  
25           debtor;

1           “(B) the identity of any persons responsible  
2           with the debtor for the support of any dependents of  
3           the debtor; and

4           “(C) the identity of any persons who contrib-  
5           uted, and the amount contributed, to the household  
6           in which the debtor resides.

7           “(2) The tax returns, amendments, and statement of  
8           income and expenditures described in paragraph (1) shall  
9           be available to the United States trustee, any bankruptcy  
10          administrator, any trustee, and any party in interest for  
11          inspection and copying, subject to the requirements of  
12          subsection (e).

13          “(g)(1) Not later than 30 days after the date of en-  
14          actment of the Consumer Bankruptcy Reform Act of  
15          1999, the Director of the Administrative Office of the  
16          United States Courts shall establish procedures for safe-  
17          guarding the confidentiality of any tax information re-  
18          quired to be provided under this section.

19          “(2) The procedures under paragraph (1) shall in-  
20          clude restrictions on creditor access to tax information  
21          that is required to be provided under this section.

22          “(3) Not later than 1 year after the date of enact-  
23          ment of the Consumer Bankruptcy Reform Act of 1999,  
24          the Director of the Administrative Office of the United



1 States Courts shall prepare, and submit to Congress a re-  
2 port that—

3 “(A) assesses the effectiveness of the proce-  
4 dures under paragraph (1); and

5 “(B) if appropriate, includes proposed  
6 legislation—

7 “(i) to further protect the confidentiality of  
8 tax information; and

9 “(ii) to provide penalties for the improper  
10 use by any person of the tax information re-  
11 quired to be provided under this section.

12 “(h) If requested by the United States trustee or a  
13 trustee serving in the case, the debtor provide a document  
14 that establishes the identity of the debtor, including a  
15 driver’s license, passport, or other document that contains  
16 a photograph of the debtor and such other personal identi-  
17 fying information relating to the debtor that establishes  
18 the identity of the debtor.”.

19 **SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
20 **ULES OR PROVIDE REQUIRED INFORMATION.**

21 Section 521 of title 11, United States Code, is  
22 amended—

23 (1) by inserting “(a)” before “The debtor”; and

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

1       “(b)(1) Notwithstanding section 707(a) of this title,  
2 and subject to paragraph (2), if an individual debtor in  
3 a voluntary case under chapter 7 or 13 fails to file all  
4 of the information required under subsection (a)(1) within  
5 45 days after the filing of the petition commencing the  
6 case, the case shall be automatically dismissed effective  
7 on the 46th day after the filing of the petition.

8       “(2) With respect to a case described in paragraph  
9 (1), any party in interest may request the court to enter  
10 an order dismissing the case. The court shall, if so re-  
11 quested, enter an order of dismissal not later than 5 days  
12 after such request.

13       “(3) Upon request of the debtor made within 45 days  
14 after the filing of the petition commencing a case de-  
15 scribed in paragraph (1), the court may allow the debtor  
16 an additional period of not to exceed 45 days to file the  
17 information required under subsection (a)(1) if the court  
18 finds justification for extending the period for the filing.”.

19 **SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
20 **CONFIRMATION OF THE PLAN.**

21       (a) HEARING.—Section 1324 of title 11, United  
22 States Code, is amended—

23               (1) by striking “After” and inserting the follow-  
24       ing:

1 “(a) Except as provided in subsection (b) and after”;  
2 and

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

4 “(b) The hearing on confirmation of the plan may  
5 be held not earlier than 20 days, and not later than 45  
6 days, after the meeting of creditors under section 341(a)  
7 of this title.”.

8 (b) FILING OF PLAN.—Section 1321 of title 11,  
9 United States Code, is amended to read as follows:

10 **“§ 1321. Filing of plan**

11 “The debtor shall file a plan not later than 90 days  
12 after the order for relief under this chapter, except that  
13 the court may extend such period if the need for an exten-  
14 sion is attributable to circumstances for which the debtor  
15 should not justly be held accountable.”.

16 **SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
17 **IN CERTAIN CASES.**

18 Title 11, United States Code, is amended—

19 (1) by amending section 1322(d) to read as fol-  
20 lows:

21 “(d) If the current monthly total income of the debtor  
22 and in a joint case, the debtor and the debtor’s spouse  
23 combined, is not less than the highest national median  
24 family income reported for a family of equal or lesser size  
25 or, in the case of a household of 1 person, not less than

1 the national median household income for 1 earner, the  
2 plan may not provide for payments over a period that is  
3 longer than 5 years. If the current monthly total income  
4 of the debtor or in a joint case, the debtor and the debtor’s  
5 spouse combined, is less than the highest national median  
6 family income reported for a family of equal or lesser size,  
7 or in the case of a household of 1 person less than the  
8 national median household income for 1 earner, the plan  
9 may not provide for payments over a period that is longer  
10 than 3 years, unless the court, for cause, approves a longer  
11 period, but the court may not approve a period that is  
12 longer than 5 years.”; and

13 (2) in section 1329—

14 (A) by striking in subsection (c) “three  
15 years” and inserting “the applicable commit-  
16 ment period under section 1325(b)(1)(B)(ii)”;  
17 and

18 (B) by inserting at the end of subsection  
19 (c) the following:

20 “The duration period shall be 5 years if the current  
21 monthly total income of the debtor, and in a joint case,  
22 the debtor and the debtor’s spouse combined, is not less  
23 than the highest national median family income reported  
24 for a family of equal or lesser size or, in the case of a  
25 household of 1 person, not less than the national median

1 household income for 1 earner, as of the date of the modi-  
2 fication and shall be 3 years if the current monthly total  
3 income is less than the highest national median family in-  
4 come reported for a family of equal or lesser size or, in  
5 the case of a household of 1 person, less than the national  
6 median household income for 1 earner as of the date of  
7 the modification.”.

8 **SEC. 607. SENSE OF THE CONGRESS REGARDING EXPAN-**  
9 **SION OF RULE 9011 OF THE FEDERAL RULES**  
10 **OF BANKRUPTCY PROCEDURE.**

11 It is the sense of the Congress that rule 9011 of the  
12 Federal Rules of Bankruptcy Procedure (11 U.S.C. App)  
13 should be modified to include a requirement that all docu-  
14 ments (including schedules), signed and unsigned, submit-  
15 ted to the court or to a trustee by debtors who represent  
16 themselves and debtors who are represented by an attor-  
17 ney be submitted only after the debtor or the debtor’s at-  
18 torney has made reasonable inquiry to verify that the in-  
19 formation contained in such documents is well grounded  
20 in fact, and is warranted by existing law or a good-faith  
21 argument for the extension, modification, or reversal of  
22 existing law.

1 **SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN**  
2 **CHAPTER 11 BANKRUPTCY CASES.**

3 (a) AMENDMENTS.—Section 1930(a)(6) of title 28,  
4 United States Code, is amended—

5 (1) in the 1st sentence by striking “until the  
6 case is converted or dismissed, whichever occurs  
7 first”; and

8 (2) in the 2d sentence—

9 (A) by striking “The” and inserting “Until  
10 the plan is confirmed or the case is converted  
11 (whichever occurs first) the”; and

12 (B) by striking “less than \$300,000;” and  
13 inserting “less than \$300,000. Until the case is  
14 converted, dismissed, or closed (whichever oc-  
15 curs first and without regard to confirmation of  
16 the plan) the fee shall be”.

17 (b) DELAYED EFFECTIVE DATE.—The amendments  
18 made by subsection (a) shall take effect on October 1,  
19 1999.

20 **SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
21 **TENDED TO DEPENDENT STUDENTS.**

22 Not later than 1 year after the date of the enactment  
23 of this Act, the Comptroller General of the United States  
24 shall—

25 (1) conduct a study regarding the impact that  
26 the extension of credit to individuals who are—

1 (A) claimed as dependents for purposes of  
2 the Internal Revenue Code of 1986; and

3 (B) enrolled in post-secondary educational  
4 institutions,

5 has on the rate of cases filed under title 11 of the  
6 United States Code; and

7 (2) submit to the Speaker of the House of Rep-  
8 resentatives and the President pro tempore of the  
9 Senate a report summarizing such study.

10 **SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
11 **CASES.**

12 Section 362(e) of title 11, United States Code, is  
13 amended—

14 (1) by inserting “(1)” after “(e)”; and

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

16 “(2) Notwithstanding paragraph (1), in the case of  
17 an individual filing under chapter 7, 11, or 13, the stay  
18 under subsection (a) shall terminate on the date that is  
19 60 days after a request is made by a party in interest  
20 under subsection (d), unless—

21 “(A) a final decision is rendered by the court  
22 during the 60-day period beginning on the date of  
23 the request; or

24 “(B) that 60-day period is extended—

1           “(i) by agreement of all parties in interest;  
2           or  
3           “(ii) by the court for such specific period  
4           of time as the court finds is required by for  
5           good cause as described in findings made by the  
6           court.”.

7 **SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**  
8           **TER 13.**

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

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

13           (2) in subparagraph (B)—

14           (A) by striking “in the converted case,  
15           with allowed secured claims” and inserting  
16           “only in a case converted to chapter 11 or 12  
17           but not in a case converted to chapter 7, with  
18           allowed secured claims in cases under chapters  
19           11 and 12”; and

20           (B) by striking the period and inserting “;  
21           and”; and

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

23           “(C) with respect to cases converted from chap-  
24           ter 13—



1           “(i) the claim of any creditor holding secu-  
2           rity as of the date of the petition shall continue  
3           to be secured by that security unless the full  
4           amount of such claim determined under appli-  
5           cable nonbankruptcy law has been paid in full  
6           as of the date of conversion, notwithstanding  
7           any valuation or determination of the amount  
8           of an allowed secured claim made for the pur-  
9           poses of the chapter 13 proceeding; and

10           “(ii) unless a prebankruptcy default has  
11           been fully cured pursuant to the plan at the  
12           time of conversion, in any proceeding under this  
13           title or otherwise, the default shall have the ef-  
14           fect given under applicable nonbankruptcy  
15           law.”.

## 16   **TITLE VII—BANKRUPTCY DATA**

### 17   **SEC. 701. IMPROVED BANKRUPTCY STATISTICS.**

18           (a) AMENDMENT.—Chapter 6 of part I of title 28,  
19   United States Code, is amended by adding at the end the  
20   following:

#### 21   **“§ 159. Bankruptcy statistics**

22           “(a) The clerk of each district shall compile statistics  
23   regarding individual debtors with primarily consumer  
24   debts seeking relief under chapters 7, 11, and 13 of title  
25   11. Those statistics shall be in a form prescribed by the

1 Director of the Administrative Office of the United States  
2 Courts (referred to in this section as the ‘Office’).

3 “(b) The Director shall—

4 “(1) compile the statistics referred to in sub-  
5 section (a);

6 “(2) make the statistics available to the public;  
7 and

8 “(3) not later than October 31, 1999, and an-  
9 nually thereafter, prepare, and submit to Congress a  
10 report concerning the information collected under  
11 subsection (a) that contains an analysis of the infor-  
12 mation.

13 “(c) The compilation required under subsection (b)  
14 shall—

15 “(1) be itemized, by chapter, with respect to  
16 title 11;

17 “(2) be presented in the aggregate and for each  
18 district; and

19 “(3) include information concerning—

20 “(A) the total assets and total liabilities of  
21 the debtors described in subsection (a), and in  
22 each category of assets and liabilities, as re-  
23 ported in the schedules prescribed pursuant to  
24 section 2075 of this title and filed by those  
25 debtors;

1           “(B) the current total monthly income,  
2           projected monthly net income, and average in-  
3           come and average expenses of those debtors as  
4           reported on the schedules and statements that  
5           each such debtor files under sections 111, 521,  
6           and 1322 of title 11;

7           “(C) the aggregate amount of debt dis-  
8           charged in the reporting period, determined as  
9           the difference between the total amount of debt  
10          and obligations of a debtor reported on the  
11          schedules and the amount of such debt reported  
12          in categories which are predominantly non-  
13          dischargeable;

14          “(D) the average period of time between  
15          the filing of the petition and the closing of the  
16          case;

17          “(E) for the reporting period—

18                  “(i) the number of cases in which a  
19                  reaffirmation was filed; and

20                  “(ii)(I) the total number of reaffirma-  
21                  tions filed;

22                  “(II) of those cases in which a reaffir-  
23                  mation was filed, the number in which the  
24                  debtor was not represented by an attorney;  
25                  and

1           “(III) of those cases, the number of  
2 cases in which the reaffirmation was ap-  
3 proved by the court;

4           “(F) with respect to cases filed under  
5 chapter 13 of title 11, for the reporting  
6 period—

7           “(i)(I) the number of cases in which a  
8 final order was entered determining the  
9 value of property securing a claim in an  
10 amount less than the amount of the claim;  
11 and

12           “(II) the number of final orders deter-  
13 mining the value of property securing a  
14 claim issued;

15           “(ii) the number of cases dismissed  
16 for failure to make payments under the  
17 plan; and

18           “(iii) the number of cases in which  
19 the debtor filed another case within the 6  
20 years previous to the filing;

21           “(G) the number of cases in which credi-  
22 tors were fined for misconduct and any amount  
23 of punitive damages awarded by the court for  
24 creditor misconduct; and

1           “(H) the number of cases in which sanc-  
2           tions under rule 9011 of the Federal Rules of  
3           Bankruptcy Procedure were imposed against  
4           debtor’s counsel and damages awarded under  
5           such Rule.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7           at the beginning of chapter 6 of title 28, United States  
8           Code, is amended by adding at the end the following:

          “159. Bankruptcy statistics.”.

9           (c) EFFECTIVE DATE.—The amendments made by  
10          this section shall take effect 18 months after the date of  
11          enactment of this Act.

12   **SEC. 702. UNIFORM RULES FOR THE COLLECTION OF BANK-**  
13                                   **RUPTCY DATA.**

14          (a) AMENDMENT.—Title 28 of the United States  
15          Code is amended by inserting after section 589a the fol-  
16          lowing:

17   **“§ 589b. Bankruptcy data**

18          “(a) RULES.—The Attorney General shall, within a  
19          reasonable time after the effective date of this section,  
20          issue rules requiring uniform forms for (and from time  
21          to time thereafter to appropriately modify and approve)—

22                   “(1) final reports by trustees in cases under  
23                   chapters 7, 12, and 13 of title 11; and

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. 703. 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 VIII—BANKRUPTCY TAX**  
2                     **PROVISIONS**

3     **SEC. 801. TREATMENT OF CERTAIN LIENS.**

4             (a) TREATMENT OF CERTAIN LIENS.—Section 724  
5 of title 11, United States Code, is amended—

6                     (1) in subsection (b), in the matter preceding  
7 paragraph (1), by inserting “(other than to the ex-  
8 tent that there is a properly perfected unavoidable  
9 tax lien arising in connection with an ad valorem tax  
10 on real or personal property of the estate)” after  
11 “under this title”;

12                     (2) in subsection (b)(2), after “507(a)(1)”, in-  
13 sert “(except that such expenses, other than claims  
14 for wages, salaries, or commissions which arise after  
15 the filing of a petition, shall be limited to expenses  
16 incurred under chapter 7 of this title and shall not  
17 include expenses incurred under chapter 11 of this  
18 title)”;

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

20             “(e) Before subordinating a tax lien on real or per-  
21 sonal property of the estate, the trustee shall—

22                     “(1) exhaust the unencumbered assets of the  
23 estate; and

24                     “(2) in a manner consistent with section 506(c)  
25 of this title, recover from property securing an al-

1       lowed secured claim the reasonable, necessary costs  
2       and expenses of preserving or disposing of that prop-  
3       erty.

4       “(f) Notwithstanding the exclusion of ad valorem tax  
5       liens set forth in this section and subject to the require-  
6       ments of subsection (e)—

7               “(1) claims for wages, salaries, and commis-  
8       sions that are entitled to priority under section  
9       507(a)(3) of this title; or

10              “(2) claims for contributions to an employee  
11       benefit plan entitled to priority under section  
12       507(a)(4) of this title,

13       may be paid from property of the estate which secures  
14       a tax lien, or the proceeds of such property.”.

15       (b) DETERMINATION OF TAX LIABILITY.—Section  
16       505(a)(2) of title 11, United States Code, is amended—

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

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

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

22               “(C) the amount or legality of any amount aris-  
23       ing in connection with an ad valorem tax on real or  
24       personal property of the estate, if the applicable pe-  
25       riod for contesting or redetermining that amount

1 under any law (other than a bankruptcy law) has  
2 expired.”.

3 **SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.**

4 (a) EFFECTIVE NOTICE TO GOVERNMENTAL  
5 UNITS.—Section 342 of title 11, United States Code, is  
6 amended by adding at the end the following:

7 “(d) If a debtor lists a governmental unit as a credi-  
8 tor in a list or schedule, any notice required to be given  
9 by the debtor under this title, any rule, any applicable law,  
10 or any order of the court, shall identify the department,  
11 agency, or instrumentality through which the debtor is in-  
12 debted. The debtor shall identify (with information such  
13 as a taxpayer identification number, loan, account or con-  
14 tract number, or real estate parcel number, where applica-  
15 ble), and describe the underlying basis for the govern-  
16 mental unit’s claim. If the debtor’s liability to a govern-  
17 mental unit arises from a debt or obligation owed or in-  
18 curred by another individual, entity, or organization, or  
19 under a different name, the debtor shall identify such indi-  
20 vidual, entity, organization, or name.

21 “(e) The clerk shall keep and update quarterly, in  
22 the form and manner as the Director of the Administra-  
23 tive Office of the United States Courts prescribes, and  
24 make available to debtors, a register in which a govern-  
25 mental unit may designate a safe harbor mailing address

1 for service of notice in cases pending in the district. A  
2 governmental unit may file a statement with the clerk des-  
3 ignating a safe harbor address to which notices are to be  
4 sent, unless such governmental unit files a notice of  
5 change of address.”.

6 (b) ADOPTION OF RULES PROVIDING NOTICE.—The  
7 Advisory Committee on Bankruptcy Rules of the Judicial  
8 Conference shall, within a reasonable period of time after  
9 the date of the enactment of this Act, propose for adoption  
10 enhanced rules for providing notice to State, Federal, and  
11 local government units that have regulatory authority over  
12 the debtor or which may be creditors in the debtor’s case.  
13 Such rules shall be reasonably calculated to ensure that  
14 notice will reach the representatives of the governmental  
15 unit, or subdivision thereof, who will be the proper persons  
16 authorized to act upon the notice. At a minimum, the rules  
17 should require that the debtor—

18 (1) identify in the schedules and the notice, the  
19 subdivision, agency, or entity in respect of which  
20 such notice should be received;

21 (2) provide sufficient information (such as case  
22 captions, permit numbers, taxpayer identification  
23 numbers, or similar identifying information) to per-  
24 mit the governmental unit or subdivision thereof, en-  
25 titled to receive such notice, to identify the debtor or

1 the person or entity on behalf of which the debtor  
2 is providing notice where the debtor may be a suc-  
3 cessor in interest or may not be the same as the per-  
4 son or entity which incurred the debt or obligation;  
5 and

6 (3) identify, in appropriate schedules, served to-  
7 gether with the notice, the property in respect of  
8 which the claim or regulatory obligation may have  
9 arisen, if any, the nature of such claim or regulatory  
10 obligation and the purpose for which notice is being  
11 given.

12 (c) EFFECT OF FAILURE OF NOTICE.—Section 342  
13 of title 11, United States Code, as amended by subsection  
14 (a), is amended by adding at the end the following:

15 “(f) A notice that does not comply with subsections  
16 (d) and (e) shall not be effective unless the debtor dem-  
17 onstrates, by clear and convincing evidence, that timely  
18 notice was given in a manner reasonably calculated to sat-  
19 isfy the requirements of this section was given, and that—

20 “(1) either the notice was timely sent to the  
21 safe harbor address provided in the register main-  
22 tained by the clerk of the district in which the case  
23 was pending for such purposes; or

24 “(2) no safe harbor address was provided in  
25 such list for the governmental unit and that an offi-

1 cer of the governmental unit who is responsible for  
2 the matter or claim had actual knowledge of the case  
3 in sufficient time to act.”.

4 **SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF**  
5 **TAXES.**

6 Section 505(b) of title 11, United States Code, is  
7 amended by striking “Unless” at the beginning of the sec-  
8 ond sentence thereof and inserting “If the request is made  
9 substantially in the manner designated by the govern-  
10 mental unit and unless”.

11 **SEC. 804. RATE OF INTEREST ON TAX CLAIMS.**

12 Chapter 5 of title 11, United States Code, is amended  
13 by adding at the end the following:

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

15 “If any provision of this title requires the payment  
16 of interest on a tax claim or requires the payment of inter-  
17 est to enable a creditor to receive the present value of the  
18 allowed amount of a tax claim, the rate of interest shall  
19 be as follows:

20 “(1) In the case of ad valorem tax claims,  
21 whether secured or unsecured, other unsecured tax  
22 claims where interest is required to be paid under  
23 section 726(a)(5) of this title, secured tax claims,  
24 and administrative tax claims paid under section

1 503(b)(1) of this title, the rate shall be determined  
2 under applicable nonbankruptcy law.

3 “(2) In the case of all other tax claims, the  
4 minimum rate of interest shall be the Federal short-  
5 term rate rounded to the nearest full percent, deter-  
6 mined under section 1274(d) of the Internal Reve-  
7 nue Code of 1986, plus 3 percentage points.

8 “(A) In the case of claims for Federal in-  
9 come taxes, such rate shall be subject to any  
10 adjustment that may be required under section  
11 6621(d) of the Internal Revenue Code of 1986.

12 “(B) In the case of taxes paid under a con-  
13 firmed plan or reorganization, such rate shall  
14 be determined as of the calendar month in  
15 which the plan is confirmed.”.

16 **SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERI-**  
17 **ODS.**

18 Section 507(a)(9)(A) of title 11, United States Code,  
19 as so redesignated, is amended—

20 (1) in clause (i) by inserting after “petition”  
21 and before the semicolon “, plus any time, plus 6  
22 months, during which the stay of proceedings was in  
23 effect in a prior case under this title”; and

24 (2) amend clause (ii) to read as follows:



1           “(ii) assessed within 240 days before  
2           the date of the filing of the petition, exclu-  
3           sive of—

4                   “(I) any time plus 30 days dur-  
5                   ing which an offer in compromise with  
6                   respect of such tax, was pending or in  
7                   effect during such 240-day period;

8                   “(II) any time plus 30 days dur-  
9                   ing which an installment agreement  
10                  with respect of such tax was pending  
11                  or in effect during such 240-day pe-  
12                  riod, up to 1 year; and

13                  “(III) any time plus 6 months  
14                  during which a stay of proceedings  
15                  against collections was in effect in a  
16                  prior case under this title during such  
17                  240-day period.”.

18 **SEC. 806. PRIORITY PROPERTY TAXES INCURRED.**

19           Section 507(a)(8)(B) of title 11, United States Code,  
20 is amended by striking “assessed” and inserting “in-  
21 curred”.

22 **SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND**  
23 **OTHER TAXES.**

24           Section 1328(a)(2) of title 11, United States Code,  
25 is amended by inserting “(1),” after “paragraph”.

1 **SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

2 Section 1141(d) of title 11, United States Code, as  
3 amended by section 119A, is amended by adding at the  
4 end the following:

5 “(6) Notwithstanding the provisions of paragraph  
6 (1), the confirmation of a plan does not discharge a debtor  
7 which is a corporation from any debt for a tax or customs  
8 duty with respect to which the debtor made a fraudulent  
9 return or willfully attempted in any manner to evade or  
10 defeat such tax.”.

11 **SEC. 809. STAY OF TAX PROCEEDINGS.**

12 (a) SECTION 362 STAY LIMITED TO PREPETITION  
13 TAXES.—Section 362(a)(8) of title 11, United States  
14 Code, is amended by striking the period at the end and  
15 inserting “, in respect of a tax liability for a taxable period  
16 ending before the order for relief.”.

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

20 (1) in subparagraph (C) by striking “or” at the  
21 end;

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

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

25 “(E) the appeal of a decision by a court or  
26 administrative tribunal which determines a tax

1 liability of the debtor without regard to whether  
2 such determination was made prepetition or  
3 postpetition.”.

4 **SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**  
5 **CASES.**

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

8 (1) in subparagraph (B) by striking “and” at  
9 the end; and

10 (2) in subparagraph (C)—

11 (A) by striking “deferred cash payments,  
12 over a period not exceeding six years after the  
13 date of assessment of such claim,” and insert-  
14 ing “regular installment payments in cash, but  
15 in no case with a balloon provision, and no  
16 more than three months apart, beginning no  
17 later than the effective date of the plan and  
18 ending on the earlier of five years after the pe-  
19 tition date or the last date payments are to be  
20 made under the plan to unsecured creditors,”;

21 (B) by striking the period at the end and  
22 inserting “; and”; and

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

24 “(D) with respect to a secured claim which  
25 would be described in section 507(a)(8) of this

1 title but for its secured status, the holder of  
2 such claim will receive on account of such claim  
3 cash payments of not less than is required in  
4 subparagraph (C) and over a period no greater  
5 than is required in such subparagraph.”.

6 **SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
7 **ITED.**

8 Section 545(2) of title 11, United States Code, is  
9 amended by striking the semicolon at the end and insert-  
10 ing “, except where such purchaser is a purchaser de-  
11 scribed in section 6323 of the Internal Revenue Code of  
12 1986 or similar provision of State or local law;”.

13 **SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
14 **NESS.**

15 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
16 title 28, United States Code, is amended—

17 (1) by inserting “(a)” before “Any”; and

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

19 “(b) Such taxes shall be paid when due in the conduct  
20 of such business unless—

21 “(1) the tax is a property tax secured by a lien  
22 against property that is abandoned within a reason-  
23 able time after the lien attaches, by the trustee of  
24 a bankruptcy estate, pursuant to section 554 of title  
25 11; or

1           “(2) payment of the tax is excused under a spe-  
2           cific provision of title 11.

3           “(c) In a case pending under chapter 7 of title 11,  
4           payment of a tax may be deferred until final distribution  
5           is made under section 726 of title 11 if—

6           “(1) the tax was not incurred by a trustee duly  
7           appointed under chapter 7 of title 11; or

8           “(2) before the due date of the tax, the court  
9           has made a finding of probable insufficiency of  
10          funds of the estate to pay in full the administrative  
11          expenses allowed under section 503(b) of title 11  
12          that have the same priority in distribution under  
13          section 726(b) of title 11 as such tax.”.

14          (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
15          Section 503(b)(1)(B) of title 11, United States Code, is  
16          amended in clause (i) by inserting after “estate,” and be-  
17          fore “except” the following: “whether secured or unse-  
18          cured, including property taxes for which liability is in rem  
19          only, in personam or both,”.

20          (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE  
21          EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of  
22          title 11, United States Code, is amended by adding at the  
23          end the following:

24                 “(D) notwithstanding the requirements of sub-  
25                 section (a) of this section, a governmental unit shall

1 not be required to file a request for the payment of  
2 a claim described in subparagraph (B) or (C);”.

3 (d) PAYMENT OF TAXES AND FEES AS SECURED  
4 CLAIMS.—Section 506 of title 11, United States Code, is  
5 amended—

6 (1) in subsection (b) by inserting “or State  
7 statute” after “agreement”; and

8 (2) in subsection (c) by inserting “, including  
9 the payment of all ad valorem property taxes in re-  
10 spect of the property” before the period at the end.

11 **SEC. 813. TARDILY FILED PRIORITY TAX CLAIMS.**

12 Section 726(a)(1) of title 11, United States Code, is  
13 amended by striking “before the date on which the trustee  
14 commences distribution under this section” and inserting  
15 “on or before the earlier of 10 days after the mailing to  
16 creditors of the summary of the trustee’s final report or  
17 the date on which the trustee commences final distribution  
18 under this section”.

19 **SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AU-**  
20 **THORITIES.**

21 Section 523(a)(1)(B) of title 11, United States Code,  
22 is amended—

23 (1) by inserting “or equivalent report or no-  
24 tice,” after “a return,”;

25 (2) in clause (i)—

1 (A) by inserting “or given” after “filed”;

2 and

3 (B) by striking “or” at the end;

4 (3) in clause (ii)—

5 (A) by inserting “or given” after “filed”;

6 and

7 (B) by inserting “, report, or notice” after

8 “return”; and

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

10 “(iii) for purposes of this subsection,

11 a return—

12 “(I) must satisfy the require-

13 ments of applicable nonbankruptcy

14 law, and includes a return prepared

15 pursuant to section 6020(a) of the In-

16 ternal Revenue Code of 1986, or simi-

17 lar State or local law, or a written

18 stipulation to a judgment entered by a

19 nonbankruptcy tribunal, but does not

20 include a return made pursuant to

21 section 6020(b) of the Internal Reve-

22 nue Code of 1986, or similar State or

23 local law; and

1                   “(II) must have been filed in a  
2                   manner permitted by applicable non-  
3                   bankruptcy law; or”.

4 **SEC. 815. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
5 **PAID TAXES.**

6           Section 505(b) of title 11, United States Code, is  
7 amended in the second sentence by inserting “the estate,”  
8 after “misrepresentation,”.

9 **SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
10 **FIRM CHAPTER 13 PLANS.**

11           (a) FILING OF PREPETITION TAX RETURNS RE-  
12 QUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of  
13 title 11, United States Code, as amended by section 143,  
14 is amended—

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

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

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

20                   “(8) if the debtor has filed all Federal, State,  
21                   and local tax returns as required by section 1308 of  
22                   this title.”.

23           (b) ADDITIONAL TIME PERMITTED FOR FILING TAX  
24 RETURNS.—(1) Chapter 13 of title 11, United States



1 Code, as amended by section 137, is amended by adding  
2 at the end the following:

3 **“§ 1308. Filing of prepetition tax returns**

4 “(a) On or before the day prior to the day on which  
5 the first meeting of the creditors is convened under section  
6 341(a) of this title, the debtor shall have filed with appro-  
7 priate tax authorities all tax returns for all taxable periods  
8 ending in the 3-year period ending on the date of filing  
9 of the petition.

10 “(b) If the tax returns required by subsection (a)  
11 have not been filed by the date on which the first meeting  
12 of creditors is convened under section 341(a) of this title,  
13 the trustee may continue such meeting for a reasonable  
14 period of time, to allow the debtor additional time to file  
15 any unfiled returns, but such additional time shall be no  
16 more than—

17 “(1) for returns that are past due as of the  
18 date of the filing of the petition, 120 days from such  
19 date;

20 “(2) for returns which are not past due as of  
21 the date of the filing of the petition, the later of 120  
22 days from such date or the due date for such re-  
23 turns under the last automatic extension of time for  
24 filing such returns to which the debtor is entitled,

1 and for which request has been timely made, accord-  
2 ing to applicable nonbankruptcy law; and

3 “(3) upon notice and hearing, and order en-  
4 tered before the lapse of any deadline fixed accord-  
5 ing to this subsection, where the debtor dem-  
6 onstrates, by clear and convincing evidence, that the  
7 failure to file the returns as required is because of  
8 circumstances beyond the control of the debtor, the  
9 court may extend the deadlines set by the trustee as  
10 provided in this subsection for—

11 “(A) a period of no more than 30 days for  
12 returns described in paragraph (1) of this sub-  
13 section; and

14 “(B) for no more than the period of time  
15 ending on the applicable extended due date for  
16 the returns described in paragraph (2).

17 “(c) For purposes of this section only, a return in-  
18 cludes a return prepared pursuant to section 6020 (a) or  
19 (b) of the Internal Revenue Code of 1986 or similar State  
20 or local law, or a written stipulation to a judgment entered  
21 by a nonbankruptcy tribunal.”.

22 (2) The table of sections of chapter 13 of title 11,  
23 United States Code, is amended by inserting after the  
24 item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”.

1           (c) DISMISSAL OR CONVERSION ON FAILURE TO  
2 COMPLY.—Section 1307 of title 11, United States Code,  
3 is amended—

4           (1) by redesignating subsections (e) and (f) as  
5 subsections (f) and (g), respectively; and

6           (2) by inserting after subsection (d) the follow-  
7 ing:

8           “(e) Upon the failure of the debtor to file tax returns  
9 under section 1308 of this title, on request of a party in  
10 interest or the United States trustee and after notice and  
11 a hearing, the court shall dismiss a case or convert a case  
12 under this chapter to a case under chapter 7 of this title,  
13 whichever is in the best interests of creditors and the es-  
14 tate.”.

15           (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
16 title 11, United States Code, is amended by striking the  
17 period at the end and inserting “, and except that in a  
18 case under chapter 13 of this title, a claim of a govern-  
19 mental unit for a tax in respect of a return filed under  
20 section 1308 of this title shall be timely if it is filed on  
21 or before 60 days after such return or returns were filed  
22 as required.”.

23           (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
24 CONFIRMATION.—It is the sense of the Congress that the  
25 Advisory Committee on Bankruptcy Rules of the Judicial

1 Conference should, within a reasonable period of time  
2 after the date of the enactment of this Act, propose for  
3 adoption amended Federal Rules of Bankruptcy Proce-  
4 dure which provide that—

5           (1) notwithstanding the provisions of Rule  
6           3015(f), in cases under chapter 13 of title 11,  
7           United States Code, a governmental unit may object  
8           to the confirmation of a plan on or before 60 days  
9           after the debtor files all tax returns required under  
10          sections 1308 and 1325(a)(7) of title 11, United  
11          States Code; and

12          (2) in addition to the provisions of Rule 3007,  
13          in a case under chapter 13 of title 11, United States  
14          Code, no objection to a tax in respect of a return re-  
15          quired to be filed under such section 1308 shall be  
16          filed until such return has been filed as required.

17 **SEC. 817. STANDARDS FOR TAX DISCLOSURE.**

18          Section 1125(a) of title 11, United States Code, is  
19 amended in paragraph (1)—

20           (1) by inserting after “records,” the following:  
21           “including a full discussion of the potential material  
22           Federal, State, and local tax consequences of the  
23           plan to the debtor, any successor to the debtor, and  
24           a hypothetical investor domiciled in the State in  
25           which the debtor resides or has its principal place of

1 business typical of the holders of claims or interests  
2 in the case,”;

3 (2) by inserting “such” after “enable”; and

4 (3) by striking “reasonable” where it appears  
5 after “hypothetical” and by striking “typical of hold-  
6 ers of claims or interests” after “investor”.

7 **SEC. 818. SETOFF OF TAX REFUNDS.**

8 Section 362(b) of title 11, United States Code, as  
9 amended by sections 120, 134, 139, and 203, is  
10 amended—

11 (1) in paragraph (29) by striking “or”;

12 (2) in paragraph (29) by striking the period at  
13 the end and inserting “; or”; and

14 (3) by inserting after paragraph (29) the fol-  
15 lowing:

16 “(30) under subsection (a) of the setoff of an  
17 income tax refund, by a governmental unit, in re-  
18 spect of a taxable period which ended before the  
19 order for relief against an income tax liability for a  
20 taxable period which also ended before the order for  
21 relief, unless—

22 “(A) prior to such setoff, an action to de-  
23 termine the amount or legality of such tax li-  
24 ability under section 505(a) was commenced; or

1           “(B) where the setoff of an income tax re-  
 2           fund is not permitted because of a pending ac-  
 3           tion to determine the amount or legality of a  
 4           tax liability, the governmental unit may hold  
 5           the refund pending the resolution of the ac-  
 6           tion.”.

7           **TITLE IX—ANCILLARY AND**  
 8           **OTHER CROSS-BORDER CASES**

9           **SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
 10           **UNITED STATES CODE.**

11           (a) IN GENERAL.—Title 11, United States Code, is  
 12           amended by inserting after chapter 13 the following:

13           **“CHAPTER 15—ANCILLARY AND OTHER**  
 14           **CROSS-BORDER CASES**

“Sec.

“1501. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“1502. Definitions.

“1503. International obligations of the United States.

“1504. Commencement of ancillary case.

“1505. Authorization to act in a foreign country.

“1506. Public policy exception.

“1507. Additional assistance.

“1508. Interpretation.

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

“1509. Right of direct access.

“1510. Limited jurisdiction.

“1511. Commencement of case under section 301 or 303.

“1512. Participation of a foreign representative in a case under this title.

“1513. Access of foreign creditors to a case under this title.

“1514. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING  
 AND RELIEF

- “1515. Application for recognition of a foreign proceeding.
- “1516. Presumptions concerning recognition.
- “1517. Order recognizing a foreign proceeding.
- “1518. Subsequent information.
- “1519. Relief that may be granted upon petition for recognition of a foreign proceeding.
- “1520. Effects of recognition of a foreign main proceeding.
- “1521. Relief that may be granted upon recognition of a foreign proceeding.
- “1522. Protection of creditors and other interested persons.
- “1523. Actions to avoid acts detrimental to creditors.
- “1524. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND  
FOREIGN REPRESENTATIVES

- “1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
- “1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- “1527. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

- “1528. Commencement of a case under this title after recognition of a foreign main proceeding.
- “1529. Coordination of a case under this title and a foreign proceeding.
- “1530. Coordination of more than 1 foreign proceeding.
- “1531. Presumption of insolvency based on recognition of a foreign main proceeding.
- “1532. Rule of payment in concurrent proceedings.

**1 “§ 1501. Purpose and scope of application**

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

6                   “(1) cooperation between—

7                           “(A) United States courts, United States  
8 Trustees, trustees, examiners, debtors, and  
9 debtors in possession; and

10                           “(B) the courts and other competent au-  
11 thorities of foreign countries involved in cross-  
12 border insolvency cases;

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

3           “(3) fair and efficient administration of cross-  
4           border insolvencies that protects the interests of all  
5           creditors, and other interested entities, including the  
6           debtor;

7           “(4) protection and maximization of the value  
8           of the debtor’s assets; and

9           “(5) facilitation of the rescue of financially  
10          troubled businesses, thereby protecting investment  
11          and preserving employment.

12          “(b) This chapter applies where—

13                 “(1) assistance is sought in the United States  
14                 by a foreign court or a foreign representative in con-  
15                 nection with a foreign proceeding;

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

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

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

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



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

3           “(2) an individual, or to an individual and such  
4           individual’s spouse, who have debts within the limits  
5           specified in section 109(e) and who are citizens of  
6           the United States or aliens lawfully admitted for  
7           permanent residence in the United States; or

8           “(3) an entity subject to a proceeding under the  
9           Securities Investor Protection Act, a stockbroker  
10          subject to subchapter III of chapter 7 of this title,  
11          or a commodity broker subject to subchapter IV of  
12          chapter 7 of this title.

13          “SUBCHAPTER I—GENERAL PROVISIONS

14          “§ 1502. **Definitions**

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

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

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

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

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

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

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

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

20 **“§ 1503. International obligations of the United States**

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

1 **“§ 1504. Commencement of ancillary case**

2 “A case under this chapter is commenced by the filing  
3 of a petition for recognition of a foreign proceeding under  
4 section 1515.

5 **“§ 1505. Authorization to act in a foreign country**

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

11 **“§ 1506. Public policy exception**

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

16 **“§ 1507. Additional assistance**

17 “(a) Subject to the specific limitations stated else-  
18 where in this chapter the court, upon recognition of a for-  
19 eign proceeding, to provide additional assistance to a for-  
20 eign representative under this title or under other laws  
21 of the United States.

22 “(b) In determining whether to provide additional as-  
23 sistance under this title or under other laws of the United  
24 States, the court shall consider whether such additional  
25 assistance, consistent with the principles of comity, will  
26 reasonably assure—

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

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

6           “(3) prevention of preferential or fraudulent  
7 dispositions of property of the debtor;

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

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

14 **“§ 1508. Interpretation**

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

19 **“SUBCHAPTER II—ACCESS OF FOREIGN REP-**  
20 **RESENTATIVES AND CREDITORS TO THE**  
21 **COURT**

22 **“§ 1509. Right of direct access**

23           “(a) A foreign representative is entitled to commence  
24 a case under section 1504 by filing a petition for recogni-  
25 tion under section 1515, and upon recognition, to apply

1 directly to other Federal and State courts for appropriate  
2 relief in those courts.

3 “(b) Upon recognition, and subject to section 1510,  
4 a foreign representative has the capacity to sue and be  
5 sued, and shall be subject to the laws of the United States  
6 of general applicability.

7 “(c) Subject to section 1510 of this title, a foreign  
8 representative is subject to laws of general application.

9 “(d) Recognition under this chapter is prerequisite to  
10 the granting of comity or cooperation to a foreign rep-  
11 resentative in any State or Federal court in the United  
12 States. Any request for comity or cooperation by a foreign  
13 representative in any court shall be accompanied by a  
14 sworn statement setting forth whether recognition under  
15 section 1515 has been sought and the status of any such  
16 petition.

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

21 **“§ 1510. Limited jurisdiction**

22 “The sole fact that a foreign representative files a  
23 petition under section 1515 does not subject the foreign  
24 representative to the jurisdiction of any court in the  
25 United States for any other purpose.

1 **“§ 1511. Commencement of case under section 301 or**  
2 **303**

3 “(a) Upon recognition, a foreign representative may  
4 commence—

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

6 “(2) a voluntary case under section 301 or 302,  
7 if the foreign proceeding is a foreign main proceed-  
8 ing.

9 “(b) The petition commencing a case under sub-  
10 section (a) must be accompanied by a statement describ-  
11 ing the petition for recognition and its current status. The  
12 court where the petition for recognition has been filed  
13 must be advised of the foreign representative’s intent to  
14 commence a case under subsection (a) prior to such com-  
15 mencement.

16 **“§ 1512. Participation of a foreign representative in a**  
17 **case under this title**

18 “Upon recognition of a foreign proceeding, the for-  
19 eign representative in that proceeding is entitled to par-  
20 ticipate as a party in interest in a case regarding the debt-  
21 or under this title.

22 **“§ 1513. Access of foreign creditors to a case under**  
23 **this title**

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

1 “(b)(1) Subsection (a) does not change or codify  
2 present law as to the priority of claims under section 507  
3 or 726 of this title, except that the claim of a foreign cred-  
4 itor under those sections shall not be given a lower priority  
5 than that of general unsecured claims without priority  
6 solely because the holder of such claim is a foreign credi-  
7 tor.

8 “(2)(A) Subsection (a) and paragraph (1) do not  
9 change or codify present law as to the allowability of for-  
10 eign revenue claims or other foreign public law claims in  
11 a proceeding under this title.

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

16 **“§ 1514. Notification to foreign creditors concerning a**  
17 **case under this title**

18 “(a) Whenever in a case under this title notice is to  
19 be given to creditors generally or to any class or category  
20 of creditors, such notice shall also be given to the known  
21 creditors generally, or to creditors in the notified class or  
22 category, that do not have addresses in the United States.  
23 The court may order that appropriate steps be taken with  
24 a view to notifying any creditor whose address is not yet  
25 known.

1       “(b) Such notification to creditors with foreign ad-  
 2 dresses described in subsection (a) shall be given individ-  
 3 ually, unless the court considers that, under the cir-  
 4 cumstances, some other form of notification would be  
 5 more appropriate. No letters rogatory or other similar for-  
 6 mality is required.

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

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

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

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

16       “(d) Any rule of procedure or order of the court as  
 17 to notice or the filing of a claim shall provide such addi-  
 18 tional time to creditors with foreign addresses as is rea-  
 19 sonable under the circumstances.

20       “SUBCHAPTER III—RECOGNITION OF A  
 21 FOREIGN PROCEEDING AND RELIEF

22       “**§ 1515. Application for recognition of a foreign pro-**  
 23                               **ceeding**

24       “(a) A foreign representative applies to the court for  
 25 recognition of the foreign proceeding in which the foreign



1 representative has been appointed by filing a petition for  
2 recognition.

3 “(b) A petition for recognition shall be accompanied  
4 by—

5 “(1) a certified copy of the decision commene-  
6 ing the foreign proceeding and appointing the for-  
7 eign representative;

8 “(2) a certificate from the foreign court affirm-  
9 ing the existence of the foreign proceeding and of  
10 the appointment of the foreign representative; or

11 “(3) in the absence of evidence referred to in  
12 paragraphs (1) and (2), any other evidence accept-  
13 able to the court of the existence of the foreign pro-  
14 ceeding and of the appointment of the foreign rep-  
15 resentative.

16 “(c) A petition for recognition shall also be accom-  
17 panied by a statement identifying all foreign proceedings  
18 with respect to the debtor that are known to the foreign  
19 representative.

20 “(d) The documents referred to in paragraphs (1)  
21 and (2) of subsection (b) must be translated into English.  
22 The court may require a translation into English of addi-  
23 tional documents.

1 **“§ 1516. Presumptions concerning recognition**

2 “(a) If the decision or certificate referred to in section  
3 1515(b) indicates that the foreign proceeding is a foreign  
4 proceeding as defined in section 101 and that the person  
5 or body is a foreign representative as defined in section  
6 101, the court is entitled to so presume.

7 “(b) The court is entitled to presume that documents  
8 submitted in support of the petition for recognition are  
9 authentic, whether or not they have been legalized.

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

14 **“§ 1517. Order recognizing a foreign proceeding**

15 “(a) Subject to section 1506, after notice and a hear-  
16 ing an order recognizing a foreign proceeding shall be en-  
17 tered if—

18 “(1) the foreign proceeding is a foreign main  
19 proceeding or foreign nonmain proceeding within the  
20 meaning of section 1502;

21 “(2) the foreign representative applying for rec-  
22 ognition is a person or body as defined in section  
23 101; and

24 “(3) the petition meets the requirements of sec-  
25 tion 1515.

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

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

4           “(2) as a foreign nonmain proceeding if the  
5           debtor has an establishment within the meaning of  
6           section 1502 in the foreign country where the pro-  
7           ceeding is pending.

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

12          “(d) The provisions of this subchapter do not prevent  
13          modification or termination of recognition if it is shown  
14          that the grounds for granting it were fully or partially  
15          lacking or have ceased to exist, but in considering such  
16          action the court shall give due weight to possible prejudice  
17          to parties that have relied upon the granting of recogni-  
18          tion. The case under this chapter may be closed in the  
19          manner prescribed for a case under section 350.

20          **“§ 1518. Subsequent information**

21          “From the time of filing the petition for recognition  
22          of the foreign proceeding, the foreign representative shall  
23          file with the court promptly a notice of change of status  
24          concerning—

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

4           “(2) any other foreign proceeding regarding the  
5 debtor that becomes known to the foreign represent-  
6 ative.

7 **“§ 1519. Relief that may be granted upon petition for**  
8 **recognition of a foreign proceeding**

9           “(a) From the time of filing a petition for recognition  
10 until the petition is decided upon, the court may, at the  
11 request of the foreign representative, where relief is ur-  
12 gently needed to protect the assets of the debtor or the  
13 interests of the creditors, grant relief of a provisional na-  
14 ture, including—

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

17           “(2) entrusting the administration or realiza-  
18 tion of all or part of the debtor’s assets located in  
19 the United States to the foreign representative or  
20 another person authorized by the court, including an  
21 examiner, in order to protect and preserve the value  
22 of assets that, by their nature or because of other  
23 circumstances, are perishable, susceptible to devalu-  
24 ation or otherwise in jeopardy; and

1           “(3) any relief referred to in paragraph (3),  
2           (4), or (7) of section 1521(a).

3           “(b) Unless extended under section 1521(a)(6), the  
4 relief granted under this section terminates when the peti-  
5 tion for recognition is decided upon.

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

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

12           “(e) The standards, procedures, and limitations ap-  
13 plicable to an injunction shall apply to relief under this  
14 section.

15 **“§ 1520. Effects of recognition of a foreign main pro-**  
16 **ceeding**

17           “(a) Upon recognition of a foreign proceeding that  
18 is a foreign main proceeding—

19           “(1) section 362 applies with respect to the  
20 debtor and that property of the debtor that is within  
21 the territorial jurisdiction of the United States;

22           “(2) a transfer, an encumbrance, or any other  
23 disposition of an interest of the debtor in property  
24 within the territorial jurisdiction of the United  
25 States is restrained as and to the extent that is pro-

1 vided for property of an estate under sections 363,  
2 549, and 552; and

3 “(3) unless the court orders otherwise, the for-  
4 eign representative may operate the debtor’s busi-  
5 ness and may exercise the powers of a trustee under  
6 section 549, subject to sections 363 and 552.

7 “(b) The scope, and the modification or termination,  
8 of the stay and restraints referred to in subsection (a) are  
9 subject to the exceptions and limitations provided in sub-  
10 sections (b), (c), and (d) of section 362, subsections (b)  
11 and (c) of section 363, and sections 552, 555 through 557,  
12 559, and 560.

13 “(c) Subsection (a) does not affect the right to com-  
14 mence individual actions or proceedings in a foreign coun-  
15 try to the extent necessary to preserve a claim against the  
16 debtor.

17 “(d) Subsection (a) does not affect the right of a for-  
18 eign representative or an entity to file a petition commenc-  
19 ing a case under this title or the right of any party to  
20 file claims or take other proper actions in such a case.

21 **“§ 1521. Relief that may be granted upon recognition**  
22 **of a foreign proceeding**

23 “(a) Upon recognition of a foreign proceeding, wheth-  
24 er main or nonmain, where necessary to effectuate the  
25 purpose of this chapter and to protect the assets of the

1 debtor or the interests of the creditors, the court may, at  
2 the request of the foreign representative, grant any appro-  
3 priate relief, including—

4           “(1) staying the commencement or continuation  
5 of individual actions or individual proceedings con-  
6 cerning the debtor’s assets, rights, obligations or li-  
7 abilities to the extent they have not been stayed  
8 under section 1520(a);

9           “(2) staying execution against the debtor’s as-  
10 sets to the extent it has not been stayed under sec-  
11 tion 1520(a);

12           “(3) suspending the right to transfer, encumber  
13 or otherwise dispose of any assets of the debtor to  
14 the extent this right has not been suspended under  
15 section 1520(a);

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

20           “(5) entrusting the administration or realiza-  
21 tion of all or part of the debtor’s assets within the  
22 territorial jurisdiction of the United States to the  
23 foreign representative or another person, including  
24 an examiner, authorized by the court;

1           “(6) extending relief granted under section  
2           1519(a); and

3           “(7) granting any additional relief that may be  
4           available to a trustee, except for relief available  
5           under sections 522, 544, 545, 547, 548, 550, and  
6           724(a).

7           “(b) Upon recognition of a foreign proceeding, wheth-  
8           er main or nonmain, the court may, at the request of the  
9           foreign representative, entrust the distribution of all or  
10          part of the debtor’s assets located in the United States  
11          to the foreign representative or another person, including  
12          an examiner, authorized by the court, provided that the  
13          court is satisfied that the interests of creditors in the  
14          United States are sufficiently protected.

15          “(c) In granting relief under this section to a rep-  
16          resentative of a foreign nonmain proceeding, the court  
17          must be satisfied that the relief relates to assets that,  
18          under the law of the United States, should be adminis-  
19          tered in the foreign nonmain proceeding or concerns infor-  
20          mation required in that proceeding.

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



1 “(e) The standards, procedures, and limitations ap-  
2 plicable to an injunction shall apply to relief under para-  
3 graphs (1), (2), (3), and (6) of subsection (a).

4 **“§ 1522. Protection of creditors and other interested**  
5 **persons**

6 “(a) The court may grant relief under section 1519  
7 or 1521, or may modify or terminate relief under sub-  
8 section (c), only if the interests of the creditors and other  
9 interested entities, including the debtor, are sufficiently  
10 protected.

11 “(b) The court may subject relief granted under sec-  
12 tion 1519 or 1521, or the operation of the debtor’s busi-  
13 ness under section 1520(a)(2) of this title, to conditions  
14 it considers appropriate, including the giving of security  
15 or the filing of a bond.

16 “(c) The court may, at the request of the foreign rep-  
17 resentative or an entity affected by relief granted under  
18 section 1519 or 1521, or at its own motion, modify or  
19 terminate such relief.

20 “(d) Section 1104(d) shall apply to the appointment  
21 of an examiner under this chapter. Any examiner shall  
22 comply with the qualification requirements imposed on a  
23 trustee by section 322.

1 **“§ 1523. Actions to avoid acts detrimental to creditors**

2       “(a) Upon recognition of a foreign proceeding, the  
3 foreign representative has standing in a case concerning  
4 the debtor pending under another chapter of this title to  
5 initiate actions under sections 522, 544, 545, 547, 548,  
6 550, and 724(a).

7       “(b) When the foreign proceeding is a foreign  
8 nonmain proceeding, the court must be satisfied that an  
9 action under subsection (a) relates to assets that, under  
10 United States law, should be administered in the foreign  
11 nonmain proceeding.

12 **“§ 1524. Intervention by a foreign representative**

13       “Upon recognition of a foreign proceeding, the for-  
14 eign representative may intervene in any proceedings in  
15 a State or Federal court in the United States in which  
16 the debtor is a party.

17 **“SUBCHAPTER IV—COOPERATION WITH FOR-**  
18 **EIGN COURTS AND FOREIGN REPRESENTA-**  
19 **TIVES**

20 **“§ 1525. Cooperation and direct communication be-**  
21 **tween the court and foreign courts or for-**  
22 **eign representatives**

23       “(a) Consistent with section 1501, the court shall co-  
24 operate to the maximum extent possible with foreign  
25 courts or foreign representatives, either directly or  
26 through the trustee.

1       “(b) The court is entitled to communicate directly  
2 with, or to request information or assistance directly from,  
3 foreign courts or foreign representatives, subject to the  
4 rights of parties in interest to notice and participation.

5       **“§ 1526. Cooperation and direct communication be-**  
6                   **tween the trustee and foreign courts or**  
7                   **foreign representatives**

8       “(a) Consistent with section 1501, the trustee or  
9 other person, including an examiner, authorized by the  
10 court, shall, subject to the supervision of the court, cooper-  
11 ate to the maximum extent possible with foreign courts  
12 or foreign representatives.

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

17       **“§ 1527. Forms of cooperation**

18       “Cooperation referred to in sections 1525 and 1526  
19 may be implemented by any appropriate means,  
20 including—

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

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

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

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

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

7   “SUBCHAPTER V—CONCURRENT PROCEEDINGS

8   “§ 1528. **Commencement of a case under this title**

9                   **after recognition of a foreign main pro-**  
10                   **ceeding**

11       “After recognition of a foreign main proceeding, a  
12 case under another chapter of this title may be commenced  
13 only if the debtor has assets in the United States. The  
14 effects of such case shall be restricted to the assets of the  
15 debtor that are within the territorial jurisdiction of the  
16 United States and, to the extent necessary to implement  
17 cooperation and coordination under sections 1525, 1526,  
18 and 1527, to other assets of the debtor that are within  
19 the jurisdiction of the court under sections 541(a) of this  
20 title, and 1334(e) of title 28, to the extent that such other  
21 assets are not subject to the jurisdiction and control of  
22 a foreign proceeding that has been recognized under this  
23 chapter.

1 **“§ 1529. Coordination of a case under this title and a**  
2 **foreign proceeding**

3 “Where a foreign proceeding and a case under an-  
4 other chapter of this title are taking place concurrently  
5 regarding the same debtor, the court shall seek coopera-  
6 tion and coordination under sections 1525, 1526, and  
7 1527, and the following shall apply:

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

11 “(A) any relief granted under sections  
12 1519 or 1521 must be consistent with the relief  
13 granted in the case in the United States; and

14 “(B) even if the foreign proceeding is rec-  
15 ognized as a foreign main proceeding, section  
16 1520 does not apply.

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

21 “(A) any relief in effect under sections  
22 1519 or 1521 shall be reviewed by the court  
23 and shall be modified or terminated if inconsis-  
24 tent with the case in the United States; and

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

1           ferred to in section 1520(a) shall be modified or  
2           terminated if inconsistent with the relief grant-  
3           ed in the case in the United States.

4           “(3) In granting, extending, or modifying relief  
5           granted to a representative of a foreign nonmain  
6           proceeding, the court must be satisfied that the re-  
7           lief relates to assets that, under the law of the  
8           United States, should be administered in the foreign  
9           nonmain proceeding or concerns information re-  
10          quired in that proceeding.

11          “(4) In achieving cooperation and coordination  
12          under sections 1528 and 1529, the court may grant  
13          any of the relief authorized under section 305.

14   **“§ 1530. Coordination of more than 1 foreign proceed-**  
15                                   **ing**

16          “In matters referred to in section 1501, with respect  
17          to more than 1 foreign proceeding regarding the debtor,  
18          the court shall seek cooperation and coordination under  
19          sections 1525, 1526, and 1527, and the following shall  
20          apply:

21               “(1) Any relief granted under section 1519 or  
22               1521 to a representative of a foreign nonmain pro-  
23               ceeding after recognition of a foreign main proceed-  
24               ing must be consistent with the foreign main pro-  
25               ceeding.

1           “(2) If a foreign main proceeding is recognized  
2           after recognition, or after the filing of a petition for  
3           recognition, of a foreign nonmain proceeding, any  
4           relief in effect under section 1519 or 1521 shall be  
5           reviewed by the court and shall be modified or termi-  
6           nated if inconsistent with the foreign main proceed-  
7           ing.

8           “(3) If, after recognition of a foreign nonmain  
9           proceeding, another foreign nonmain proceeding is  
10          recognized, the court shall grant, modify, or termi-  
11          nate relief for the purpose of facilitating coordina-  
12          tion of the proceedings.

13   **“§ 1531. Presumption of insolvency based on recogni-**  
14                           **tion of a foreign main proceeding**

15          “‘In the absence of evidence to the contrary, recogni-  
16          tion of a foreign main proceeding is for the purpose of  
17          commencing a proceeding under section 303, proof that  
18          the debtor is generally not paying its debts as such debts  
19          become due.

20   **“§ 1532. Rule of payment in concurrent proceedings**

21          “‘Without prejudice to secured claims or rights in  
22          rem, a creditor who has received payment with respect to  
23          its claim in a foreign proceeding pursuant to a law relating  
24          to insolvency may not receive a payment for the same  
25          claim in a case under any other chapter of this title re-

1 guarding the debtor, so long as the payment to other credi-  
 2 tors of the same class is proportionately less than the pay-  
 3 ment the creditor has already received.”.

4 (b) CLERICAL AMENDMENT.—The table of chapters  
 5 for title 11, United States Code, is amended by inserting  
 6 after the item relating to chapter 13 the following:

“15. **Ancillary and Other Cross-Border Cases** ..... **1501**”.

7 **SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11,**  
 8 **UNITED STATES CODE.**

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

11 (1) in subsection (a), by inserting before the pe-  
 12 riod the following: “, and this chapter, sections 307,  
 13 304, 555 through 557, 559, and 560 apply in a case  
 14 under chapter 15”; and

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

16 “(j) Chapter 15 applies only in a case under such  
 17 chapter, except that—

18 “(1) sections 1513 and 1514 apply in all cases  
 19 under this title; and

20 “(2) section 1505 applies to trustees and to any  
 21 other entity (including an examiner) authorized by  
 22 the court under chapters 7, 11, and 12, to debtors  
 23 in possession under chapters 11 and 12, and to  
 24 debtors under chapter 9 who are authorized to act  
 25 under section 1505.”.



1 (b) DEFINITIONS.—Paragraphs (23) and (24) of title  
2 11, United States Code, are amended to read as follows:

3 “(23) ‘foreign proceeding’ means a collective ju-  
4 dicial or administrative proceeding in a foreign coun-  
5 try, including an interim proceeding, pursuant to a  
6 law relating to insolvency in which proceeding the  
7 assets and affairs of the debtor are subject to con-  
8 trol or supervision by a foreign court, for the pur-  
9 pose of reorganization or liquidation;

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

16 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
17 CODE.—

18 (1) PROCEDURES.—Section 157(b)(2) of title  
19 28, United States Code, is amended—

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

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

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

1           “(P) recognition of foreign proceedings and  
2 other matters under chapter 15 of title 11.”.

3           (2) BANKRUPTCY CASES AND PROCEEDINGS.—  
4 Section 1334(c)(1) of title 28, United States Code,  
5 is amended by striking “Nothing in” and inserting  
6 “Except with respect to a case under chapter 15 of  
7 title 11, nothing in”.

8           (3) DUTIES OF TRUSTEES.—Section 586(a)(3)  
9 of title 28, United States Code, is amended by in-  
10 sserting “15,” after “chapter”.

## 11 **TITLE X—FINANCIAL CONTRACT** 12 **PROVISIONS**

### 13 **SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CON-** 14 **SERVATORS OR RECEIVERS OF INSURED DE-** 15 **POSITORY INSTITUTIONS.**

16           (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
17 TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-  
18 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by  
19 inserting “, resolution or order” after “any similar agree-  
20 ment that the Corporation determines by regulation”.

21           (b) DEFINITION OF SECURITIES CONTRACT.—Sec-  
22 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act  
23 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-  
24 lows:

1           “(ii) SECURITIES CONTRACT.—The  
2 term ‘securities contract’—

3           “(I) means a contract for the  
4 purchase, sale, or loan of a security, a  
5 certificate of deposit, a mortgage loan,  
6 or any interest in a mortgage loan, a  
7 group or index of securities, certifi-  
8 cates of deposit, or mortgage loans or  
9 interests therein (including any inter-  
10 est therein or based on the value  
11 thereof) or any option on any of the  
12 foregoing, including any option to  
13 purchase or sell any such security,  
14 certificate of deposit, loan, interest,  
15 group or index, or option;

16           “(II) does not include any pur-  
17 chase, sale, or repurchase obligation  
18 under a participation in a commercial  
19 mortgage loan unless the Corporation  
20 determines by regulation, resolution,  
21 or order to include any such agree-  
22 ment within the meaning of such  
23 term;

1           “(III) means any option entered  
2 into on a national securities exchange  
3 relating to foreign currencies;

4           “(IV) means the guarantee by or  
5 to any securities clearing agency of  
6 any settlement of cash, securities, cer-  
7 tificates of deposit, mortgage loans or  
8 interests therein, group or index of se-  
9 curities, certificates of deposit, or  
10 mortgage loans or interests therein  
11 (including any interest therein or  
12 based on the value thereof) or option  
13 on any of the foregoing, including any  
14 option to purchase or sell any such se-  
15 curity, certificate of deposit, loan, in-  
16 terest, group or index or option;

17           “(V) means any margin loan;

18           “(VI) means any other agree-  
19 ment or transaction that is similar to  
20 any agreement or transaction referred  
21 to in this clause;

22           “(VII) means any combination of  
23 the agreements or transactions re-  
24 ferred to in this clause;

1 “(VIII) means any option to  
2 enter into any agreement or trans-  
3 action referred to in this clause;

4 “(IX) means a master agreement  
5 that provides for an agreement or  
6 transaction referred to in subclause  
7 (I), (III), (IV), (V), (VI), (VII), or  
8 (VIII), together with all supplements  
9 to any such master agreement, with-  
10 out regard to whether the master  
11 agreement provides for an agreement  
12 or transaction that is not a securities  
13 contract under this clause, except that  
14 the master agreement shall be consid-  
15 ered to be a securities contract under  
16 this clause only with respect to each  
17 agreement or transaction under the  
18 master agreement that is referred to  
19 in subclause (I), (III), (IV), (V), (VI),  
20 (VII), or (VIII); and

21 “(X) means any security agree-  
22 ment or arrangement or other credit  
23 enhancement related to any agree-  
24 ment or transaction referred to in this  
25 clause.”.

1           (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
2 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
3 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
4 lows:

5                           “(iii) COMMODITY CONTRACT.—The  
6 term ‘commodity contract’ means—

7                                   “(I) with respect to a futures  
8 commission merchant, a contract for  
9 the purchase or sale of a commodity  
10 for future delivery on, or subject to  
11 the rules of, a contract market or  
12 board of trade;

13                                   “(II) with respect to a foreign fu-  
14 tures commission merchant, a foreign  
15 future;

16                                   “(III) with respect to a leverage  
17 transaction merchant, a leverage  
18 transaction;

19                                   “(IV) with respect to a clearing  
20 organization, a contract for the pur-  
21 chase or sale of a commodity for fu-  
22 ture delivery on, or subject to the  
23 rules of, a contract market or board  
24 of trade that is cleared by such clear-  
25 ing organization, or commodity option

1 traded on, or subject to the rules of,  
2 a contract market or board of trade  
3 that is cleared by such clearing orga-  
4 nization;

5 “(V) with respect to a commodity  
6 options dealer, a commodity option;

7 “(VI) any other agreement or  
8 transaction that is similar to any  
9 agreement or transaction referred to  
10 in this clause;

11 “(VII) any combination of the  
12 agreements or transactions referred to  
13 in this clause;

14 “(VIII) any option to enter into  
15 any agreement or transaction referred  
16 to in this clause;

17 “(IX) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclause (I),  
20 (II), (III), (IV), (V), (VI), (VII), or  
21 (VIII), together with all supplements  
22 to any such master agreement, with-  
23 out regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a commod-

1           ity contract under this clause, except  
2           that the master agreement shall be  
3           considered to be a commodity contract  
4           under this clause only with respect to  
5           each agreement or transaction under  
6           the master agreement that is referred  
7           to in subclause (I), (II), (III), (IV),  
8           (V), (VI), (VII), or (VIII); or

9                   “(X) a security agreement or ar-  
10           rangement or other credit enhance-  
11           ment related to any agreement or  
12           transaction referred to in this  
13           clause.”.

14           (d) DEFINITION OF FORWARD CONTRACT.—Section  
15   11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
16   U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

17                   “(iv) FORWARD CONTRACT.—The  
18           term ‘forward contract’ means—

19                   “(I) a contract (other than a  
20           commodity contract) for the purchase,  
21           sale, or transfer of a commodity or  
22           any similar good, article, service,  
23           right, or interest which is presently or  
24           in the future becomes the subject of  
25           dealing in the forward contract trade,



1 or product or byproduct thereof, with  
2 a maturity date more than 2 days  
3 after the date the contract is entered  
4 into, including a repurchase agree-  
5 ment, reverse repurchase agreement,  
6 consignment, lease, swap, hedge  
7 transaction, deposit, loan, option, allo-  
8 cated transaction, unallocated trans-  
9 action, or any other similar agree-  
10 ment;

11 “(II) any combination of agree-  
12 ments or transactions referred to in  
13 subclauses (I) and (III);

14 “(III) any option to enter into  
15 any agreement or transaction referred  
16 to in subclause (I) or (II);

17 “(IV) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclauses (I),  
20 (II), or (III), together with all supple-  
21 ments to any such master agreement,  
22 without regard to whether the master  
23 agreement provides for an agreement  
24 or transaction that is not a forward  
25 contract under this clause, except that

1 the master agreement shall be consid-  
2 ered to be a forward contract under  
3 this clause only with respect to each  
4 agreement or transaction under the  
5 master agreement that is referred to  
6 in subclause (I), (II), or (III); or

7 “(V) a security agreement or ar-  
8 rangement or other credit enhance-  
9 ment related to any agreement or  
10 transaction referred to in subclause  
11 (I), (II), (III), or (IV).”.

12 (e) DEFINITION OF REPURCHASE AGREEMENT.—  
13 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance  
14 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as  
15 follows:

16 “(v) REPURCHASE AGREEMENT.—The  
17 terms ‘repurchase agreement’ and ‘reverse  
18 repurchase agreement’—

19 “(I) mean an agreement, includ-  
20 ing related terms, which provides for  
21 the transfer of 1 or more certificates  
22 of deposit, mortgage-related securities  
23 (as such term is defined in the Securi-  
24 ties Exchange Act of 1934), mortgage  
25 loans, interests in mortgage-related

1 securities or mortgage loans, eligible  
2 bankers' acceptances, qualified foreign  
3 government securities or securities  
4 that are direct obligations of, or that  
5 are fully guaranteed by, the United  
6 States or any agency of the United  
7 States against the transfer of funds  
8 by the transferee of such certificates  
9 of deposit, eligible bankers' accept-  
10 ances, securities, loans, or interests  
11 with a simultaneous agreement by  
12 such transferee to transfer to the  
13 transferor thereof certificates of de-  
14 posit, eligible bankers' acceptances,  
15 securities, loans, or interests as de-  
16 scribed above, at a date certain not  
17 later than 1 year after such transfers  
18 or on demand, against the transfer of  
19 funds, or any other similar agreement;

20 “(II) does not include any repur-  
21 chase obligation under a participation  
22 in a commercial mortgage loan unless  
23 the Corporation determines by regula-  
24 tion, resolution, or order to include

1 any such participation within the  
2 meaning of such term;

3 “(III) means any combination of  
4 agreements or transactions referred to  
5 in subclauses (I) and (IV);

6 “(IV) means any option to enter  
7 into any agreement or transaction re-  
8 ferred to in subclause (I) or (III);

9 “(V) means a master agreement  
10 that provides for an agreement or  
11 transaction referred to in subclause  
12 (I), (III), or (IV), together with all  
13 supplements to any such master  
14 agreement, without regard to whether  
15 the master agreement provides for an  
16 agreement or transaction that is not a  
17 repurchase agreement under this  
18 clause, except that the master agree-  
19 ment shall be considered to be a re-  
20 purchase agreement under this sub-  
21 clause only with respect to each agree-  
22 ment or transaction under the master  
23 agreement that is referred to in sub-  
24 clause (I), (III), or (IV); and

1                   “(VI) means a security agree-  
2                   ment or arrangement or other credit  
3                   enhancement related to any agree-  
4                   ment or transaction referred to in  
5                   subclause (I), (III), (IV), or (V).

6                   For purposes of this clause, the term  
7                   ‘qualified foreign government security’  
8                   means a security that is a direct obligation  
9                   of, or that is fully guaranteed by, the cen-  
10                  tral government of a member of the Orga-  
11                  nization for Economic Cooperation and  
12                  Development (as determined by regulation  
13                  or order adopted by the appropriate Fed-  
14                  eral banking authority).”.

15                  (f) DEFINITION OF SWAP AGREEMENT.—The Fed-  
16                  eral Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi))  
17                  is amended to read as follows:

18                               “(vi) SWAP AGREEMENT.—The term  
19                               ‘swap agreement’ means—

20                                       “(I) any agreement, including the  
21                                       terms and conditions incorporated by  
22                                       reference in any such agreement,  
23                                       which is an interest rate swap, option,  
24                                       future, or forward agreement, includ-  
25                                       ing a rate floor, rate cap, rate collar,

1 cross-currency rate swap, and basis  
2 swap; a spot, same day-tomorrow, to-  
3 morrow-next, forward, or other for-  
4 eign exchange or precious metals  
5 agreement; a currency swap, option,  
6 future, or forward agreement; an eq-  
7 uity index or equity swap, option, fu-  
8 ture, or forward agreement; a debt  
9 index or debt swap, option, future, or  
10 forward agreement; a credit spread or  
11 credit swap, option, future, or forward  
12 agreement; a commodity index or  
13 commodity swap, option, future, or  
14 forward agreement;

15 “(II) any agreement or trans-  
16 action similar to any other agreement  
17 or transaction referred to in this  
18 clause that is presently, or in the fu-  
19 ture becomes, regularly entered into  
20 in the swap market (including terms  
21 and conditions incorporated by ref-  
22 erence in such agreement) and that is  
23 a forward, swap, future, or option on  
24 1 or more rates, currencies, commod-  
25 ities, equity securities or other equity

1 instruments, debt securities or other  
2 debt instruments, or economic indices  
3 or measures of economic risk or value;  
4 “(III) any combination of agree-  
5 ments or transactions referred to in  
6 this clause;  
7 “(IV) any option to enter into  
8 any agreement or transaction referred  
9 to in this clause;  
10 “(V) a master agreement that  
11 provides for an agreement or trans-  
12 action referred to in subclause (I),  
13 (II), (III), or (IV), together with all  
14 supplements to any such master  
15 agreement, without regard to whether  
16 the master agreement contains an  
17 agreement or transaction that is not a  
18 swap agreement under this clause, ex-  
19 cept that the master agreement shall  
20 be considered to be a swap agreement  
21 under this clause only with respect to  
22 each agreement or transaction under  
23 the master agreement that is referred  
24 to in subclause (I), (II), (III), or (IV);  
25 and

1                   “(VI) any security agreement or  
2                   arrangement or other credit enhance-  
3                   ment related to any agreements or  
4                   transactions referred to in subpara-  
5                   graph (I), (II), (III), or (IV).

6                   Such term is applicable for purposes of  
7                   this Act only and shall not be construed or  
8                   applied so as to challenge or affect the  
9                   characterization, definition, or treatment of  
10                  any swap agreement under any other stat-  
11                  ute, regulation, or rule, including the Secu-  
12                  rities Act of 1933, the Securities Exchange  
13                  Act of 1934, the Public Utility Holding  
14                  Company Act of 1935, the Trust Indenture  
15                  Act of 1939, the Investment Company Act  
16                  of 1940, the Investment Advisers Act of  
17                  1940, the Securities Investor Protection  
18                  Act of 1970, the Commodity Exchange  
19                  Act, and the regulations promulgated by  
20                  the Securities and Exchange Commission  
21                  or the Commodity Futures Trading Com-  
22                  mission.”.

23                  (g)       DEFINITION       OF       TRANSFER.—Section  
24       11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
25       U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:



1                   “(viii) TRANSFER.—The term ‘trans-  
2                   fer’ means every mode, direct or indirect,  
3                   absolute or conditional, voluntary or invol-  
4                   untary, of disposing of or parting with  
5                   property or with an interest in property,  
6                   including retention of title as a security in-  
7                   terest and foreclosure of the depository  
8                   institutions’s equity of redemption.”.

9           (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
10 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-  
11 ance Act (12 U.S.C. 1821(e)(8)) is amended—

12           (1) in subparagraph (A), by striking “para-  
13           graph (10)” and inserting “paragraphs (9) and  
14           (10)”;

15           (2) in subparagraph (A)(i), by striking “to  
16           cause the termination or liquidation” and inserting  
17           “such person has to cause the termination, liquida-  
18           tion, or acceleration”;

19           (3) by amending subparagraph (A)(ii) to read  
20           as follows:

21                   “(ii) any right under any security  
22                   agreement or arrangement or other credit  
23                   enhancement related to 1 or more qualified  
24                   financial contracts described in clause  
25                   (i);” and

1           (4) by amending subparagraph (E)(ii) to read  
2 as follows:

3                   “(ii) any right under any security  
4 agreement or arrangement or other credit  
5 enhancement related to 1 or more qualified  
6 financial contracts described in clause  
7 (i);”.

8           (i) AVOIDANCE OF TRANSFERS.—Section  
9 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
10 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
11 5242 of the Revised Statutes (12 U.S.C. 91) or any other  
12 Federal or State law relating to the avoidance of pref-  
13 erential or fraudulent transfers,” before “the Corpora-  
14 tion”.

15 **SEC. 1002. AUTHORITY OF THE CORPORATION WITH RE-**  
16 **SPECT TO FAILED AND FAILING INSTITU-**  
17 **TIONS.**

18           (a) IN GENERAL.—Section 11(e)(8) of the Federal  
19 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is  
20 amended—

21                   (1) in subparagraph (E), by striking “other  
22 than paragraph (12) of this subsection, subsection  
23 (d)(9)” and inserting “other than subsections (d)(9)  
24 and (e)(10)”; and

1           (2) by adding at the end the following new sub-  
2 paragraphs:

3           “(F) CLARIFICATION.—No provision of law  
4 shall be construed as limiting the right or  
5 power of the Corporation, or authorizing any  
6 court or agency to limit or delay, in any man-  
7 ner, the right or power of the Corporation to  
8 transfer any qualified financial contract in ac-  
9 cordance with paragraphs (9) and (10) of this  
10 subsection or to disaffirm or repudiate any such  
11 contract in accordance with subsection (e)(1) of  
12 this section.

13           “(G) WALKAWAY CLAUSES NOT EFFEC-  
14 TIVE.—

15           “(i) IN GENERAL.—Notwithstanding  
16 the provisions of subparagraphs (A) and  
17 (E), and sections 403 and 404 of the Fed-  
18 eral Deposit Insurance Corporation Im-  
19 provement Act of 1991, no walkaway  
20 clause shall be enforceable in a qualified fi-  
21 nancial contract of an insured depository  
22 institution in default.

23           “(ii) WALKAWAY CLAUSE DEFINED.—  
24 For purposes of this subparagraph, the  
25 term ‘walkaway clause’ means a provision

1 in a qualified financial contract that, after  
2 calculation of a value of a party's position  
3 or an amount due to or from 1 of the par-  
4 ties in accordance with its terms upon ter-  
5 mination, liquidation, or acceleration of the  
6 qualified financial contract, either does not  
7 create a payment obligation of a party or  
8 extinguishes a payment obligation of a  
9 party in whole or in part solely because of  
10 such party's status as a nondefaulting  
11 party.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
13 Section 11(e)(12)(A) of the Federal Deposit Insurance  
14 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
15 “or the exercise of rights or powers” after “the appoint-  
16 ment”.

17 **SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF**  
18 **QUALIFIED FINANCIAL CONTRACTS.**

19 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-  
20 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)  
21 of the Federal Deposit Insurance Act (12 U.S.C.  
22 1821(e)(9)) is amended to read as follows:

23 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
24 TRACTS.—

1           “(A) IN GENERAL.—In making any trans-  
2           fer of assets or liabilities of a depository institu-  
3           tion in default which includes any qualified fi-  
4           nancial contract, the conservator or receiver for  
5           such depository institution shall either—

6                   “(i) transfer to 1 financial institution,  
7                   other than a financial institution for which  
8                   a conservator, receiver, trustee in bank-  
9                   ruptcy, or other legal custodian has been  
10                  appointed or which is otherwise the subject  
11                  of a bankruptcy or insolvency proceeding—

12                           “(I) all qualified financial con-  
13                           tracts between any person or any af-  
14                           filiate of such person and the deposi-  
15                           tory institution in default;

16                           “(II) all claims of such person or  
17                           any affiliate of such person against  
18                           such depository institution under any  
19                           such contract (other than any claim  
20                           which, under the terms of any such  
21                           contract, is subordinated to the claims  
22                           of general unsecured creditors of such  
23                           institution);

24                           “(III) all claims of such deposi-  
25                           tory institution against such person or

1 any affiliate of such person under any  
2 such contract; and

3 “(IV) all property securing or  
4 any other credit enhancement for any  
5 contract described in subclause (I) or  
6 any claim described in subclause (II)  
7 or (III) under any such contract; or

8 “(ii) transfer none of the qualified fi-  
9 nancial contracts, claims, property or other  
10 credit enhancement referred to in clause (i)  
11 (with respect to such person and any affili-  
12 ate of such person).

13 “(B) TRANSFER TO FOREIGN BANK, FOR-  
14 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
15 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
16 STITUTION.—In transferring any qualified fi-  
17 nancial contracts and related claims and prop-  
18 erty pursuant to subparagraph (A)(i), the con-  
19 servator or receiver for such depository institu-  
20 tion shall not make such transfer to a foreign  
21 bank, financial institution organized under the  
22 laws of a foreign country, or a branch or agency  
23 of a foreign bank or financial institution unless,  
24 under the law applicable to such bank, financial  
25 institution, branch or agency, to the qualified

1 financial contracts, and to any netting contract,  
2 any security agreement or arrangement or other  
3 credit enhancement related to 1 or more quali-  
4 fied financial contracts the contractual rights of  
5 the parties to such qualified financial contracts,  
6 netting contracts, security agreements or ar-  
7 rangements, or other credit enhancements are  
8 enforceable substantially to the same extent as  
9 permitted under this section.

10 “(C) TRANSFER OF CONTRACTS SUBJECT  
11 TO THE RULES OF A CLEARING ORGANIZA-  
12 TION.—In the event that a conservator or re-  
13 ceiver transfers any qualified financial contract  
14 and related claims, property and credit en-  
15 hancements pursuant to subparagraph (A)(i)  
16 and such contract is subject to the rules of a  
17 clearing organization, the clearing organization  
18 shall not be required to accept the transferee as  
19 a member by virtue of the transfer.

20 “(D) DEFINITION.—For purposes of this  
21 section, the term ‘financial institution’ means a  
22 broker or dealer, a depository institution, a fu-  
23 tures commission merchant, or any other insti-  
24 tution as determined by the Corporation by reg-  
25 ulation to be a financial institution.”.

1           (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
2 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
3 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
4 amended by amending the flush material following clause  
5 (ii) to read as follows: “the conservator or receiver shall  
6 notify any person who is a party to any such contract of  
7 such transfer by 5:00 p.m. (eastern time) on the business  
8 day following the date of the appointment of the receiver,  
9 in the case of a receivership, or the business day following  
10 such transfer, in the case of a conservatorship.”.

11           (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF  
12 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-  
13 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further  
14 amended—

15           (1) by redesignating subparagraph (B) as sub-  
16 paragraph (D); and

17           (2) by inserting after subparagraph (A) the fol-  
18 lowing new subparagraphs:

19                   “(B) CERTAIN RIGHTS NOT ENFORCE-  
20 ABLE.—

21                           “(i) RECEIVERSHIP.—A person who is  
22 a party to a qualified financial contract  
23 with an insured depository institution may  
24 not exercise any right such person has to  
25 terminate, liquidate, or net such contract



1 under paragraph (8)(A) or section 403 or  
2 404 of the Federal Deposit Insurance Cor-  
3 poration Improvement Act of 1991 solely  
4 by reason of or incidental to the appoint-  
5 ment of a receiver for the depository insti-  
6 tution (or the insolvency or financial condi-  
7 tion of the depository institution for which  
8 the receiver has been appointed)—

9 “(I) until 5:00 p.m. (eastern  
10 time) on the business day following  
11 the date of the appointment of the re-  
12 ceiver; or

13 “(II) after the person has re-  
14 ceived notice that the contract has  
15 been transferred pursuant to para-  
16 graph (9)(A).

17 “(ii) CONSERVATORSHIP.—A person  
18 who is a party to a qualified financial con-  
19 tract with an insured depository institution  
20 may not exercise any right such person has  
21 to terminate, liquidate, or net such con-  
22 tract under paragraph (8)(E) or sections  
23 403 or 404 of the Federal Deposit Insur-  
24 ance Corporation Improvement Act of  
25 1991, solely by reason of or incidental to

1 the appointment of a conservator for the  
2 depository institution (or the insolvency or  
3 financial condition of the depository insti-  
4 tution for which the conservator has been  
5 appointed).

6 “(iii) NOTICE.—For purposes of this  
7 subsection, the Corporation as receiver or  
8 conservator of an insured depository insti-  
9 tution shall be deemed to have notified a  
10 person who is a party to a qualified finan-  
11 cial contract with such depository institu-  
12 tion if the Corporation has taken steps  
13 reasonably calculated to provide notice to  
14 such person by the time specified in sub-  
15 paragraph (A) of this subsection.

16 “(C) TREATMENT OF BRIDGE BANKS.—  
17 The following institutions shall not be consid-  
18 ered a financial institution for which a con-  
19 servator, receiver, trustee in bankruptcy, or  
20 other legal custodian has been appointed or  
21 which is otherwise the subject of a bankruptcy  
22 or insolvency proceeding for purposes of sub-  
23 section (e)(9)—

24 “(i) a bridge bank; or

1                   “(ii) a depository institution organized  
2                   by the Corporation, for which a conserva-  
3                   tor is appointed either—

4                                 “(I) immediately upon the orga-  
5                                 nization of the institution; or

6                                 “(II) at the time of a purchase  
7                                 and assumption transaction between  
8                                 such institution and the Corporation  
9                                 as receiver for a depository institution  
10                                in default.”.

11 **SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE**  
12                                 **OR REPUDIATION OF QUALIFIED FINANCIAL**  
13                                 **CONTRACTS.**

14           Section 11(e) of the Federal Deposit Insurance Act  
15 (12 U.S.C. 1821(e)) is further amended—

16                   (1) by redesignating paragraphs (11) through  
17                   (15) as paragraphs (12) through (16), respectively;  
18                   and

19                   (2) by inserting after paragraph (10) the fol-  
20                   lowing new paragraph:

21                                 “(11) DISAFFIRMANCE OR REPUDIATION OF  
22                                 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
23                                 the rights of disaffirmance or repudiation of a con-  
24                                 servator or receiver with respect to any qualified fi-  
25                                 nancial contract to which an insured depository in-

1       stitution is a party, the conservator or receiver for  
2       such institution shall either—

3               “(A) disaffirm or repudiate all qualified fi-  
4       nancial contracts between—

5                       “(i) any person or any affiliate of  
6       such person; and

7                       “(ii) the depository institution in de-  
8       fault; or

9               “(B) disaffirm or repudiate none of the  
10       qualified financial contracts referred to in sub-  
11       paragraph (A) (with respect to such person or  
12       any affiliate of such person).”.

13 **SEC. 1005. CLARIFYING AMENDMENT RELATING TO MAS-**  
14 **TER AGREEMENTS.**

15       Section 11(e)(8)(D)(vii) of the Federal Deposit In-  
16       surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to  
17       read as follows:

18                       “(vii) TREATMENT OF MASTER  
19       AGREEMENT AS 1 AGREEMENT.—Any mas-  
20       ter agreement for any contract or agree-  
21       ment described in any preceding clause of  
22       this subparagraph (or any master agree-  
23       ment for such master agreement or agree-  
24       ments), together with all supplements to  
25       such master agreement, shall be treated as

1 a single agreement and a single qualified  
2 financial contract. If a master agreement  
3 contains provisions relating to agreements  
4 or transactions that are not themselves  
5 qualified financial contracts, the master  
6 agreement shall be deemed to be a quali-  
7 fied financial contract only with respect to  
8 those transactions that are themselves  
9 qualified financial contracts.”.

10 **SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION**  
11 **IMPROVEMENT ACT OF 1991.**

12 (a) DEFINITIONS.—Section 402 of the Federal De-  
13 posit Insurance Corporation Improvement Act of 1991 (12  
14 U.S.C. 4402) is amended—

15 (1) in paragraph (6)—

16 (A) by redesignating subparagraphs (B)  
17 through (D) as subparagraphs (C) through (E),  
18 respectively;

19 (B) by inserting after subparagraph (A)  
20 the following new subparagraph:

21 “(B) an uninsured national bank or an un-  
22 insured State bank that is a member of the  
23 Federal Reserve System if the national bank or  
24 State member bank is not eligible to make ap-  
25 plication to become an insured bank under sec-

1           tion 5 of the Federal Deposit Insurance Act;”;  
2           and

3           (C) by amending subparagraph (C) (as re-  
4           designated) to read as follows:

5           “(C) a branch or agency of a foreign bank,  
6           a foreign bank and any branch or agency of the  
7           foreign bank, or the foreign bank that estab-  
8           lished the branch or agency, as those terms are  
9           defined in section 1(b) of the International  
10          Banking Act of 1978;”;

11          (2) in paragraph (11), by adding before the pe-  
12          riod “and any other clearing organization with which  
13          such clearing organization has a netting contract”;

14          (3) by amending paragraph (14)(A)(i) to read  
15          as follows:

16                  “(i) means a contract or agreement  
17                  between 2 or more financial institutions,  
18                  clearing organizations, or members that  
19                  provides for netting present or future pay-  
20                  ment obligations or payment entitlements  
21                  (including liquidation or closeout values re-  
22                  lating to such obligations or entitlements)  
23                  among the parties to the agreement; and”;  
24          and

1           (4) by adding at the end the following new  
2 paragraph:

3           “(15) PAYMENT.—The term ‘payment’ means a  
4 payment of United States dollars, another currency,  
5 or a composite currency, and a noncash delivery, in-  
6 cluding a payment or delivery to liquidate an  
7 unmatured obligation.”.

8           (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
9 TRACTS.—Section 403 of the Federal Deposit Insurance  
10 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
11 is amended—

12           (1) by amending subsection (a) to read as fol-  
13 lows:

14           “(a) GENERAL RULE.—Notwithstanding any other  
15 provision of State or Federal law (other than paragraphs  
16 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
17 Deposit Insurance Act or any order authorized under sec-  
18 tion 5(b)(2) of the Securities Investor Protection Act of  
19 1970, the covered contractual payment obligations and the  
20 covered contractual payment entitlements between any 2  
21 financial institutions shall be netted in accordance with,  
22 and subject to the conditions of, the terms of any applica-  
23 ble netting contract (except as provided in section  
24 561(b)(2) of title 11).”;

1           (2) by adding at the end the following new sub-  
2           section:

3           “(f) ENFORCEABILITY OF SECURITY AGREE-  
4 MENTS.—The provisions of any security agreement or ar-  
5 rangement or other credit enhancement related to 1 or  
6 more netting contracts between any 2 financial institu-  
7 tions shall be enforceable in accordance with their terms  
8 (except as provided in section 561(b)(2) of title 11) and  
9 shall not be stayed, avoided, or otherwise limited by any  
10 State or Federal law (other than paragraphs (8)(E),  
11 (8)(F), and (10)(B) of section 11(e) of the Federal De-  
12 posit Insurance Act and section 5(b)(2) of the Securities  
13 Investor Protection Act of 1970).”.

14           (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
15 NETTING CONTRACTS.—Section 404 of the Federal De-  
16 posit Insurance Corporation Improvement Act of 1991 (12  
17 U.S.C. 4404) is amended—

18           (1) by amending subsection (a) to read as fol-  
19           lows:

20           “(a) GENERAL RULE.—Notwithstanding any other  
21 provision of State or Federal law (other than paragraphs  
22 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
23 Deposit Insurance Act and any order authorized under  
24 section 5(b)(2) of the Securities Investor Protection Act  
25 of 1970, the covered contractual payment obligations and



1 the covered contractual payment entitlements of a member  
2 of a clearing organization to and from all other members  
3 of a clearing organization shall be netted in accordance  
4 with and subject to the conditions of any applicable net-  
5 ting contract (except as provided in section 561(b)(2) of  
6 title 11, United States Code).”; and

7 (2) by adding at the end the following new sub-  
8 section:

9 “(h) ENFORCEABILITY OF SECURITY AGREE-  
10 MENTS.—The provisions of any security agreement or ar-  
11 rangement or other credit enhancement related to 1 or  
12 more netting contracts between any 2 members of a clear-  
13 ing organization shall be enforceable in accordance with  
14 their terms (except as provided in section 561(b)(2) of  
15 title 11, United States Code) and shall not be stayed,  
16 avoided, or otherwise limited by any State or Federal law  
17 other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
18 tion 11(e) of the Federal Deposit Insurance Act and sec-  
19 tion 5(b)(2) of the Securities Investor Protection Act of  
20 1970.”.

21 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
22 SURED NATIONAL BANKS AND UNINSURED FEDERAL  
23 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
24 ance Corporation Improvement Act of 1991 (12 U.S.C.  
25 4401 et seq.) is amended—

1 (1) by redesignating section 407 as section 408;

2 and

3 (2) by adding after section 406 the following

4 new section:

5 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**

6 **NATIONAL BANKS AND UNINSURED FEDERAL**

7 **BRANCHES AND AGENCIES.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of law, paragraphs (8), (9), (10), and (11) of section  
10 11(e) of the Federal Deposit Insurance Act shall apply  
11 to an uninsured national bank or uninsured Federal  
12 branch or Federal agency except—

13 “(1) any reference to the ‘Corporation as re-  
14 ceiver’ or ‘the receiver or the Corporation’ shall refer  
15 to the receiver of an uninsured national bank or un-  
16 insured Federal branch or Federal agency appointed  
17 by the Comptroller of the Currency;

18 “(2) any reference to the ‘Corporation’ (other  
19 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
20 poration, whether acting as such or as conservator  
21 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
22 to the receiver or conservator of an uninsured na-  
23 tional bank or uninsured Federal branch or Federal  
24 agency appointed by the Comptroller of the Cur-  
25 rency; and

1           “(3) any reference to an ‘insured depository in-  
2           stitution’ or ‘depository institution’ shall refer to an  
3           uninsured national bank or an uninsured Federal  
4           branch or Federal agency.

5           “(b) LIABILITY.—The liability of a receiver or con-  
6           servator of an uninsured national bank or uninsured Fed-  
7           eral branch or agency shall be determined in the same  
8           manner and subject to the same limitations that apply to  
9           receivers and conservators of insured depository institu-  
10          tions under section 11(e) of the Federal Deposit Insurance  
11          Act.

12          “(c) REGULATORY AUTHORITY.—

13           “(1) IN GENERAL.—The Comptroller of the  
14          Currency, in consultation with the Federal Deposit  
15          Insurance Corporation, may promulgate regulations  
16          to implement this section.

17           “(2) SPECIFIC REQUIREMENT.—In promulgat-  
18          ing regulations to implement this section, the Comp-  
19          troller of the Currency shall ensure that the regula-  
20          tions generally are consistent with the regulations  
21          and policies of the Federal Deposit Insurance Cor-  
22          poration adopted pursuant to the Federal Deposit  
23          Insurance Act.

24          “(d) DEFINITIONS.—For purposes of this section, the  
25          terms ‘Federal branch’, ‘Federal agency’, and ‘foreign

1 bank' have the same meaning as in section 1(b) of the  
2 International Banking Act.”.

3 **SEC. 1007. BANKRUPTCY CODE AMENDMENTS.**

4 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
5 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
6 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
7 RITIES CONTRACT.—Title 11, United States Code, is  
8 amended—

9 (1) in section 101—

10 (A) in paragraph (25)—

11 (i) by striking “means a contract”

12 and inserting “means—

13 “(A) a contract”;

14 (ii) by striking “, or any combination

15 thereof or option thereon;” and inserting

16 “, or any other similar agreement;”; and

17 (iii) by adding at the end the follow-

18 ing:

19 “(B) a combination of agreements or

20 transactions referred to in subparagraphs (A)

21 and (C);

22 “(C) an option to enter into an agreement

23 or transaction referred to in subparagraph (A)

24 or (B);

1           “(D) a master netting agreement that pro-  
2           vides for an agreement or transaction referred  
3           to in subparagraph (A), (B), or (C), together  
4           with all supplements to such master netting  
5           agreement, without regard to whether such  
6           master netting agreement provides for an  
7           agreement or transaction that is not a forward  
8           contract under this paragraph, except that such  
9           master netting agreement shall be considered to  
10          be a forward contract under this paragraph  
11          only with respect to each agreement or trans-  
12          action under such master netting agreement  
13          that is referred to in subparagraph (A), (B) or  
14          (C); or

15           “(E) a security agreement or arrangement,  
16           or other credit enhancement, directly pertaining  
17           to a contract, option, agreement, or transaction  
18           referred to in subparagraph (A), (B), (C), or  
19           (D), but not to exceed the actual value of such  
20           contract, option, agreement, or transaction on  
21           the date of the filing of the petition;”;

22           (B) by amending paragraph (47) to read  
23           as follows:

24           “(47) ‘repurchase agreement’ and ‘reverse re-  
25           purchase agreement’—

1 “(A) mean—

2 “(i) an agreement, including related  
3 terms, which provides for the transfer of—

4 “(I) a certificate of deposit,  
5 mortgage-related security (as defined  
6 in the Securities Exchange Act of  
7 1934), mortgage loan, interest in a  
8 mortgage-related security or mortgage  
9 loan, eligible bankers’ acceptance,  
10 qualified foreign government security;  
11 or

12 “(II) security that is a direct ob-  
13 ligation of, or that is fully guaranteed  
14 by, the United States or an agency of  
15 the United States against the transfer  
16 of funds by the transferee of such cer-  
17 tificate of deposit, eligible bankers’ ac-  
18 ceptance, security, loan, or interest;

19 with a simultaneous agreement by such  
20 transferee to transfer to the transferor  
21 thereof a certificate of deposit, eligible  
22 bankers’ acceptance, security, loan, or in-  
23 terest of the kind described in subclause  
24 (I) or (II), at a date certain not later than

1 1 year after the transferor's transfer or on  
2 demand, against the transfer of funds;

3 “(ii) a combination of agreements or  
4 transactions referred to in clauses (i) and  
5 (iii);

6 “(iii) an option to enter into an agree-  
7 ment or transaction referred to in clause  
8 (i) or (ii);

9 “(iv) a master netting agreement that  
10 provides for an agreement or transaction  
11 referred to in clause (i), (ii), or (iii), to-  
12 gether with all supplements to such master  
13 netting agreement, without regard to  
14 whether such master netting agreement  
15 provides for an agreement or transaction  
16 that is not a repurchase agreement under  
17 this subparagraph, except that such master  
18 netting agreement shall be considered to be  
19 a repurchase agreement under this sub-  
20 paragraph only with respect to each agree-  
21 ment or transaction under such master  
22 netting agreement that is referred to in  
23 clause (i), (ii), or (iii); or

24 “(v) a security agreement or arrange-  
25 ment, or other credit enhancement, directly

1           pertaining to a contract referred to in  
2           clause (i), (ii), (iii), or (iv), but not to ex-  
3           ceed the actual value of such contract on  
4           the date of the filing of the petition; and

5           “(B) do not include a repurchase obliga-  
6           tion under a participation in a commercial  
7           mortgage loan;

8           and, for purposes of this paragraph, the term ‘quali-  
9           fied foreign government security’ means a security  
10          that is a direct obligation of, or that is fully guaran-  
11          teed by, the central government of a member of the  
12          Organization for Economic Cooperation and Devel-  
13          opment;”;

14                 (C) in paragraph (48) by inserting “or ex-  
15                 empt from such registration under such section  
16                 pursuant to an order of the Securities and Ex-  
17                 change Commission” after “1934”; and

18                 (D) by amending paragraph (53B) to read  
19                 as follows:

20                 “(53B) ‘swap agreement’ means—

21                         “(A) an agreement, including the terms  
22                         and conditions incorporated by reference in  
23                         such agreement, that is—

24                                 “(i) an interest rate swap, option, fu-  
25                                 ture, or forward agreement, including a



1 rate floor, rate cap, rate collar, cross-cur-  
2 rency rate swap, and basis swap;

3 “(ii) a spot, same day-tomorrow, to-  
4 morrow-next, forward, or other foreign ex-  
5 change or precious metals agreement;

6 “(iii) a currency swap, option, future,  
7 or forward agreement;

8 “(iv) an equity index or an equity  
9 swap, option, future, or forward agree-  
10 ment;

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

13 “(vi) a credit spread or a credit swap,  
14 option, future, or forward agreement; or

15 “(vii) a commodity index or a com-  
16 modity swap, option, future, or forward  
17 agreement;

18 “(B) an agreement or transaction similar  
19 to an agreement or transaction referred to in  
20 this paragraph that—

21 “(i) is currently, or in the future be-  
22 comes, regularly entered into in the swap  
23 market (including terms and conditions in-  
24 corporated by reference therein); and

1           “(ii) is a forward, swap, future, or op-  
2           tion on a rate, currency, commodity, equity  
3           security, or other equity instrument, on a  
4           debt security or other debt instrument, or  
5           on an economic index or measure of eco-  
6           nomic risk or value;

7           “(C) a combination of agreements or  
8           transactions referred to in this paragraph;

9           “(D) an option to enter into an agreement  
10          or transaction referred to in this paragraph;

11          “(E) a master netting agreement that pro-  
12          vides for an agreement or transaction referred  
13          to in subparagraph (A), (B), (C), or (D), to-  
14          gether with all supplements to such master net-  
15          ting agreement and without regard to whether  
16          such master netting agreement contains an  
17          agreement or transaction described in any such  
18          subparagraph, but only with respect to each  
19          agreement or transaction referred to in any  
20          such subparagraph that is under such master  
21          netting agreement; or

22          “(F) is applicable for purposes of this title  
23          only and shall not be construed or applied so as  
24          to challenge or affect the characterization, defi-  
25          nition, or treatment of any swap agreement

1 under any other statute, regulation, or rule, in-  
2 cluding the Securities Act of 1933, the Securi-  
3 ties Exchange Act of 1934, the Public Utility  
4 Holding Company Act of 1935, the Trust In-  
5 denture Act of 1939, the Investment Company  
6 Act of 1940, the Investment Advisers Act of  
7 1940, the Securities Investor Protection Act of  
8 1970, the Commodity Exchange Act, and the  
9 regulations prescribed by the Securities and Ex-  
10 change Commission or the Commodity Futures  
11 Trading Commission.”;

12 (2) by amending section 741(7) to read as fol-  
13 lows:

14 “(7) ‘securities contract’—

15 “(A) means—

16 “(i) a contract for the purchase, sale,  
17 or loan of a security, a mortgage loan or  
18 an interest in a mortgage loan, a group or  
19 index of securities, or mortgage loans or  
20 interests therein (including an interest  
21 therein or based on the value thereof), or  
22 option on any of the foregoing, including  
23 an option to purchase or sell any of the  
24 foregoing;

1           “(ii) an option entered into on a na-  
2           tional securities exchange relating to for-  
3           eign currencies;

4           “(iii) the guarantee by or to a securi-  
5           ties clearing agency of a settlement of  
6           cash, securities, mortgage loans or inter-  
7           ests therein, group or index of securities,  
8           or mortgage loans or interests therein (in-  
9           cluding any interest therein or based on  
10          the value thereof), or option on any of the  
11          foregoing, including an option to purchase  
12          or sell any of the foregoing;

13          “(iv) a margin loan;

14          “(v) any other agreement or trans-  
15          action that is similar to an agreement or  
16          transaction referred to in this subpara-  
17          graph;

18          “(vi) a combination of the agreements  
19          or transactions referred to in this subpara-  
20          graph;

21          “(vii) an option to enter into an  
22          agreement or transaction referred to in  
23          this subparagraph;

24          “(viii) a master netting agreement  
25          that provides for an agreement or trans-

1 action referred to in clause (i), (ii), (iii),  
2 (iv), (v), (vi), or (vii), together with all  
3 supplements to such master netting agree-  
4 ment, without regard to whether such mas-  
5 ter netting agreement provides for an  
6 agreement or transaction that is not a se-  
7 curities contract under this subparagraph,  
8 except that such master netting agreement  
9 shall be considered to be a securities con-  
10 tract under this subparagraph only with  
11 respect to each agreement or transaction  
12 under such master netting agreement that  
13 is referred to in clause (i), (ii), (iii), (iv),  
14 (v), (vi), or (vii); or

15 “(ix) a security agreement or arrange-  
16 ment, or other credit enhancement, directly  
17 pertaining to a contract referred to in this  
18 subparagraph, but not to exceed the actual  
19 value of such contract on the date of the  
20 filing of the petition; and

21 “(B) does not include a purchase, sale, or  
22 repurchase obligation under a participation in a  
23 commercial mortgage loan;” and

24 (3) in section 761(4)—

1 (A) by striking “or” at the end of subpara-  
2 graph (D); and

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

4 “(F) any other agreement or transaction  
5 that is similar to an agreement or transaction  
6 referred to in this paragraph;

7 “(G) a combination of the agreements or  
8 transactions referred to in this paragraph;

9 “(H) an option to enter into an agreement  
10 or transaction referred to in this paragraph;

11 “(I) a master netting agreement that pro-  
12 vides for an agreement or transaction referred  
13 to in subparagraph (A), (B), (C), (D), (E), (F),  
14 (G), or (H), together with all supplements to  
15 such master netting agreement, without regard  
16 to whether such master netting agreement pro-  
17 vides for an agreement or transaction that is  
18 not a commodity contract under this paragraph,  
19 except that such master netting agreement shall  
20 be considered to be a commodity contract under  
21 this paragraph only with respect to each agree-  
22 ment or transaction under such master netting  
23 agreement that is referred to in subparagraph  
24 (A), (B), (C), (D), (E), (F), (G), or (H); or

1           “(J) a security agreement or arrangement,  
2           or other credit enhancement, directly pertaining  
3           to a contract referred to in this paragraph, but  
4           not to exceed the actual value of such contract  
5           on the date of the filing of the petition;”.

6           (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
7           NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
8           CHANT.—Section 101 of title 11, United States Code, is  
9           amended—

10           (1) by amending paragraph (22) to read as fol-  
11           lows:

12           “(22) ‘financial institution’ means—

13           “(A) a Federal reserve bank, or an entity  
14           that is a commercial or savings bank, industrial  
15           savings bank, savings and loan association,  
16           trust company, or receiver or conservator for  
17           such entity and, when such Federal reserve  
18           bank, receiver, or conservator or entity is acting  
19           as agent or custodian for a customer in connec-  
20           tion with a securities contract, as defined in  
21           section 741 of this title, such customer; or

22           “(B) in connection with a securities con-  
23           tract, as defined in section 741 of this title, an  
24           investment company registered under the In-  
25           vestment Company Act of 1940;”;

1           (2) by inserting after paragraph (22) the fol-  
2           lowing:

3           “(22A) ‘financial participant’ means an entity  
4           that is a party to a securities contract, commodity  
5           contract or forward contract, or on the date of the  
6           filing of the petition, has a commodity contract (as  
7           defined in section 761 of this title) with the debtor  
8           or any other entity (other than an affiliate) of a  
9           total gross dollar value of at least \$1,000,000,000 in  
10          notional or actual principal amount outstanding on  
11          any day during the previous 15-month period, or has  
12          gross mark-to-market positions of at least  
13          \$100,000,000 (aggregated across counterparties) in  
14          any such agreement or transaction with the debtor  
15          or any other entity (other than an affiliate) on any  
16          day during the previous 15-month period;”;

17          (3) by amending paragraph (26) to read as fol-  
18          lows:

19          “(26) ‘forward contract merchant’ means a  
20          Federal reserve bank, or an entity whose business  
21          consists in whole or in part of entering into forward  
22          contracts as or with merchants or in a commodity,  
23          as defined or in section 761 of this title, or any simi-  
24          lar good, article, service, right, or interest which is



1       presently or in the future becomes the subject of  
2       dealing or in the forward contract trade;”.

3       (c) DEFINITION OF MASTER NETTING AGREEMENT  
4 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
5 tion 101 of title 11, United States Code, is amended by  
6 inserting after paragraph (38) the following new para-  
7 graphs:

8               “(38A) the term ‘master netting agreement’  
9       means an agreement providing for the exercise of  
10       rights, including rights of netting, setoff, liquidation,  
11       termination, acceleration, or closeout, under or in  
12       connection with 1 or more contracts that are de-  
13       scribed in any 1 or more of paragraphs (1) through  
14       (5) of section 561(a), or any security agreement or  
15       arrangement or other credit enhancement related to  
16       1 or more of the foregoing. If a master netting  
17       agreement contains provisions relating to agree-  
18       ments or transactions that are not contracts de-  
19       scribed in paragraphs (1) through (5) of section  
20       561(a), the master netting agreement shall be  
21       deemed to be a master netting agreement only with  
22       respect to those agreements or transactions that are  
23       described in any 1 or more of the paragraphs (1)  
24       through (5) of section 561(a);

1           “(38B) the term ‘master netting agreement  
2           participant’ means an entity that, at any time before  
3           the filing of the petition, is a party to an outstand-  
4           ing master netting agreement with the debtor;”.

5           (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
6           COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
7           CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
8           MENTS UNDER THE AUTOMATIC-STAY.—

9           (1) IN GENERAL.—Section 362(b) of title 11,  
10          United States Code, as amended by sections 120,  
11          134, 139, 203 and 818, is amended—

12                   (A) in paragraph (6), by inserting “,  
13                   pledged to, and under the control of,” after  
14                   “held by”;

15                   (B) in paragraph (7), by inserting “,  
16                   pledged to, and under the control of,” after  
17                   “held by”;

18                   (C) by amending paragraph (17) to read  
19                   as follows:

20                   “(17) under subsection (a), of the setoff by a  
21                   swap participant of a mutual debt and claim under  
22                   or in connection with a swap agreement that con-  
23                   stitutes the setoff of a claim against the debtor for  
24                   a payment or transfer due from the debtor under or  
25                   in connection with a swap agreement against a pay-

1 ment due to the debtor from the swap participant  
2 under or in connection with a swap agreement or  
3 against cash, securities, or other property held by,  
4 pledged to, and under the control of, or due from  
5 such swap participant to guarantee, secure, or settle  
6 a swap agreement;”;

7 (D) in paragraph (27), by striking “or” at  
8 the end;

9 (E) in paragraph (28) by striking the pe-  
10 riod at the end and inserting “; and”;

11 (F) by inserting after paragraph (28) the  
12 following new paragraph:

13 “(29) under subsection (a), of the setoff by a  
14 master netting agreement participant of a mutual  
15 debt and claim under or in connection with 1 or  
16 more master netting agreements or any contract or  
17 agreement subject to such agreements that con-  
18 stitutes the setoff of a claim against the debtor for  
19 any payment or other transfer of property due from  
20 the debtor under or in connection with such agree-  
21 ments or any contract or agreement subject to such  
22 agreements against any payment due to the debtor  
23 from such master netting agreement participant  
24 under or in connection with such agreements or any  
25 contract or agreement subject to such agreements or

1 against cash, securities, or other property held by,  
2 pledged or and under the control of, or due from  
3 such master netting agreement participant to mar-  
4 gin, guarantee, secure, or settle such agreements or  
5 any contract or agreement subject to such agree-  
6 ments, to the extent such participant is eligible to  
7 exercise such offset rights under paragraph (6), (7),  
8 or (17) for each individual contract covered by the  
9 master netting agreement in issue.”.

10 (2) LIMITATION.—Section 362 of title 11,  
11 United States Code, is amended by adding at the  
12 end the following:

13 “(i) LIMITATION.—The exercise of rights not subject  
14 to the stay arising under subsection (a) pursuant to para-  
15 graph (6), (7), or (17) of subsection (b) shall not be stayed  
16 by an order of a court or administrative agency in any  
17 proceeding under this title.”.

18 (e) LIMITATION OF AVOIDANCE POWERS UNDER  
19 MASTER NETTING AGREEMENT.—Section 546 of title 11,  
20 United States Code, is amended—

21 (1) in subsection (g) (as added by section 103  
22 of Public Law 101–311)—

23 (A) by striking “under a swap agreement”;

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

4 (2) by redesignating subsection (g) (as added  
5 by section 222(a) of Public Law 103–394) as sub-  
6 section (i); and

7 (3) by inserting before subsection (i) (as redesi-  
8 gnated) the following new subsection:

9 “(h) Notwithstanding sections 544, 545, 547,  
10 548(a)(2)(B), and 548(b) of this title, the trustee may not  
11 avoid a transfer made by or to a master netting agreement  
12 participant under or in connection with any master netting  
13 agreement or any individual contract covered thereby that  
14 is made before the commencement of the case, and except  
15 to the extent the trustee could otherwise avoid such a  
16 transfer made under an individual contract covered by  
17 such master netting agreement, except under section  
18 548(a)(1)(A) of this title.”.

19 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
20 AGREEMENTS.—Section 548(d)(2) of title 11, United  
21 States Code, is amended—

22 (1) in subparagraph (C), by striking “and”;

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

1           (3) by adding at the end the following new sub-  
2 paragraph:

3           “(E) a master netting agreement partici-  
4 pant that receives a transfer in connection with  
5 a master netting agreement or any individual  
6 contract covered thereby takes for value to the  
7 extent of such transfer, except, with respect to  
8 a transfer under any individual contract covered  
9 thereby, to the extent such master netting  
10 agreement participant otherwise did not take  
11 (or is otherwise not deemed to have taken) such  
12 transfer for value.”.

13           (g) TERMINATION OR ACCELERATION OF SECURITIES  
14 CONTRACTS.—Section 555 of title 11, United States Code,  
15 is amended—

16           (1) by amending the section heading to read as  
17 follows:

18 **“§ 555. Contractual right to liquidate, terminate, or**  
19 **accelerate a securities contract”; and**

20           (2) in the first sentence, by striking “liquida-  
21 tion” and inserting “liquidation, termination, or ac-  
22 celeration”.

23           (h) TERMINATION OR ACCELERATION OF COMMOD-  
24 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
25 United States Code, is amended—

1           (1) by amending the section heading to read as  
2 follows:

3 **“§ 556. Contractual right to liquidate, terminate, or**  
4 **accelerate a commodities contract or for-**  
5 **ward contract”; and**

6           (2) in the first sentence, by striking “liquida-  
7 tion” and inserting “liquidation, termination, or ac-  
8 celeration”.

9           (i) TERMINATION OR ACCELERATION OF REPUR-  
10 CHASE AGREEMENTS.—Section 559 of title 11, United  
11 States Code, is amended—

12           (1) by amending the section heading to read as  
13 follows:

14 **“§ 559. Contractual right to liquidate, terminate, or**  
15 **accelerate a repurchase agreement”; and**

16           (2) in the first sentence, by striking “liquida-  
17 tion” and inserting “liquidation, termination, or ac-  
18 celeration”.

19           (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
20 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
21 States Code, is amended—

22           (1) by amending the section heading to read as  
23 follows:

1 **“§ 560. Contractual right to liquidate, terminate, or**  
2 **accelerate a swap agreement”; and**

3 (2) in the first sentence, by striking “termi-  
4 nation of a swap agreement” and inserting “liquida-  
5 tion, termination, or acceleration of a swap agree-  
6 ment”; and

7 (3) by striking “in connection with any swap  
8 agreement” and inserting “in connection with the  
9 termination, liquidation, or acceleration of a swap  
10 agreement”.

11 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
12 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
13 ACROSS CONTRACTS.—Title 11, United States Code, is  
14 amended by inserting after section 560 the following new  
15 section:

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

19 “(a) IN GENERAL.—Subject to subsection (b), the ex-  
20 ercise of any contractual right, because of a condition of  
21 the kind specified in section 365(e)(1), to cause the termi-  
22 nation, liquidation, or acceleration of or to offset or net  
23 termination values, payment amounts or other transfer ob-  
24 ligations arising under or in connection with 1 or more  
25 (or the termination, liquidation, or acceleration of 1 or  
26 more—



1           “(1) securities contracts, as defined in section  
2       741(7);

3           “(2) commodity contracts, as defined in section  
4       761(4);

5           “(3) forward contracts;

6           “(4) repurchase agreements;

7           “(5) swap agreements; or

8           “(6) master netting agreements,

9 shall not be stayed, avoided, or otherwise limited by oper-  
10 ation of any provision of this title or by any order of a  
11 court or administrative agency in any proceeding under  
12 this title.

13       “(b) EXCEPTION.—

14           “(1) A party may exercise a contractual right  
15 described in subsection (a) to terminate, liquidate, or  
16 accelerate only to the extent that such party could  
17 exercise such a right under section 555, 556, 559,  
18 or 560 for each individual contract covered by the  
19 master netting agreement in issue.

20           “(2) If a debtor is a commodity broker subject  
21 to subchapter IV of chapter 7 of this title—

22           “(A) a party may not net or offset an obli-  
23 gation to the debtor arising under, or in con-  
24 nection with, a commodity contract against any  
25 claim arising under, or in connection with,

1 other instruments, contracts, or agreements  
2 listed in subsection (a) except to the extent the  
3 party has no positive net equity in the commod-  
4 ity accounts at the debtor, as calculated under  
5 subchapter IV;

6 “(B) another commodity broker may not  
7 net or offset an obligation to the debtor arising  
8 under, or in connection with, a commodity con-  
9 tract entered into or held on behalf of a cus-  
10 tomer of the debtor against any claim arising  
11 under, or in connection with, other instruments,  
12 contracts, or agreements listed in subsection  
13 (a).

14 “(c) DEFINITION.—As used in this section, the term  
15 ‘contractual right’ includes a right set forth in a rule or  
16 bylaw of a national securities exchange, a national securi-  
17 ties association, or a securities clearing agency, a right  
18 set forth in a bylaw of a clearing organization or contract  
19 market or in a resolution of the governing board thereof,  
20 and a right, whether or not evidenced in writing, arising  
21 under common law, under law merchant, or by reason of  
22 normal business practice.”.

23 (l) MUNICIPAL BANKRUPTCIES.—Section 901 of title  
24 11, United States Code, is amended—

25 (1) by inserting “, 555, 556” after “553”; and

1           (2) by inserting “, 559, 560, 561,” after “557”.

2           (m) ANCILLARY PROCEEDINGS.—Section 304 of title  
3 11, United States Code, is amended by adding at the end  
4 the following:

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

18           (n) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
19 United States Code, is amended by inserting after section  
20 766 the following:

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

7 “Notwithstanding any other provision of this title,  
8 the exercise of rights by a forward contract merchant,  
9 commodity broker, stockbroker, financial institution, secu-  
10 rities clearing agency, swap participant, repo participant,  
11 or master netting agreement participant under this title  
12 shall not affect the priority of any unsecured claim it may  
13 have after the exercise of such rights.”.

14 (o) STOCKBROKER LIQUIDATIONS.—Title 11, United  
15 States Code, is amended by inserting after section 752 the  
16 following:

17 **“§ 753. Stockbroker liquidation and forward contract**  
18 **merchants, commodity brokers, stock-**  
19 **brokers, financial institutions, securities**  
20 **clearing agencies, swap participants,**  
21 **repo participants, and master netting**  
22 **agreement participants**

23 “Notwithstanding any other provision of this title,  
24 the exercise of rights by a forward contract merchant,  
25 commodity broker, stockbroker, financial institution, secu-  
26 rities clearing agency, swap participant, repo participant,

1 financial participant, or master netting agreement partici-  
2 pant under this title shall not affect the priority of any  
3 unsecured claim it may have after the exercise of such  
4 rights.”.

5 (p) SETOFF.—Section 553 of title 11, United States  
6 Code, is amended—

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

12 (2) in subsection (b)(1), by striking  
13 “362(b)(14),” and inserting “362(b)(17),  
14 362(b)(19), 555, 556, 559, 560.”.

15 (q) SECURITIES CONTRACTS, COMMODITY CON-  
16 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
17 States Code, is amended—

18 (1) in section 362(b)(6), by striking “financial  
19 institutions,” each place such term appears and in-  
20 serting “financial institution, financial participant”;

21 (2) in section 546(e), by inserting “financial  
22 participant” after “financial institution,”;

23 (3) in section 548(d)(2)(B), by inserting “fi-  
24 nancial participant” after “financial institution,”;

25 (4) in section 555—

1 (A) by inserting “financial participant”  
2 after “financial institution,”; and

3 (B) by inserting before the period “, a  
4 right set forth in a bylaw of a clearing organi-  
5 zation or contract market or in a resolution of  
6 the governing board thereof, and a right,  
7 whether or not in writing, arising under com-  
8 mon law, under law merchant, or by reason of  
9 normal business practice”; and

10 (5) in section 556, by inserting “, financial par-  
11 ticipant” after “commodity broker”.

12 (r) CONFORMING AMENDMENTS.—Title 11 of the  
13 United States Code is amended—

14 (1) in the table of sections of chapter 5—

15 (A) by amending the items relating to sec-  
16 tions 555 and 556 to read as follows:

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

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

17 (B) by amending the items relating to sec-  
18 tions 555 and 556 to read as follows:

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

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-  
ment.”; and

19 (2) in the table of sections of chapter 7—

20 (A) by inserting after the item relating to  
21 section 766 the following:

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

1 (B) by inserting after the item relating to  
2 section 752 the following:

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

3 **SEC. 1008. RECORDKEEPING REQUIREMENTS.**

4 Section 11(e)(8) of the Federal Deposit Insurance  
5 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the  
6 end the following new subparagraph:

7 “(H) RECORDKEEPING REQUIREMENTS.—  
8 The Corporation, in consultation with the ap-  
9 propriate Federal banking agencies, may pre-  
10 scribe regulations requiring more detailed rec-  
11 ordkeeping with respect to qualified financial  
12 contracts (including market valuations) by in-  
13 sured depository institutions.”.

14 **SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXE-**  
15 **CUTION —REQUIREMENT.**

16 Section 13(e)(2) of the Federal Deposit Insurance  
17 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

18 “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
19 EXECUTION REQUIREMENT.—An agreement to pro-  
20 vide for the lawful collateralization of—

1           “(A) deposits of, or other credit extension  
2           by, a Federal, State, or local governmental en-  
3           tity, or of any depositor referred to in section  
4           11(a)(2), including an agreement to provide col-  
5           lateral in lieu of a surety bond;

6           “(B) bankruptcy estate funds pursuant to  
7           section 345(b)(2) of title 11, United States  
8           Code;

9           “(C) extensions of credit, including any  
10          overdraft, from a Federal reserve bank or Fed-  
11          eral home loan bank; or

12          “(D) 1 or more qualified financial con-  
13          tracts, as defined in section 11(e)(8)(D),  
14          shall not be deemed invalid pursuant to paragraph  
15          (1)(B) solely because such agreement was not exe-  
16          cuted contemporaneously with the acquisition of the  
17          collateral or because of pledges, delivery, or substi-  
18          tution of the collateral made in accordance with such  
19          agreement.”.

20 **SEC. 1010. DAMAGE MEASURE.**

21          (a) Title 11, United States Code, is amended—

22                  (1) by inserting after section 561 the following:



1 **“§ 562. Damage measure in connection with swap**  
2 **agreements, securities contracts, forward**  
3 **contracts, commodity contracts, repur-**  
4 **chase agreements, or master netting**  
5 **agreements**

6 “If the trustee rejects a swap agreement, securities  
7 contract as defined in section 741 of this title, forward  
8 contract, commodity contract (as defined in section 761  
9 of this title) repurchase agreement, or master netting  
10 agreement pursuant to section 365(a) of this title, or if  
11 a forward contract merchant, stockbroker, financial insti-  
12 tution, securities clearing agency, repo participant, finan-  
13 cial participant, master netting agreement participant, or  
14 swap participant liquidates, terminates, or accelerates  
15 such contract or agreement, damages shall be measured  
16 as of the earlier of—

17 “(1) the date of such rejection; or

18 “(2) the date of such liquidation, termination,  
19 or acceleration.”; and

20 (2) in the table of sections of chapter 5 by in-  
21 serting after the item relating to section 561 the fol-  
22 lowing:

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

23 (b) **CLAIMS ARISING FROM REJECTION.**—Section  
24 502(g) of title 11, United States Code, is amended—

1           (1) by designating the existing text as para-  
2           graph (1); and

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

4           “(2) A claim for damages calculated in accordance  
5 with section 561 of this title shall be allowed under sub-  
6 section (a), (b), or (c), or disallowed under subsection (d)  
7 or (e), as if such claim had arisen before the date of the  
8 filing of the petition.”.

9   **SEC. 1011. SIPC STAY.**

10          Section 5(b)(2) of the Securities Investor Protection  
11 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
12 after subparagraph (B) the following new subparagraph:

13                   “(C) EXCEPTION FROM STAY.—

14                           “(i) Notwithstanding section 362 of  
15                           title 11, United States Code, neither the  
16                           filing of an application under subsection  
17                           (a)(3) nor any order or decree obtained by  
18                           Securities Investor Protection Corporation  
19                           from the court shall operate as a stay of  
20                           any contractual rights of a creditor to liq-  
21                           uidate, terminate, or accelerate a securities  
22                           contract, commodity contract, forward con-  
23                           tract, repurchase agreement, swap agree-  
24                           ment, or master netting agreement, each  
25                           as defined in title 11, to offset or net ter-

1           mination values, payment amounts, or  
2           other transfer obligations arising under or  
3           in connection with 1 or more of such con-  
4           tracts or agreements, or to foreclose on  
5           any cash collateral pledged by the debtor  
6           whether or not with respect to 1 or more  
7           of such contracts or agreements.

8           “(ii) Notwithstanding clause (i), such  
9           application, order, or decree may operate  
10          as a stay of the foreclosure on securities  
11          collateral pledged by the debtor, whether  
12          or not with respect to 1 or more of such  
13          contracts or agreements, securities sold by  
14          the debtor under a repurchase agreement  
15          or securities lent under a securities lending  
16          agreement.

17          “(iii) As used in this section, the term  
18          ‘contractual right’ includes a right set  
19          forth in a rule or bylaw of a national secu-  
20          rities exchange, a national securities asso-  
21          ciation, or a securities clearing agency, a  
22          right set forth in a bylaw of a clearing or-  
23          ganization or contract market or in a reso-  
24          lution of the governing board thereof, and  
25          a right, whether or not in writing, arising

1                   under common law, under law merchant,  
2                   or by reason of normal business practice.”.

3 **SEC. 1012. ASSET-BACKED SECURITIZATIONS.**

4       Section 541 of title 11, United States Code, is  
5 amended—

6           (1) in subsection (b), by striking “or” at the  
7       end of paragraph (4);

8           (2) by redesignating paragraph (5) of sub-  
9       section (b) as paragraph (6);

10          (3) by inserting after paragraph (4) of sub-  
11       section (b) the following new paragraph:

12           “(5) any eligible asset (or proceeds thereof), to  
13       the extent that such eligible asset was transferred by  
14       the debtor, before the date of commencement of the  
15       case, to an eligible entity in connection with an  
16       asset-backed securitization, except to the extent such  
17       asset (or proceeds or value thereof) may be recov-  
18       ered by the trustee under section 550 by virtue of  
19       avoidance under section 548(a); or”;

20          (4) by adding at the end the following new sub-  
21       section:

22       “(e) DEFINITIONS.—For purposes of this section, the  
23       following definitions shall apply:

24           “(1) ASSET-BACKED SECURITIZATION.—The  
25       term ‘asset-backed securitization’ means a trans-

1 action in which eligible assets transferred to an eligi-  
2 ble entity are used as the source of payment on se-  
3 curities, the most senior of which are rated invest-  
4 ment grade by 1 or more nationally recognized secu-  
5 rities rating organizations, issued by an issuer;

6 “(2) ELIGIBLE ASSET.—The term ‘eligible  
7 asset’ means—

8 “(A) financial assets (including interests  
9 therein and proceeds thereof), either fixed or re-  
10 volving, including residential and commercial  
11 mortgage loans, consumer receivables, trade re-  
12 ceivables, and lease receivables, that, by their  
13 terms, convert into cash within a finite time pe-  
14 riod, plus any rights or other assets designed to  
15 assure the servicing or timely distribution of  
16 proceeds to security holders;

17 “(B) cash; and

18 “(C) securities.

19 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-  
20 tity’ means—

21 “(A) an issuer; or

22 “(B) a trust, corporation, partnership, or  
23 other entity engaged exclusively in the business  
24 of acquiring and transferring eligible assets di-

1           rectly or indirectly to an issuer and taking ac-  
2           tions ancillary thereto;

3           “(4) ISSUER.—The term ‘issuer’ means a trust,  
4           corporation, partnership, or other entity engaged ex-  
5           clusively in the business of acquiring and holding eli-  
6           gible assets, issuing securities backed by eligible as-  
7           sets, and taking actions ancillary thereto.

8           “(5) TRANSFERRED.—The term ‘transferred’  
9           means the debtor, pursuant to a written agreement,  
10          represented and warranted that eligible assets were  
11          sold, contributed, or otherwise conveyed with the in-  
12          tention of removing them from the estate of the  
13          debtor pursuant to subsection (b)(5), irrespective,  
14          without limitation of—

15                 “(A) whether the debtor directly or indi-  
16                 rectly obtained or held an interest in the issuer  
17                 or in any securities issued by the issuer;

18                 “(B) whether the debtor had an obligation  
19                 to repurchase or to service or supervise the  
20                 servicing of all or any portion of such eligible  
21                 assets; or

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

1 **SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIRE-**  
2 **MENTS.**

3 The 2d sentence of the 2d undesignated paragraph  
4 of section 16 of the Federal Reserve Act (12 U.S.C. 412)  
5 is amended by striking “acceptances acquired under sec-  
6 tion 13 of this Act” and inserting “acceptances acquired  
7 under section 10A, 10B, 13, or 13A of this Act”.

8 **SEC. 1014. SEVERABILITY; EFFECTIVE DATE; APPLICATION**  
9 **OF AMENDMENTS.**

10 (a) SEVERABILITY.—If any provision of this Act or  
11 any amendment made by this Act, or the application of  
12 any such provision or amendment to any person or cir-  
13 cumstance, is held to be unconstitutional, the remaining  
14 provisions of and amendments made by this Act and the  
15 application of such other provisions and amendments to  
16 any person or circumstance shall not be affected thereby.

17 (b) EFFECTIVE DATE.—This Act shall take effect on  
18 the date of the enactment of this Act.

19 (c) APPLICATION OF AMENDMENTS.—The amend-  
20 ments made by this Act shall apply with respect to cases  
21 commenced or appointments made under any Federal or  
22 State law after the date of enactment of this Act, but shall  
23 not apply with respect to cases commenced or appoint-  
24 ments made under any Federal or State law before the  
25 date of enactment of this Act.

# TITLE XI—TECHNICAL CORRECTIONS

## SEC. 1101. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by section 317, is amended—

(1) by striking “In this title—” and inserting “In this title:”;

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

(3) in paragraph (35)(B), by striking “paragraphs (21B) and (33)(A)” and inserting “paragraphs (23) and (35)”;

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

(5) in paragraph (51B)—

(A) by inserting “who is not a family farmer” after “debtor” the first place it appears; and

(B) by striking “thereto having aggregate” and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

“(54) The term ‘transfer’ means—

“(A) the creation of a lien;



1           “(B) the retention of title as a security in-  
2           terest;

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

5           “(D) each mode, direct or indirect, abso-  
6           lute or conditional, voluntary or involuntary, of  
7           disposing of or parting with—

8                   “(i) property; or

9                   “(ii) an interest in property;”;

10           (7) in each of paragraphs (1) through (35), in  
11           each of paragraphs (36) and (37), and in each of  
12           paragraphs (40) through (55) (including paragraph  
13           (54), as amended by paragraph (6) of this section),  
14           by striking the semicolon at the end and inserting a  
15           period; and

16           (8) by redesignating paragraphs (4) through  
17           (55), including paragraph (54), as amended by para-  
18           graph (6) of this section, in entirely numerical se-  
19           quence.

20 **SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

21           Section 104 of title 11, United States Code, is  
22           amended by inserting “522(f)(3), 707(b)(5),” after  
23           “522(d),” each place it appears.

1 **SEC. 1103. EXTENSION OF TIME.**

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

5 **SEC. 1104. TECHNICAL AMENDMENTS.**

6 Title 11 of the United States Code is amended—

7 (1) in section 109(b)(2) by striking “subsection  
8 (c) or (d) of”;

9 (2) in section 541(b)(4) by adding “or” at the  
10 end; and

11 (3) in section 552(b)(1) by striking “product”  
12 each place it appears and inserting “products”.

13 **SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
14 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
15 **TITIONS.**

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

19 **SEC. 1106. LIMITATION ON COMPENSATION OF PROFES-**  
20 **SIONAL PERSONS.**

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

1 **SEC. 1107. SPECIAL TAX PROVISIONS.**

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

5 **SEC. 1108. EFFECT OF CONVERSION.**

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

9 **SEC. 1109. AMENDMENT TO TABLE OF SECTIONS.**

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

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

13 **SEC. 1110. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

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

17 **SEC. 1111. PRIORITIES.**

18 Section 507(a) of title 11, United States Code, as  
19 amended by section 323, is amended—

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

22 (2) in paragraph (7), by inserting “unsecured”  
23 after “allowed”.

1 **SEC. 1112. EXEMPTIONS.**

2 Section 522 of title 11, United States Code, as  
3 amended by section 320, is amended—

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

5 (A) by striking “includes a liability des-  
6 igned as” and inserting “is for a liability that  
7 is designated as, and is actually in the nature  
8 of,”; and

9 (B) by striking “, unless” and all that fol-  
10 lows through “support”; and

11 (2) in subsection (g)(2), by striking “subsection  
12 (f)(2)” and inserting “subsection (f)(1)(B)”.

13 **SEC. 1113. EXCEPTIONS TO DISCHARGE.**

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

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

18 (2) as amended by section 304(e) of Public Law  
19 103–394 (108 Stat. 4133), in paragraph (15), by  
20 transferring such paragraph so as to insert it after  
21 paragraph (14) of subsection (a);

22 (3) in subsection (a)(9), by inserting  
23 “, watercraft, or aircraft” after “motor vehicle”;

24 (4) in subsection (a)(15), as so redesignated by  
25 paragraph (2) of this subsection, by inserting “to a

1 spouse, former spouse, or child of the debtor and”  
2 after “(15)”;

3 (5) in subsection (a)(17)—

4 (A) by striking “by a court” and inserting  
5 “on a prisoner by any court”;

6 (B) by striking “section 1915 (b) or (f)”  
7 and inserting “subsection (b) or (f)(2) of sec-  
8 tion 1915”; and

9 (C) by inserting “(or a similar non-Federal  
10 law)” after “title 28” each place it appears; and

11 (6) in subsection (e), by striking “a insured”  
12 and inserting “an insured”.

13 **SEC. 1114. EFFECT OF DISCHARGE.**

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

18 **SEC. 1115. PROTECTION AGAINST DISCRIMINATORY TREAT-**

19 **MENT.**

20 Section 525(e) of title 11, United States Code, is  
21 amended—

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

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

4 **SEC. 1116. PROPERTY OF THE ESTATE.**

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

7 **SEC. 1117. PREFERENCES.**

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

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

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

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

20 **SEC. 1118. POSTPETITION TRANSACTIONS.**

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

23           (1) by inserting “an interest in” after “transfer  
24           of”;

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

5 **SEC. 1119. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

8 **SEC. 1120. GENERAL PROVISIONS.**

9           Section 901(a) of title 11, United States Code, as  
10 amended by section 408, is amended by inserting  
11 “1123(d),” after “1123(b),”.

12 **SEC. 1121. APPOINTMENT OF ELECTED TRUSTEE.**

13           Section 1104(b) of title 11, United States Code, is  
14 amended—

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

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

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

21           “(i) the trustee elected under paragraph (1)  
22 shall be considered to have been selected and ap-  
23 pointed for purposes of this section; and

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

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

4 **SEC. 1122. ABANDONMENT OF RAILROAD LINE.**

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

8 **SEC. 1123. CONTENTS OF PLAN.**

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

12 **SEC. 1124. DISCHARGE UNDER CHAPTER 12.**

13 Subsections (a) and (c) of section 1228 of title 11,  
14 United States Code, are amended by striking  
15 “1222(b)(10)” each place it appears and inserting  
16 “1222(b)(9)”.

17 **SEC. 1125. BANKRUPTCY CASES AND PROCEEDINGS.**

18 Section 1334(d) of title 28, United States Code, is  
19 amended—

20 (1) by striking “made under this subsection”  
21 and inserting “made under subsection (c)”; and

22 (2) by striking “This subsection” and inserting  
23 “Subsection (c) and this subsection”.



1 **SEC. 1126. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
2 **RULE.**

3 Section 156(a) of title 18, United States Code, is  
4 amended—

5 (1) in the first undesignated paragraph—

6 (A) by inserting “(1) the term” before  
7 “bankruptcy”; and

8 (B) by striking the period at the end and  
9 inserting “; and”; and

10 (2) in the second undesignated paragraph—

11 (A) by inserting “(2) the term” before  
12 “document”; and

13 (B) by striking “this title” and inserting  
14 “title 11”.

15 **SEC. 1127. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
16 **CORPORATIONS.**

17 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
18 of title 11, United States Code, is amended—

19 (1) by striking “only” and all that follows  
20 through the end of the subsection and inserting  
21 “only—

22 “(1) in accordance with applicable nonbank-  
23 ruptcy law that governs the transfer of property by  
24 a corporation or trust that is not a moneyed, busi-  
25 ness, or commercial corporation or trust; and

1           “(2) to the extent not inconsistent with any re-  
2           lief granted under subsection (c), (d), (e), or (f) of  
3           section 362 of this title.”.

4           (b) CONFIRMATION OF PLAN FOR REORGANIZA-  
5           TION.—Section 1129(a) of title 11, United States Code,  
6           as amended by section 143, is amended by adding at the  
7           end the following:

8           “(15) All transfers of property of the plan shall  
9           be made in accordance with any applicable provi-  
10          sions of nonbankruptcy law that govern the transfer  
11          of property by a corporation or trust that is not a  
12          moneyed, business, or commercial corporation or  
13          trust.”.

14          (c) TRANSFER OF PROPERTY.—Section 541 of title  
15          11, United States Code, is amended by adding at the end  
16          the following:

17          “(e) Notwithstanding any other provision of this title,  
18          property that is held by a debtor that is a corporation de-  
19          scribed in section 501(c)(3) of the Internal Revenue Code  
20          of 1986 and exempt from tax under section 501(a) of such  
21          Code may be transferred to an entity that is not such a  
22          corporation, but only under the same conditions as would  
23          apply if the debtor had not filed a case under this title.”.

24          (d) APPLICABILITY.—The amendments made by this  
25          section shall apply to a case pending under title 11, United

1 States Code, on the date of enactment of this Act, except  
2 that the court shall not confirm a plan under chapter 11  
3 of this title without considering whether this section would  
4 substantially affect the rights of a party in interest who  
5 first acquired rights with respect to the debtor after the  
6 date of the petition. The parties who may appear and be  
7 heard in a proceeding under this section include the attor-  
8 ney general of the State in which the debtor is incor-  
9 porated, was formed, or does business.

10 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
11 tion shall be deemed to require the court in which a case  
12 under chapter 11 is pending to remand or refer any pro-  
13 ceeding, issue, or controversy to any other court or to re-  
14 quire the approval of any other court for the transfer of  
15 property.

16 **SEC. 1128. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
17 **URE TO INCUR FINANCE CHARGES.**

18 Section 127 of the Truth in Lending Act (15 U.S.C.  
19 1637) is amended by adding at the end the following:

20 “(h) **PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
21 **URE TO INCUR FINANCE CHARGES.**—A creditor of an ac-  
22 count under an open end consumer credit plan may not  
23 terminate an account prior to its expiration date solely be-  
24 cause the consumer has not incurred finance charges on  
25 the account. Nothing in this subsection shall prohibit a

1 creditor from terminating an account for inactivity in 3  
2 or more consecutive months.”.

3 **SEC. 1129. PROTECTION OF VALID PURCHASE MONEY SE-**  
4 **CURITY INTERESTS.**

5 Section 547(c)(3)(B) of title 11, United States Code,  
6 is amended by striking “20” and inserting “30”.

7 **SEC. 1130. TRUSTEES.**

8 (a) **SUSPENSION AND TERMINATION OF PANEL**  
9 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of  
10 title 28, United States Code, is amended—

11 (1) by inserting “(1)” after “(d)”; and

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

13 “(2) A trustee whose appointment under subsection  
14 (a)(1) or under subsection (b) is terminated or who ceases  
15 to be assigned to cases filed under title 11 of the United  
16 States Code may obtain judicial review of the final agency  
17 decision by commencing an action in the United States  
18 district court for the district for which the panel to which  
19 the trustee is appointed under subsection (a)(1), or in the  
20 United States district court for the district in which the  
21 trustee is appointed under subsection (b) resides, after  
22 first exhausting all available administrative remedies,  
23 which if the trustee so elects, shall also include an admin-  
24 istrative hearing on the record. Unless the trustee elects  
25 to have an administrative hearing on the record, the trust-

1 ee shall be deemed to have exhausted all administrative  
2 remedies for purposes of this paragraph if the agency fails  
3 to make a final agency decision within 90 days after the  
4 trustee requests administrative remedies. The Attorney  
5 General shall prescribe procedures to implement this para-  
6 graph. The decision of the agency shall be affirmed by  
7 the district court unless it is unreasonable and without  
8 cause based on the administrative record before the agen-  
9 cy.”.

10 (b) EXPENSES OF STANDING TRUSTEES.—Section  
11 586(e) of title 28, United States Code, is amended by add-  
12 ing at the end the following:

13 “(3) After first exhausting all available administra-  
14 tive remedies, an individual appointed under subsection  
15 (b) may obtain judicial review of final agency action to  
16 deny a claim of actual, necessary expenses under this sub-  
17 section by commencing an action in the United States dis-  
18 trict court in the district where the individual resides. The  
19 decision of the agency shall be affirmed by the district  
20 court unless it is unreasonable or without cause based  
21 upon the administrative record before the agency.

22 “(4) The Attorney General shall prescribe procedures  
23 to implement this subsection.”.

1 **TITLE XII—GENERAL EFFECTIVE**  
2 **DATE; APPLICATION OF**  
3 **AMENDMENTS**

4 **SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMEND-**  
5 **MENTS.**

6 (a) **EFFECTIVE DATE.**—Except as provided otherwise  
7 in this Act, this Act and the amendments made by this  
8 Act shall take effect 180 days after the date of the enact-  
9 ment of this Act.

10 (b) **APPLICATION OF AMENDMENTS.**—The amend-  
11 ments made by this Act shall not apply with respect to  
12 cases commenced under title 11 of the United States Code  
13 before the effective date of this Act.

○