

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5745

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2002

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on 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,*

3 **SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-**  
4 **TENTS.**

5       (a) **SHORT TITLE.**—This Act may be cited as the  
6 “Bankruptcy Abuse Prevention and Consumer Protection  
7 Act of 2002”.

8       (b) **TABLE OF CONTENTS.**—The table of contents for  
9 this Act is as follows:

Sec. 1. Short title; references; table of contents.

#### TITLE I—NEEDS-BASED BANKRUPTCY

- Sec. 101. Conversion.
- Sec. 102. Dismissal or conversion.
- Sec. 103. Sense of Congress and study.
- Sec. 104. Notice of alternatives.
- Sec. 105. Debtor financial management training test program.
- Sec. 106. Credit counseling.
- Sec. 107. Schedules of reasonable and necessary expenses.

#### TITLE II—ENHANCED CONSUMER PROTECTION

##### Subtitle A—Penalties for Abusive Creditor Practices

- Sec. 201. Promotion of alternative dispute resolution.
- Sec. 202. Effect of discharge.
- Sec. 203. Discouraging abuse of reaffirmation practices.
- Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
- Sec. 205. GAO study and report on reaffirmation process.

##### Subtitle B—Priority Child Support

- Sec. 211. Definition of domestic support obligation.
- Sec. 212. Priorities for claims for domestic support obligations.
- Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 216. Continued liability of property.
- Sec. 217. Protection of domestic support claims against preferential transfer motions.
- Sec. 218. Disposable income defined.
- Sec. 219. Collection of child support.
- Sec. 220. Nondischargeability of certain educational benefits and loans.

##### Subtitle C—Other Consumer Protections

- Sec. 221. Amendments to discourage abusive bankruptcy filings.
- Sec. 222. Sense of Congress.
- Sec. 223. Additional amendments to title 11, United States Code.
- Sec. 224. Protection of retirement savings in bankruptcy.
- Sec. 225. Protection of education savings in bankruptcy.
- Sec. 226. Definitions.
- Sec. 227. Restrictions on debt relief agencies.
- Sec. 228. Disclosures.
- Sec. 229. Requirements for debt relief agencies.
- Sec. 230. GAO study.
- Sec. 231. Protection of personally identifiable information.
- Sec. 232. Consumer privacy ombudsman.
- Sec. 233. Prohibition on disclosure of name of minor children.

#### TITLE III—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 301. Reinforcement of the fresh start.

- Sec. 302. Discouraging bad faith repeat filings.
- Sec. 303. Curbing abusive filings.
- Sec. 304. Debtor retention of personal property security.
- Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec. 306. Giving secured creditors fair treatment in chapter 13.
- Sec. 307. Domiciliary requirements for exemptions.
- Sec. 308. Reduction of homestead exemption for fraud.
- Sec. 309. Protecting secured creditors in chapter 13 cases.
- Sec. 310. Limitation on luxury goods.
- Sec. 311. Automatic stay.
- Sec. 312. Extension of period between bankruptcy discharges.
- Sec. 313. Definition of household goods and antiques.
- Sec. 314. Debt incurred to pay nondischargeable debts.
- Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
- Sec. 316. Dismissal for failure to timely file schedules or provide required information.
- Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 320. Prompt relief from stay in individual cases.
- Sec. 321. Chapter 11 cases filed by individuals.
- Sec. 322. Limitations on homestead exemption.
- Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
- Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
- Sec. 325. United States trustee program filing fee increase.
- Sec. 326. Sharing of compensation.
- Sec. 327. Fair valuation of collateral.
- Sec. 328. Defaults based on nonmonetary obligations.
- Sec. 329. Clarification of postpetition wages and benefits.
- Sec. 330. Delay of discharge during pendency of certain proceedings.

#### TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

##### Subtitle A—General Business Bankruptcy Provisions

- Sec. 401. Adequate protection for investors.
- Sec. 402. Meetings of creditors and equity security holders.
- Sec. 403. Protection of refinance of security interest.
- Sec. 404. Executory contracts and unexpired leases.
- Sec. 405. Creditors and equity security holders committees.
- Sec. 406. Amendment to section 546 of title 11, United States Code.
- Sec. 407. Amendments to section 330(a) of title 11, United States Code.
- Sec. 408. Postpetition disclosure and solicitation.
- Sec. 409. Preferences.
- Sec. 410. Venue of certain proceedings.
- Sec. 411. Period for filing plan under chapter 11.
- Sec. 412. Fees arising from certain ownership interests.
- Sec. 413. Creditor representation at first meeting of creditors.
- Sec. 414. Definition of disinterested person.
- Sec. 415. Factors for compensation of professional persons.
- Sec. 416. Appointment of elected trustee.
- Sec. 417. Utility service.

- Sec. 418. Bankruptcy fees.
- Sec. 419. More complete information regarding assets of the estate.

#### Subtitle B—Small Business Bankruptcy Provisions

- Sec. 431. Flexible rules for disclosure statement and plan.
- Sec. 432. Definitions.
- Sec. 433. Standard form disclosure statement and plan.
- Sec. 434. Uniform national reporting requirements.
- Sec. 435. Uniform reporting rules and forms for small business cases.
- Sec. 436. Duties in small business cases.
- Sec. 437. Plan filing and confirmation deadlines.
- Sec. 438. Plan confirmation deadline.
- Sec. 439. Duties of the United States trustee.
- Sec. 440. Scheduling conferences.
- Sec. 441. Serial filer provisions.
- Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
- Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
- Sec. 444. Payment of interest.
- Sec. 445. Priority for administrative expenses.
- Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
- Sec. 447. Appointment of committee of retired employees.

#### TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

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

#### TITLE VI—BANKRUPTCY DATA

- Sec. 601. Improved bankruptcy statistics.
- Sec. 602. Uniform rules for the collection of bankruptcy data.
- Sec. 603. Audit procedures.
- Sec. 604. Sense of Congress regarding availability of bankruptcy data.

#### TITLE VII—BANKRUPTCY TAX PROVISIONS

- Sec. 701. Treatment of certain liens.
- Sec. 702. Treatment of fuel tax claims.
- Sec. 703. Notice of request for a determination of taxes.
- Sec. 704. Rate of interest on tax claims.
- Sec. 705. Priority of tax claims.
- Sec. 706. Priority property taxes incurred.
- Sec. 707. No discharge of fraudulent taxes in chapter 13.
- Sec. 708. No discharge of fraudulent taxes in chapter 11.
- Sec. 709. Stay of tax proceedings limited to prepetition taxes.
- Sec. 710. Periodic payment of taxes in chapter 11 cases.
- Sec. 711. Avoidance of statutory tax liens prohibited.
- Sec. 712. Payment of taxes in the conduct of business.
- Sec. 713. Tardily filed priority tax claims.
- Sec. 714. Income tax returns prepared by tax authorities.
- Sec. 715. Discharge of the estate's liability for unpaid taxes.
- Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
- Sec. 717. Standards for tax disclosure.

- Sec. 718. Setoff of tax refunds.
- Sec. 719. Special provisions related to the treatment of State and local taxes.
- Sec. 720. Dismissal for failure to timely file tax returns.

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

- Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
- Sec. 802. Other amendments to titles 11 and 28, United States Code.

#### TITLE IX—FINANCIAL CONTRACT PROVISIONS

- Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 902. Authority of the corporation with respect to failed and failing institutions.
- Sec. 903. Amendments relating to transfers of qualified financial contracts.
- Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 905. Clarifying amendment relating to master agreements.
- Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 907. Bankruptcy law amendments.
- Sec. 908. Recordkeeping requirements.
- Sec. 909. Exemptions from contemporaneous execution requirement.
- Sec. 910. Damage measure.
- Sec. 911. SIPC stay.

#### TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

- Sec. 1001. Permanent reenactment of chapter 12.
- Sec. 1002. Debt limit increase.
- Sec. 1003. Certain claims owed to governmental units.
- Sec. 1004. Definition of family farmer.
- Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
- Sec. 1006. Prohibition of retroactive assessment of disposable income.
- Sec. 1007. Family fishermen.

#### TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

- Sec. 1101. Definitions.
- Sec. 1102. Disposal of patient records.
- Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
- Sec. 1104. Appointment of ombudsman to act as patient advocate.
- Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
- Sec. 1106. Exclusion from program participation not subject to automatic stay.

#### TITLE XII—TECHNICAL AMENDMENTS

- Sec. 1201. Definitions.
- Sec. 1202. Adjustment of dollar amounts.
- Sec. 1203. Extension of time.
- Sec. 1204. Technical amendments.
- Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.

- Sec. 1206. Limitation on compensation of professional persons.
- Sec. 1207. Effect of conversion.
- Sec. 1208. Allowance of administrative expenses.
- Sec. 1209. Exceptions to discharge.
- Sec. 1210. Effect of discharge.
- Sec. 1211. Protection against discriminatory treatment.
- Sec. 1212. Property of the estate.
- Sec. 1213. Preferences.
- Sec. 1214. Postpetition transactions.
- Sec. 1215. Disposition of property of the estate.
- Sec. 1216. General provisions.
- Sec. 1217. Abandonment of railroad line.
- Sec. 1218. Contents of plan.
- Sec. 1219. Bankruptcy cases and proceedings.
- Sec. 1220. Knowing disregard of bankruptcy law or rule.
- Sec. 1221. Transfers made by nonprofit charitable corporations.
- Sec. 1222. Protection of valid purchase money security interests.
- Sec. 1223. Compensating trustees.
- Sec. 1224. Amendment to section 362 of title 11, United States Code.
- Sec. 1225. Judicial education.
- Sec. 1226. Reclamation.
- Sec. 1227. Providing requested tax documents to the court.
- Sec. 1228. Encouraging creditworthiness.
- Sec. 1229. Property no longer subject to redemption.
- Sec. 1230. Trustees.
- Sec. 1231. Bankruptcy forms.
- Sec. 1232. Direct appeals of bankruptcy matters to courts of appeals.
- Sec. 1233. Involuntary cases.
- Sec. 1234. Federal election law fines and penalties as nondischargeable debt.

#### TITLE XIII—CONSUMER CREDIT DISCLOSURE

- Sec. 1301. Enhanced disclosures under an open end credit plan.
- Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
- Sec. 1303. Disclosures related to “introductory rates”.
- Sec. 1304. Internet-based credit card solicitations.
- Sec. 1305. Disclosures related to late payment deadlines and penalties.
- Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
- Sec. 1307. Dual use debit card.
- Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 1309. Clarification of clear and conspicuous.

#### TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

- Sec. 1401. Effective date; application of amendments.

1                   **TITLE I—NEEDS-BASED**  
2                   **BANKRUPTCY**

3 **SEC. 101. CONVERSION.**

4           Section 706(c) of title 11, United States Code, is  
5 amended by inserting “or consents to” after “requests”.

6 **SEC. 102. DISMISSAL OR CONVERSION.**

7           (a) **IN GENERAL.**—Section 707 of title 11, United  
8 States Code, is amended—

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

11           **“§ 707. Dismissal of a case or conversion to a case**  
12                   **under chapter 11 or 13”;**

13           and

14                   (2) in subsection (b)—

15                           (A) by inserting “(1)” after “(b)”;

16                           (B) in paragraph (1), as so redesignated  
17                   by subparagraph (A) of this paragraph—

18                                   (i) in the first sentence—

19   (I) by striking “but not at the re-  
20   quest or suggestion of” and inserting  
21   “trustee, bankruptcy administrator,  
22   or”;

23   (II) by inserting “, or, with the  
24   debtor’s consent, convert such a case  
25   to a case under chapter 11 or 13 of

1                   this title,” after “consumer debts”;

2                   and

3                                 (III) by striking “a substantial

4                                 abuse” and inserting “an abuse”; and

5                                 (ii) by striking the next to last sen-

6                   tence; and

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

8                   “(2)(A)(i) In considering under paragraph (1) wheth-

9                   er the granting of relief would be an abuse of the provi-

10                   sions of this chapter, the court shall presume abuse exists

11                   if the debtor’s current monthly income reduced by the

12                   amounts determined under clauses (ii), (iii), and (iv), and

13                   multiplied by 60 is not less than the lesser of—

14                                 “(I) 25 percent of the debtor’s nonpriority un-

15                                 secured claims in the case, or \$6,000, whichever is

16                                 greater; or

17                                 “(II) \$10,000.

18                   “(ii)(I) The debtor’s monthly expenses shall be the

19                   debtor’s applicable monthly expense amounts specified

20                   under the National Standards and Local Standards, and

21                   the debtor’s actual monthly expenses for the categories

22                   specified as Other Necessary Expenses issued by the In-

23                   ternal Revenue Service for the area in which the debtor

24                   resides, as in effect on the date of the entry of the order

25                   for relief, for the debtor, the dependents of the debtor,

1 and the spouse of the debtor in a joint case, if the spouse  
2 is not otherwise a dependent. Notwithstanding any other  
3 provision of this clause, the monthly expenses of the debt-  
4 or shall not include any payments for debts. In addition,  
5 the debtor's monthly expenses shall include the debtor's  
6 reasonably necessary expenses incurred to maintain the  
7 safety of the debtor and the family of the debtor from fam-  
8 ily violence as identified under section 309 of the Family  
9 Violence Prevention and Services Act, or other applicable  
10 Federal law. The expenses included in the debtor's month-  
11 ly expenses described in the preceding sentence shall be  
12 kept confidential by the court. In addition, if it is dem-  
13 onstrated that it is reasonable and necessary, the debtor's  
14 monthly expenses may also include an additional allowance  
15 for food and clothing of up to 5 percent of the food and  
16 clothing categories as specified by the National Standards  
17 issued by the Internal Revenue Service.

18       “(II) In addition, the debtor's monthly expenses may  
19 include, if applicable, the continuation of actual expenses  
20 paid by the debtor that are reasonable and necessary for  
21 care and support of an elderly, chronically ill, or disabled  
22 household member or member of the debtor's immediate  
23 family (including parents, grandparents, siblings, children,  
24 and grandchildren of the debtor, the dependents of the  
25 debtor, and the spouse of the debtor in a joint case who

1 is not a dependent) and who is unable to pay for such  
2 reasonable and necessary expenses.

3       “(III) In addition, for a debtor eligible for chapter  
4 13, the debtor’s monthly expenses may include the actual  
5 administrative expenses of administering a chapter 13  
6 plan for the district in which the debtor resides, up to an  
7 amount of 10 percent of the projected plan payments, as  
8 determined under schedules issued by the Executive Office  
9 for United States Trustees.

10       “(IV) In addition, the debtor’s monthly expenses may  
11 include the actual expenses for each dependent child less  
12 than 18 years of age, not to exceed \$1,500 per year per  
13 child, to attend a private or public elementary or sec-  
14 ondary school if the debtor provides documentation of such  
15 expenses and a detailed explanation of why such expenses  
16 are reasonable and necessary, and why such expenses are  
17 not already accounted for in the National Standards,  
18 Local Standards, or Other Necessary Expenses referred  
19 to in subclause (I)

20       “(V) In addition, the debtor’s monthly expenses may  
21 include an allowance for housing and utilities, in excess  
22 of the allowance specified by the Local Standards for  
23 housing and utilities issued by the Internal Revenue Serv-  
24 ice, based on the actual expenses for home energy costs  
25 if the debtor provides documentation of such actual ex-

1 penses and demonstrates that such actual expenses are  
2 reasonable and necessary.

3 “(iii) The debtor’s average monthly payments on ac-  
4 count of secured debts shall be calculated as the sum of—

5 “(I) the total of all amounts scheduled as con-  
6 tractually due to secured creditors in each month of  
7 the 60 months following the date of the petition; and

8 “(II) any additional payments to secured credi-  
9 tors necessary for the debtor, in filing a plan under  
10 chapter 13 of this title, to maintain possession of the  
11 debtor’s primary residence, motor vehicle, or other  
12 property necessary for the support of the debtor and  
13 the debtor’s dependents, that serves as collateral for  
14 secured debts;

15 divided by 60.

16 “(iv) The debtor’s expenses for payment of all pri-  
17 ority claims (including priority child support and alimony  
18 claims) shall be calculated as the total amount of debts  
19 entitled to priority, divided by 60.

20 “(B)(i) In any proceeding brought under this sub-  
21 section, the presumption of abuse may only be rebutted  
22 by demonstrating special circumstances that justify addi-  
23 tional expenses or adjustments of current monthly income  
24 for which there is no reasonable alternative.

1       “(ii) In order to establish special circumstances, the  
2 debtor shall be required to itemize each additional expense  
3 or adjustment of income and to provide—

4               “(I) documentation for such expense or adjust-  
5 ment to income; and

6               “(II) a detailed explanation of the special cir-  
7 cumstances that make such expenses or adjustment  
8 to income necessary and reasonable.

9       “(iii) The debtor shall attest under oath to the accu-  
10 racy of any information provided to demonstrate that ad-  
11 ditional expenses or adjustments to income are required.

12       “(iv) The presumption of abuse may only be rebutted  
13 if the additional expenses or adjustments to income re-  
14 ferred to in clause (i) cause the product of the debtor’s  
15 current monthly income reduced by the amounts deter-  
16 mined under clauses (ii), (iii), and (iv) of subparagraph  
17 (A) when multiplied by 60 to be less than the lesser of—

18               “(I) 25 percent of the debtor’s nonpriority un-  
19 secured claims, or \$6,000, whichever is greater; or

20               “(II) \$10,000.

21       “(C) As part of the schedule of current income and  
22 expenditures required under section 521, the debtor shall  
23 include a statement of the debtor’s current monthly in-  
24 come, and the calculations that determine whether a pre-

1 sumption arises under subparagraph (A)(i), that shows  
2 how each such amount is calculated.

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

8 “(A) whether the debtor filed the petition in  
9 bad faith; or

10 “(B) the totality of the circumstances  
11 (including whether the debtor seeks to reject a per-  
12 sonal services contract and the financial need for  
13 such rejection as sought by the debtor) of the debt-  
14 or’s financial situation demonstrates abuse.

15 “(4)(A) The court, on its own initiative or on the mo-  
16 tion of a party in interest, in accordance with the proce-  
17 dures described in rule 9011 of the Federal Rules of  
18 Bankruptcy Procedure, may order the attorney for the  
19 debtor to reimburse the trustee for all reasonable costs  
20 in prosecuting a motion filed under section 707(b), includ-  
21 ing reasonable attorneys’ fees, if—

22 “(i) a trustee files a motion for dismissal or  
23 conversion under this subsection; and

24 “(ii) the court—

25 “(I) grants such motion; and

1           “(II) finds that the action of the attorney  
2           for the debtor in filing under this chapter vio-  
3           lated rule 9011 of the Federal Rules of Bank-  
4           ruptcy Procedure.

5           “(B) If the court finds that the attorney for the debt-  
6           or violated rule 9011 of the Federal Rules of Bankruptcy  
7           Procedure, the court, on its own initiative or on the motion  
8           of a party in interest, in accordance with such procedures,  
9           may order—

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

12           “(ii) the payment of such civil penalty to the  
13           trustee, the United States trustee, or the bankruptcy  
14           administrator.

15           “(C) In the case of a petition, pleading, or written  
16           motion, the signature of an attorney shall constitute a cer-  
17           tification that the attorney has—

18           “(i) performed a reasonable investigation into  
19           the circumstances that gave rise to the petition,  
20           pleading, or written motion; and

21           “(ii) determined that the petition, pleading, or  
22           written motion—

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

24           “(II) is warranted by existing law or a  
25           good faith argument for the extension, modi-

1           fication, or reversal of existing law and does not  
2           constitute an abuse under paragraph (1).

3           “(D) The signature of an attorney on the petition  
4 shall constitute a certification that the attorney has no  
5 knowledge after an inquiry that the information in the  
6 schedules filed with such petition is incorrect.

7           “(5)(A) Except as provided in subparagraph (B) and  
8 subject to paragraph (6), the court, on its own initiative  
9 or on the motion of a party in interest, in accordance with  
10 the procedures described in rule 9011 of the Federal Rules  
11 of Bankruptcy Procedure, may award a debtor all reason-  
12 able costs (including reasonable attorneys’ fees) in con-  
13 testing a motion filed by a party in interest (other than  
14 a trustee, United States trustee, or bankruptcy adminis-  
15 trator) under this subsection if—

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

17           “(ii) the court finds that—

18           “(I) the position of the party that filed the  
19 motion violated rule 9011 of the Federal Rules  
20 of Bankruptcy Procedure; or

21           “(II) the attorney (if any) who filed the  
22 motion did not comply with the requirements of  
23 clauses (i) and (ii) of paragraph (4)(C), and the  
24 motion was made solely for the purpose of co-

1           ercing a debtor into waiving a right guaranteed  
2           to the debtor under this title.

3           “(B) A small business that has a claim of an aggre-  
4           gate amount less than \$1,000 shall not be subject to sub-  
5           paragraph (A)(ii)(I).

6           “(C) For purposes of this paragraph—

7           “(i) the term ‘small business’ means an unin-  
8           corporated business, partnership, corporation, asso-  
9           ciation, or organization that—

10                   “(I) has fewer than 25 full-time employees  
11                   as determined on the date on which the motion  
12                   is filed; and

13                   “(II) is engaged in commercial or business  
14                   activity; and

15           “(ii) the number of employees of a wholly  
16           owned subsidiary of a corporation includes the em-  
17           ployees of—

18                   “(I) a parent corporation; and

19                   “(II) any other subsidiary corporation of  
20                   the parent corporation.

21           “(6) Only the judge, United States trustee, or bank-  
22           ruptcy administrator may file a motion under section  
23           707(b), if the current monthly income of the debtor, or  
24           in a joint case, the debtor and the debtor’s spouse, as of

1 the date of the order for relief, when multiplied by 12,  
2 is equal to or less than—

3           “(A) in the case of a debtor in a household of  
4           1 person, the median family income of the applicable  
5           State for 1 earner;

6           “(B) in the case of a debtor in a household of  
7           2, 3, or 4 individuals, the highest median family in-  
8           come of the applicable State for a family of the same  
9           number or fewer individuals; or

10           “(C) in the case of a debtor in a household ex-  
11           ceeding 4 individuals, the highest median family in-  
12           come of the applicable State for a family of 4 or  
13           fewer individuals, plus \$525 per month for each in-  
14           dividual in excess of 4.

15           “(7)(A) No judge, United States trustee, trustee,  
16           bankruptcy administrator, or other party in interest may  
17           file a motion under paragraph (2) if the current monthly  
18           income of the debtor and the debtor’s spouse combined,  
19           as of the date of the order for relief when multiplied by  
20           12, is equal to or less than—

21           “(i) in the case of a debtor in a household of  
22           1 person, the median family income of the applicable  
23           State for 1 earner;

24           “(ii) in the case of a debtor in a household of  
25           2, 3, or 4 individuals, the highest median family in-

1       come of the applicable State for a family of the same  
2       number or fewer individuals; or

3               “(iii) in the case of a debtor in a household ex-  
4       ceeding 4 individuals, the highest median family in-  
5       come of the applicable State for a family of 4 or  
6       fewer individuals , plus \$525 per month for each in-  
7       dividual in excess of 4.

8       “(B) In a case that is not a joint case, current month-  
9       ly income of the debtor’s spouse shall not be considered  
10      for purposes of subparagraph (A) if—

11               “(i)(I) the debtor and the debtor’s spouse are  
12      separated under applicable nonbankruptcy law; or

13               “(II) the debtor and the debtor’s spouse are liv-  
14      ing separate and apart, other than for the purpose  
15      of evading subparagraph (A); and

16               “(ii) the debtor files a statement under penalty  
17      of perjury—

18               “(I) specifying that the debtor meets the  
19      requirement of subclause (I) or (II) of clause  
20      (i); and

21               “(II) disclosing the aggregate, or best esti-  
22      mate of the aggregate, amount of any cash or  
23      money payments received from the debtor’s  
24      spouse attributed to the debtor’s current  
25      monthly income.”.

1 (b) DEFINITION.—Section 101 of title 11, United  
2 States Code, is amended by inserting after paragraph (10)  
3 the following:

4 “(10A) ‘current monthly income’—

5 “(A) means the average monthly income  
6 from all sources that the debtor receives (or in  
7 a joint case the debtor and the debtor’s spouse  
8 receive) without regard to whether such income  
9 is taxable income, derived during the 6-month  
10 period ending on—

11 “(i) the last day of the calendar  
12 month immediately preceding the date of  
13 the commencement of the case if the debt-  
14 or files the schedule of current income re-  
15 quired by section 521(a)(1)(B)(ii); or

16 “(ii) the date on which current income  
17 is determined by the court for purposes of  
18 this title if the debtor does not file the  
19 schedule of current income required by sec-  
20 tion 521(a)(1)(B)(ii); and

21 “(B) includes any amount paid by any en-  
22 tity other than the debtor (or in a joint case the  
23 debtor and the debtor’s spouse), on a regular  
24 basis for the household expenses of the debtor  
25 or the debtor’s dependents (and in a joint case

1 the debtor’s spouse if not otherwise a depend-  
2 ent), but excludes benefits received under the  
3 Social Security Act, payments to victims of war  
4 crimes or crimes against humanity on account  
5 of their status as victims of such crimes, and  
6 payments to victims of international terrorism  
7 (as defined in section 2331 of title 18) or do-  
8 mestic terrorism (as defined in section 2331 of  
9 title 18) on account of their status as victims  
10 of such terrorism;”.

11 (c) UNITED STATES TRUSTEE AND BANKRUPTCY  
12 ADMINISTRATOR DUTIES.—Section 704 of title 11, United  
13 States Code, is amended—

14 (1) by inserting “(a)” before “The trustee  
15 shall—”; and

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

17 “(b)(1) With respect to a debtor who is an individual  
18 in a case under this chapter—

19 “(A) the United States trustee or bankruptcy  
20 administrator shall review all materials filed by the  
21 debtor and, not later than 10 days after the date of  
22 the first meeting of creditors, file with the court a  
23 statement as to whether the debtor’s case would be  
24 presumed to be an abuse under section 707(b); and

1           “(B) not later than 5 days after receiving a  
2           statement under subparagraph (A), the court shall  
3           provide a copy of the statement to all creditors.

4           “(2) The United States trustee or bankruptcy admin-  
5           istrator shall, not later than 30 days after the date of fil-  
6           ing a statement under paragraph (1), either file a motion  
7           to dismiss or convert under section 707(b) or file a state-  
8           ment setting forth the reasons the United States trustee  
9           or bankruptcy administrator does not believe that such a  
10          motion would be appropriate, if the United States trustee  
11          or bankruptcy administrator determines that the debtor’s  
12          case should be presumed to be an abuse under section  
13          707(b) and the product of the debtor’s current monthly  
14          income, multiplied by 12 is not less than—

15                 “(A) in the case of a debtor in a household of  
16                 1 person, the median family income of the applicable  
17                 State for 1 earner; or

18                 “(B) in the case of a debtor in a household of  
19                 2 or more individuals, the highest median family in-  
20                 come of the applicable State for a family of the same  
21                 number or fewer individuals .”.

22           (d) NOTICE.—Section 342 of title 11, United States  
23           Code, is amended by adding at the end the following:

24                 “(d) In a case under chapter 7 of this title in which  
25                 the debtor is an individual and in which the presumption

1 of abuse is triggered under section 707(b), the clerk shall  
2 give written notice to all creditors not later than 10 days  
3 after the date of the filing of the petition that the pre-  
4 sumption of abuse has been triggered.”.

5 (e) NONLIMITATION OF INFORMATION.—Nothing in  
6 this title shall limit the ability of a creditor to provide in-  
7 formation to a judge (except for information commu-  
8 nicated ex parte, unless otherwise permitted by applicable  
9 law), United States trustee, bankruptcy administrator or  
10 trustee.

11 (f) DISMISSAL FOR CERTAIN CRIMES.—Section 707  
12 of title 11, United States Code, is amended by adding at  
13 the end the following:

14 “(c)(1) In this subsection—

15 “(A) the term ‘crime of violence’ has the mean-  
16 ing given such term in section 16 of title 18; and

17 “(B) the term ‘drug trafficking crime’ has the  
18 meaning given such term in section 924(c)(2) of title  
19 18.

20 “(2) Except as provided in paragraph (3), after no-  
21 tice and a hearing, the court, on a motion by the victim  
22 of a crime of violence or a drug trafficking crime, may  
23 when it is in the best interest of the victim dismiss a vol-  
24 untary case filed under this chapter by a debtor who is

1 an individual if such individual was convicted of such  
2 crime.

3 “(3) The court may not dismiss a case under para-  
4 graph (2) if the debtor establishes by a preponderance of  
5 the evidence that the filing of a case under this chapter  
6 is necessary to satisfy a claim for a domestic support obli-  
7 gation.”.

8 (g) CONFIRMATION OF PLAN.—Section 1325(a) of  
9 title 11, United States Code, is amended—

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

12 (2) in paragraph (6), by striking the period and  
13 inserting a semicolon; and

14 (3) by inserting after paragraph (6) the fol-  
15 lowing:

16 “(7) the action of the debtor in filing the peti-  
17 tion was in good faith;”.

18 (h) APPLICABILITY OF MEANS TEST TO CHAPTER  
19 13.—Section 1325(b) of title 11, United States Code, is  
20 amended—

21 (1) in paragraph (1)(B), by inserting “to unse-  
22 cured creditors” after “to make payments”; and

23 (2) by striking paragraph (2) and inserting the  
24 following:

1           “(2) For purposes of this subsection, the term  
2           ‘disposable income’ means current monthly income  
3           received by the debtor (other than child support pay-  
4           ments, foster care payments, or disability payments  
5           for a dependent child made in accordance with appli-  
6           cable nonbankruptcy law to the extent reasonably  
7           necessary to be expended for such child) less  
8           amounts reasonably necessary to be expended—

9           “(A) for the maintenance or support of the  
10           debtor or a dependent of the debtor or for a do-  
11           mestic support obligation that first becomes  
12           payable after the date the petition is filed and  
13           for charitable contributions (that meet the defi-  
14           nition of ‘charitable contribution’ under section  
15           548(d)(3) to a qualified religious or charitable  
16           entity or organization (as defined in section  
17           548(d)(4)) in an amount not to exceed 15 per-  
18           cent of gross income of the debtor for the year  
19           in which the contributions are made; and

20           “(B) if the debtor is engaged in business,  
21           for the payment of expenditures necessary for  
22           the continuation, preservation, and operation of  
23           such business.

24           “(3) Amounts reasonably necessary to be ex-  
25           pended under paragraph (2) shall be determined in

1 accordance with subparagraphs (A) and (B) of sec-  
2 tion 707(b)(2), if the debtor has current monthly in-  
3 come, when multiplied by 12, greater than—

4 “(A) in the case of a debtor in a household  
5 of 1 person, the median family income of the  
6 applicable State for 1 earner;

7 “(B) in the case of a debtor in a household  
8 of 2, 3, or 4 individuals, the highest median  
9 family income of the applicable State for a fam-  
10 ily of the same number or fewer individuals; or

11 “(C) in the case of a debtor in a household  
12 exceeding 4 individuals, the highest median  
13 family income of the applicable State for a fam-  
14 ily of 4 or fewer individuals , plus \$525 per  
15 month for each individual in excess of 4.”.

16 (i) SPECIAL ALLOWANCE FOR HEALTH INSUR-  
17 ANCE.—Section 1329(a) of title 11, United States Code,  
18 is amended—

19 (1) in paragraph (2) by striking “or” at the  
20 end;

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

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

24 “(4) reduce amounts to be paid under the plan  
25 by the actual amount expended by the debtor to pur-

1 chase health insurance for the debtor (and for any  
2 dependent of the debtor if such dependent does not  
3 otherwise have health insurance coverage) if the  
4 debtor documents the cost of such insurance and  
5 demonstrates that—

6 “(A) such expenses are reasonable and  
7 necessary;

8 “(B)(i) if the debtor previously paid for  
9 health insurance, the amount is not materially  
10 larger than the cost the debtor previously paid  
11 or the cost necessary to maintain the lapsed  
12 policy; or

13 “(ii) if the debtor did not have health in-  
14 surance, the amount is not materially larger  
15 than the reasonable cost that would be incurred  
16 by a debtor who purchases health insurance,  
17 who has similar income, expenses, age, and  
18 health status, and who lives in the same geo-  
19 graphical location with the same number of de-  
20 pendents who do not otherwise have health in-  
21 surance coverage; and

22 “(C) the amount is not otherwise allowed  
23 for purposes of determining disposable income  
24 under section 1325(b) of this title;

1 and upon request of any party in interest, files proof  
2 that a health insurance policy was purchased.”.

3 (j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section  
4 104(b) of title 11, United States Code, is amended by  
5 striking “and 523(a)(2)(C)” each place it appears and in-  
6 serting “523(a)(2)(C), 707(b), and 1325(b)(3)”.

7 (k) DEFINITION OF ‘MEDIAN FAMILY INCOME’.—  
8 Section 101 of title 11, United States Code, is amended  
9 by inserting after paragraph (39) the following:

10 “(39A) ‘median family income’ means for any  
11 year—

12 “(A) the median family income both cal-  
13 culated and reported by the Bureau of the Cen-  
14 sus in the then most recent year; and

15 “(B) if not so calculated and reported in  
16 the then current year, adjusted annually after  
17 such most recent year until the next year in  
18 which median family income is both calculated  
19 and reported by the Bureau of the Census, to  
20 reflect the percentage change in the Consumer  
21 Price Index for All Urban Consumers during  
22 the period of years occurring after such most  
23 recent year and before such current year;”.

24 (k) CLERICAL AMENDMENT.—The table of sections  
25 for chapter 7 of title 11, United States Code, is amended

1 by striking the item relating to section 707 and inserting  
2 the following:

“707. Dismissal of a case or conversion to a case under chapter 11 or 13.”.

3 **SEC. 103. SENSE OF CONGRESS AND STUDY.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that the Secretary of the Treasury has the authority  
6 to alter the Internal Revenue Service standards estab-  
7 lished to set guidelines for repayment plans as needed to  
8 accommodate their use under section 707(b) of title 11,  
9 United States Code.

10 (b) STUDY.—

11 (1) IN GENERAL.—Not later than 2 years after  
12 the date of enactment of this Act, the Director of  
13 the Executive Office for United States Trustees shall  
14 submit a report to the Committee on the Judiciary  
15 of the Senate and the Committee on the Judiciary  
16 of the House of Representatives containing the find-  
17 ings of the Director regarding the utilization of In-  
18 ternal Revenue Service standards for determining—

19 (A) the current monthly expenses of a  
20 debtor under section 707(b) of title 11, United  
21 States Code; and

22 (B) the impact that the application of such  
23 standards has had on debtors and on the bank-  
24 ruptcy courts.

1           (2) RECOMMENDATION.—The report under  
2 paragraph (1) may include recommendations for  
3 amendments to title 11, United States Code, that  
4 are consistent with the findings of the Director  
5 under paragraph (1).

6 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

9           “(b) Before the commencement of a case under this  
10 title by an individual whose debts are primarily consumer  
11 debts, the clerk shall give to such individual written notice  
12 containing—

13                 “(1) a brief description of—

14                         “(A) chapters 7, 11, 12, and 13 and the  
15 general purpose, benefits, and costs of pro-  
16 ceeding under each of those chapters; and

17                         “(B) the types of services available from  
18 credit counseling agencies; and

19                 “(2) statements specifying that—

20                         “(A) a person who knowingly and fraudu-  
21 lently conceals assets or makes a false oath or  
22 statement under penalty of perjury in connec-  
23 tion with a bankruptcy case shall be subject to  
24 fine, imprisonment, or both; and

1                   “(B) all information supplied by a debtor  
2                   in connection with a bankruptcy case is subject  
3                   to examination by the Attorney General.”.

4 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**  
5                   **TEST PROGRAM.**

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

18           (b) TEST.—

19           (1) SELECTION OF DISTRICTS.—The Director  
20 shall select 6 judicial districts of the United States  
21 in which to test the effectiveness of the financial  
22 management training curriculum and materials de-  
23 veloped under subsection (a).

24           (2) USE.—For an 18-month period beginning  
25 not later than 270 days after the date of enactment

1 of this Act, such curriculum and materials shall be,  
2 for the 6 judicial districts selected under paragraph  
3 (1), used as the instructional course concerning per-  
4 sonal financial management for purposes of section  
5 111 of title 11, United States Code.

6 (c) EVALUATION.—

7 (1) IN GENERAL.—During the 18-month period  
8 referred to in subsection (b), the Director shall  
9 evaluate the effectiveness of—

10 (A) the financial management training cur-  
11 rriculum and materials developed under sub-  
12 section (a); and

13 (B) a sample of existing consumer edu-  
14 cation programs such as those described in the  
15 Report of the National Bankruptcy Review  
16 Commission (October 20, 1997) that are rep-  
17 resentative of consumer education programs  
18 carried out by the credit industry, by trustees  
19 serving under chapter 13 of title 11, United  
20 States Code, and by consumer counseling  
21 groups.

22 (2) REPORT.—Not later than 3 months after  
23 concluding such evaluation, the Director shall sub-  
24 mit a report to the Speaker of the House of Rep-  
25 resentatives and the President pro tempore of the

1 Senate, for referral to the appropriate committees of  
2 the Congress, containing the findings of the Director  
3 regarding the effectiveness of such curriculum, such  
4 materials, and such programs and their costs.

5 **SEC. 106. CREDIT COUNSELING.**

6 (a) WHO MAY BE A DEBTOR.—Section 109 of title  
7 11, United States Code, is amended by adding at the end  
8 the following:

9 “(h)(1) Subject to paragraphs (2) and (3), and not-  
10 withstanding any other provision of this section, an indi-  
11 vidual may not be a debtor under this title unless that  
12 individual has, during the 180-day period preceding the  
13 date of filing of the petition of that individual, received  
14 from an approved nonprofit budget and credit counseling  
15 agency described in section 111(a) an individual or group  
16 briefing (including a briefing conducted by telephone or  
17 on the Internet) that outlined the opportunities for avail-  
18 able credit counseling and assisted that individual in per-  
19 forming a related budget analysis.

20 “(2)(A) Paragraph (1) shall not apply with respect  
21 to a debtor who resides in a district for which the United  
22 States trustee or bankruptcy administrator of the bank-  
23 ruptcy court of that district determines that the approved  
24 nonprofit budget and credit counseling agencies for that  
25 district are not reasonably able to provide adequate serv-

1 ices to the additional individuals who would otherwise seek  
2 credit counseling from that agency by reason of the re-  
3 quirements of paragraph (1).

4 “(B) Each United States trustee or bankruptcy ad-  
5 ministrator that makes a determination described in sub-  
6 paragraph (A) shall review that determination not later  
7 than 1 year after the date of that determination, and not  
8 less frequently than every year thereafter. Notwith-  
9 standing the preceding sentence, a nonprofit budget and  
10 credit counseling agency may be disapproved by the  
11 United States trustee or bankruptcy administrator at any  
12 time.

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

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

18 “(ii) states that the debtor requested credit  
19 counseling services from an approved nonprofit  
20 budget and credit counseling agency, but was unable  
21 to obtain the services referred to in paragraph (1)  
22 during the 5-day period beginning on the date on  
23 which the debtor made that request; and

24 “(iii) is satisfactory to the court.

1       “(B) With respect to a debtor, an exemption under  
2 subparagraph (A) shall cease to apply to that debtor on  
3 the date on which the debtor meets the requirements of  
4 paragraph (1), but in no case may the exemption apply  
5 to that debtor after the date that is 30 days after the debt-  
6 or files a petition, except that the court, for cause, may  
7 order an additional 15 days.”.

8       (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
9 11, United States Code, is amended—

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

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

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

15           “(11) after the filing of the petition, the debtor  
16 failed to complete an instructional course concerning  
17 personal financial management described in section  
18 111, except that this paragraph shall not apply with  
19 respect to a debtor who resides in a district for  
20 which the United States trustee or bankruptcy ad-  
21 ministrator of such district determines that the ap-  
22 proved instructional courses are not adequate to  
23 service the additional individuals required to com-  
24 plete such instructional courses under this section  
25 (Each United States trustee or bankruptcy adminis-

1       trator who makes a determination described in this  
2       paragraph shall review such determination not later  
3       than 1 year after the date of such determination,  
4       and not less frequently than annually thereafter.”.

5       (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
6 11, United States Code, is amended by adding at the end  
7 the following:

8       “(g)(1) The court shall not grant a discharge under  
9 this section to a debtor unless after filing a petition the  
10 debtor has completed an instructional course concerning  
11 personal financial management described in section 111.

12       “(2) Paragraph (1) shall not apply with respect to  
13 a debtor who resides in a district for which the United  
14 States trustee or bankruptcy administrator of such district  
15 determines that the approved instructional courses are not  
16 adequate to service the additional individuals who would  
17 be required to complete such instructional course by rea-  
18 son of the requirements of this section.

19       “(3) Each United States trustee or bankruptcy ad-  
20 ministrator who makes a determination described in para-  
21 graph (2) shall review such determination not later than  
22 1 year after the date of such determination, and not less  
23 frequently than annually thereafter.”.

1           (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
2 11, United States Code, is amended by adding at the end  
3 the following:

4           “(g) The court shall not grant a discharge under this  
5 section to a debtor, unless after filing a petition the debtor  
6 has completed an instructional course concerning personal  
7 financial management described in section 111.

8           “(h) Subsection (g) shall not apply with respect to  
9 a debtor who resides in a district for which the United  
10 States trustee or bankruptcy administrator of the bank-  
11 ruptcy court of that district determines that the approved  
12 instructional courses are not adequate to service the addi-  
13 tional individuals who would be required to complete the  
14 instructional course by reason of the requirements of this  
15 section.

16           “(i) Each United States trustee or bankruptcy ad-  
17 ministrator that makes a determination described in sub-  
18 section (h) shall review that determination not later than  
19 1 year after the date of that determination, and not less  
20 frequently than every year thereafter.”.

21           (d) DEBTOR’S DUTIES.—Section 521 of title 11,  
22 United States Code, is amended—

23           (1) by inserting “(a)” before “The debtor  
24 shall—”; and

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

1 “(b) In addition to the requirements under subsection  
2 (a), a debtor who is an individual shall file with the  
3 court—

4 “(1) a certificate from the approved nonprofit  
5 budget and credit counseling agency that provided  
6 the debtor services under section 109(h) describing  
7 the services provided to the debtor; and

8 “(2) a copy of the debt repayment plan, if any,  
9 developed under section 109(h) through the ap-  
10 proved nonprofit budget and credit counseling agen-  
11 cy referred to in paragraph (1).”.

12 (e) GENERAL PROVISIONS.—

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

16 “§ 111. **Credit counseling agencies; financial manage-**  
17 **ment instructional courses**

18 “(a) The clerk shall maintain a publicly available list  
19 of—

20 “(1) credit counseling agencies that provide 1  
21 or more programs described in section 109(h) cur-  
22 rently approved by the United States trustee or the  
23 bankruptcy administrator for the district, as applica-  
24 ble; and

1           “(2) instructional courses concerning personal  
2           financial management currently approved by the  
3           United States trustee or the bankruptcy adminis-  
4           trator for the district, as applicable.

5           “(b) The United States trustee or bankruptcy admin-  
6           istrator shall only approve a credit counseling agency or  
7           instructional course concerning personal financial manage-  
8           ment as follows:

9           “(1) The United States trustee or bankruptcy  
10          administrator shall have thoroughly reviewed the  
11          qualifications of the credit counseling agency or of  
12          the provider of the instructional course under the  
13          standards set forth in this section, and the programs  
14          or instructional courses which will be offered by such  
15          agency or provider, and may require an agency or  
16          provider of an instructional course which has sought  
17          approval to provide information with respect to such  
18          review.

19          “(2) The United States trustee or bankruptcy  
20          administrator shall have determined that the credit  
21          counseling agency or instructional course fully satis-  
22          fies the applicable standards set forth in this section.

23          “(3) When an agency or instructional course is  
24          initially approved, such approval shall be for a pro-  
25          bationary period not to exceed 6 months. An agency

1 or instructional course is initially approved if it did  
2 not appear on the approved list for the district  
3 under subsection (a) immediately prior to approval.

4 “(4) At the conclusion of the probationary pe-  
5 riod under paragraph (3), the United States trustee  
6 or bankruptcy administrator may only approve for  
7 an additional 1-year period, and for successive 1-  
8 year periods thereafter, any agency or instructional  
9 course which has demonstrated during the proba-  
10 tionary or subsequent period that such agency or in-  
11 structional course—

12 “(A) has met the standards set forth under  
13 this section during such period; and

14 “(B) can satisfy such standards in the fu-  
15 ture.

16 “(5) Not later than 30 days after any final de-  
17 cision under paragraph (4), that occurs either after  
18 the expiration of the initial probationary period, or  
19 after any 2-year period thereafter, an interested per-  
20 son may seek judicial review of such decision in the  
21 appropriate district court of the United States.

22 “(c)(1) The United States trustee or bankruptcy ad-  
23 ministrator shall only approve a credit counseling agency  
24 that demonstrates that it will provide qualified counselors,  
25 maintain adequate provision for safekeeping and payment

1 of client funds, provide adequate counseling with respect  
2 to client credit problems, and deal responsibly and effec-  
3 tively with other matters as relate to the quality, effective-  
4 ness, and financial security of such programs.

5 “(2) To be approved by the United States trustee or  
6 bankruptcy administrator, a credit counseling agency  
7 shall, at a minimum—

8 “(A) be a nonprofit budget and credit coun-  
9 seling agency, the majority of the board of directors  
10 of which—

11 “(i) are not employed by the agency; and

12 “(ii) will not directly or indirectly benefit  
13 financially from the outcome of a credit coun-  
14 seling session;

15 “(B) if a fee is charged for counseling services,  
16 charge a reasonable fee, and provide services without  
17 regard to ability to pay the fee;

18 “(C) provide for safekeeping and payment of  
19 client funds, including an annual audit of the trust  
20 accounts and appropriate employee bonding;

21 “(D) provide full disclosures to clients, includ-  
22 ing funding sources, counselor qualifications, pos-  
23 sible impact on credit reports, and any costs of such  
24 program that will be paid by the debtor and how  
25 such costs will be paid;

1           “(E) provide adequate counseling with respect  
2           to client credit problems that includes an analysis of  
3           their current situation, what brought them to that  
4           financial status, and how they can develop a plan to  
5           handle the problem without incurring negative amor-  
6           tization of their debts;

7           “(F) provide trained counselors who receive no  
8           commissions or bonuses based on the counseling ses-  
9           sion outcome, and who have adequate experience,  
10          and have been adequately trained to provide coun-  
11          seling services to individuals in financial difficulty,  
12          including the matters described in subparagraph  
13          (E);

14          “(G) demonstrate adequate experience and  
15          background in providing credit counseling; and

16          “(H) have adequate financial resources to pro-  
17          vide continuing support services for budgeting plans  
18          over the life of any repayment plan.

19          “(d) The United States trustee or bankruptcy admin-  
20          istrator shall only approve an instructional course con-  
21          cerning personal financial management—

22                 “(1) for an initial probationary period under  
23                 subsection (b)(3) if the course will provide at a min-  
24                 imum—

1           “(A) trained personnel with adequate expe-  
2           rience and training in providing effective in-  
3           struction and services;

4           “(B) learning materials and teaching  
5           methodologies designed to assist debtors in un-  
6           derstanding personal financial management and  
7           that are consistent with stated objectives di-  
8           rectly related to the goals of such instructional  
9           course;

10          “(C) adequate facilities situated in reason-  
11          ably convenient locations at which such instruc-  
12          tional course is offered, except that such facili-  
13          ties may include the provision of such instruc-  
14          tional course or program by telephone or  
15          through the Internet, if such instructional  
16          course or program is effective; and

17          “(D) the preparation and retention of rea-  
18          sonable records (which shall include the debt-  
19          or’s bankruptcy case number) to permit evalua-  
20          tion of the effectiveness of such instructional  
21          course or program, including any evaluation of  
22          satisfaction of instructional course or program  
23          requirements for each debtor attending such in-  
24          structional course or program, which shall be  
25          available for inspection and evaluation by the

1 Executive Office for United States Trustees,  
2 the United States trustee, bankruptcy adminis-  
3 trator, or chief bankruptcy judge for the district  
4 in which such instructional course or program  
5 is offered; and

6 “(2) for any 1-year period if the provider there-  
7 of has demonstrated that the course meets the  
8 standards of paragraph (1) and, in addition—

9 “(A) has been effective in assisting a sub-  
10 stantial number of debtors to understand per-  
11 sonal financial management; and

12 “(B) is otherwise likely to increase sub-  
13 stantially debtor understanding of personal fi-  
14 nancial management.

15 “(e) The district court may, at any time, investigate  
16 the qualifications of a credit counseling agency referred  
17 to in subsection (a), and request production of documents  
18 to ensure the integrity and effectiveness of such credit  
19 counseling agencies. The district court may, at any time,  
20 remove from the approved list under subsection (a) a cred-  
21 it counseling agency upon finding such agency does not  
22 meet the qualifications of subsection (b).

23 “(f) The United States trustee or bankruptcy admin-  
24 istrator shall notify the clerk that a credit counseling  
25 agency or an instructional course is no longer approved,

1 in which case the clerk shall remove it from the list main-  
2 tained under subsection (a).

3 “(g)(1) No credit counseling agency may provide to  
4 a credit reporting agency information concerning whether  
5 a debtor who has received or sought instruction concerning  
6 personal financial management from the credit counseling  
7 agency.

8 “(2) A credit counseling agency that willfully or neg-  
9 ligently fails to comply with any requirement under this  
10 title with respect to a debtor shall be liable for damages  
11 in an amount equal to the sum of—

12 “(A) any actual damages sustained by the debt-  
13 or as a result of the violation; and

14 “(B) any court costs or reasonable attorneys’  
15 fees (as determined by the court) incurred in an ac-  
16 tion to recover those damages.”.

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

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

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

23 “(i) If a case commenced under chapter 7, 11, or 13  
24 is dismissed due to the creation of a debt repayment plan,  
25 for purposes of subsection (c)(3), any subsequent case

1 commenced by the debtor under any such chapter shall  
 2 not be presumed to be filed not in good faith.

3 “(j) On request of a party in interest, the court shall  
 4 issue an order under subsection (c) confirming that the  
 5 automatic stay has been terminated.”.

6 **SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY**  
 7 **EXPENSES.**

8 For purposes of section 707(b) of title 11, United  
 9 States Code, as amended by this Act, the Director of the  
 10 Executive Office for United States Trustees shall, not  
 11 later than 180 days after the date of enactment of this  
 12 Act, issue schedules of reasonable and necessary adminis-  
 13 trative expenses of administering a chapter 13 plan for  
 14 each judicial district of the United States.

15 **TITLE II—ENHANCED**  
 16 **CONSUMER PROTECTION**  
 17 **Subtitle A—Penalties for Abusive**  
 18 **Creditor Practices**

19 **SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**  
 20 **TION.**

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

24 “(k)(1) The court, on the motion of the debtor and  
 25 after a hearing, may reduce a claim filed under this sec-

1 tion based in whole on an unsecured consumer debt by  
2 not more than 20 percent of the claim, if—

3 “(A) the claim was filed by a creditor who un-  
4 reasonably refused to negotiate a reasonable alter-  
5 native repayment schedule proposed by an approved  
6 credit counseling agency described in section 111  
7 acting on behalf of the debtor;

8 “(B) the offer of the debtor under subpara-  
9 graph (A)—

10 “(i) was made at least 60 days before the  
11 filing of the petition; and

12 “(ii) provided for payment of at least 60  
13 percent of the amount of the debt over a period  
14 not to exceed the repayment period of the loan,  
15 or a reasonable extension thereof; and

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

18 “(2) The debtor shall have the burden of proving, by  
19 clear and convincing evidence, that—

20 “(A) the creditor unreasonably refused to con-  
21 sider the debtor’s proposal; and

22 “(B) the proposed alternative repayment sched-  
23 ule was made prior to expiration of the 60-day pe-  
24 riod specified in paragraph (1)(B)(i).”.

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

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

8 **SEC. 202. EFFECT OF DISCHARGE.**

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

11 “(i) The willful failure of a creditor to credit pay-  
12 ments received under a plan confirmed under this title,  
13 unless the order confirming the plan is revoked, the plan  
14 is in default, or the creditor has not received payments  
15 required to be made under the plan in the manner re-  
16 quired by the plan (including crediting the amounts re-  
17 quired under the plan), shall constitute a violation of an  
18 injunction under subsection (a)(2) if the act of the creditor  
19 to collect and failure to credit payments in the manner  
20 required by the plan caused material injury to the debtor.

21 “(j) Subsection (a)(2) does not operate as an injunc-  
22 tion against an act by a creditor that is the holder of a  
23 secured claim, if—

1           “(1) such creditor retains a security interest in  
2           real property that is the principal residence of the  
3           debtor;

4           “(2) such act is in the ordinary course of busi-  
5           ness between the creditor and the debtor; and

6           “(3) such act is limited to seeking or obtaining  
7           periodic payments associated with a valid security  
8           interest in lieu of pursuit of in rem relief to enforce  
9           the lien.”.

10 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**  
11 **PRACTICES.**

12           (a) IN GENERAL.—Section 524 of title 11, United  
13 States Code, as amended section 202, is amended—

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

16           “(2) the debtor received the disclosures de-  
17           scribed in subsection (k) at or before the time at  
18           which the debtor signed the agreement;” and

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

20           “(k)(1) The disclosures required under subsection  
21 (c)(2) shall consist of the disclosure statement described  
22 in paragraph (3), completed as required in that para-  
23 graph, together with the agreement, statement, declara-  
24 tion, motion and order described, respectively, in para-

1 graphs (4) through (8), and shall be the only disclosures  
2 required in connection with the reaffirmation.

3       “(2) Disclosures made under paragraph (1) shall be  
4 made clearly and conspicuously and in writing. The terms  
5 ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall  
6 be disclosed more conspicuously than other terms, data or  
7 information provided in connection with this disclosure,  
8 except that the phrases ‘Before agreeing to reaffirm a  
9 debt, review these important disclosures’ and ‘Summary  
10 of Reaffirmation Agreement’ may be equally conspicuous.  
11 Disclosures may be made in a different order and may  
12 use terminology different from that set forth in para-  
13 graphs (2) through (8), except that the terms ‘Amount  
14 Reaffirmed’ and ‘Annual Percentage Rate’ must be used  
15 where indicated.

16       “(3) The disclosure statement required under this  
17 paragraph shall consist of the following:

18               “(A) The statement: ‘Part A: Before agreeing  
19 to reaffirm a debt, review these important disclo-  
20 sures.’;

21               “(B) Under the heading ‘Summary of Reaffir-  
22 mation Agreement’, the statement: ‘This Summary  
23 is made pursuant to the requirements of the Bank-  
24 ruptcy Code’;

1           “(C) The ‘Amount Reaffirmed’, using that  
2 term, which shall be—

3           “(i) the total amount which the debtor  
4 agrees to reaffirm, and

5           “(ii) the total of any other fees or cost ac-  
6 crued as of the date of the disclosure statement.

7           “(D) In conjunction with the disclosure of the  
8 ‘Amount Reaffirmed’, the statements—

9           “(i) ‘The amount of debt you have agreed  
10 to reaffirm’; and

11           “(ii) ‘Your credit agreement may obligate  
12 you to pay additional amounts which may come  
13 due after the date of this disclosure. Consult  
14 your credit agreement.’.

15           “(E) The ‘Annual Percentage Rate’, using that  
16 term, which shall be disclosed as—

17           “(i) if, at the time the petition is filed, the  
18 debt is an extension of credit under an open  
19 end credit plan, as the terms ‘credit’ and ‘open  
20 end credit plan’ are defined in section 103 of  
21 the Truth in Lending Act, then—

22           “(I) the annual percentage rate deter-  
23 mined under paragraphs (5) and (6) of  
24 section 127(b) of the Truth in Lending  
25 Act, as applicable, as disclosed to the debt-

1 or in the most recent periodic statement  
2 prior to the agreement or, if no such peri-  
3 odic statement has been given to the debt-  
4 or during the prior 6 months, the annual  
5 percentage rate as it would have been so  
6 disclosed at the time the disclosure state-  
7 ment is given to the debtor, or to the ex-  
8 tent this annual percentage rate is not  
9 readily available or not applicable, then

10 “(II) the simple interest rate applica-  
11 ble to the amount reaffirmed as of the date  
12 the disclosure statement is given to the  
13 debtor, or if different simple interest rates  
14 apply to different balances, the simple in-  
15 terest rate applicable to each such balance,  
16 identifying the amount of each such bal-  
17 ance included in the amount reaffirmed, or

18 “(III) if the entity making the disclo-  
19 sure elects, to disclose the annual percent-  
20 age rate under subclause (I) and the sim-  
21 ple interest rate under subclause (II);

22 “(ii) if, at the time the petition is filed, the  
23 debt is an extension of credit other than under  
24 an open end credit plan, as the terms ‘credit’

1 and ‘open end credit plan’ are defined in section  
2 103 of the Truth in Lending Act, then—

3 “(I) the annual percentage rate under  
4 section 128(a)(4) of the Truth in Lending  
5 Act, as disclosed to the debtor in the most  
6 recent disclosure statement given to the  
7 debtor prior to the reaffirmation agree-  
8 ment with respect to the debt, or, if no  
9 such disclosure statement was given to the  
10 debtor, the annual percentage rate as it  
11 would have been so disclosed at the time  
12 the disclosure statement is given to the  
13 debtor, or to the extent this annual per-  
14 centage rate is not readily available or not  
15 applicable, then

16 “(II) the simple interest rate applica-  
17 ble to the amount reaffirmed as of the date  
18 the disclosure statement is given to the  
19 debtor, or if different simple interest rates  
20 apply to different balances, the simple in-  
21 terest rate applicable to each such balance,  
22 identifying the amount of such balance in-  
23 cluded in the amount reaffirmed, or

24 “(III) if the entity making the disclo-  
25 sure elects, to disclose the annual percent-

1                   age rate under (I) and the simple interest  
2                   rate under (II).

3                   “(F) If the underlying debt transaction was dis-  
4                   closed as a variable rate transaction on the most re-  
5                   cent disclosure given under the Truth in Lending  
6                   Act, by stating ‘The interest rate on your loan may  
7                   be a variable interest rate which changes from time  
8                   to time, so that the annual percentage rate disclosed  
9                   here may be higher or lower.’.

10                  “(G) If the debt is secured by a security inter-  
11                  est which has not been waived in whole or in part  
12                  or determined to be void by a final order of the  
13                  court at the time of the disclosure, by disclosing that  
14                  a security interest or lien in goods or property is as-  
15                  serted over some or all of the obligations the debtor  
16                  is reaffirming and listing the items and their origi-  
17                  nal purchase price that are subject to the asserted  
18                  security interest, or if not a purchase-money security  
19                  interest then listing by items or types and the origi-  
20                  nal amount of the loan.

21                  “(H) At the election of the creditor, a state-  
22                  ment of the repayment schedule using 1 or a com-  
23                  bination of the following—

24                         “(i) by making the statement: ‘Your first  
25                         payment in the amount of \$\_\_\_\_\_ is due on

1           \_\_\_\_\_ but the future payment amount may be  
2           different. Consult your reaffirmation or credit  
3           agreement, as applicable.’, and stating the  
4           amount of the first payment and the due date  
5           of that payment in the places provided;

6           “(ii) by making the statement: ‘Your pay-  
7           ment schedule will be:’, and describing the re-  
8           payment schedule with the number, amount and  
9           due dates or period of payments scheduled to  
10          repay the obligations reaffirmed to the extent  
11          then known by the disclosing party; or

12          “(iii) by describing the debtor’s repayment  
13          obligations with reasonable specificity to the ex-  
14          tent then known by the disclosing party.

15          “(I) The following statement: ‘Note: When this  
16          disclosure refers to what a creditor “may” do, it  
17          does not use the word “may” to give the creditor  
18          specific permission. The word “may” is used to tell  
19          you what might occur if the law permits the creditor  
20          to take the action. If you have questions about your  
21          reaffirmation or what the law requires, talk to the  
22          attorney who helped you negotiate this agreement. If  
23          you don’t have an attorney helping you, the judge  
24          will explain the effect of your reaffirmation when the  
25          reaffirmation hearing is held.’

1           “(J)(i) The following additional statements:

2           “‘Reaffirming a debt is a serious financial decision.  
3 The law requires you to take certain steps to make sure  
4 the decision is in your best interest. If these steps are not  
5 completed, the reaffirmation agreement is not effective,  
6 even though you have signed it.

7           “‘1. Read the disclosures in this Part A care-  
8 fully. Consider the decision to reaffirm carefully.  
9 Then, if you want to reaffirm, sign the reaffirmation  
10 agreement in Part B (or you may use a separate  
11 agreement you and your creditor agree on).

12           “‘2. Complete and sign Part D and be sure you  
13 can afford to make the payments you are agreeing  
14 to make and have received a copy of the disclosure  
15 statement and a completed and signed reaffirmation  
16 agreement.

17           “‘3. If you were represented by an attorney  
18 during the negotiation of the reaffirmation agree-  
19 ment, the attorney must have signed the certification  
20 in Part C.

21           “‘4. If you were not represented by an attorney  
22 during the negotiation of the reaffirmation agree-  
23 ment, you must have completed and signed Part E.

24           “‘5. The original of this disclosure must be  
25 filed with the court by you or your creditor. If a sep-

1 arate reaffirmation agreement (other than the one in  
2 Part B) has been signed, it must be attached.

3 “6. If you were represented by an attorney  
4 during the negotiation of the reaffirmation agree-  
5 ment, your reaffirmation agreement becomes effec-  
6 tive upon filing with the court unless the reaffirma-  
7 tion is presumed to be an undue hardship as ex-  
8 plained in Part D.

9 “7. If you were not represented by an attorney  
10 during the negotiation of the reaffirmation agree-  
11 ment, it will not be effective unless the court ap-  
12 proves it. The court will notify you of the hearing on  
13 your reaffirmation agreement. You must attend this  
14 hearing in bankruptcy court where the judge will re-  
15 view your agreement. The bankruptcy court must  
16 approve the agreement as consistent with your best  
17 interests, except that no court approval is required  
18 if the agreement is for a consumer debt secured by  
19 a mortgage, deed of trust, security deed or other lien  
20 on your real property, like your home.

21 “Your right to rescind a reaffirmation. You may re-  
22 scind (cancel) your reaffirmation at any time before the  
23 bankruptcy court enters a discharge order or within 60  
24 days after the agreement is filed with the court, whichever

1 is longer. To rescind or cancel, you must notify the cred-  
2 itor that the agreement is canceled.

3       “‘What are your obligations if you reaffirm the debt?

4 A reaffirmed debt remains your personal legal obligation.

5 It is not discharged in your bankruptcy. That means that

6 if you default on your reaffirmed debt after your bank-

7 ruptcy is over, your creditor may be able to take your

8 property or your wages. Otherwise, your obligations will

9 be determined by the reaffirmation agreement which may

10 have changed the terms of the original agreement. For ex-

11 ample, if you are reaffirming an open end credit agree-

12 ment, the creditor may be permitted by that agreement

13 or applicable law to change the terms of the agreement

14 in the future under certain conditions.

15       “‘Are you required to enter into a reaffirmation

16 agreement by any law? No, you are not required to reaf-

17 firm a debt by any law. Only agree to reaffirm a debt if

18 it is in your best interest. Be sure you can afford the pay-

19 ments you agree to make.

20       “‘What if your creditor has a security interest or

21 lien? Your bankruptcy discharge does not eliminate any

22 lien on your property. A “lien” is often referred to as a

23 security interest, deed of trust, mortgage or security deed.

24 Even if you do not reaffirm and your personal liability

25 on the debt is discharged, because of the lien your creditor



1 “Borrower:

2 “Co-borrower, if also reaffirming:

3 “Accepted by creditor:

4 “Date of creditor acceptance:’.

5 “(5)(A) The declaration shall consist of the following:

6 “Part C: Certification by Debtor’s Attorney (If  
7 Any).

8 “I hereby certify that (1) this agreement represents  
9 a fully informed and voluntary agreement by the debtor(s);  
10 (2) this agreement does not impose an undue hardship on  
11 the debtor or any dependent of the debtor; and (3) I have  
12 fully advised the debtor of the legal effect and con-  
13 sequences of this agreement and any default under this  
14 agreement.

15 “Signature of Debtor’s Attorney:           Date:’.

16 “(B) In the case of reaffirmations in which a pre-  
17 sumption of undue hardship has been established, the cer-  
18 tification shall state that in the opinion of the attorney,  
19 the debtor is able to make the payment.

20 “(C) In the case of a reaffirmation agreement under  
21 subsection (m)(2), subparagraph (B) is not applicable.

22 “(6)(A) The statement in support of reaffirmation  
23 agreement, which the debtor shall sign and date prior to  
24 filing with the court, shall consist of the following:

1           “Part D: Debtor’s Statement in Support of Reaffir-  
2 mation Agreement.

3           “1. I believe this agreement will not impose an  
4 undue hardship on my dependents or me. I can afford to  
5 make the payments on the reaffirmed debt because my  
6 monthly income (take home pay plus any other income re-  
7 ceived) is \$\_\_\_\_\_, and my actual current monthly ex-  
8 penses including monthly payments on post-bankruptcy  
9 debt and other reaffirmation agreements total \$\_\_\_\_\_,  
10 leaving \$\_\_\_\_\_ to make the required payments on this  
11 reaffirmed debt. I understand that if my income less my  
12 monthly expenses does not leave enough to make the pay-  
13 ments, this reaffirmation agreement is presumed to be an  
14 undue hardship on me and must be reviewed by the court.  
15 However, this presumption may be overcome if I explain  
16 to the satisfaction of the court how I can afford to make  
17 the payments here: \_\_\_\_\_.

18           “2. I received a copy of the Reaffirmation Disclosure  
19 Statement in Part A and a completed and signed reaffir-  
20 mation agreement.’.

21           “(B) Where the debtor is represented by an attorney  
22 and is reaffirming a debt owed to a creditor defined in  
23 section 19(b)(1)(A)(iv) of the Federal Reserve Act, the  
24 statement of support of the reaffirmation agreement,

1 which the debtor shall sign and date prior to filing with  
2 the court, shall consist of the following:

3        “‘I believe this agreement is in my financial interest.  
4 I can afford to make the payments on the reaffirmed debt.  
5 I received a copy of the Reaffirmation Disclosure State-  
6 ment in Part A and a completed and signed reaffirmation  
7 agreement.’.

8        “(7) The motion, which may be used if approval of  
9 the agreement by the court is required in order for it to  
10 be effective and shall be signed and dated by the moving  
11 party, shall consist of the following:

12        “‘Part E: Motion for Court Approval (To be com-  
13 pleted only where debtor is not represented by an attor-  
14 ney.). I (we), the debtor, affirm the following to be true  
15 and correct:

16        “‘I am not represented by an attorney in connection  
17 with this reaffirmation agreement.

18        “‘I believe this agreement is in my best interest  
19 based on the income and expenses I have disclosed in my  
20 Statement in Support of this reaffirmation agreement  
21 above, and because (provide any additional relevant rea-  
22 sons the court should consider):

23        “‘Therefore, I ask the court for an order approving  
24 this reaffirmation agreement.’.

1       “(8) The court order, which may be used to approve  
2 a reaffirmation, shall consist of the following:

3       “‘Court Order: The court grants the debtor’s motion  
4 and approves the reaffirmation agreement described  
5 above.’.

6       “(l) Notwithstanding any other provision of this title  
7 the following shall apply:

8               “(1) A creditor may accept payments from a  
9 debtor before and after the filing of a reaffirmation  
10 agreement with the court.

11              “(2) A creditor may accept payments from a  
12 debtor under a reaffirmation agreement which the  
13 creditor believes in good faith to be effective.

14              “(3) The requirements of subsections (c)(2) and  
15 (k) shall be satisfied if disclosures required under  
16 those subsections are given in good faith.

17       “(m)(1) Until 60 days after a reaffirmation agree-  
18 ment is filed with the court (or such additional period as  
19 the court, after notice and a hearing and for cause, orders  
20 before the expiration of such period), it shall be presumed  
21 that the reaffirmation agreement is an undue hardship on  
22 the debtor if the debtor’s monthly income less the debtor’s  
23 monthly expenses as shown on the debtor’s completed and  
24 signed statement in support of the reaffirmation agree-  
25 ment required under subsection (k)(6)(A) is less than the

1 scheduled payments on the reaffirmed debt. This pre-  
2 sumption shall be reviewed by the court. The presumption  
3 may be rebutted in writing by the debtor if the statement  
4 includes an explanation which identifies additional sources  
5 of funds to make the payments as agreed upon under the  
6 terms of the reaffirmation agreement. If the presumption  
7 is not rebutted to the satisfaction of the court, the court  
8 may disapprove the agreement. No agreement shall be dis-  
9 approved without notice and a hearing to the debtor and  
10 creditor and such hearing shall be concluded before the  
11 entry of the debtor's discharge.

12 “(2) This subsection does not apply to reaffirmation  
13 agreements where the creditor is a credit union, as defined  
14 in section 19(b)(1)(A)(iv) of the Federal Reserve Act.”.

15 (b) LAW ENFORCEMENT.—

16 (1) IN GENERAL.—Chapter 9 of title 18, United  
17 States Code, is amended by adding at the end the  
18 following:

19 **“§ 158. Designation of United States attorneys and**  
20 **agents of the Federal Bureau of Inves-**  
21 **tigation to address abusive reaffirma-**  
22 **tions of debt and materially fraudulent**  
23 **statements in bankruptcy schedules**

24 “(a) IN GENERAL.—The Attorney General of the  
25 United States shall designate the individuals described in

1 subsection (b) to have primary responsibility in carrying  
2 out enforcement activities in addressing violations of sec-  
3 tion 152 or 157 relating to abusive reaffirmations of debt.  
4 In addition to addressing the violations referred to in the  
5 preceding sentence, the individuals described under sub-  
6 section (b) shall address violations of section 152 or 157  
7 relating to materially fraudulent statements in bankruptcy  
8 schedules that are intentionally false or intentionally mis-  
9 leading.

10 “(b) UNITED STATES ATTORNEYS AND AGENTS OF  
11 THE FEDERAL BUREAU OF INVESTIGATION.—The indi-  
12 viduals referred to in subsection (a) are—

13 “(1) a United States attorney for each judicial  
14 district of the United States; and

15 “(2) an agent of the Federal Bureau of Inves-  
16 tigation (within the meaning of section 3107) for  
17 each field office of the Federal Bureau of Investiga-  
18 tion.

19 “(c) BANKRUPTCY INVESTIGATIONS.—Each United  
20 States attorney designated under this section shall, in ad-  
21 dition to any other responsibilities, have primary responsi-  
22 bility for carrying out the duties of a United States attor-  
23 ney under section 3057.

24 “(d) BANKRUPTCY PROCEDURES.—The bankruptcy  
25 courts shall establish procedures for referring any case

1 which may contain a materially fraudulent statement in  
2 a bankruptcy schedule to the individuals designated under  
3 this section.”.

4 (2) CLERICAL AMENDMENT.—The analysis for  
5 chapter 9 of title 18, United States Code, is amend-  
6 ed by adding at the end the following:

“158. Designation of United States attorneys and agents of the Federal Bureau  
of Investigation to address abusive reaffirmations of debt and  
materially fraudulent statements in bankruptcy schedules.”.

7 **SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON**  
8 **SALE OF PREDATORY LOANS.**

9 Section 363 of title 11, United States Code, is  
10 amended—

11 (1) by redesignating subsection (o) as sub-  
12 section (p), and

13 (2) by inserting after subsection (n) the fol-  
14 lowing:

15 “(o) Notwithstanding subsection (f), if a person pur-  
16 chases any interest in a consumer credit transaction that  
17 is subject to the Truth in Lending Act or any interest in  
18 a consumer credit contract (as defined in section 433.1  
19 of title 16 of the Code of Federal Regulations (January  
20 1, 2001), as amended from time to time), and if such in-  
21 terest is purchased through a sale under this section, then  
22 such person shall remain subject to all claims and defenses  
23 that are related to such consumer credit transaction or  
24 such consumer credit contract, to the same extent as such

1 person would be subject to such claims and defenses of  
2 the consumer had such interest been purchased at a sale  
3 not under this section.”.

4 **SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION**  
5 **PROCESS.**

6 (a) **STUDY.**—The Comptroller General of the United  
7 States shall conduct a study of the reaffirmation process  
8 that occurs under title 11 of the United States Code, to  
9 determine the overall treatment of consumers within the  
10 context of such process, and shall include in such study  
11 consideration of—

12 (1) the policies and activities of creditors with  
13 respect to reaffirmation; and

14 (2) whether consumers are fully, fairly, and  
15 consistently informed of their rights pursuant to  
16 such title.

17 (b) **REPORT TO THE CONGRESS.**—Not later than 18  
18 months after the date of enactment of this Act, the Comp-  
19 troller General shall submit to the President pro tempore  
20 of the Senate and the Speaker of the House of Represent-  
21 atives a report on the results of the study conducted under  
22 subsection (a), together with recommendations for legisla-  
23 tion (if any) to address any abusive or coercive tactics  
24 found in connection with the reaffirmation process that  
25 occurs under title 11 of the United States Code.

## 1 **Subtitle B—Priority Child Support**

### 2 **SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-** 3 **TION.**

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

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

7 (2) by inserting after paragraph (14) the fol-  
8 lowing:

9 “(14A) ‘domestic support obligation’ means a  
10 debt that accrues before or after the entry of an  
11 order for relief under this title, including interest  
12 that accrues on that debt as provided under applica-  
13 ble nonbankruptcy law notwithstanding any other  
14 provision of this title, that is—

15 “(A) owed to or recoverable by—

16 “(i) a spouse, former spouse, or child  
17 of the debtor or such child’s parent, legal  
18 guardian, or responsible relative; or

19 “(ii) a governmental unit;

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

1           “(C) established or subject to establish-  
2           ment before or after entry of an order for relief  
3           under this title, by reason of applicable provi-  
4           sions of—

5                   “(i) a separation agreement, divorce  
6                   decree, or property settlement agreement;

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

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

11           “(D) not assigned to a nongovernmental  
12           entity, unless that obligation is assigned volun-  
13           tarily by the spouse, former spouse, child, or  
14           parent, legal guardian, or responsible relative of  
15           the child for the purpose of collecting the  
16           debt;”.

17 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
18 **PORT OBLIGATIONS.**

19           Section 507(a) of title 11, United States Code, is  
20 amended—

21                   (1) by striking paragraph (7);

22                   (2) by redesignating paragraphs (1) through  
23                   (6) as paragraphs (2) through (7), respectively;

24                   (3) in paragraph (2), as so redesignated, by  
25                   striking “First” and inserting “Second”;

1           (4) in paragraph (3), as so redesignated, by  
2 striking “Second” and inserting “Third”;

3           (5) in paragraph (4), as so redesignated—

4                 (A) by striking “Third” and inserting  
5 “Fourth”; and

6                 (B) by striking the semicolon at the end  
7 and inserting a period;

8           (6) in paragraph (5), as so redesignated, by  
9 striking “Fourth” and inserting “Fifth”;

10           (7) in paragraph (6), as so redesignated, by  
11 striking “Fifth” and inserting “Sixth”;

12           (8) in paragraph (7), as so redesignated, by  
13 striking “Sixth” and inserting “Seventh”; and

14           (9) by inserting before paragraph (2), as so re-  
15 designated, the following:

16                 “(1) First:

17                         “(A) Allowed unsecured claims for domes-  
18 tic support obligations that, as of the date of  
19 the filing of the petition, are owed to or recover-  
20 able by a spouse, former spouse, or child of the  
21 debtor, or the parent, legal guardian, or respon-  
22 sible relative of such child, without regard to  
23 whether the claim is filed by such person or is  
24 filed by a governmental unit on behalf of that  
25 person, on the condition that funds received

1 under this paragraph by a governmental unit  
2 under this title after the date of the filing of  
3 the petition shall be applied and distributed in  
4 accordance with applicable nonbankruptcy law.

5 “(B) Subject to claims under subpara-  
6 graph (A), allowed unsecured claims for domes-  
7 tic support obligations that, as of the date the  
8 petition was filed are assigned by a spouse,  
9 former spouse, child of the debtor, or such  
10 child’s parent, legal guardian, or responsible  
11 relative to a governmental unit (unless such ob-  
12 ligation is assigned voluntarily by the spouse,  
13 former spouse, child, parent, legal guardian, or  
14 responsible relative of the child for the purpose  
15 of collecting the debt) or are owed directly to or  
16 recoverable by a governmental unit under appli-  
17 cable nonbankruptcy law, on the condition that  
18 funds received under this paragraph by a gov-  
19 ernmental unit under this title after the date of  
20 the filing of the petition be applied and distrib-  
21 uted in accordance with applicable nonbank-  
22 ruptey law.

23 “(C) If a trustee is appointed or elected  
24 under section 701, 702, 703, 1104, 1202, or  
25 1302, the administrative expenses of the trustee

1           allowed under paragraphs (1)(A), (2), and (6)  
2           of section 503(b) shall be paid before payment  
3           of claims under subparagraphs (A) and (B), to  
4           the extent that the trustee administers assets  
5           that are otherwise available for the payment of  
6           such claims.”.

7 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
8                   **DISCHARGE IN CASES INVOLVING DOMESTIC**  
9                   **SUPPORT OBLIGATIONS.**

10          Title 11, United States Code, is amended—

11               (1) in section 1129(a), by adding at the end the  
12          following:

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

19               (2) in section 1208(c)—

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

22                   (B) in paragraph (9), by striking the pe-  
23          riod at the end and inserting “; and”; and

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

1           “(10) failure of the debtor to pay any domestic  
2 support obligation that first becomes payable after  
3 the date on which the petition is filed.”;

4           (3) in section 1222(a)—

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

7           (B) in paragraph (3), by striking the pe-  
8 riod at the end and inserting “; and”; and

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

10           “(4) notwithstanding any other provision of this  
11 section, a plan may provide for less than full pay-  
12 ment of all amounts owed for a claim entitled to pri-  
13 ority under section 507(a)(1)(B) only if the plan  
14 provides that all of the debtor’s projected disposable  
15 income for a 5-year period, beginning on the date  
16 that the first payment is due under the plan, will be  
17 applied to make payments under the plan.”;

18           (4) in section 1222(b)—

19           (A) by redesignating paragraph (11) as  
20 paragraph (12); and

21           (B) by inserting after paragraph (10) the  
22 following:

23           “(11) provide for the payment of interest accru-  
24 ing after the date of the filing of the petition on un-  
25 secured claims that are nondischargeable under sec-

1       tion 1228(a), except that such interest may be paid  
2       only to the extent that the debtor has disposable in-  
3       come available to pay such interest after making  
4       provision for full payment of all allowed claims;”;

5               (5) in section 1225(a)—

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

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

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

11                    “(7) if the debtor is required by a judicial or  
12               administrative order or statute to pay a domestic  
13               support obligation, the debtor has paid all amounts  
14               payable under such order for such obligation that  
15               first become payable after the date on which the pe-  
16               tition is filed.”;

17                    (6) in section 1228(a), in the matter preceding  
18               paragraph (1), by inserting “, and in the case of a  
19               debtor who is required by a judicial or administra-  
20               tive order to pay a domestic support obligation, after  
21               such debtor certifies that all amounts payable under  
22               such order or statute that are due on or before the  
23               date of the certification (including amounts due be-  
24               fore the petition was filed, but only to the extent  
25               provided for by the plan) have been paid” after

1 “completion by the debtor of all payments under the  
2 plan”;

3 (7) in section 1307(c)—

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

6 (B) in paragraph (10), by striking the pe-  
7 riod at the end and inserting “; or”; and

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

9 “(11) failure of the debtor to pay any domestic  
10 support obligation that first becomes payable after  
11 the date on which the petition is filed.”;

12 (8) in section 1322(a)—

13 (A) in paragraph (2), by striking “and” at  
14 the end;

15 (B) in paragraph (3), by striking the pe-  
16 riod at the end and inserting “; and”; and

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

18 “(4) notwithstanding any other provision of this  
19 section, a plan may provide for less than full pay-  
20 ment of all amounts owed for a claim entitled to pri-  
21 ority under section 507(a)(1)(B) only if the plan  
22 provides that all of the debtor’s projected disposable  
23 income for a 5-year period beginning on the date  
24 that the first payment is due under the plan will be  
25 applied to make payments under the plan.”;

1 (9) in section 1322(b)—

2 (A) in paragraph (9), by striking “; and”  
3 and inserting a semicolon;

4 (B) by redesignating paragraph (10) as  
5 paragraph (11); and

6 (C) inserting after paragraph (9) the fol-  
7 lowing:

8 “(10) provide for the payment of interest accru-  
9 ing after the date of the filing of the petition on un-  
10 secured claims that are nondischargeable under sec-  
11 tion 1328(a), except that such interest may be paid  
12 only to the extent that the debtor has disposable in-  
13 come available to pay such interest after making  
14 provision for full payment of all allowed claims;  
15 and”;

16 (10) in section 1325(a), as amended by section  
17 102, by inserting after paragraph (7) the following:

18 “(8) the debtor is required by a judicial or ad-  
19 ministrative order or statute to pay a domestic sup-  
20 port obligation, the debtor has paid all amounts pay-  
21 able under such order or statute for such obligation  
22 that first becomes payable after the date on which  
23 the petition is filed; and”;

24 (11) in section 1328(a), in the matter preceding  
25 paragraph (1), by inserting “, and in the case of a

1 debtor who is required by a judicial or administra-  
2 tive order to pay a domestic support obligation, after  
3 such debtor certifies that all amounts payable under  
4 such order or statute that are due on or before the  
5 date of the certification (including amounts due be-  
6 fore the petition was filed, but only to the extent  
7 provided for by the plan) have been paid” after  
8 “completion by the debtor of all payments under the  
9 plan”.

10 **SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
11 **SUPPORT OBLIGATION PROCEEDINGS.**

12 Section 362(b) of title 11, United States Code, is  
13 amended by striking paragraph (2) and inserting the fol-  
14 lowing:

15 “(2) under subsection (a)—

16 “(A) of the commencement or continuation  
17 of a civil action or proceeding—

18 “(i) for the establishment of paternity;

19 “(ii) for the establishment or modi-  
20 fication of an order for domestic support  
21 obligations;

22 “(iii) concerning child custody or visi-  
23 tation;

24 “(iv) for the dissolution of a marriage,  
25 except to the extent that such proceeding

1 seeks to determine the division of property  
2 that is property of the estate; or

3 “(v) regarding domestic violence;

4 “(B) of the collection of a domestic sup-  
5 port obligation from property that is not prop-  
6 erty of the estate;

7 “(C) with respect to the withholding of in-  
8 come that is property of the estate or property  
9 of the debtor for payment of a domestic support  
10 obligation under a judicial or administrative  
11 order;

12 “(D) of the withholding, suspension, or re-  
13 striction of drivers’ licenses, professional and  
14 occupational licenses, and recreational licenses  
15 under State law, as specified in section  
16 466(a)(16) of the Social Security Act;

17 “(E) of the reporting of overdue support  
18 owed by a parent to any consumer reporting  
19 agency as specified in section 466(a)(7) of the  
20 Social Security Act;

21 “(F) of the interception of tax refunds, as  
22 specified in sections 464 and 466(a)(3) of the  
23 Social Security Act or under an analogous State  
24 law; or

1           “(G) of the enforcement of medical obliga-  
2           tions as specified under title IV of the Social  
3           Security Act;”.

4 **SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**  
5 **ALIMONY, MAINTENANCE, AND SUPPORT.**

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

8           (1) in subsection (a)—

9                   (A) by striking paragraph (5) and insert-  
10           ing the following:

11                   “(5) for a domestic support obligation;”; and

12                   (B) by striking paragraph (18);

13           (2) in subsection (c), by striking “(6), or (15)”  
14           each place it appears and inserting “or (6)”; and

15           (3) in paragraph (15), as added by Public Law  
16           103–394 (108 Stat. 4133)—

17                   (A) by inserting “to a spouse, former  
18           spouse, or child of the debtor and” before “not  
19           of the kind”;

20                   (B) by inserting “or” after “court of  
21           record,”; and

22                   (C) by striking “unless—” and all that fol-  
23           lows through the end of the paragraph and in-  
24           serting a semicolon.

1 **SEC. 216. CONTINUED LIABILITY OF PROPERTY.**

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

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

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

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

15 (3) in subsection (g)(2), by striking “subsection  
16 (f)(2)” and inserting “subsection (f)(1)(B)”.

17 **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
18 **AGAINST PREFERENTIAL TRANSFER MO-**  
19 **TIONS.**

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

22 “(7) to the extent such transfer was a bona fide  
23 payment of a debt for a domestic support obliga-  
24 tion;”.

1 **SEC. 218. DISPOSABLE INCOME DEFINED.**

2 Section 1225(b)(2)(A) of title 11, United States  
3 Code, is amended by inserting “or for a domestic support  
4 obligation that first becomes payable after the date on  
5 which the petition is filed” after “dependent of the debt-  
6 or”.

7 **SEC. 219. COLLECTION OF CHILD SUPPORT.**

8 (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-  
9 tion 704 of title 11, United States Code, as amended by  
10 section 102, is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (8), by striking “and” at  
13 the end;

14 (B) in paragraph (9), by striking the pe-  
15 riod and inserting a semicolon; and

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

17 “(10) if with respect to the debtor there is a  
18 claim for a domestic support obligation, provide the  
19 applicable notice specified in subsection (c); and”;  
20 and

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

22 “(c)(1) In a case described in subsection (a)(10) to  
23 which subsection (a)(10) applies, the trustee shall—

24 “(A)(i) provide written notice to the holder of  
25 the claim described in subsection (a)(10) of such  
26 claim and of the right of such holder to use the serv-

1       ices of the State child support enforcement agency  
2       established under sections 464 and 466 of the Social  
3       Security Act for the State in which such holder re-  
4       sides, for assistance in collecting child support dur-  
5       ing and after the case under this title;

6               “(ii) include in the notice provided under clause  
7       (i) the address and telephone number of such State  
8       child support enforcement agency; and

9               “(iii) include in the notice provided under  
10       clause (i) an explanation of the rights of such holder  
11       to payment of such claim under this chapter;

12              “(B)(i) provide written notice to such State  
13       child support enforcement agency of such claim; and

14              “(ii) include in the notice provided under clause  
15       (i) the name, address, and telephone number of such  
16       holder; and

17              “(C) at such time as the debtor is granted a  
18       discharge under section 727, provide written notice  
19       to such holder and to such State child support en-  
20       forcement agency of—

21                      “(i) the granting of the discharge;

22                      “(ii) the last recent known address of the  
23       debtor;

24                      “(iii) the last recent known name and ad-  
25       dress of the debtor’s employer; and

1                   “(iv) the name of each creditor that holds  
2                   a claim that—

3                   “(I) is not discharged under para-  
4                   graph (2), (4), or (14A) of section 523(a);  
5                   or

6                   “(II) was reaffirmed by the debtor  
7                   under section 524 (c).

8                   “(2)(A) The holder of a claim described in subsection  
9                   (a)(10) or the State child support enforcement agency of  
10                  the State in which such holder resides may request from  
11                  a creditor described in paragraph (1)(C)(iv) the last  
12                  known address of the debtor.

13                  “(B) Notwithstanding any other provision of law, a  
14                  creditor that makes a disclosure of a last known address  
15                  of a debtor in connection with a request made under sub-  
16                  paragraph (A) shall not be liable by reason of making such  
17                  disclosure.”.

18                  (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—  
19                  Section 1106 of title 11, United States Code, is amend-  
20                  ed—

21                         (1) in subsection (a)—

22                                 (A) in paragraph (6), by striking “and” at  
23                                 the end;

24                                 (B) in paragraph (7), by striking the pe-  
25                                 riod and inserting “; and”; and

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

2 “(8) if with respect to the debtor there is a  
3 claim for a domestic support obligation, provide the  
4 applicable notice specified in subsection (e).”; and

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

6 “(c)(1) In a case described in subsection (a)(8) to  
7 which subsection (a)(8) applies, the trustee shall—

8 “(A)(i) provide written notice to the holder of  
9 the claim described in subsection (a)(8) of such  
10 claim and of the right of such holder to use the serv-  
11 ices of the State child support enforcement agency  
12 established under sections 464 and 466 of the Social  
13 Security Act for the State in which such holder re-  
14 sides, for assistance in collecting child support dur-  
15 ings and after the case under this title; and

16 “(ii) include in the notice required by clause (i)  
17 the address and telephone number of such State  
18 child support enforcement agency;

19 “(B)(i) provide written notice to such State  
20 child support enforcement agency of such claim; and

21 “(ii) include in the notice required by clause (i)  
22 the name, address, and telephone number of such  
23 holder; and

24 “(C) at such time as the debtor is granted a  
25 discharge under section 1141, provide written notice

1 to such holder of such claim and to such State child  
2 support enforcement agency of—

3 “(i) the granting of the discharge;

4 “(ii) the last recent known address of the  
5 debtor;

6 “(iii) the last recent known name and ad-  
7 dress of the debtor’s employer; and

8 “(iv) the name of each creditor that holds  
9 a claim that—

10 “(I) is not discharged under para-  
11 graph (2), (3), or (14A) of section 523(a);

12 or

13 “(II) was reaffirmed by the debtor  
14 under section 524(c).

15 “(2)(A) The holder of a claim described in subsection  
16 (a)(8) or the State child enforcement support agency of  
17 the State in which such holder resides may request from  
18 a creditor described in paragraph (1)(C)(iv) the last  
19 known address of the debtor.

20 “(B) Notwithstanding any other provision of law, a  
21 creditor that makes a disclosure of a last known address  
22 of a debtor in connection with a request made under sub-  
23 paragraph (A) shall not be liable by reason of making such  
24 disclosure.”.

1           (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—  
2 Section 1202 of title 11, United States Code, is amend-  
3 ed—

4           (1) in subsection (b)—

5                 (A) in paragraph (4), by striking “and” at  
6 the end;

7                 (B) in paragraph (5), by striking the pe-  
8 riod and inserting “; and”; and

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

10                 “(6) if with respect to the debtor there is a  
11 claim for a domestic support obligation, provide the  
12 applicable notice specified in subsection (c).”; and

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

14                 “(c)(1) In a case described in subsection (b)(6) to  
15 which subsection (b)(6) applies, the trustee shall—

16                 “(A)(i) provide written notice to the holder of  
17 the claim described in subsection (b)(6) of such  
18 claim and of the right of such holder to use the serv-  
19 ices of the State child support enforcement agency  
20 established under sections 464 and 466 of the Social  
21 Security Act for the State in which such holder re-  
22 sides, for assistance in collecting child support dur-  
23 ing and after the case under this title; and

1           “(ii) include in the notice provided under clause  
2           (i) the address and telephone number of such State  
3           child support enforcement agency;

4           “(B)(i) provide written notice to such State  
5           child support enforcement agency of such claim; and

6           “(ii) include in the notice provided under clause  
7           (i) the name, address, and telephone number of such  
8           holder; and

9           “(C) at such time as the debtor is granted a  
10          discharge under section 1228, provide written notice  
11          to such holder and to such State child support en-  
12          forcement agency of—

13                 “(i) the granting of the discharge;

14                 “(ii) the last recent known address of the  
15                 debtor;

16                 “(iii) the last recent known name and ad-  
17                 dress of the debtor’s employer; and

18                 “(iv) the name of each creditor that holds  
19                 a claim that—

20                         “(I) is not discharged under para-  
21                         graph (2), (4), or (14A) of section 523(a);

22                         or

23                         “(II) was reaffirmed by the debtor  
24                         under section 524(c).

1       “(2)(A) The holder of a claim described in subsection  
2 (b)(6) or the State child support enforcement agency of  
3 the State in which such holder resides may request from  
4 a creditor described in paragraph (1)(C)(iv) the last  
5 known address of the debtor.

6       “(B) Notwithstanding any other provision of law, a  
7 creditor that makes a disclosure of a last known address  
8 of a debtor in connection with a request made under sub-  
9 paragraph (A) shall not be liable by reason of making that  
10 disclosure.”.

11       (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—  
12 Section 1302 of title 11, United States Code, is amend-  
13 ed—

14             (1) in subsection (b)—

15                 (A) in paragraph (4), by striking “and” at  
16             the end;

17                 (B) in paragraph (5), by striking the pe-  
18             riod and inserting “; and”; and

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

20             “(6) if with respect to the debtor there is a  
21             claim for a domestic support obligation, provide the  
22             applicable notice specified in subsection (d).”; and

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

24             “(d)(1) In a case described in subsection (b)(6) to  
25             which subsection (b)(6) applies, the trustee shall—

1           “(A)(i) provide written notice to the holder of  
2           the claim described in subsection (b)(6) of such  
3           claim and of the right of such holder to use the serv-  
4           ices of the State child support enforcement agency  
5           established under sections 464 and 466 of the Social  
6           Security Act for the State in which such holder re-  
7           sides, for assistance in collecting child support dur-  
8           ing and after the case under this title; and

9           “(ii) include in the notice provided under clause  
10          (i) the address and telephone number of such State  
11          child support enforcement agency;

12          “(B)(i) provide written notice to such State  
13          child support enforcement agency of such claim; and

14          “(ii) include in the notice provided under clause  
15          (i) the name, address, and telephone number of such  
16          holder; and

17          “(C) at such time as the debtor is granted a  
18          discharge under section 1328, provide written notice  
19          to such holder and to such State child support en-  
20          forcement agency of—

21                  “(i) the granting of the discharge;

22                  “(ii) the last recent known address of the  
23          debtor;

24                  “(iii) the last recent known name and ad-  
25          dress of the debtor’s employer; and

1           “(iv) the name of each creditor that holds  
2           a claim that—

3                   “(I) is not discharged under para-  
4                   graph (2) or (4) of section 523(a); or

5                   “(II) was reaffirmed by the debtor  
6                   under section 524(c).

7           “(2)(A) The holder of a claim described in subsection  
8 (b)(6) or the State child support enforcement agency of  
9 the State in which such holder resides may request from  
10 a creditor described in paragraph (1)(C)(iv) the last  
11 known address of the debtor.

12           “(B) Notwithstanding any other provision of law, a  
13 creditor that makes a disclosure of a last known address  
14 of a debtor in connection with a request made under sub-  
15 paragraph (A) shall not be liable by reason of making that  
16 disclosure.”.

17 **SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDU-**  
18 **CATIONAL BENEFITS AND LOANS.**

19           Section 523(a) of title 11, United States Code, is  
20 amended by striking paragraph (8) and inserting the fol-  
21 lowing:

22                   “(8) unless excepting such debt from discharge  
23                   under this paragraph would impose an undue hard-  
24                   ship on the debtor and the debtor’s dependents,  
25                   for—

1           “(A)(i) an educational benefit overpayment  
2           or loan made, insured, or guaranteed by a gov-  
3           ernmental unit, or made under any program  
4           funded in whole or in part by a governmental  
5           unit or nonprofit institution; or

6           “(ii) an obligation to repay funds received  
7           as an educational benefit, scholarship, or sti-  
8           pend; or

9           “(B) any other educational loan that is a  
10          qualified education loan, as defined in section  
11          221(d)(1) of the Internal Revenue Code of  
12          1986, incurred by a debtor who is an indi-  
13          vidual;”.

## 14           **Subtitle C—Other Consumer** 15           **Protections**

### 16   **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-** 17           **RUPTCY FILINGS.**

18          Section 110 of title 11, United States Code, is  
19   amended—

20           (1) in subsection (a)(1), by striking “or an em-  
21          ployee of an attorney” and inserting “for the debtor  
22          or an employee of such attorney under the direct su-  
23          pervision of such attorney”;

24           (2) in subsection (b)—

1 (A) in paragraph (1), by adding at the end  
2 the following: “If a bankruptcy petition pre-  
3 parer is not an individual, then an officer, prin-  
4 cipal, responsible person, or partner of the pre-  
5 parer shall be required to—

6 “(A) sign the document for filing; and

7 “(B) print on the document the name and ad-  
8 dress of that officer, principal, responsible person or  
9 partner.”; and

10 (B) by striking paragraph (2) and insert-  
11 ing the following:

12 “(2)(A) Before preparing any document for filing or  
13 accepting any fees from a debtor, the bankruptcy petition  
14 preparer shall provide to the debtor a written notice to  
15 debtors concerning bankruptcy petition preparers, which  
16 shall be on an official form issued by the Judicial Con-  
17 ference of the United States.

18 “(B) The notice under subparagraph (A)—

19 “(i) shall inform the debtor in simple language  
20 that a bankruptcy petition preparer is not an attor-  
21 ney and may not practice law or give legal advice;

22 “(ii) may contain a description of examples of  
23 legal advice that a bankruptcy petition preparer is  
24 not authorized to give, in addition to any advice that

1 the preparer may not give by reason of subsection  
2 (e)(2); and

3 “(iii) shall—

4 “(I) be signed by the debtor and, under  
5 penalty of perjury, by the bankruptcy petition  
6 preparer; and

7 “(II) be filed with any document for fil-  
8 ing.”;

9 (3) in subsection (c)—

10 (A) in paragraph (2)—

11 (i) by striking “(2) For purposes” and  
12 inserting “(2)(A) Subject to subparagraph  
13 (B), for purposes”; and

14 (ii) by adding at the end the fol-  
15 lowing:

16 “(B) If a bankruptcy petition preparer is not an indi-  
17 vidual, the identifying number of the bankruptcy petition  
18 preparer shall be the Social Security account number of  
19 the officer, principal, responsible person, or partner of the  
20 preparer.”; and

21 (B) by striking paragraph (3);

22 (4) in subsection (d)—

23 (A) by striking “(d)(1)” and inserting  
24 “(d)”; and

25 (B) by striking paragraph (2);

1 (5) in subsection (e)—

2 (A) by striking paragraph (2); and

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

4 “(2)(A) A bankruptcy petition preparer may not offer  
5 a potential bankruptcy debtor any legal advice, including  
6 any legal advice described in subparagraph (B).

7 “(B) The legal advice referred to in subparagraph  
8 (A) includes advising the debtor—

9 “(i) whether—

10 “(I) to file a petition under this title; or

11 “(II) commencing a case under chapter 7,  
12 11, 12, or 13 is appropriate;

13 “(ii) whether the debtor’s debts will be elimi-  
14 nated or discharged in a case under this title;

15 “(iii) whether the debtor will be able to retain  
16 the debtor’s home, car, or other property after com-  
17 mencing a case under this title;

18 “(iv) concerning—

19 “(I) the tax consequences of a case  
20 brought under this title; or

21 “(II) the dischargeability of tax claims;

22 “(v) whether the debtor may or should promise  
23 to repay debts to a creditor or enter into a reaffir-  
24 mation agreement with a creditor to reaffirm a debt;

1           “(vi) concerning how to characterize the nature  
2 of the debtor’s interests in property or the debtor’s  
3 debts; or

4           “(vii) concerning bankruptcy procedures and  
5 rights.”;

6           (6) in subsection (f)—

7                 (A) by striking “(f)(1)” and inserting  
8 “(f)”; and

9                 (B) by striking paragraph (2);

10          (7) in subsection (g)—

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

13                 (B) by striking paragraph (2);

14          (8) in subsection (h)—

15                 (A) by redesignating paragraphs (1)  
16 through (4) as paragraphs (2) through (5), re-  
17 spectively;

18                 (B) by inserting before paragraph (2), as  
19 so redesignated, the following:

20           “(1) The Supreme Court may promulgate rules under  
21 section 2075 of title 28, or the Judicial Conference of the  
22 United States may prescribe guidelines, for setting a max-  
23 imum allowable fee chargeable by a bankruptcy petition  
24 preparer. A bankruptcy petition preparer shall notify the  
25 debtor of any such maximum amount before preparing any

1 document for filing for a debtor or accepting any fee from  
2 the debtor.”;

3 (C) in paragraph (2), as so redesignated—

4 (i) by striking “Within 10 days after  
5 the date of filing a petition, a bankruptcy  
6 petition preparer shall file a” and inserting  
7 “A”;

8 (ii) by inserting “by the bankruptcy  
9 petition preparer shall be filed together  
10 with the petition,” after “perjury”; and

11 (iii) by adding at the end the fol-  
12 lowing: “If rules or guidelines setting a  
13 maximum fee for services have been pro-  
14 mulgated or prescribed under paragraph  
15 (1), the declaration under this paragraph  
16 shall include a certification that the bank-  
17 ruptcy petition preparer complied with the  
18 notification requirement under paragraph  
19 (1).”;

20 (D) by striking paragraph (3), as so red-  
21 igned, and inserting the following:

22 “(3)(A) The court shall disallow and order the imme-  
23 diate turnover to the bankruptcy trustee any fee referred  
24 to in paragraph (2) found to be in excess of the value  
25 of any services—

1           “(i) rendered by the preparer during the 12-  
2           month period immediately preceding the date of fil-  
3           ing of the petition; or

4           “(ii) found to be in violation of any rule or  
5           guideline promulgated or prescribed under para-  
6           graph (1).

7           “(B) All fees charged by a bankruptcy petition pre-  
8           parer may be forfeited in any case in which the bankruptcy  
9           petition preparer fails to comply with this subsection or  
10          subsection (b), (c), (d), (e), (f), or (g).

11          “(C) An individual may exempt any funds recovered  
12          under this paragraph under section 522(b).”; and

13                         (E) in paragraph (4), as so redesignated,  
14                         by striking “or the United States trustee” and  
15                         inserting “the United States trustee, the bank-  
16                         ruptcy administrator, or the court, on the ini-  
17                         tiative of the court,”;

18           (9) in subsection (i)(1), by striking the matter  
19          preceding subparagraph (A) and inserting the fol-  
20          lowing:

21          “(i)(1) If a bankruptcy petition preparer violates this  
22          section or commits any act that the court finds to be  
23          fraudulent, unfair, or deceptive, on the motion of the debt-  
24          or, trustee, United States trustee, or bankruptcy adminis-  
25          trator, and after the court holds a hearing with respect

1 to that violation or act, the court shall order the bank-  
2 ruptcy petition preparer to pay to the debtor—”;

3 (10) in subsection (j)—

4 (A) in paragraph (2)—

5 (i) in subparagraph (A)(i)(I), by strik-  
6 ing “a violation of which subjects a person  
7 to criminal penalty”;

8 (ii) in subparagraph (B)—

9 (I) by striking “or has not paid  
10 a penalty” and inserting “has not  
11 paid a penalty”; and

12 (II) by inserting “or failed to dis-  
13 gorge all fees ordered by the court”  
14 after “a penalty imposed under this  
15 section,”;

16 (B) by redesignating paragraph (3) as  
17 paragraph (4); and

18 (C) by inserting after paragraph (2) the  
19 following:

20 “(3) The court, as part of its contempt power, may  
21 enjoin a bankruptcy petition preparer that has failed to  
22 comply with a previous order issued under this section.  
23 The injunction under this paragraph may be issued on the  
24 motion of the court, the trustee, the United States trustee,  
25 or the bankruptcy administrator.”; and

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

2 “(1)(1) A bankruptcy petition preparer who fails to  
3 comply with any provision of subsection (b), (c), (d), (e),  
4 (f), (g), or (h) may be fined not more than \$500 for each  
5 such failure.

6 “(2) The court shall triple the amount of a fine as-  
7 sessed under paragraph (1) in any case in which the court  
8 finds that a bankruptcy petition preparer—

9 “(A) advised the debtor to exclude assets or in-  
10 come that should have been included on applicable  
11 schedules;

12 “(B) advised the debtor to use a false Social  
13 Security account number;

14 “(C) failed to inform the debtor that the debtor  
15 was filing for relief under this title; or

16 “(D) prepared a document for filing in a man-  
17 ner that failed to disclose the identity of the pre-  
18 parer.

19 “(3) The debtor, the trustee, a creditor, the United  
20 States trustee, or the bankruptcy administrator may file  
21 a motion for an order imposing a fine on the bankruptcy  
22 petition preparer for each violation of this section.

23 “(4)(A) Fines imposed under this subsection in judi-  
24 cial districts served by United States trustees shall be paid  
25 to the United States trustee, who shall deposit an amount

1 equal to such fines in a special account of the United  
2 States Trustee System Fund referred to in section  
3 586(e)(2) of title 28. Amounts deposited under this sub-  
4 paragraph shall be available to fund the enforcement of  
5 this section on a national basis.

6 “(B) Fines imposed under this subsection in judicial  
7 districts served by bankruptcy administrators shall be de-  
8 posited as offsetting receipts to the fund established under  
9 section 1931 of title 28, and shall remain available until  
10 expended to reimburse any appropriation for the amount  
11 paid out of such appropriation for expenses of the oper-  
12 ation and maintenance of the courts of the United  
13 States.”.

14 **SEC. 222. SENSE OF CONGRESS.**

15 It is the sense of Congress that States should develop  
16 curricula relating to the subject of personal finance, de-  
17 signed for use in elementary and secondary schools.

18 **SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**

19 **STATES CODE.**

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

22 “(10) Tenth, allowed claims for death or per-  
23 sonal injuries resulting from the operation of a  
24 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   **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
4                   **RUPTCY.**

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

7           (1) in subsection (b)—

8               (A) in paragraph (2)—

9                   (i) in subparagraph (A), by striking  
10                   “and” at the end;

11                   (ii) in subparagraph (B), by striking  
12                   the period at the end and inserting “;  
13                   and”;

14                   (iii) by adding at the end the fol-  
15                   lowing:

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

21                   (iv) by striking “(2)(A) any property”  
22                   and inserting:

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

24                   “(A) any property”;

1 (B) by striking paragraph (1) and insert-  
2 ing:

3 “(2) Property listed in this paragraph is property  
4 that is specified under subsection (d), unless the State law  
5 that is applicable to the debtor under paragraph (3)(A)  
6 specifically does not so authorize.”;

7 (C) by striking “(b) Notwithstanding” and  
8 inserting “(b)(1) Notwithstanding”;

9 (D) by striking “paragraph (2)” each place  
10 it appears and inserting “paragraph (3)”;

11 (E) by striking “paragraph (1)” each place  
12 it appears and inserting “paragraph (2)”;

13 (F) by striking “Such property is—”; and

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

15 “(4) For purposes of paragraph (3)(C) and sub-  
16 section (d)(12), the following shall apply:

17 “(A) If the retirement funds are in a retirement  
18 fund that has received a favorable determination  
19 under section 7805 of the Internal Revenue Code of  
20 1986, and that determination is in effect as of the  
21 date of the commencement of the case under section  
22 301, 302, or 303 of this title, those funds shall be  
23 presumed to be exempt from the estate.

24 “(B) If the retirement funds are in a retirement  
25 fund that has not received a favorable determination

1 under such section 7805, those funds are exempt  
2 from the estate if the debtor demonstrates that—

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

6 “(ii)(I) the retirement fund is in substan-  
7 tial compliance with the applicable requirements  
8 of the Internal Revenue Code of 1986; or

9 “(II) the retirement fund fails to be in  
10 substantial compliance with the applicable re-  
11 quirements of the Internal Revenue Code of  
12 1986 and the debtor is not materially respon-  
13 sible for that failure.

14 “(C) A direct transfer of retirement funds from  
15 1 fund or account that is exempt from taxation  
16 under section 401, 403, 408, 408A, 414, 457, or  
17 501(a) of the Internal Revenue Code of 1986, under  
18 section 401(a)(31) of the Internal Revenue Code of  
19 1986, or otherwise, shall not cease to qualify for ex-  
20 emption under paragraph (3)(C) or subsection  
21 (d)(12) by reason of that direct transfer.

22 “(D)(i) Any distribution that qualifies as an eli-  
23 gible rollover distribution within the meaning of sec-  
24 tion 402(c) of the Internal Revenue Code of 1986 or  
25 that is described in clause (ii) shall not cease to

1 qualify for exemption under paragraph (3)(C) or  
2 subsection (d)(12) by reason of that distribution.

3 “(ii) A distribution described in this clause is  
4 an amount that—

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

9 “(II) to the extent allowed by law, is de-  
10 posited in such a fund or account not later than  
11 60 days after the distribution of that amount.”;  
12 and

13 (2) in subsection (d)—

14 (A) in the matter preceding paragraph (1),  
15 by striking “subsection (b)(1)” and inserting  
16 “subsection (b)(2)”; and

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

18 “(12) Retirement funds to the extent that those  
19 funds are in a fund or account that is exempt from  
20 taxation under section 401, 403, 408, 408A, 414,  
21 457, or 501(a) of the Internal Revenue Code of  
22 1986.”.

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

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

3           (2) in paragraph (18), by striking the period  
4 and inserting a semicolon; and

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

7           “(19) under subsection (a), of withholding of  
8 income from a debtor’s wages and collection of  
9 amounts withheld, under the debtor’s agreement au-  
10 thorizing that withholding and collection for the ben-  
11 efit of a pension, profit-sharing, stock bonus, or  
12 other plan established under section 401, 403, 408,  
13 408A, 414, 457, or 501(c) of the Internal Revenue  
14 Code of 1986, that is sponsored by the employer of  
15 the debtor, or an affiliate, successor, or predecessor  
16 of such employer—

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

24           “(B) in the case of a loan from a thrift  
25 savings plan described in subchapter III of

1 chapter 84 of title 5, that satisfies the require-  
2 ments of section 8433(g) of such title;  
3 but this paragraph may not be construed to provide  
4 that any loan made under a governmental plan  
5 under section 414(d), or a contract or account under  
6 section 403(b) of the Internal Revenue Code of 1986  
7 constitutes a claim or a debt under this title;”.

8 (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of  
9 title 11, United States Code, as amended by section 215,  
10 is amended by adding at the end the following:

11 “(18) owed to a pension, profit-sharing, stock  
12 bonus, or other plan established under section 401,  
13 403, 408, 408A, 414, 457, or 501(c) of the Internal  
14 Revenue Code of 1986, under—

15 “(A) a loan permitted under section  
16 408(b)(1) of the Employee Retirement Income  
17 Security Act of 1974, or subject to section  
18 72(p) of the Internal Revenue Code of 1986; or

19 “(B) a loan from the thrift savings plan  
20 described in subchapter III of chapter 84 of  
21 title 5, that satisfies the requirements of section  
22 8433(g) of such title;

23 but nothing in this paragraph may be construed to  
24 provide that any loan made under a governmental  
25 plan under section 414(d), or a contract or account

1 under section 403(b), of the Internal Revenue Code  
2 of 1986 constitutes a claim or a debt under this  
3 title.”.

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

7 “(f) A plan may not materially alter the terms of a  
8 loan described in section 362(b)(19) and any amounts re-  
9 quired to repay such loan shall not constitute ‘disposable  
10 income’ under section 1325.”.

11 (e) ASSET LIMITATION.—

12 (1) LIMITATION.—Section 522 of title 11,  
13 United States Code, is amended by adding at the  
14 end the following:

15 “(n) For assets in individual retirement accounts de-  
16 scribed in section 408 or 408A of the Internal Revenue  
17 Code of 1986, other than a simplified employee pension  
18 under section 408(k) of that Code or a simple retirement  
19 account under section 408(p) of that Code, the aggregate  
20 value of such assets exempted under this section, without  
21 regard to amounts attributable to rollover contributions  
22 under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and  
23 403(b)(8) of the Internal Revenue Code of 1986, and  
24 earnings thereon, shall not exceed \$1,000,000 in a case  
25 filed by a debtor who is an individual, except that such

1 amount may be increased if the interests of justice so re-  
2 quire.”.

3 (2) ADJUSTMENT OF DOLLAR AMOUNTS.—

4 Paragraphs (1) and (2) of section 104(b) of title 11,  
5 United States Code, are amended by inserting  
6 “522(n),” after “522(d),”.

7 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**  
8 **RUPTCY.**

9 (a) EXCLUSIONS.—Section 541 of title 11, United  
10 States Code, is amended—

11 (1) in subsection (b)—

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

14 (B) by redesignating paragraph (5) as  
15 paragraph (9); and

16 (C) by inserting after paragraph (4) the  
17 following:

18 “(5) funds placed in an education individual re-  
19 tirement account (as defined in section 530(b)(1) of  
20 the Internal Revenue Code of 1986) not later than  
21 365 days before the date of filing of the petition,  
22 but—

23 “(A) only if the designated beneficiary of  
24 such account was a son, daughter, stepson,  
25 stepdaughter, grandchild, or step-grandchild of

1 the debtor for the taxable year for which funds  
2 were placed in such account;

3 “(B) only to the extent that such funds—

4 “(i) are not pledged or promised to  
5 any entity in connection with any extension  
6 of credit; and

7 “(ii) are not excess contributions (as  
8 described in section 4973(e) of the Internal  
9 Revenue Code of 1986); and

10 “(C) in the case of funds placed in all such  
11 accounts having the same designated bene-  
12 ficiary not earlier than 720 days nor later than  
13 365 days before such date, only so much of  
14 such funds as does not exceed \$5,000;

15 “(6) funds used to purchase a tuition credit or  
16 certificate or contributed to an account in accord-  
17 ance with section 529(b)(1)(A) of the Internal Rev-  
18 enue Code of 1986 under a qualified State tuition  
19 program (as defined in section 529(b)(1) of such  
20 Code) not later than 365 days before the date of fil-  
21 ing of the petition, but—

22 “(A) only if the designated beneficiary of  
23 the amounts paid or contributed to such tuition  
24 program was a son, daughter, stepson, step-  
25 daughter, grandchild, or step-grandchild of the

1 debtor for the taxable year for which funds  
2 were paid or contributed;

3 “(B) with respect to the aggregate amount  
4 paid or contributed to such program having the  
5 same designated beneficiary, only so much of  
6 such amount as does not exceed the total con-  
7 tributions permitted under section 529(b)(7) of  
8 such Code with respect to such beneficiary, as  
9 adjusted beginning on the date of the filing of  
10 the petition by the annual increase or decrease  
11 (rounded to the nearest tenth of 1 percent) in  
12 the education expenditure category of the Con-  
13 sumer Price Index prepared by the Department  
14 of Labor; and

15 “(C) in the case of funds paid or contrib-  
16 uted to such program having the same des-  
17 igned beneficiary not earlier than 720 days  
18 nor later than 365 days before such date, only  
19 so much of such funds as does not exceed  
20 \$5,000;” and

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

22 “(e) In determining whether any of the relationships  
23 specified in paragraph (5)(A) or (6)(A) of subsection (b)  
24 exists, a legally adopted child of an individual (and a child  
25 who is a member of an individual’s household, if placed

1 with such individual by an authorized placement agency  
2 for legal adoption by such individual), or a foster child  
3 of an individual (if such child has as the child's principal  
4 place of abode the home of the debtor and is a member  
5 of the debtor's household) shall be treated as a child of  
6 such individual by blood.”.

7 (b) DEBTOR'S DUTIES.—Section 521 of title 11,  
8 United States Code, as amended by section 106, is amend-  
9 ed by adding at the end the following:

10 “(c) In addition to meeting the requirements under  
11 subsection (a), a debtor shall file with the court a record  
12 of any interest that a debtor has in an education individual  
13 retirement account (as defined in section 530(b)(1) of the  
14 Internal Revenue Code of 1986) or under a qualified State  
15 tuition program (as defined in section 529(b)(1) of such  
16 Code).”.

17 **SEC. 226. DEFINITIONS.**

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

20 (1) by inserting after paragraph (2) the fol-  
21 lowing:

22 “(3) ‘assisted person’ means any person whose  
23 debts consist primarily of consumer debts and the  
24 value of whose nonexempt property is less than  
25 \$150,000;”;

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

3           “(4A) ‘bankruptcy assistance’ means any goods  
4           or services sold or otherwise provided to an assisted  
5           person with the express or implied purpose of pro-  
6           viding information, advice, counsel, document prepa-  
7           ration, or filing, or attendance at a creditors’ meet-  
8           ing or appearing in a proceeding on behalf of an-  
9           other or providing legal representation with respect  
10          to a case or proceeding under this title;”;

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

13          “(12A) ‘debt relief agency’ means any person  
14          who provides any bankruptcy assistance to an as-  
15          sisted person in return for the payment of money or  
16          other valuable consideration, or who is a bankruptcy  
17          petition preparer under section 110, but does not in-  
18          clude—

19                 “(A) any person that is an officer, director,  
20                 employee, or agent of a person who provides  
21                 such assistance or of such preparer;

22                 “(B) a nonprofit organization which is ex-  
23                 empt from taxation under section 501(c)(3) of  
24                 the Internal Revenue Code of 1986;

1           “(C) a creditor of such assisted person, to  
2           the extent that the creditor is assisting such as-  
3           sisted person to restructure any debt owed by  
4           such assisted person to the creditor;

5           “(D) a depository institution (as defined in  
6           section 3 of the Federal Deposit Insurance Act)  
7           or any Federal credit union or State credit  
8           union (as those terms are defined in section  
9           101 of the Federal Credit Union Act), or any  
10          affiliate or subsidiary of such depository institu-  
11          tion or credit union; or

12          “(E) an author, publisher, distributor, or  
13          seller of works subject to copyright protection  
14          under title 17, when acting in such capacity.”.

15          (b) CONFORMING AMENDMENT.—Section 104(b) of  
16          title 11, United States Code, is amended by inserting  
17          “101(3),” after “sections” each place it appears.

18          **SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

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

22          **“§ 526. Restrictions on debt relief agencies**

23                 “(a) A debt relief agency shall not—

24                         “(1) fail to perform any service that such agen-  
25                         cy informed an assisted person or prospective as-

1       sisted person it would provide in connection with a  
2       case or proceeding under this title;

3               “(2) make any statement, or counsel or advise  
4       any assisted person or prospective assisted person to  
5       make a statement in a document filed in a case or  
6       proceeding under this title, that is untrue and mis-  
7       leading, or that upon the exercise of reasonable care,  
8       should have been known by such agency to be untrue  
9       or misleading;

10              “(3) misrepresent to any assisted person or pro-  
11       spective assisted person, directly or indirectly, af-  
12       firmatively or by material omission, with respect  
13       to—

14                      “(i) the services that such agency will pro-  
15       vide to such person; or

16                      “(ii) the benefits and risks that may result  
17       if such person becomes a debtor in a case under  
18       this title; or

19              “(4) advise an assisted person or prospective  
20       assisted person to incur more debt in contemplation  
21       of such person filing a case under this title or to pay  
22       an attorney or bankruptcy petition preparer fee or  
23       charge for services performed as part of preparing  
24       for or representing a debtor in a case under this  
25       title.

1       “(b) Any waiver by any assisted person of any protec-  
2       tion or right provided under this section shall not be en-  
3       forceable against the debtor by any Federal or State court  
4       or any other person, but may be enforced against a debt  
5       relief agency.

6       “(c)(1) Any contract for bankruptcy assistance be-  
7       tween a debt relief agency and an assisted person that  
8       does not comply with the material requirements of this  
9       section, section 527, or section 528 shall be void and may  
10      not be enforced by any Federal or State court or by any  
11      other person, other than such assisted person.

12      “(2) Any debt relief agency shall be liable to an as-  
13      sisted person in the amount of any fees or charges in con-  
14      nection with providing bankruptcy assistance to such per-  
15      son that such debt relief agency has received, for actual  
16      damages, and for reasonable attorneys’ fees and costs if  
17      such agency is found, after notice and a hearing, to have—

18              “(A) intentionally or negligently failed to com-  
19              ply with any provision of this section, section 527,  
20              or section 528 with respect to a case or proceeding  
21              under this title for such assisted person;

22              “(B) provided bankruptcy assistance to an as-  
23              sisted person in a case or proceeding under this title  
24              that is dismissed or converted to a case under an-  
25              other chapter of this title because of such agency’s

1 intentional or negligent failure to file any required  
2 document including those specified in section 521; or

3 “(C) intentionally or negligently disregarded the  
4 material requirements of this title or the Federal  
5 Rules of Bankruptcy Procedure applicable to such  
6 agency.

7 “(3) In addition to such other remedies as are pro-  
8 vided under State law, whenever the chief law enforcement  
9 officer of a State, or an official or agency designated by  
10 a State, has reason to believe that any person has violated  
11 or is violating this section, the State—

12 “(A) may bring an action to enjoin such viola-  
13 tion;

14 “(B) may bring an action on behalf of its resi-  
15 dents to recover the actual damages of assisted per-  
16 sons arising from such violation, including any liabil-  
17 ity under paragraph (2); and

18 “(C) in the case of any successful action under  
19 subparagraph (A) or (B), shall be awarded the costs  
20 of the action and reasonable attorney fees as deter-  
21 mined by the court.

22 “(4) The district court of the United States for any  
23 district located in the State shall have concurrent jurisdic-  
24 tion of any action under subparagraph (A) or (B) of para-  
25 graph (3).

1       “(5) Notwithstanding any other provision of Federal  
2 law and in addition to any other remedy provided under  
3 Federal or State law, if the court, on its own motion or  
4 on the motion of the United States trustee or the debtor,  
5 finds that a person intentionally violated this section, or  
6 engaged in a clear and consistent pattern or practice of  
7 violating this section, the court may—

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

9               “(B) impose an appropriate civil penalty  
10 against such person.

11       “(d) No provision of this section, section 527, or sec-  
12 tion 528 shall—

13               “(1) annul, alter, affect, or exempt any person  
14 subject to such sections from complying with any  
15 law of any State except to the extent that such law  
16 is inconsistent with those sections, and then only to  
17 the extent of the inconsistency; or

18               “(2) be deemed to limit or curtail the authority  
19 or ability—

20               “(A) of a State or subdivision or instru-  
21 mentality thereof, to determine and enforce  
22 qualifications for the practice of law under the  
23 laws of that State; or

1           “(B) of a Federal court to determine and  
2           enforce the qualifications for the practice of law  
3           before that court.”.

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

          “526. Restrictions on debt relief agencies.”.

8           **SEC. 228. DISCLOSURES.**

9           (a) DISCLOSURES.—Subchapter II of chapter 5 of  
10          title 11, United States Code, as amended by section 227,  
11          is amended by adding at the end the following:

12         **“§ 527. Disclosures**

13           “(a) A debt relief agency providing bankruptcy assist-  
14          ance to an assisted person shall provide—

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

17                 “(2) to the extent not covered in the written no-  
18                 tice described in paragraph (1), and not later than  
19                 3 business days after the first date on which a debt  
20                 relief agency first offers to provide any bankruptcy  
21                 assistance services to an assisted person, a clear and  
22                 conspicuous written notice advising assisted persons  
23                 that—

24                         “(A) all information that the assisted per-  
25                         son is required to provide with a petition and

1           thereafter during a case under this title is re-  
2           quired to be complete, accurate, and truthful;

3           “(B) all assets and all liabilities are re-  
4           quired to be completely and accurately disclosed  
5           in the documents filed to commence the case,  
6           and the replacement value of each asset as de-  
7           fined in section 506 of this title must be stated  
8           in those documents where requested after rea-  
9           sonable inquiry to establish such value;

10          “(C) current monthly income, the amounts  
11          specified in section 707(b)(2), and, in a case  
12          under chapter 13, disposable income  
13          (determined in accordance with section  
14          707(b)(2), are required to be stated after rea-  
15          sonable inquiry; and

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

22          “(b) A debt relief agency providing bankruptcy assist-  
23          ance to an assisted person shall provide each assisted per-  
24          son at the same time as the notices required under sub-  
25          section (a)(1) with the following statement, to the extent

1 applicable, or one substantially similar. The statement  
2 shall be clear and conspicuous and shall be in a single  
3 document separate from other documents or notices pro-  
4 vided to the assisted person:

5       “‘IMPORTANT INFORMATION ABOUT BANK-  
6 RUPTCY ASSISTANCE SERVICES FROM AN AT-  
7 TORNEY OR BANKRUPTCY PETITION PRE-  
8 PARER.

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

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

23       “‘Before filing a bankruptcy case, either you or your  
24 attorney should analyze your eligibility for different forms  
25 of debt relief made available by the Bankruptcy Code and

1 which form of relief is most likely to be beneficial for you.  
2 Be sure you understand the relief you can obtain and its  
3 limitations. To file a bankruptcy case, documents called  
4 a Petition, Schedules and Statement of Financial Affairs,  
5 as well as in some cases a Statement of Intention need  
6 to be prepared correctly and filed with the bankruptcy  
7 court. You will have to pay a filing fee to the bankruptcy  
8 court. Once your case starts, you will have to attend the  
9 required first meeting of creditors where you may be ques-  
10 tioned by a court official called a ‘trustee’ and by credi-  
11 tors.

12       “‘If you choose to file a chapter 7 case, you may  
13 be asked by a creditor to reaffirm a debt. You may want  
14 help deciding whether to do so and a creditor is not per-  
15 mitted to coerce you into reaffirming your debts.

16       “‘If you choose to file a chapter 13 case in which  
17 you repay your creditors what you can afford over 3 to  
18 5 years, you may also want help with preparing your chap-  
19 ter 13 plan and with the confirmation hearing on your  
20 plan which will be before a bankruptcy judge.

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

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

5           “(c) Except to the extent the debt relief agency pro-  
6 vides the required information itself after reasonably dili-  
7 gent inquiry of the assisted person or others so as to ob-  
8 tain such information reasonably accurately for inclusion  
9 on the petition, schedules or statement of financial affairs,  
10 a debt relief agency providing bankruptcy assistance to an  
11 assisted person, to the extent permitted by nonbankruptcy  
12 law, shall provide each assisted person at the time re-  
13 quired for the notice required under subsection (a)(1) rea-  
14 sonably sufficient information (which shall be provided in  
15 a clear and conspicuous writing) to the assisted person  
16 on how to provide all the information the assisted person  
17 is required to provide under this title pursuant to section  
18 521, including—

19           “(1) how to value assets at replacement value,  
20 determine current monthly income, the amounts  
21 specified in section 707(b)(2) and, in a chapter 13  
22 case, how to determine disposable income in accord-  
23 ance with section 707(b)(2) and related calculations;

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

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

7           “(d) A debt relief agency shall maintain a copy of  
8           the notices required under subsection (a) of this section  
9           for 2 years after the date on which the notice is given  
10          the assisted person.”.

11          (b) CONFORMING AMENDMENT.—The table of sec-  
12          tions for chapter 5 of title 11, United States Code, as  
13          amended by section 227, is amended by inserting after the  
14          item relating to section 526 the following:

          “527. Disclosures.”.

15          **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

16          (a) ENFORCEMENT.—Subchapter II of chapter 5 of  
17          title 11, United States Code, as amended by sections 227  
18          and 228, is amended by adding at the end the following:

19          **“§ 528. Requirements for debt relief agencies**

20          “(a) A debt relief agency shall—

21                  “(1) not later than 5 business days after the  
22                  first date on which such agency provides any bank-  
23                  ruptcy assistance services to an assisted person, but  
24                  prior to such assisted person’s petition under this  
25                  title being filed, execute a written contract with such

1 assisted person that explains clearly and conspicu-  
2 ously—

3 “(A) the services such agency will provide  
4 to such assisted person; and

5 “(B) the fees or charges for such services,  
6 and the terms of payment;

7 “(2) provide the assisted person with a copy of  
8 the fully executed and completed contract;

9 “(3) clearly and conspicuously disclose in any  
10 advertisement of bankruptcy assistance services or of  
11 the benefits of bankruptcy directed to the general  
12 public (whether in general media, seminars or spe-  
13 cific mailings, telephonic or electronic messages, or  
14 otherwise) that the services or benefits are with re-  
15 spect to bankruptcy relief under this title; and

16 “(4) clearly and conspicuously use the following  
17 statement in such advertisement: ‘We are a debt re-  
18 lief agency. We help people file for bankruptcy relief  
19 under the Bankruptcy Code.’ or a substantially simi-  
20 lar statement.

21 “(b)(1) An advertisement of bankruptcy assistance  
22 services or of the benefits of bankruptcy directed to the  
23 general public includes—

24 “(A) descriptions of bankruptcy assistance in  
25 connection with a chapter 13 plan whether or not

1 chapter 13 is specifically mentioned in such adver-  
2 tisement; and

3 “(B) statements such as ‘federally supervised  
4 repayment plan’ or ‘Federal debt restructuring help’  
5 or other similar statements that could lead a reason-  
6 able consumer to believe that debt counseling was  
7 being offered when in fact the services were directed  
8 to providing bankruptcy assistance with a chapter  
9 13 plan or other form of bankruptcy relief under  
10 this title.

11 “(2) An advertisement, directed to the general public,  
12 indicating that the debt relief agency provides assistance  
13 with respect to credit defaults, mortgage foreclosures, evic-  
14 tion proceedings, excessive debt, debt collection pressure,  
15 or inability to pay any consumer debt shall—

16 “(A) disclose clearly and conspicuously in such  
17 advertisement that the assistance may involve bank-  
18 ruptcy relief under this title; and

19 “(B) include the following statement: ‘We are a  
20 debt relief agency. We help people file for bank-  
21 ruptcy relief under the Bankruptcy Code.’ or a sub-  
22 stantially similar statement.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-  
24 tions for chapter 5 of title 11, United States Code, as

1 amended by section 227 and 228, is amended by inserting  
2 after the item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

3 **SEC. 230. GAO STUDY.**

4 (a) **STUDY.**—Not later than 270 days after the date  
5 of enactment of this Act, the Comptroller General of the  
6 United States shall conduct a study of the feasibility, ef-  
7 fectiveness, and cost of requiring trustees appointed under  
8 title 11, United States Code, or the bankruptcy courts,  
9 to provide to the Office of Child Support Enforcement  
10 promptly after the commencement of cases by debtors who  
11 are individuals under such title, the names and social secu-  
12 rity numbers of such debtors for the purposes of allowing  
13 such Office to determine whether such debtors have out-  
14 standing obligations for child support (as determined on  
15 the basis of information in the Federal Case Registry or  
16 other national database).

17 (b) **REPORT.**—Not later than 300 days after the date  
18 of enactment of this Act, the Comptroller General shall  
19 submit to the President pro tempore of the Senate and  
20 the Speaker of the House of Representatives a report con-  
21 taining the results of the study required by subsection (a).

1 **SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**  
2 **FORMATION.**

3 (a) LIMITATION.—Section 363(b)(1) of title 11,  
4 United States Code, is amended by striking the period at  
5 the end and inserting the following:

6 “, except that if the debtor in connection with offering  
7 a product or a service discloses to an individual a policy  
8 prohibiting the transfer of personally identifiable informa-  
9 tion about individuals to persons that are not affiliated  
10 with the debtor and if such policy is in effect on the date  
11 of the commencement of the case, then the trustee may  
12 not sell or lease personally identifiable information to any  
13 person unless—

14 “(A) such sale or such lease is consistent with  
15 such policy; or

16 “(B) after appointment of a consumer privacy  
17 ombudsman in accordance with section 332, and  
18 after notice and a hearing, the court approves such  
19 sale or such lease—

20 “(i) giving due consideration to the facts,  
21 circumstances, and conditions of such sale or  
22 such lease; and

23 “(ii) finding that no showing was made  
24 that such sale or such lease would violate appli-  
25 cable nonbankruptcy law.”.

1 (b) DEFINITION.—Section 101 of title 11, United  
2 States Code, is amended by inserting after paragraph (41)  
3 the following:

4 “(41A) ‘personally identifiable information’  
5 means—

6 “(A) if provided by an individual to the  
7 debtor in connection with obtaining a product  
8 or a service from the debtor primarily for per-  
9 sonal, family, or household purposes—

10 “(i) the first name (or initial) and last  
11 name of such individual, whether given at  
12 birth or time of adoption, or resulting from  
13 a lawful change of name;

14 “(ii) the geographical address of a  
15 physical place of residence of such indi-  
16 vidual;

17 “(iii) an electronic address (including  
18 an e-mail address) of such individual;

19 “(iv) a telephone number dedicated to  
20 contacting such individual at such physical  
21 place of residence;

22 “(v) a social security account number  
23 issued to such individual; or

24 “(vi) the account number of a credit  
25 card issued to such individual; or

1           “(B) if identified in connection with 1 or  
2           more of the items of information specified in  
3           subparagraph (A)—

4                   “(i) a birth date, the number of a cer-  
5                   tificate of birth or adoption, or a place of  
6                   birth; or

7                   “(ii) any other information concerning  
8                   an identified individual that, if disclosed,  
9                   will result in contacting or identifying such  
10                  individual physically or electronically;”.

11 **SEC. 232. CONSUMER PRIVACY OMBUDSMAN.**

12           (a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of  
13 the United States Code is amended by inserting after sec-  
14 tion 331 the following:

15 **“§ 332. Consumer privacy ombudsman**

16           “(a) If a hearing is required under section  
17 363(b)(1)(B) of this title, the court shall order the United  
18 States trustee to appoint, not later than 5 days before the  
19 commencement of the hearing, 1 disinterested person  
20 (other than the United States trustee) to serve as the con-  
21 sumer privacy ombudsman in the case and shall require  
22 that notice of such hearing be timely given to such om-  
23 budsman.

24           “(b) The consumer privacy ombudsman may appear  
25 and be heard at such hearing and shall provide to the

1 court information to assist the court in its consideration  
2 of the facts, circumstances, and conditions of the proposed  
3 sale or lease of personally identifiable information under  
4 section 363(b)(1)(B) of this title. Such information may  
5 include presentation of—

6 “(1) the debtor’s privacy policy;

7 “(2) the potential losses or gains of privacy to  
8 consumers if such sale or such lease is approved by  
9 the court;

10 “(3) the potential costs or benefits to con-  
11 sumers if such sale or such lease is approved by the  
12 court; and

13 “(4) the potential alternatives that would miti-  
14 gate potential privacy losses or potential costs to  
15 consumers.

16 “(c) A consumer privacy ombudsman shall not dis-  
17 close any personally identifiable information obtained by  
18 the ombudsman under this title.”.

19 (b) COMPENSATION OF CONSUMER PRIVACY OM-  
20 BUDSMAN.—Section 330(a)(1) of title 11, United States  
21 Code, is amended in the matter preceding subparagraph  
22 (A), by inserting “a consumer privacy ombudsman ap-  
23 pointed under section 332,” before “an examiner”.

24 (c) CONFORMING AMENDMENT.—The table of sec-  
25 tions for subchapter II of chapter 3 of title 11, United

1 States Code, is amended by adding at the end the fol-  
2 lowing:

“332. Consumer privacy ombudsman.”.

3 **SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF**  
4 **MINOR CHILDREN.**

5 (a) PROHIBITION.—Title 11 of the United States  
6 Code, as amended by section 106, is amended by inserting  
7 after section 111 the following:

8 **“§ 112. Prohibition on disclosure of name of minor**  
9 **children**

10 “The debtor may be required to provide information  
11 regarding a minor child involved in matters under this title  
12 but may not be required to disclose in the public records  
13 in the case the name of such minor child. The debtor may  
14 be required to disclose the name of such minor child in  
15 a nonpublic record that is maintained by the court and  
16 made available by the court for examination by the United  
17 States trustee, the trustee, and the auditor (if any) ap-  
18 pointed under section 586(f) of title 28, in the case. The  
19 court, the United States trustee, the trustee, and such  
20 auditor shall not disclose the name of such minor child  
21 maintained in such nonpublic record.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 for chapter 1 of title 11, United States Code, as amended

1 by section 106, is amended by inserting after the item re-  
2 lating to section 111 the following:

“112. Prohibition on disclosure of name of minor children.”.

3 (c) CONFORMING AMENDMENT.—Section 107(a) of  
4 title 11, United States Code, is amended by inserting “and  
5 subject to section 112 of this title” after “section”.

6 **TITLE III—DISCOURAGING**  
7 **BANKRUPTCY ABUSE**

8 **SEC. 301. REINFORCEMENT OF THE FRESH START.**

9 Section 523(a)(17) of title 11, United States Code,  
10 is amended—

11 (1) by striking “by a court” and inserting “on  
12 a prisoner by any court”;

13 (2) by striking “section 1915(b) or (f)” and in-  
14 serting “subsection (b) or (f)(2) of section 1915”;  
15 and

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

18 **SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

19 Section 362(c) of title 11, United States Code, is  
20 amended—

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

23 (2) in paragraph (2), by striking the period at  
24 the end and inserting a semicolon; and

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

1           “(3) if a single or joint case is filed by or  
2           against debtor who is an individual in a case under  
3           chapter 7, 11, or 13, and if a single or joint case  
4           of the debtor was pending within the preceding 1-  
5           year period but was dismissed, other than a case  
6           refiled under a chapter other than chapter 7 after  
7           dismissal under section 707(b)—

8                   “(A) the stay under subsection (a) with re-  
9                   spect to any action taken with respect to a debt  
10                  or property securing such debt or with respect  
11                  to any lease shall terminate with respect to the  
12                  debtor on the 30th day after the filing of the  
13                  later case;

14                  “(B) on the motion of a party in interest  
15                  for continuation of the automatic stay and upon  
16                  notice and a hearing, the court may extend the  
17                  stay in particular cases as to any or all credi-  
18                  tors (subject to such conditions or limitations  
19                  as the court may then impose) after notice and  
20                  a hearing completed before the expiration of the  
21                  30-day period only if the party in interest dem-  
22                  onstrates that the filing of the later case is in  
23                  good faith as to the creditors to be stayed; and

24                  “(C) for purposes of subparagraph (B), a  
25                  case is presumptively filed not in good faith

1 (but such presumption may be rebutted by clear  
2 and convincing evidence to the contrary)—

3 “(i) as to all creditors, if—

4 “(I) more than 1 previous case  
5 under any of chapters 7, 11, and 13  
6 in which the individual was a debtor  
7 was pending within the preceding 1-  
8 year period;

9 “(II) a previous case under any  
10 of chapters 7, 11, and 13 in which the  
11 individual was a debtor was dismissed  
12 within such 1-year period, after the  
13 debtor failed to—

14 “(aa) file or amend the peti-  
15 tion or other documents as re-  
16 quired by this title or the court  
17 without substantial excuse (but  
18 mere inadvertence or negligence  
19 shall not be a substantial excuse  
20 unless the dismissal was caused  
21 by the negligence of the debtor’s  
22 attorney);

23 “(bb) provide adequate pro-  
24 tection as ordered by the court;  
25 or

1                   “(cc) perform the terms of a  
2                   plan confirmed by the court; or

3                   “(III) there has not been a sub-  
4                   stantial change in the financial or per-  
5                   sonal affairs of the debtor since the  
6                   dismissal of the next most previous  
7                   case under chapter 7, 11, or 13 or  
8                   any other reason to conclude that the  
9                   later case will be concluded—

10                   “(aa) if a case under chap-  
11                   ter 7, with a discharge; or

12                   “(bb) if a case under chap-  
13                   ter 11 or 13, with a confirmed  
14                   plan that will be fully performed;  
15                   and

16                   “(ii) as to any creditor that com-  
17                   menced an action under subsection (d) in  
18                   a previous case in which the individual was  
19                   a debtor if, as of the date of dismissal of  
20                   such case, that action was still pending or  
21                   had been resolved by terminating, condi-  
22                   tioning, or limiting the stay as to actions  
23                   of such creditor; and

24                   “(4)(A)(i) if a single or joint case is filed by or  
25                   against a debtor who is an individual under this

1 title, and if 2 or more single or joint cases of the  
2 debtor were pending within the previous year but  
3 were dismissed, other than a case refiled under sec-  
4 tion 707(b), the stay under subsection (a) shall not  
5 go into effect upon the filing of the later case; and

6 “(ii) on request of a party in interest, the court  
7 shall promptly enter an order confirming that no  
8 stay is in effect;

9 “(B) if, within 30 days after the filing of the  
10 later case, a party in interest requests the court may  
11 order the stay to take effect in the case as to any  
12 or all creditors (subject to such conditions or limita-  
13 tions as the court may impose), after notice and a  
14 hearing, only if the party in interest demonstrates  
15 that the filing of the later case is in good faith as  
16 to the creditors to be stayed;

17 “(C) a stay imposed under subparagraph (B)  
18 shall be effective on the date of entry of the order  
19 allowing the stay to go into effect; and

20 “(D) for purposes of subparagraph (B), a case  
21 is presumptively not filed in good faith (but such  
22 presumption may be rebutted by clear and con-  
23 vincing evidence to the contrary)—

24 “(i) as to all creditors if—

1           “(I) 2 or more previous cases under  
2 this title in which the individual was a  
3 debtor were pending within the 1-year pe-  
4 riod;

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

19           “(III) there has not been a substan-  
20 tial change in the financial or personal af-  
21 fairs of the debtor since the dismissal of  
22 the next most previous case under this  
23 title, or any other reason to conclude that  
24 the later case will not be concluded, if a  
25 case under chapter 7, with a discharge,

1           and if a case under chapter 11 or 13, with  
2           a confirmed plan that will be fully per-  
3           formed; or

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

11 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

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

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

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

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

1           “(A) transfer of all or part ownership of,  
2           or other interest in, the real property without  
3           the consent of the secured creditor or court ap-  
4           proval; or

5           “(B) multiple bankruptcy filings affecting  
6           the real property.

7 If recorded in compliance with applicable State laws gov-  
8 erning notices of interests or liens in real property, an  
9 order entered under this subsection shall be binding in any  
10 other case under this title purporting to affect the real  
11 property filed not later than 2 years after the date of entry  
12 of such order by the court, except that a debtor in a subse-  
13 quent case may move for relief from such order based  
14 upon changed circumstances or for good cause shown,  
15 after notice and a hearing. Any Federal, State, or local  
16 governmental unit that accepts notices of interests or liens  
17 in real property shall accept any certified copy of an order  
18 described in this subsection for indexing and recording.”.

19           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
20 United States Code, as amended by section 224, is amend-  
21 ed by inserting after paragraph (19), the following:

22           “(20) under subsection (a), of any act to en-  
23           force any lien against or security interest in real  
24           property following the entry of an order under sec-  
25           tion 362(d)(4) as to that property in any prior bank-

1       ruptcy case for a period of 2 years after entry of  
2       such an order, except that the debtor, in a subse-  
3       quent case, may move the court for relief from such  
4       order based upon changed circumstances or for  
5       other good cause shown, after notice and a hearing;

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

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

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

16 **SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY**  
17                               **SECURITY.**

18       Title 11, United States Code, is amended—

19              (1) in section 521(a), as so designated by sec-  
20       tion 106—

21              (A) in paragraph (4), by striking “, and”  
22       at the end and inserting a semicolon;

23              (B) in paragraph (5), by striking the pe-  
24       riod at the end and inserting “; and”; and

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

1           “(6) in a case under chapter 7 of this title in  
2           which the debtor is an individual, not retain posses-  
3           sion of personal property as to which a creditor has  
4           an allowed claim for the purchase price secured in  
5           whole or in part by an interest in that personal  
6           property unless the debtor, not later than 45 days  
7           after the first meeting of creditors under section  
8           341(a), either—

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

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

16 If the debtor fails to so act within the 45-day period re-  
17 ferred to in paragraph (6), the stay under section 362(a)  
18 of this title is terminated with respect to the personal  
19 property of the estate or of the debtor which is affected,  
20 such property shall no longer be property of the estate,  
21 and the creditor may take whatever action as to such prop-  
22 erty as is permitted by applicable nonbankruptcy law, un-  
23 less the court determines on the motion of the trustee filed  
24 before the expiration of such 45-day period, and after no-  
25 tice and a hearing, that such property is of consequential

1 value or benefit to the estate, orders appropriate adequate  
2 protection of the creditor’s interest, and orders the debtor  
3 to deliver any collateral in the debtor’s possession to the  
4 trustee.”; and

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

7 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
8 **DEBTOR DOES NOT COMPLETE INTENDED**  
9 **SURRENDER OF CONSUMER DEBT COLLAT-**  
10 **ERAL.**

11 Title 11, United States Code, is amended—

12 (1) in section 362, as amended by section  
13 106—

14 (A) in subsection (e), by striking “(e), and  
15 (f)” and inserting “(e), (f), and (h)”;

16 (B) by redesignating subsection (h) as sub-  
17 section (k) and transferring such subsection so  
18 as to insert it after subsection (j) as added by  
19 section 106; and

20 (C) by inserting after subsection (g) the  
21 following:

22 “(h)(1) In a case in which the debtor is an individual,  
23 the stay provided by subsection (a) is terminated with re-  
24 spect to personal property of the estate or of the debtor  
25 securing in whole or in part a claim, or subject to an unex-

1 pired lease, and such personal property shall no longer be  
2 property of the estate if the debtor fails within the applica-  
3 ble time set by section 521(a)(2) of this title—

4           “(A) to file timely any statement of intention  
5           required under section 521(a)(2) of this title with  
6           respect to that property or to indicate in that state-  
7           ment that the debtor will either surrender the prop-  
8           erty or retain it and, if retaining it, either redeem  
9           the property pursuant to section 722 of this title, re-  
10          affirm the debt it secures pursuant to section 524(c)  
11          of this title, or assume the unexpired lease pursuant  
12          to section 365(p) of this title if the trustee does not  
13          do so, as applicable; and

14          “(B) to take timely the action specified in that  
15          statement of intention, as it may be amended before  
16          expiration of the period for taking action, unless the  
17          statement of intention specifies reaffirmation and  
18          the creditor refuses to reaffirm on the original con-  
19          tract terms.

20          “(2) Paragraph (1) does not apply if the court deter-  
21          mines, on the motion of the trustee filed before the expira-  
22          tion of the applicable time set by section 521(a)(2), after  
23          notice and a hearing, that such property is of consequen-  
24          tial value or benefit to the estate, and orders appropriate  
25          adequate protection of the creditor’s interest, and orders

1 the debtor to deliver any collateral in the debtor’s posses-  
2 sion to the trustee. If the court does not so determine,  
3 the stay provided by subsection (a) shall terminate upon  
4 the conclusion of the proceeding on the motion.”; and

5 (2) in section 521, as amended by sections 106  
6 and 225—

7 (A) in subsection (a)(2) by striking  
8 “consumer”;

9 (B) in subsection (a)(2)(B)—

10 (i) by striking “forty-five days after  
11 the filing of a notice of intent under this  
12 section” and inserting “30 days after the  
13 first date set for the meeting of creditors  
14 under section 341(a) of this title”; and

15 (ii) by striking “forty-five day” and  
16 inserting “30-day”;

17 (C) in subsection (a)(2)(C) by inserting “,  
18 except as provided in section 362(h) of this  
19 title” before the semicolon; and

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

21 “(d) If the debtor fails timely to take the action speci-  
22 fied in subsection (a)(6) of this section, or in paragraphs  
23 (1) and (2) of section 362(h) of this title, with respect  
24 to property which a lessor or bailor owns and has leased,  
25 rented, or bailed to the debtor or as to which a creditor

1 holds a security interest not otherwise voidable under sec-  
 2 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-  
 3 ing in this title shall prevent or limit the operation of a  
 4 provision in the underlying lease or agreement which has  
 5 the effect of placing the debtor in default under such lease  
 6 or agreement by reason of the occurrence, pendency, or  
 7 existence of a proceeding under this title or the insolvency  
 8 of the debtor. Nothing in this subsection shall be deemed  
 9 to justify limiting such a provision in any other cir-  
 10 cumstance.”.

11 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

12 **IN CHAPTER 13.**

13 (a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title  
 14 11, United States Code, is amended to read as follows:

15 “(i) the plan provides that—

16 “(I) the holder of such claim retain  
 17 the lien securing such claim until the ear-  
 18 lier of—

19 “(aa) the payment of the under-  
 20 lying debt determined under nonbank-  
 21 ruptcy law; or

22 “(bb) discharge under section  
 23 1328; and

24 “(II) if the case under this chapter is  
 25 dismissed or converted without completion

1 of the plan, such lien shall also be retained  
2 by such holder to the extent recognized by  
3 applicable nonbankruptcy law; and”.

4 (b) RESTORING THE FOUNDATION FOR SECURED  
5 CREDIT.—Section 1325(a) of title 11, United States Code,  
6 is amended by adding at the end the following:

7 “For purposes of paragraph (5), section 506 shall not  
8 apply to a claim described in that paragraph if the creditor  
9 has a purchase money security interest securing the debt  
10 that is the subject of the claim, the debt was incurred  
11 within the 910-day preceding the filing of the petition, and  
12 the collateral for that debt consists of a motor vehicle (as  
13 defined in section 30102 of title 49) acquired for the per-  
14 sonal use of the debtor, or if collateral for that debt con-  
15 sists of any other thing of value, if the debt was incurred  
16 during the 1-year period preceding that filing.”.

17 (c) DEFINITIONS.—Section 101 of title 11, United  
18 States Code, is amended—

19 (1) by inserting after paragraph (13) the fol-  
20 lowing:

21 “(13A) ‘debtor’s principal residence’—

22 “(A) means a residential structure, includ-  
23 ing incidental property, without regard to  
24 whether that structure is attached to real prop-  
25 erty; and

1           “(B) includes an individual condominium  
2           or cooperative unit, a mobile or manufactured  
3           home, or trailer;” and

4           (2) by inserting after paragraph (27), the fol-  
5           lowing:

6           “(27A) ‘incidental property’ means, with re-  
7           spect to a debtor’s principal residence—

8                   “(A) property commonly conveyed with a  
9                   principal residence in the area where the real  
10                  estate is located;

11                   “(B) all easements, rights, appurtenances,  
12                  fixtures, rents, royalties, mineral rights, oil or  
13                  gas rights or profits, water rights, escrow  
14                  funds, or insurance proceeds; and

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

16 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

17           Section 522(b)(3) of title 11, United States Code, as  
18           so designated by section 106, is amended—

19                   (1) in subparagraph (A)—

20                           (A) by striking “180 days” and inserting  
21                           “730 days”; and

22                           (B) by striking “, or for a longer portion  
23                           of such 180-day period than in any other place”  
24                           and inserting “or if the debtor’s domicile has  
25                           not been located at a single State for such 730-

1 day period, the place in which the debtor's  
2 domicile was located for 180 days immediately  
3 preceding the 730-day period or for a longer  
4 portion of such 180-day period than in any  
5 other place"; and

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

7 "If the effect of the domiciliary requirement under sub-  
8 paragraph (A) is to render the debtor ineligible for any  
9 exemption, the debtor may elect to exempt property that  
10 is specified under subsection (d).".

11 **SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR**  
12 **FRAUD.**

13 Section 522 of title 11, United States Code, as  
14 amended by section 224, is amended—

15 (1) in subsection (b)(3)(A), as so designated by  
16 this Act, by inserting "subject to subsections (o) and  
17 (p)," before "any property"; and

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

19 "(o) For purposes of subsection (b)(3)(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;

1           “(3) a burial plot for the debtor or a dependent  
2           of the debtor; or

3           “(4) real or personal property that the debtor  
4           or a dependent of the debtor claims as a homestead;  
5           shall be reduced to the extent that such value is attrib-  
6           utable to any portion of any property that the debtor dis-  
7           posed of in the 10-year period ending on the date of the  
8           filing of the petition with the intent to hinder, delay, or  
9           defraud a creditor and that the debtor could not exempt,  
10          or that portion that the debtor could not exempt, under  
11          subsection (b), if on such date the debtor had held the  
12          property so disposed of.”.

13   **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**  
14                           **13 CASES.**

15          (a) STOPPING ABUSIVE CONVERSIONS FROM CHAP-  
16          TER 13.—Section 348(f)(1) of title 11, United States  
17          Code, is amended—

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

20                 (2) in subparagraph (B)—

21                         (A) by striking “in the converted case,  
22                         with allowed secured claims” and inserting  
23                         “only in a case converted to a case under chap-  
24                         ter 11 or 12, but not in a case converted to a

1 case under chapter 7, with allowed secured  
2 claims in cases under chapters 11 and 12”; and

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

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

6 “(C) with respect to cases converted from chap-  
7 ter 13—

8 “(i) the claim of any creditor holding secu-  
9 rity as of the date of the petition shall continue  
10 to be secured by that security unless the full  
11 amount of such claim determined under appli-  
12 cable nonbankruptcy law has been paid in full  
13 as of the date of conversion, notwithstanding  
14 any valuation or determination of the amount  
15 of an allowed secured claim made for the pur-  
16 poses of the case under chapter 13; and

17 “(ii) unless a prebankruptcy default has  
18 been fully cured under the plan at the time of  
19 conversion, in any proceeding under this title or  
20 otherwise, the default shall have the effect given  
21 under applicable nonbankruptcy law.”.

22 (b) GIVING DEBTORS THE ABILITY TO KEEP  
23 LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section  
24 365 of title 11, United States Code, is amended by adding  
25 at the end the following:

1           “(p)(1) If a lease of personal property is rejected or  
2 not timely assumed by the trustee under subsection (d),  
3 the leased property is no longer property of the estate and  
4 the stay under section 362(a) is automatically terminated.

5           “(2)(A) If the debtor in a case under chapter 7 is  
6 an individual, the debtor may notify the creditor in writing  
7 that the debtor desires to assume the lease. Upon being  
8 so notified, the creditor may, at its option, notify the debt-  
9 or that it is willing to have the lease assumed by the debt-  
10 or and may condition such assumption on cure of any out-  
11 standing default on terms set by the contract.

12           “(B) If, not later than 30 days after notice is pro-  
13 vided under subparagraph (A), the debtor notifies the les-  
14 sor in writing that the lease is assumed, the liability under  
15 the lease will be assumed by the debtor and not by the  
16 estate.

17           “(C) The stay under section 362 and the injunction  
18 under section 524(a)(2) shall not be violated by notifica-  
19 tion of the debtor and negotiation of cure under this sub-  
20 section.

21           “(3) In a case under chapter 11 in which the debtor  
22 is an individual and in a case under chapter 13, if the  
23 debtor is the lessee with respect to personal property and  
24 the lease is not assumed in the plan confirmed by the  
25 court, the lease is deemed rejected as of the conclusion

1 of the hearing on confirmation. If the lease is rejected,  
2 the stay under section 362 and any stay under section  
3 1301 is automatically terminated with respect to the prop-  
4 erty subject to the lease.”.

5 (c) ADEQUATE PROTECTION OF LESSORS AND PUR-  
6 CHASE MONEY SECURED CREDITORS.—

7 (1) CONFIRMATION OF PLAN.—Section  
8 1325(a)(5)(B) of title 11, United States Code, as  
9 amended by section 306, is amended—

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

12 (B) in clause (ii), by striking “or” at the  
13 end and inserting “and”; and

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

15 “(iii) if—

16 “(I) property to be distributed pursu-  
17 ant to this subsection is in the form of  
18 periodic payments, such payments shall be  
19 in equal monthly amounts; and

20 “(II) the holder of the claim is se-  
21 cured by personal property, the amount of  
22 such payments shall not be less than an  
23 amount sufficient to provide to the holder  
24 of such claim adequate protection during  
25 the period of the plan; or”.

1           (2) PAYMENTS.—Section 1326(a) of title 11,  
2           United States Code, is amended to read as follows:

3           “(a)(1) Unless the court orders otherwise, the debtor  
4 shall commence making payments not later than 30 days  
5 after the date of the filing of the plan or the order for  
6 relief, whichever is earlier, in the amount—

7           “(A) proposed by the plan to the trustee;

8           “(B) scheduled in a lease of personal property  
9           directly to the lessor for that portion of the obliga-  
10          tion that becomes due after the order for relief, re-  
11          ducing the payments under subparagraph (A) by the  
12          amount so paid and providing the trustee with evi-  
13          dence of such payment, including the amount and  
14          date of payment; and

15          “(C) that provides adequate protection directly  
16          to a creditor holding an allowed claim secured by  
17          personal property to the extent the claim is attrib-  
18          utable to the purchase of such property by the debt-  
19          or for that portion of the obligation that becomes  
20          due after the order for relief, reducing the payments  
21          under subparagraph (A) by the amount so paid and  
22          providing the trustee with evidence of such payment,  
23          including the amount and date of payment.

24          “(2) A payment made under paragraph (1)(A) shall  
25 be retained by the trustee until confirmation or denial of

1 confirmation. If a plan is confirmed, the trustee shall dis-  
2 tribute any such payment in accordance with the plan as  
3 soon as is practicable. If a plan is not confirmed, the trust-  
4 ee shall return any such payments not previously paid and  
5 not yet due and owing to creditors pursuant to paragraph  
6 (3) to the debtor, after deducting any unpaid claim al-  
7 lowed under section 503(b).

8       “(3) Subject to section 363, the court may, upon no-  
9 tice and a hearing, modify, increase, or reduce the pay-  
10 ments required under this subsection pending confirma-  
11 tion of a plan.

12       “(4) Not later than 60 days after the date of filing  
13 of a case under this chapter, a debtor retaining possession  
14 of personal property subject to a lease or securing a claim  
15 attributable in whole or in part to the purchase price of  
16 such property shall provide the lessor or secured creditor  
17 reasonable evidence of the maintenance of any required  
18 insurance coverage with respect to the use or ownership  
19 of such property and continue to do so for so long as the  
20 debtor retains possession of such property.”.

21 **SEC. 310. LIMITATION ON LUXURY GOODS.**

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

24               “(C)(i) for purposes of subparagraph  
25               (A)—

1           “(I) consumer debts owed to a single  
2 creditor and aggregating more than \$500  
3 for luxury goods or services incurred by an  
4 individual debtor on or within 90 days be-  
5 fore the order for relief under this title are  
6 presumed to be nondischargeable; and

7           “(II) cash advances aggregating more  
8 than \$750 that are extensions of consumer  
9 credit under an open end credit plan ob-  
10 tained by an individual debtor on or within  
11 70 days before the order for relief under  
12 this title, are presumed to be non-  
13 dischargeable; and

14           “(ii) for purposes of this subparagraph—

15           “(I) the terms ‘consumer’, ‘credit’,  
16 and ‘open end credit plan’ have the same  
17 meanings as in section 103 of the Truth in  
18 Lending Act; and

19           “(II) the term ‘luxury goods or serv-  
20 ices’ does not include goods or services rea-  
21 sonably necessary for the support or main-  
22 tenance of the debtor or a dependent of the  
23 debtor.”.

1 **SEC. 311. AUTOMATIC STAY.**

2 (a) IN GENERAL.—Section 362(b) of title 11, United  
3 States Code, as amended by sections 224 and 303, is  
4 amended by inserting after paragraph (21), the following:

5 “(22) subject to subsection (n), under sub-  
6 section (a)(3), of the continuation of any eviction,  
7 unlawful detainer action, or similar proceeding by a  
8 lessor against a debtor involving residential property  
9 in which the debtor resides as a tenant under a lease  
10 or rental agreement and with respect to which the  
11 lessor has obtained before the date of the filing of  
12 the bankruptcy petition, a judgment for possession  
13 of such property against the debtor;

14 “(23) subject to subsection (o), under sub-  
15 section (a)(3), of an eviction action that seeks pos-  
16 session of the residential property in which the debt-  
17 or resides as a tenant under a lease or rental agree-  
18 ment based on endangerment of such property or  
19 the illegal use of controlled substances on such prop-  
20 erty, but only if the lessor files with the court, and  
21 serves upon the debtor, a certification under penalty  
22 of perjury that such an eviction action has been  
23 filed, or that the debtor, during the 30-day period  
24 preceding the date of the filing of the certification,  
25 has endangered property or illegally used or allowed  
26 to be used a controlled substance on the property;

1           “(24) under subsection (a), of any transfer that  
2           is not avoidable under section 544 and that is not  
3           avoidable under section 549;”.

4           (b) LIMITATIONS.—Section 362 of title 11, United  
5 States Code, as amended by sections 106 and 305, is  
6 amended by adding at the end the following:

7           “(l)(1) Except as otherwise provided in this sub-  
8 section, subsection (b)(22) shall apply on the date that  
9 is 30 days after the date on which the bankruptcy petition  
10 is filed, if the debtor files with the petition and serves upon

11 the lessor a certification under penalty of perjury that—

12           “(A) under nonbankruptcy law applicable in the  
13 jurisdiction, there are circumstances under which the  
14 debtor would be permitted to cure the entire mone-  
15 tary default that gave rise to the judgment for pos-  
16 session, after that judgment for possession was en-  
17 tered; and

18           “(B) the debtor (or an adult dependent of the  
19 debtor) has deposited with the clerk of the court,  
20 any rent that would become due during the 30-day  
21 period after the filing of the bankruptcy petition.

22           “(2) If, within the 30-day period after the filing of  
23 the bankruptcy petition, the debtor (or an adult dependent  
24 of the debtor) complies with paragraph (1) and files with  
25 the court and serves upon the lessor a further certification

1 under penalty of perjury that the debtor (or an adult de-  
2 pendent of the debtor) has cured, under nonbankruptcy  
3 law applicable in the jurisdiction, the entire monetary de-  
4 fault that gave rise to the judgment under which posses-  
5 sion is sought by the lessor, subsection (b)(22) shall not  
6 apply, unless ordered to apply by the court under para-  
7 graph (3).

8       “(3)(A) If the lessor files an objection to any certifi-  
9 cation filed by the debtor under paragraph (1) or (2), and  
10 serves such objection upon the debtor, the court shall hold  
11 a hearing within 10 days after the filing and service of  
12 such objection to determine if the certification filed by the  
13 debtor under paragraph (1) or (2) is true.

14       “(B) If the court upholds the objection of the lessor  
15 filed under subparagraph (A)—

16               “(i) subsection (b)(22) shall apply immediately  
17 and relief from the stay provided under subsection  
18 (a)(3) shall not be required to enable the lessor to  
19 complete the process to recover full possession of the  
20 property; and

21               “(ii) the clerk of the court shall immediately  
22 serve upon the lessor and the debtor a certified copy  
23 of the court’s order upholding the lessor’s objection.

24       “(4) If a debtor, in accordance with paragraph (5),  
25 indicates on the petition that there was a judgment for

1 possession of the residential rental property in which the  
2 debtor resides and does not file a certification under para-  
3 graph (1) or (2)—

4           “(A) subsection (b)(22) shall apply immediately  
5           upon failure to file such certification, and relief from  
6           the stay provided under subsection (a)(3) shall not  
7           be required to enable the lessor to complete the  
8           process to recover full possession of the property;  
9           and

10           “(B) the clerk of the court shall immediately  
11           serve upon the lessor and the debtor a certified copy  
12           of the docket indicating the absence of a filed certifi-  
13           cation and the applicability of the exception to the  
14           stay under subsection (b)(22).

15           “(5)(A) Where a judgment for possession of residen-  
16           tial property in which the debtor resides as a tenant under  
17           a lease or rental agreement has been obtained by the les-  
18           sor, the debtor shall so indicate on the bankruptcy petition  
19           and shall provide the name and address of the lessor that  
20           obtained that pre-petition judgment on the petition and  
21           on any certification filed under this subsection.

22           “(B) The form of certification filed with the petition,  
23           as specified in this subsection, shall provide for the debtor  
24           to certify, and the debtor shall certify—

1           “(i) whether a judgment for possession of resi-  
2           dential rental housing in which the debtor resides  
3           has been obtained against the debtor before the fil-  
4           ing of the petition; and

5           “(ii) whether the debtor is claiming under para-  
6           graph (1) that under nonbankruptcy law applicable  
7           in the jurisdiction, there are circumstances under  
8           which the debtor would be permitted to cure the en-  
9           tire monetary default that gave rise to the judgment  
10          for possession, after that judgment of possession was  
11          entered, and has made the appropriate deposit with  
12          the court.

13          “(C) The standard forms (electronic and otherwise)  
14          used in a bankruptcy proceeding shall be amended to re-  
15          flect the requirements of this subsection.

16          “(D) The clerk of the court shall arrange for the  
17          prompt transmittal of the rent deposited in accordance  
18          with paragraph (1)(B) to the lessor.

19          “(m)(1) Except as otherwise provided in this sub-  
20          section, subsection (b)(23) shall apply on the date that  
21          is 15 days after the date on which the lessor files and  
22          serves a certification described in subsection (b)(23).

23          “(2)(A) If the debtor files with the court an objection  
24          to the truth or legal sufficiency of the certification de-  
25          scribed in subsection (b)(23) and serves such objection

1 upon the lessor, subsection (b)(23) shall not apply, unless  
2 ordered to apply by the court under this subsection.

3 “(B) If the debtor files and serves the objection under  
4 subparagraph (A), the court shall hold a hearing within  
5 10 days after the filing and service of such objection to  
6 determine if the situation giving rise to the lessor’s certifi-  
7 cation under paragraph (1) existed or has been remedied.

8 “(C) If the debtor can demonstrate to the satisfaction  
9 of the court that the situation giving rise to the lessor’s  
10 certification under paragraph (1) did not exist or has been  
11 remedied, the stay provided under subsection (a)(3) shall  
12 remain in effect until the termination of the stay under  
13 this section.

14 “(D) If the debtor cannot demonstrate to the satis-  
15 faction of the court that the situation giving rise to the  
16 lessor’s certification under paragraph (1) did not exist or  
17 has been remedied—

18 “(i) relief from the stay provided under sub-  
19 section (a)(3) shall not be required to enable the les-  
20 sor to proceed with the eviction; and

21 “(ii) the clerk of the court shall immediately  
22 serve upon the lessor and the debtor a certified copy  
23 of the court’s order upholding the lessor’s certifi-  
24 cation.

1       “(3) If the debtor fails to file, within 15 days, an  
2 objection under paragraph (2)(A)—

3               “(A) subsection (b)(23) shall apply immediately  
4 upon such failure and relief from the stay provided  
5 under subsection (a)(3) shall not be required to en-  
6 able the lessor to complete the process to recover full  
7 possession of the property; and

8               “(B) the clerk of the court shall immediately  
9 serve upon the lessor and the debtor a certified copy  
10 of the docket indicating such failure.”.

11 **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**

12                       **DISCHARGES.**

13       Title 11, United States Code, is amended—

14               (1) in section 727(a)(8), by striking “six” and  
15 inserting “8”; and

16               (2) in section 1328, by inserting after sub-  
17 section (e) the following:

18               “(f) Notwithstanding subsections (a) and (b), the  
19 court shall not grant a discharge of all debts provided for  
20 in the plan or disallowed under section 502, if the debtor  
21 has received a discharge—

22               “(1) in a case filed under chapter 7, 11, or 12  
23 of this title during the 4-year period preceding the  
24 date of the order for relief under this chapter, or

1           “(2) in a case filed under chapter 13 of this  
2           title during the 2-year period preceding the date of  
3           such order.”.

4 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**  
5 **TIQUES.**

6           (a) DEFINITION.—Section 522(f) of title 11, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing:

9           “(4)(A) Subject to subparagraph (B), for purposes  
10 of paragraph (1)(B), the term ‘household goods’ means—

11           “(i) clothing;

12           “(ii) furniture;

13           “(iii) appliances;

14           “(iv) 1 radio;

15           “(v) 1 television;

16           “(vi) 1 VCR;

17           “(vii) linens;

18           “(viii) china;

19           “(ix) crockery;

20           “(x) kitchenware;

21           “(xi) educational materials and educational  
22 equipment primarily for the use of minor dependent  
23 children of the debtor;

24           “(xii) medical equipment and supplies;

1           “(xiii) furniture exclusively for the use of minor  
2 children, or elderly or disabled dependents of the  
3 debtor;

4           “(xiv) personal effects (including the toys and  
5 hobby equipment of minor dependent children and  
6 wedding rings) of the debtor and the dependents of  
7 the debtor; and

8           “(xv) 1 personal computer and related equip-  
9 ment.

10          “(B) The term ‘household goods’ does not include—

11           “(i) works of art (unless by or of the debtor, or  
12 any relative of the debtor);

13           “(ii) electronic entertainment equipment with a  
14 fair market value of more than \$500 in the aggre-  
15 gate (except 1 television, 1 radio, and 1 VCR);

16           “(iii) items acquired as antiques with a fair  
17 market value of more than \$500 in the aggregate;

18           “(iv) jewelry with a fair market value of more  
19 than \$500 in the aggregate (except wedding rings);  
20 and

21           “(v) a computer (except as otherwise provided  
22 for in this section), motor vehicle (including a trac-  
23 tor or lawn tractor), boat, or a motorized rec-  
24 reational device, conveyance, vehicle, watercraft, or  
25 aircraft.”.

1 (b) STUDY.—Not later than 2 years after the date  
2 of enactment of this Act, the Director of the Executive  
3 Office for United States Trustees shall submit a report  
4 to the Committee on the Judiciary of the Senate and the  
5 Committee on the Judiciary of the House of Representa-  
6 tives containing its findings regarding utilization of the  
7 definition of household goods, as defined in section  
8 522(f)(4) of title 11, United States Code, as added by this  
9 section, with respect to the avoidance of nonpossessory,  
10 nonpurchase money security interests in household goods  
11 under section 522(f)(1)(B) of title 11, United States Code,  
12 and the impact that section 522(f)(4) of that title, as  
13 added by this section, has had on debtors and on the bank-  
14 ruptcy courts. Such report may include recommendations  
15 for amendments to section 522(f)(4) of title 11, United  
16 States Code, consistent with the Director’s findings.

17 **SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE**  
18 **DEBTS.**

19 (a) IN GENERAL.—Section 523(a) of title 11, United  
20 States Code, is amended by inserting after paragraph (14)  
21 the following:

22 “(14A) incurred to pay a tax to a governmental  
23 unit, other than the United States, that would be  
24 nondischargeable under paragraph (1);”.

1 (b) DISCHARGE UNDER CHAPTER 13.—Section  
2 1328(a) of title 11, United States Code, is amended by  
3 striking paragraphs (1) through (3) and inserting the fol-  
4 lowing:

5 “(1) provided for under section 1322(b)(5);

6 “(2) of the kind specified in paragraph (2), (3),  
7 (4), (5), (8), or (9) of section 523(a);

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

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

16 **SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7**  
17 **AND 13 CASES.**

18 (a) NOTICE.—Section 342 of title 11, United States  
19 Code, as amended by section 102, is amended—

20 (1) in subsection (c)—

21 (A) by inserting “(1)” after “(c)”;

22 (B) by striking “, but the failure of such  
23 notice to contain such information shall not in-  
24 validate the legal effect of such notice”; and

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

1           “(2)(A) If, within the 90 days before the commence-  
2 ment of a voluntary case, a creditor supplies the debtor  
3 in at least 2 communications sent to the debtor with the  
4 current account number of the debtor and the address at  
5 which such creditor requests to receive correspondence,  
6 then any notice required by this title to be sent by the  
7 debtor to such creditor shall be sent to such address and  
8 shall include such account number.

9           (B) If a creditor would be in violation of applicable  
10 nonbankruptcy law by sending any such communication  
11 within such 90-day period and if such creditor supplies  
12 the debtor in the last 2 communications with the current  
13 account number of the debtor and the address at which  
14 such creditor requests to receive correspondence, then any  
15 notice required by this title to be sent by the debtor to  
16 such creditor shall be sent to such address and shall in-  
17 clude such account number; and

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

19           “(e)(1) In a case under chapter 7 or 13 of this title  
20 of a debtor who is an individual, a creditor at any time  
21 may both file with the court and serve on the debtor a  
22 notice of address to be used to provide notice in such case  
23 to such creditor.

24           “(2) Any notice in such case required to be provided  
25 to such creditor by the debtor or the court later than 5

1 days after the court and the debtor receive such creditor's  
2 notice of address, shall be provided to such address.

3       “(f)(1) An entity may file with any bankruptcy court  
4 a notice of address to be used by all the bankruptcy courts  
5 or by particular bankruptcy courts, as so specified by such  
6 entity at the time such notice is filed, to provide notice  
7 to such entity in all cases under chapters 7 and 13  
8 pending in the courts with respect to which such notice  
9 is filed, in which such entity is a creditor.

10       “(2) In any case filed under chapter 7 or 13, any  
11 notice required to be provided by a court with respect to  
12 which a notice is filed under paragraph (1), to such entity  
13 later than 30 days after the filing of such notice under  
14 paragraph (1) shall be provided to such address unless  
15 with respect to a particular case a different address is  
16 specified in a notice filed and served in accordance with  
17 subsection (e).

18       “(3) A notice filed under paragraph (1) may be with-  
19 drawn by such entity.

20       “(g)(1) Notice provided to a creditor by the debtor  
21 or the court other than in accordance with this section  
22 (excluding this subsection) shall not be effective notice  
23 until such notice is brought to the attention of such cred-  
24 itor. If such creditor designates a person or an organiza-  
25 tional subdivision of such creditor to be responsible for

1 receiving notices under this title and establishes reason-  
2 able procedures so that such notices receivable by such  
3 creditor are to be delivered to such person or such subdivi-  
4 sion, then a notice provided to such creditor other than  
5 in accordance with this section (excluding this subsection)  
6 shall not be considered to have been brought to the atten-  
7 tion of such creditor until such notice is received by such  
8 person or such subdivision.

9 “(2) A monetary penalty may not be imposed on a  
10 creditor for a violation of a stay in effect under section  
11 362(a) of this title (including a monetary penalty imposed  
12 under section 362(k) of this title) or for failure to comply  
13 with section 542 or 543 unless the conduct that is the  
14 basis of such violation or of such failure occurs after such  
15 creditor receives notice effective under this section of the  
16 order for relief.”.

17 (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
18 United States Code, as amended by sections 106, 225, and  
19 305, is amended—

20 (1) in subsection (a), as so designated by sec-  
21 tion 106, by amending paragraph (1) to read as fol-  
22 lows:

23 “(1) file—

24 “(A) a list of creditors; and

25 “(B) unless the court orders otherwise—

1           “(i) a schedule of assets and liabil-  
2           ities;

3           “(ii) a schedule of current income and  
4           current expenditures;

5           “(iii) a statement of the debtor’s fi-  
6           nancial affairs and, if section 342(b) ap-  
7           plies, a certificate—

8                   “(I) of an attorney whose name  
9                   is indicated on the petition as the at-  
10                  torney for the debtor, or any bank-  
11                  ruptcy petition preparer signing the  
12                  petition under section 110(b)(1), indi-  
13                  cating that such attorney or such  
14                  bankruptcy petition preparer delivered  
15                  to the debtor the notice required by  
16                  section 342(b); or

17                   “(II) if no attorney is so indi-  
18                  cated, and no bankruptcy petition pre-  
19                  parer signed the petition, of the debt-  
20                  or that such notice was received and  
21                  read by the debtor;

22           “(iv) copies of all payment advices or  
23           other evidence of payment received within  
24           60 days before the filing of the petition, by

1 the debtor from any employer of the debt-  
2 or;

3 “(v) a statement of the amount of  
4 monthly net income, itemized to show how  
5 the amount is calculated; and

6 “(vi) a statement disclosing any rea-  
7 sonably anticipated increase in income or  
8 expenditures over the 12-month period fol-  
9 lowing the date of the filing of the peti-  
10 tion;” and

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

12 “(e)(1) If the debtor in a case under chapter 7 or  
13 13 is an individual and if a creditor files with the court  
14 at any time a request to receive a copy of the petition,  
15 schedules, and statement of financial affairs filed by the  
16 debtor, then the court shall make such petition, such  
17 schedules, and such statement available to such creditor.

18 “(2)(A) The debtor shall provide—

19 “(i) not later than 7 days before the date first  
20 set for the first meeting of creditors, to the trustee  
21 a copy of the Federal income tax return required  
22 under applicable law (or at the election of the debt-  
23 or, a transcript of such return) for the most recent  
24 tax year ending immediately before the commence-

1       ment of the case and for which a Federal income tax  
2       return was filed; and

3               “(ii) at the same time the debtor complies with  
4       clause (i), a copy of such return (or if elected under  
5       clause (i), such transcript) to any creditor that time-  
6       ly requests such copy.

7       “(B) If the debtor fails to comply with clause (i) or  
8       (ii) of subparagraph (A), the court shall dismiss the case  
9       unless the debtor demonstrates that the failure to so com-  
10      ply is due to circumstances beyond the control of the debt-  
11      or.

12       “(C) If a creditor requests a copy of such tax return  
13      or such transcript and if the debtor fails to provide a copy  
14      of such tax return or such transcript to such creditor at  
15      the time the debtor provides such tax return or such tran-  
16      script to the trustee, then the court shall dismiss the case  
17      unless the debtor demonstrates that the failure to provide  
18      a copy of such tax return or such transcript is due to cir-  
19      cumstances beyond the control of the debtor.

20       “(3) If a creditor in a case under chapter 13 files  
21      with the court at any time a request to receive a copy  
22      of the plan filed by the debtor, then the court shall make  
23      available to such creditor a copy of such plan—

24               “(A) at a reasonable cost; and

1           “(B) not later than 5 days after such request  
2           is filed.

3           “(f) At the request of the court, the United States  
4 trustee, or any party in interest in a case under chapter  
5 7, 11, or 13, a debtor who is an individual shall file with  
6 the court—

7           “(1) at the same time filed with the taxing au-  
8 thority, a copy of each Federal income tax return re-  
9 quired under applicable law (or at the election of the  
10 debtor, a transcript of such tax return) with respect  
11 to each tax year of the debtor ending while the case  
12 is pending under such chapter;

13           “(2) at the same time filed with the taxing au-  
14 thority, each Federal income tax return required  
15 under applicable law (or at the election of the debt-  
16 or, a transcript of such tax return) that had not  
17 been filed with such authority as of the date of the  
18 commencement of the case and that was subse-  
19 quently filed for any tax year of the debtor ending  
20 in the 3-year period ending on the date of the com-  
21 mencement of the case;

22           “(3) a copy of each amendment to any Federal  
23 income tax return or transcript filed with the court  
24 under paragraph (1) or (2); and

25           “(4) in a case under chapter 13—

1           “(A) on the date that is either 90 days  
2           after the end of such tax year or 1 year after  
3           the date of the commencement of the case,  
4           whichever is later, if a plan is not confirmed be-  
5           fore such later date; and

6           “(B) annually after the plan is confirmed  
7           and until the case is closed, not later than the  
8           date that is 45 days before the anniversary of  
9           the confirmation of such plan;

10          a statement, under penalty of perjury, of the income  
11          and expenditures of the debtor during the tax year  
12          of the debtor most recently concluded before such  
13          statement is filed under this paragraph, and of the  
14          monthly income of the debtor, that shows how in-  
15          come, expenditures, and monthly income are cal-  
16          culated.

17          “(g)(1) A statement referred to in subsection (f)(4)  
18 shall disclose—

19               “(A) the amount and sources of the income of  
20               the debtor;

21               “(B) the identity of any person responsible with  
22               the debtor for the support of any dependent of the  
23               debtor; and

1           “(C) the identity of any person who contrib-  
2           uted, and the amount contributed, to the household  
3           in which the debtor resides.

4           “(2) The tax returns, amendments, and statement of  
5           income and expenditures described in subsections  
6           (e)(2)(A) and (f) shall be available to the United States  
7           trustee (or the bankruptcy administrator, if any), the  
8           trustee, and any party in interest for inspection and copy-  
9           ing, subject to the requirements of subsection (h).

10          “(h)(1) Not later than 180 days after the date of the  
11          enactment of the Bankruptcy Abuse Prevention and Con-  
12          sumer Protection Act of 2002, the Director of the Admin-  
13          istrative Office of the United States Courts shall establish  
14          procedures for safeguarding the confidentiality of any tax  
15          information required to be provided under this section.

16          “(2) The procedures under paragraph (1) shall in-  
17          clude restrictions on creditor access to tax information  
18          that is required to be provided under this section.

19          “(3) Not later than 540 days after the date of enact-  
20          ment of the Bankruptcy Abuse Prevention and Consumer  
21          Protection Act of 2002, the Director of the Administrative  
22          Office of the United States Courts shall prepare and sub-  
23          mit to the President pro tempore of the Senate and the  
24          Speaker of the House of Representatives a report that—



1 voluntary case under chapter 7 or 13 fails to file all of  
2 the information required under subsection (a)(1) within  
3 45 days after the filing of the petition commencing the  
4 case, the case shall be automatically dismissed effective  
5 on the 46th day after the filing of the petition.

6       “(2) Subject to paragraph (4) and with respect to  
7 a case described in paragraph (1), any party in interest  
8 may request the court to enter an order dismissing the  
9 case. If requested, the court shall enter an order of dis-  
10 missal not later than 5 days after such request.

11       “(3) Subject to paragraph (4) and upon request of  
12 the debtor made within 45 days after the filing of the peti-  
13 tion commencing a case described in paragraph (1), the  
14 court may allow the debtor an additional period of not to  
15 exceed 45 days to file the information required under sub-  
16 section (a)(1) if the court finds justification for extending  
17 the period for the filing.

18       “(4) Notwithstanding any other provision of this sub-  
19 section, on the motion of the trustee filed before the expi-  
20 ration of the applicable period of time specified in para-  
21 graph (1), (2), or (3), and after notice and a hearing, the  
22 court may decline to dismiss the case if the court finds  
23 that the debtor attempted in good faith to file all the infor-  
24 mation required by subsection (a)(1)(B)(iv) and that the

1 best interests of creditors would be served by administra-  
2 tion of the case.”.

3 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
4 **CONFIRMATION OF THE PLAN.**

5 Section 1324 of title 11, United States Code, is  
6 amended—

7 (1) by striking “After” and inserting the fol-  
8 lowing:

9 “(a) Except as provided in subsection (b) and after”;  
10 and

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

12 “(b) The hearing on confirmation of the plan may  
13 be held not earlier than 20 days and not later than 45  
14 days after the date of the meeting of creditors under sec-  
15 tion 341(a), unless the court determines that it would be  
16 in the best interests of the creditors and the estate to hold  
17 such hearing at an earlier date and there is no objection  
18 to such earlier date.”.

19 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
20 **IN CERTAIN CASES.**

21 Title 11, United States Code, is amended—

22 (1) by amending section 1322(d) to read as fol-  
23 lows:

1       “(d)(1) If the current monthly income of the debtor  
2 and the debtor’s spouse combined, when multiplied by 12,  
3 is not less than—

4           “(A) in the case of a debtor in a household of  
5       1 person, the median family income of the applicable  
6       State for 1 earner;

7           “(B) in the case of a debtor in a household of  
8       2, 3, or 4 individuals, the highest median family in-  
9       come of the applicable State for a family of the same  
10       number or fewer individuals; or

11          “(C) in the case of a debtor in a household ex-  
12       ceeding 4 individuals, the highest median family in-  
13       come of the applicable State for a family of 4 or  
14       fewer individuals, plus \$525 per month for each in-  
15       dividual in excess of 4,

16 the plan may not provide for payments over a period that  
17 is longer than 5 years.

18       “(2) If the current monthly income of the debtor and  
19 the debtor’s spouse combined, when multiplied by 12, is  
20 less than—

21           “(A) in the case of a debtor in a household of  
22       1 person, the median family income of the applicable  
23       State for 1 earner last;

24           “(B) in the case of a debtor in a household of  
25       2, 3, or 4 individuals, the highest median family in-

1       come of the applicable State for a family of the same  
2       number or fewer individuals; or

3               “(C) in the case of a debtor in a household ex-  
4       ceeding 4 individuals, the highest median family in-  
5       come of the applicable State for a family of 4 or  
6       fewer individuals , plus \$525 per month for each in-  
7       dividual in excess of 4,

8       the plan may not provide for payments over a period that  
9       is longer than 3 years, unless the court, for cause, ap-  
10      proves a longer period, but the court may not approve a  
11      period that is longer than 5 years.”;

12              (2) in section 1325(b)(1)(B), by striking  
13      “three-year period” and inserting “applicable com-  
14      mitment period”; and

15              (3) in section 1325(b), as amended by section  
16      102, by adding at the end the following:

17      “(4) For purposes of this subsection, the ‘applicable  
18      commitment period’—

19              “(A) subject to subparagraph (B), shall be—

20                      “(i) 3 years; or

21                      “(ii) not less than 5 years, if the current  
22              monthly income of the debtor and the debtor’s  
23              spouse combined, when multiplied by 12, is not  
24              less than—

1           “(I) in the case of a debtor in a  
2 household of 1 person, the median family  
3 income of the applicable State for 1 earn-  
4 er;

5           “(II) in the case of a debtor in a  
6 household of 2, 3, or 4 individuals, the  
7 highest median family income of the appli-  
8 cable State for a family of the same num-  
9 ber or fewer individuals; or

10           “(III) in the case of a debtor in a  
11 household exceeding 4 individuals, the  
12 highest median family income of the appli-  
13 cable State for a family of 4 or fewer indi-  
14 viduals , plus \$525 per month for each in-  
15 dividual in excess of 4; and

16           “(B) may be less than 3 or 5 years, whichever  
17 is applicable under subparagraph (A), but only if the  
18 plan provides for payment in full of all allowed unse-  
19 cured claims over a shorter period.”; and

20           (4) in section 1329(c), by striking “three  
21 years” and inserting “the applicable commitment pe-  
22 riod under section 1325(b)(1)(B)”.

1 **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**  
2 **RULE 9011 OF THE FEDERAL RULES OF BANK-**  
3 **RUPTCY PROCEDURE.**

4 It is the sense of Congress that rule 9011 of the Fed-  
5 eral Rules of Bankruptcy Procedure (11 U.S.C. App.)  
6 should be modified to include a requirement that all docu-  
7 ments (including schedules), signed and unsigned, sub-  
8 mitted to the court or to a trustee by debtors who rep-  
9 resent themselves and debtors who are represented by at-  
10 torneys be submitted only after the debtors or the debtors'  
11 attorneys have made reasonable inquiry to verify that the  
12 information contained in such documents is—

13 (1) well grounded in fact; and

14 (2) warranted by existing law or a good faith  
15 argument for the extension, modification, or reversal  
16 of existing law.

17 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
18 **CASES.**

19 Section 362(e) of title 11, United States Code, is  
20 amended—

21 (1) by inserting “(1)” after “(e)”; and

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

23 “(2) Notwithstanding paragraph (1), in a case under  
24 chapter 7, 11, or 13 in which the debtor is an individual,  
25 the stay under subsection (a) shall terminate on the date

1 that is 60 days after a request is made by a party in inter-  
2 est under subsection (d), unless—

3 “(A) a final decision is rendered by the court  
4 during the 60-day period beginning on the date of  
5 the request; or

6 “(B) that 60-day period is extended—

7 “(i) by agreement of all parties in interest;  
8 or

9 “(ii) by the court for such specific period  
10 of time as the court finds is required for good  
11 cause, as described in findings made by the  
12 court.”.

13 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

14 (a) PROPERTY OF THE ESTATE.—

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

18 **“§ 1115. Property of the estate**

19 “(a) In a case concerning a debtor who is an indi-  
20 vidual, property of the estate includes, in addition to the  
21 property specified in section 541—

22 “(1) all property of the kind specified in section  
23 541 that the debtor acquires after the commence-  
24 ment of the case but before the case is closed, dis-

1 missed, or converted to a case under chapter 7, 12,  
2 or 13, whichever occurs first; and

3 “(2) earnings from services performed by the  
4 debtor after the commencement of the case but be-  
5 fore the case is closed, dismissed, or converted to a  
6 case under chapter 7, 12, or 13, whichever occurs  
7 first.”.

8 “(b) Except as provided in section 1104 or a con-  
9 firmed plan or order confirming a plan, the debtor shall  
10 remain in possession of all property of the estate.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for subchapter I of chapter 11 of title 11,  
13 United States Code, is amended by adding at the  
14 end the following:

“1115. Property of the estate.”.

15 (b) CONTENTS OF PLAN.—Section 1123(a) of title  
16 11, United States Code, is amended—

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

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

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

22 “(8) in a case in which the debtor is an indi-  
23 vidual, provide for the payment to creditors under  
24 the plan of all or such portion of earnings from per-  
25 sonal services performed by the debtor after the

1 commencement of the case or other future income of  
2 the debtor as is necessary for the execution of the  
3 plan.”.

4 (c) CONFIRMATION OF PLAN.—

5 (1) REQUIREMENTS RELATING TO VALUE OF  
6 PROPERTY.—Section 1129(a) of title 11, United  
7 States Code, as amended by section 213, is amended  
8 by adding at the end the following:

9 “(15) In a case in which the debtor is an indi-  
10 vidual and in which the holder of an allowed unse-  
11 cured claim objects to the confirmation of the plan—

12 “(A) the value, as of the effective date of  
13 the plan, of the property to be distributed  
14 under the plan on account of such claim is not  
15 less than the amount of such claim; or

16 “(B) the value of the property to be dis-  
17 tributed under the plan is not less than the pro-  
18 jected disposable income of the debtor (as de-  
19 fined in section 1325(b)(2)) to be received dur-  
20 ing the 5-year period beginning on the date that  
21 the first payment is due under the plan, or dur-  
22 ing the period for which the plan provides pay-  
23 ments, whichever is longer.”.

24 (2) REQUIREMENT RELATING TO INTERESTS IN  
25 PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,

1 United States Code, is amended by inserting before  
2 the period at the end the following: “, except that  
3 in a case in which the debtor is an individual, the  
4 debtor may retain property included in the estate  
5 under section 1115, subject to the requirements of  
6 subsection (a)(14) of this section.”.

7 (d) EFFECT OF CONFIRMATION.—Section 1141(d) of  
8 title 11, United States Code, is amended—

9 (1) in paragraph (2), by striking “The con-  
10 firmation of a plan does not discharge an individual  
11 debtor” and inserting “A discharge under this chap-  
12 ter does not discharge a debtor who is an indi-  
13 vidual”; and

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

15 “(5) In a case in which the debtor is an individual—

16 “(A) unless after notice and a hearing the court  
17 orders otherwise for cause, confirmation of the plan  
18 does not discharge any debt provided for in the plan  
19 until the court grants a discharge on completion of  
20 all payments under the plan;

21 “(B) at any time after the confirmation of the  
22 plan, and after notice and a hearing, the court may  
23 not grant a discharge to the debtor who has not  
24 completed payments under the plan unless—

1           “(i) for each allowed unsecured claim, the  
2           value, as of the effective date of the plan, of  
3           property actually distributed under the plan on  
4           account of that claim is not less than the  
5           amount that would have been paid on such  
6           claim if the estate of the debtor had been liq-  
7           uidated under chapter 7 of this title on such  
8           date; and

9           “(ii) modification of the plan under section  
10           1127 of this title is not practicable; and”.

11           (e) MODIFICATION OF PLAN.—Section 1127 of title  
12 11, United States Code, is amended by adding at the end  
13 the following:

14           “(e) If the debtor is an individual, the plan may be  
15 modified at any time after confirmation of the plan but  
16 before the completion of payments under the plan, whether  
17 or not the plan has been substantially consummated, upon  
18 request of the debtor, the trustee, the United States trust-  
19 ee, or the holder of an allowed unsecured claim, to—

20           “(1) increase or reduce the amount of payments  
21           on claims of a particular class provided for by the  
22           plan;

23           “(2) extend or reduce the time period for such  
24           payments; or

1           “(3) alter the amount of the distribution to a  
2           creditor whose claim is provided for by the plan to  
3           the extent necessary to take account of any payment  
4           of such claim made other than under the plan.

5           “(f)(1) Sections 1121 through 1128 of this title and  
6           the requirements of section 1129 of this title apply to any  
7           modification under subsection (a).

8           “(2) The plan, as modified, shall become the plan  
9           only after there has been disclosure under section 1125  
10          as the court may direct, notice and a hearing, and such  
11          modification is approved.”.

12   **SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.**

13          (a) EXEMPTIONS.—Section 522 of title 11, United  
14          States Code, as amended by sections 224 and 308, is  
15          amended by adding at the end the following:

16          “(p)(1) Except as provided in paragraph (2) of this  
17          subsection and sections 544 and 548 of this title, as a  
18          result of electing under subsection (b)(3)(A) to exempt  
19          property under State or local law, a debtor may not ex-  
20          empt any amount of interest that was acquired by the  
21          debtor during the 1215-day period preceding the filing of  
22          the petition which exceeds in the aggregate \$125,000 in  
23          value in—

24                  “(A) real or personal property that the debtor  
25                  or a dependent of the debtor uses as a residence;

1           “(B) a cooperative that owns property that the  
2 debtor or a dependent of the debtor uses as a resi-  
3 dence;

4           “(C) a burial plot for the debtor or a dependent  
5 of the debtor; or

6           “(D) real or personal property that the debtor  
7 or dependent of the debtor claims as a homestead.

8           “(2)(A) The limitation under paragraph (1) shall not  
9 apply to an exemption claimed under subsection (b)(3)(A)  
10 by a family farmer for the principal residence of that  
11 farmer.

12           “(B) For purposes of paragraph (1), any amount of  
13 such interest does not include any interest transferred  
14 from a debtor’s previous principal residence (which was  
15 acquired prior to the beginning of such 1215-day period)  
16 into the debtor’s current principal residence, if the  
17 debtor’s previous and current residences are located in the  
18 same State.

19           “(q)(1) As a result of electing under subsection  
20 (b)(3)(A) to exempt property under State or local law, a  
21 debtor may not exempt any amount of an interest in prop-  
22 erty described in subparagraphs (A), (B), (C), and (D)  
23 of subsection (p)(1) which exceeds in the aggregate  
24 \$125,000 if—

1           “(A) the court determines, after notice and a  
2 hearing, that the debtor has been convicted of a fel-  
3 ony (as defined in section 3156 of title 18), which  
4 under the circumstances, demonstrates that the fil-  
5 ing of the case was an abuse of the provisions of this  
6 title; or

7           “(B) the debtor owes a debt arising from—

8           “(i) any violation of the Federal securities  
9 laws (as defined in section 3(a)(47) of the Secu-  
10 rities Exchange Act of 1934), any State securi-  
11 ties laws, or any regulation or order issued  
12 under Federal securities laws or State securities  
13 laws;

14           “(ii) fraud, deceit, or manipulation in a fi-  
15 duciary capacity or in connection with the pur-  
16 chase or sale of any security registered under  
17 section 12 or 15(d) of the Securities Exchange  
18 Act of 1934 or under section 6 of the Securities  
19 Act of 1933;

20           “(iii) any civil remedy under section 1964  
21 of title 18, United States Code; or

22           “(iv) any criminal act, intentional tort, or  
23 willful or reckless misconduct that caused seri-  
24 ous physical injury or death to another indi-  
25 vidual in the preceding 5 years.

1       “(2) Paragraph (1) shall not apply to the extent the  
2 amount of an interest in property described in subpara-  
3 graphs (A), (B), (C), and (D) of subsection (p)(1) is rea-  
4 sonably necessary for the support of the debtor and any  
5 dependent of the debtor.”.

6       (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Para-  
7 graphs (1) and (2) of section 104(b) of title 11, United  
8 States Code, as amended by section 224, are amended by  
9 inserting “522(p), 522(q),” after “522(n),”.

10 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
11 **PANT CONTRIBUTIONS AND OTHER PROP-**  
12 **ERTY FROM THE ESTATE.**

13       Section 541(b) of title 11, United States Code, as  
14 amended by section 225, is amended by adding at the end  
15 the following:

16               “(7) any amount—

17                       “(A) withheld by an employer from the  
18 wages of employees for payment as contribu-  
19 tions to—

20                               “(i) an employee benefit plan subject  
21 to title I of the Employee Retirement In-  
22 come Security Act of 1974 or under an  
23 employee benefit plan which is a govern-  
24 mental plan under section 414(d) of the  
25 Internal Revenue Code of 1986, a deferred

1 compensation plan under section 457 of  
2 the Internal Revenue Code of 1986, or a  
3 tax-deferred annuity under section 403(b)  
4 of the Internal Revenue Code of 1986, ex-  
5 cept that such amount under this clause  
6 shall not constitute disposable income, as  
7 defined in section 1325(b)(2) of this title;  
8 or

9 “(ii) a health insurance plan regulated  
10 by State law whether or not subject to  
11 such title; or

12 “(B) received by the employer from em-  
13 ployees for payment as contributions to—

14 “(i) an employee benefit plan subject  
15 to title I of the Employee Retirement In-  
16 come Security Act of 1974 or under an  
17 employee benefit plan which is a govern-  
18 mental plan under section 414(d) of the  
19 Internal Revenue Code of 1986, a deferred  
20 compensation plan under section 457 of  
21 the Internal Revenue Code of 1986, or a  
22 tax-deferred annuity under section 403(b)  
23 of the Internal Revenue Code of 1986, ex-  
24 cept that such amount under this clause  
25 shall not constitute disposable income, as

1 defined in section 1325(b)(2) of this title;  
2 or  
3 “(ii) a health insurance plan regulated  
4 by State law whether or not subject to  
5 such title;”.

6 **SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLV-**  
7 **ING BANKRUPTCY PROFESSIONALS.**

8 (a) IN GENERAL.—Section 1334 of title 28, United  
9 States Code, is amended—

10 (1) in subsection (b), by striking  
11 “Notwithstanding” and inserting “Except as pro-  
12 vided in subsection (e)(2), and notwithstanding”;  
13 and

14 (2) by striking subsection (e) and inserting the  
15 following:

16 “(e) The district court in which a case under title  
17 11 is commenced or is pending shall have exclusive juris-  
18 diction—

19 “(1) of all the property, wherever located, of the  
20 debtor as of the date of commencement of such case,  
21 and of property of the estate; and

22 “(2) over all claims or causes of action that in-  
23 volve construction of section 327 of title 11, United  
24 States Code, or rules relating to disclosure require-  
25 ments under section 327.”.

1 (b) APPLICABILITY.—This section shall only apply to  
2 cases filed after the date of enactment of this Act.

3 **SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE**  
4 **INCREASE.**

5 (a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE  
6 11, UNITED STATES CODE.—Section 1930(a) of title 28,  
7 United States Code, is amended by striking paragraph (1)  
8 and inserting the following:

9 “(1) For a case commenced—

10 “(A) under chapter 7 of title 11, \$160; or

11 “(B) under chapter 13 of title 11, \$150.”.

12 (b) UNITED STATES TRUSTEE SYSTEM FUND.—Sec-  
13 tion 589a(b) of title 28, United States Code, is amended—

14 (1) by striking paragraph (1) and inserting the  
15 following:

16 “(1)(A) 40.63 percent of the fees collected  
17 under section 1930(a)(1)(A) of this title in cases  
18 commenced under chapter 7 of title 11; and

19 “(B) 70.00 percent of the fees collected under  
20 section 1930(a)(1)(B) of this title in cases com-  
21 menced under chapter 13 of title 11;”;

22 (2) in paragraph (2), by striking “one-half”  
23 and inserting “three-fourths”; and

24 (3) in paragraph (4), by striking “one-half”  
25 and inserting “100 percent”.

1           (c) COLLECTION AND DEPOSIT OF MISCELLANEOUS  
2 BANKRUPTCY FEES.—Section 406(b) of the Judiciary Ap-  
3 propriations Act, 1990 (28 U.S.C. 1931 note) is amended  
4 by striking “pursuant to 28 U.S.C. section 1930(b) and  
5 33.87 per centum of the fees hereafter collected under 28  
6 U.S.C. section 1930(a)(1) and 25 percent of the fees here-  
7 after collected under 28 U.S.C. section 1930(a)(3) shall  
8 be deposited as offsetting receipts to the fund established  
9 under 28 U.S.C. section 1931” and inserting “under sec-  
10 tion 1930(b) of title 28, United States Code, and 31.25  
11 percent of the fees collected under section 1930(a)(1)(A)  
12 of that title, 30.00 percent of the fees collected under sec-  
13 tion 1930(a)(1)(B) of that title, and 25 percent of the fees  
14 collected under section 1930(a)(3) of that title shall be  
15 deposited as offsetting receipts to the fund established  
16 under section 1931 of that title”.

17 **SEC. 326. SHARING OF COMPENSATION.**

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

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

1 **SEC. 327. FAIR VALUATION OF COLLATERAL.**

2 Section 506(a) of title 11, United States Code, is  
3 amended by—

4 (1) inserting “(1)” after “(a)”; and

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

6 “(2) If the debtor is an individual in a case under  
7 chapter 7 or 13, such value with respect to personal prop-  
8 erty securing an allowed claim shall be determined based  
9 on the replacement value of such property as of the date  
10 of filing the petition without deduction for costs of sale  
11 or marketing. With respect to property acquired for per-  
12 sonal, family, or household purposes, replacement value  
13 shall mean the price a retail merchant would charge for  
14 property of that kind considering the age and condition  
15 of the property at the time value is determined.”.

16 **SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
17 **TIONS.**

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

21 (1) in subsection (b)—

22 (A) in paragraph (1)(A), by striking the  
23 semicolon at the end and inserting the fol-  
24 lowing: “other than a default that is a breach  
25 of a provision relating to the satisfaction of any  
26 provision (other than a penalty rate or penalty

1 provision) relating to a default arising from any  
2 failure to perform nonmonetary obligations  
3 under an unexpired lease of real property, if it  
4 is impossible for the trustee to cure such de-  
5 fault by performing nonmonetary acts at and  
6 after the time of assumption, except that if  
7 such default arises from a failure to operate in  
8 accordance with a nonresidential real property  
9 lease, then such default shall be cured by per-  
10 formance at and after the time of assumption  
11 in accordance with such lease, and pecuniary  
12 losses resulting from such default shall be com-  
13 pensated in accordance with the provisions of  
14 this paragraph;” and

15 (B) in paragraph (2)(D), by striking  
16 “penalty rate or provision” and inserting  
17 “penalty rate or penalty provision”;

18 (2) in subsection (c)—

19 (A) in paragraph (2), by inserting “or” at  
20 the end;

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

23 (C) by striking paragraph (4);

24 (3) in subsection (d)—

1 (A) by striking paragraphs (5) through  
2 (9); and

3 (B) by redesignating paragraph (10) as  
4 paragraph (5); and

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

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

11 (1) in subparagraph (A), by inserting “or of a  
12 kind that section 365(b)(2) of this title expressly  
13 does not require to be cured” before the semicolon  
14 at the end;

15 (2) in subparagraph (C), by striking “and” at  
16 the end;

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

19 (4) by inserting after subparagraph (C) the fol-  
20 lowing:

21 “(D) if such claim or such interest arises  
22 from any failure to perform a nonmonetary ob-  
23 ligation, other than a default arising from fail-  
24 ure to operate a nonresidential real property  
25 lease subject to section 365(b)(1)(A), com-

1           pensates the holder of such claim or such inter-  
2           est (other than the debtor or an insider) for any  
3           actual pecuniary loss incurred by such holder as  
4           a result of such failure; and”.

5 **SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND**  
6                                   **BENEFITS.**

7           Section 503(b)(1)(A) of title 11, United States Code,  
8 is amended to read as follows:

9           “(A) the actual, necessary costs and expenses of pre-  
10 serving the estate including—

11                   “(i) wages, salaries, or commissions for services  
12           rendered after the commencement of the case; and

13                   “(ii) wages and benefits awarded pursuant to a  
14           judicial proceeding or a proceeding of the National  
15           Labor Relations Board as back pay attributable to  
16           any period of time occurring after commencement of  
17           the case under this title, as a result of a violation  
18           of Federal or State law by the debtor, without re-  
19           gard to the time of the occurrence of unlawful con-  
20           duct on which such award is based or to whether  
21           any services were rendered, if the court determines  
22           that payment of wages and benefits by reason of the  
23           operation of this clause will not substantially in-  
24           crease the probability of layoff or termination of cur-

1       rent employees, or of nonpayment of domestic sup-  
2       port obligations, during the case under this title;”.

3 **SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF**  
4                                   **CERTAIN PROCEEDINGS.**

5       (a) CHAPTER 7.—Section 727(a) of title 11, United  
6 States Code, as amended by section 106, is amended—

7           (1) in paragraph (10), by striking “or” at the  
8       end;

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

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

13           “(12) the court after notice and a hearing held  
14       not more than 10 days before the date of entry of  
15       the order granting the discharge finds that there is  
16       reasonable cause to believe that—

17           “(A) section 522(q)(1) may be applicable  
18       to the debtor; and

19           “(B) there is pending any proceeding in  
20       which the debtor may be found guilty of a fel-  
21       ony of the kind described in section  
22       522(q)(1)(A) or liable for a debt of the kind de-  
23       scribed in section 522(q)(1)(B); or”.

1 (b) CHAPTER 11.—Section 1141(d) of title 11,  
2 United States Code, as amended by section 321, is amend-  
3 ed by adding at the end the following:

4 “(C) unless after notice and a hearing held  
5 not more than 10 days before the date of entry  
6 of the order granting the discharge, the court  
7 finds that there is no reasonable cause to be-  
8 lieve that—

9 “(i) section 522(q)(1) may be applica-  
10 ble to the debtor; and

11 “(ii) there is pending any proceeding  
12 in which the debtor may be found guilty of  
13 a felony of the kind described in section  
14 522(q)(1)(A) or liable for a debt of the  
15 kind described in section 522(q)(1)(B).”.

16 (c) CHAPTER 12.—Section 1228 of title 11, United  
17 States Code, is amended—

18 (1) in subsection (a) by striking “As” and in-  
19 serting “Subject to subsection (d), as”,

20 (2) in subsection (b) by striking “At” and in-  
21 serting “Subject to subsection (d), at”, and

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

23 “(f) The court may not grant a discharge under this  
24 chapter unless the court after notice and a hearing held  
25 not more than 10 days before the date of entry of the

1 order granting the discharge finds that there is no reason-  
2 able cause to believe that—

3 “(1) section 522(q)(1) may be applicable to the  
4 debtor; and

5 “(2) there is pending any proceeding in which  
6 the debtor may be found guilty of a felony of the  
7 kind described in section 522(q)(1)(A) or liable for  
8 a debt of the kind described in section  
9 522(q)(1)(B).”.

10 (d) CHAPTER 13.—Section 1328 of title 11, United  
11 States Code, as amended by section 106, is amended—

12 (1) in subsection (a) by striking “As” and in-  
13 serting “Subject to subsection (d), as”,

14 (2) in subsection (b) by striking “At” and in-  
15 serting “Subject to subsection (d), at”, and

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

17 “(h) The court may not grant a discharge under this  
18 chapter unless the court after notice and a hearing held  
19 not more than 10 days before the date of entry of the  
20 order granting the discharge finds that there is no reason-  
21 able cause to believe that—

22 “(1) section 522(q)(1) may be applicable to the  
23 debtor; and

24 “(2) there is pending any proceeding in which  
25 the debtor may be found guilty of a felony of the

1 kind described in section 522(q)(1)(A) or liable for  
2 a debt of the kind described in section  
3 522(q)(1)(B).”.

4 **TITLE IV—GENERAL AND SMALL**  
5 **BUSINESS BANKRUPTCY PRO-**  
6 **VISIONS**

7 **Subtitle A—General Business**  
8 **Bankruptcy Provisions**

9 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

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

13 “(48A) ‘securities self regulatory organization’  
14 means either a securities association registered with  
15 the Securities and Exchange Commission under sec-  
16 tion 15A of the Securities Exchange Act of 1934 or  
17 a national securities exchange registered with the  
18 Securities and Exchange Commission under section  
19 6 of the Securities Exchange Act of 1934;”.

20 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
21 United States Code, as amended by sections 224, 303, and  
22 311, is amended by inserting after paragraph (24) the fol-  
23 lowing:

24 “(25) under subsection (a), of—

1           “(A) the commencement or continuation of  
2           an investigation or action by a securities self  
3           regulatory organization to enforce such organi-  
4           zation’s regulatory power;

5           “(B) the enforcement of an order or deci-  
6           sion, other than for monetary sanctions, ob-  
7           tained in an action by the securities self regu-  
8           latory organization to enforce such organiza-  
9           tion’s regulatory power; or

10           “(C) any act taken by the securities self  
11           regulatory organization to delist, delete, or  
12           refuse to permit quotation of any stock that  
13           does not meet applicable regulatory require-  
14           ments;”.

15 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
16 **HOLDERS.**

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

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

1 **SEC. 403. PROTECTION OF REFINANCE OF SECURITY IN-**  
2 **TEREST.**

3 Subparagraphs (A), (B), and (C) of section 547(e)(2)  
4 of title 11, United States Code, are each amended by strik-  
5 ing “10” each place it appears and inserting “30”.

6 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**  
7 **LEASES.**

8 (a) IN GENERAL.—Section 365(d)(4) of title 11,  
9 United States Code, is amended to read as follows:

10 “(4)(A) Subject to subparagraph (B), an unexpired  
11 lease of nonresidential real property under which the debt-  
12 or is the lessee shall be deemed rejected, and the trustee  
13 shall immediately surrender that nonresidential real prop-  
14 erty to the lessor, if the trustee does not assume or reject  
15 the unexpired lease by the earlier of—

16 “(i) the date that is 120 days after the date of  
17 the order for relief; or

18 “(ii) the date of the entry of an order con-  
19 firming a plan.

20 “(B)(i) The court may extend the period determined  
21 under subparagraph (A), prior to the expiration of the  
22 120-day period, for 90 days on the motion of the trustee  
23 or lessor for cause.

24 “(ii) If the court grants an extension under clause  
25 (i), the court may grant a subsequent extension only upon  
26 prior written consent of the lessor in each instance.”.

1 (b) EXCEPTION.—Section 365(f)(1) of title 11,  
2 United States Code, is amended by striking “subsection”  
3 the first place it appears and inserting “subsections (b)  
4 and”.

5 **SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS**  
6 **COMMITTEES.**

7 (a) APPOINTMENT.—Section 1102(a) of title 11,  
8 United States Code, is amended by adding at the end the  
9 following:

10 “(4) On request of a party in interest and after notice  
11 and a hearing, the court may order the United States  
12 trustee to change the membership of a committee ap-  
13 pointed under this subsection, if the court determines that  
14 the change is necessary to ensure adequate representation  
15 of creditors or equity security holders. The court may  
16 order the United States trustee to increase the number  
17 of members of a committee to include a creditor that is  
18 a small business concern (as described in section 3(a)(1)  
19 of the Small Business Act , if the court determines that  
20 the creditor holds claims (of the kind represented by the  
21 committee) the aggregate amount of which, in comparison  
22 to the annual gross revenue of that creditor, is dispro-  
23 tionately large.”.

1 (b) INFORMATION.—Section 1102(b) of title 11,  
2 United States Code, is amended by adding at the end the  
3 following:

4 “(3) A committee appointed under subsection (a)  
5 shall—

6 “(A) provide access to information for creditors  
7 who—

8 “(i) hold claims of the kind represented by  
9 that committee; and

10 “(ii) are not appointed to the committee;

11 “(B) solicit and receive comments from the  
12 creditors described in subparagraph (A); and

13 “(C) be subject to a court order that compels  
14 any additional report or disclosure to be made to the  
15 creditors described in subparagraph (A).”.

16 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**  
17 **UNITED STATES CODE.**

18 Section 546 of title 11, United States Code, is  
19 amended—

20 (1) by redesignating the second subsection (g)  
21 (as added by section 222(a) of Public Law 103–394)  
22 as subsection (i);

23 (2) in subsection (i), as so redesignated, by in-  
24 serting “and subject to the prior rights of holders of

1 security interests in such goods or the proceeds of  
2 such goods” after “consent of a creditor”; and

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

4 “(j)(1) Notwithstanding paragraphs (2) and (3) of  
5 section 545, the trustee may not avoid a warehouseman’s  
6 lien for storage, transportation, or other costs incidental  
7 to the storage and handling of goods.

8 “(2) The prohibition under paragraph (1) shall be ap-  
9 plied in a manner consistent with any State statute appli-  
10 cable to such lien that is similar to section 7–209 of the  
11 Uniform Commercial Code, as in effect on the date of en-  
12 actment of the Bankruptcy Abuse Prevention and Con-  
13 sumer Protection Act of 2002, or any successor to such  
14 section 7–209.”.

15 **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**  
16 **UNITED STATES CODE.**

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

19 (1) in paragraph (3)—

20 (A) by striking “(A) In” and inserting  
21 “In”; and

22 (B) by inserting “to an examiner, trustee  
23 under chapter 11, or professional person” after  
24 “awarded”; and

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

1       “(7) In determining the amount of reasonable com-  
2       pensation to be awarded to a trustee, the court shall treat  
3       such compensation as a commission, based on section 326  
4       of this title.”.

5       **SEC. 408. 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. 409. PREFERENCES.**

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

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

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 (8), by striking the period at  
4           the end and inserting “; or”; and

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

6           “(9) if, in a case filed by a debtor whose debts  
7           are not primarily consumer debts, the aggregate  
8           value of all property that constitutes or is affected  
9           by such transfer is less than \$5,000.”.

10 **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

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

14 **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

15           Section 1121(d) of title 11, United States Code, is  
16 amended—

17           (1) by striking “On” and inserting “(1) Subject  
18           to paragraph (2), on”; and

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

20           “(2)(A) The 120-day period specified in paragraph  
21 (1) may not be extended beyond a date that is 18 months  
22 after the date of the order for relief under this chapter.

23           “(B) The 180-day period specified in paragraph (1)  
24 may not be extended beyond a date that is 20 months after  
25 the date of the order for relief under this chapter.”.

1 **SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP IN-**  
2 **TERESTS.**

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

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

7 (2) by striking “ownership or” and inserting  
8 “ownership,”;

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

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

17 **SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING**  
18 **OF CREDITORS.**

19 Section 341(e) of title 11, United States Code, is  
20 amended by inserting at the end the following:  
21 “Notwithstanding any local court rule, provision of a State  
22 constitution, any other Federal or State law that is not  
23 a bankruptcy law, or other requirement that representa-  
24 tion at the meeting of creditors under subsection (a) be  
25 by an attorney, a creditor holding a consumer debt or any  
26 representative of the creditor (which may include an entity

1 or an employee of an entity and may be a representative  
2 for more than 1 creditor) shall be permitted to appear at  
3 and participate in the meeting of creditors in a case under  
4 chapter 7 or 13, either alone or in conjunction with an  
5 attorney for the creditor. Nothing in this subsection shall  
6 be construed to require any creditor to be represented by  
7 an attorney at any meeting of creditors.”.

8 **SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

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

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

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

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

18 “(C) does not have an interest materially  
19 adverse to the interest of the estate or of any  
20 class of creditors or equity security holders, by  
21 reason of any direct or indirect relationship to,  
22 connection with, or interest in, the debtor, or  
23 for any other reason;”.

1 **SEC. 415. FACTORS FOR COMPENSATION OF PROFES-**  
2 **SIONAL PERSONS.**

3 Section 330(a)(3) of title 11, United States Code, is  
4 amended—

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

7 (2) by redesignating subparagraph (E) as sub-  
8 paragraph (F); and

9 (3) by inserting after subparagraph (D) the fol-  
10 lowing:

11 “(E) with respect to a professional person,  
12 whether the person is board certified or otherwise  
13 has demonstrated skill and experience in the bank-  
14 ruptcy field; and”.

15 **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

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

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

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

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

23 “(B) Upon the filing of a report under subparagraph  
24 (A)—

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

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

6           “(C) The court shall resolve any dispute arising out  
7 of an election described in subparagraph (A).”.

8 **SEC. 417. UTILITY SERVICE.**

9           Section 366 of title 11, United States Code, is  
10 amended—

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

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

14           “(c)(1)(A) For purposes of this subsection, the term  
15 ‘assurance of payment’ means—

16           “(i) a cash deposit;

17           “(ii) a letter of credit;

18           “(iii) a certificate of deposit;

19           “(iv) a surety bond;

20           “(v) a prepayment of utility consumption; or

21           “(vi) another form of security that is mutually  
22 agreed on between the utility and the debtor or the  
23 trustee.

1       “(B) For purposes of this subsection an administra-  
2 tive expense priority shall not constitute an assurance of  
3 payment.

4       “(2) Subject to paragraphs (3) and (4), with respect  
5 to a case filed under chapter 11, a utility referred to in  
6 subsection (a) may alter, refuse, or discontinue utility  
7 service, if during the 30-day period beginning on the date  
8 of filing of the petition, the utility does not receive from  
9 the debtor or the trustee adequate assurance of payment  
10 for utility service that is satisfactory to the utility.

11       “(3)(A) On request of a party in interest and after  
12 notice and a hearing, the court may order modification  
13 of the amount of an assurance of payment under para-  
14 graph (2).

15       “(B) In making a determination under this para-  
16 graph whether an assurance of payment is adequate, the  
17 court may not consider—

18               “(i) the absence of security before the date of  
19 filing of the petition;

20               “(ii) the payment by the debtor of charges for  
21 utility service in a timely manner before the date of  
22 filing of the petition; or

23               “(iii) the availability of an administrative ex-  
24 pense priority.

1       “(4) Notwithstanding any other provision of law, with  
2 respect to a case subject to this subsection, a utility may  
3 recover or set off against a security deposit provided to  
4 the utility by the debtor before the date of filing of the  
5 petition without notice or order of the court.”.

6 **SEC. 418. BANKRUPTCY FEES.**

7       Section 1930 of title 28, United States Code, is  
8 amended—

9           (1) in subsection (a), by striking  
10       “Notwithstanding section 1915 of this title, the”  
11       and inserting “The”; and

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

13       “(f)(1) Under the procedures prescribed by the Judi-  
14 cial Conference of the United States, the district court or  
15 the bankruptcy court may waive the filing fee in a case  
16 under chapter 7 of title 11 for an individual if the court  
17 determines that such individual has income less than 150  
18 percent of the income official poverty line (as defined by  
19 the Office of Management and Budget, and revised annu-  
20 ally in accordance with section 673(2) of the Omnibus  
21 Budget Reconciliation Act of 1981) applicable to a family  
22 of the size involved and is unable to pay that fee in install-  
23 ments. For purposes of this paragraph, the term ‘filing  
24 fee’ means the filing required by subsection (a), or any  
25 other fee prescribed by the Judicial Conference under sub-

1 sections (b) and (c) that is payable to the clerk upon the  
2 commencement of a case under chapter 7.

3 “(2) The district court or the bankruptcy court may  
4 waive for such debtors other fees prescribed under sub-  
5 sections (b) and (c).

6 “(3) This subsection does not restrict the district  
7 court or the bankruptcy court from waiving, in accordance  
8 with Judicial Conference policy, fees prescribed under this  
9 section for other debtors and creditors.”.

10 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**  
11 **SETS OF THE ESTATE.**

12 (a) IN GENERAL.—

13 (1) DISCLOSURE.—The Advisory Committee on  
14 Bankruptcy Rules of the Judicial Conference of the  
15 United States, after consideration of the views of the  
16 Director of the Executive Office for United States  
17 Trustees, shall propose for adoption amended Fed-  
18 eral Rules of Bankruptcy Procedure and Official  
19 Bankruptcy Forms directing debtors under chapter  
20 11 of title 11, United States Code, to disclose the  
21 information described in paragraph (2) by filing and  
22 serving periodic financial and other reports designed  
23 to provide such information.

24 (2) INFORMATION.—The information referred  
25 to in paragraph (1) is the value, operations, and

1       profitability of any closely held corporation, partner-  
2       ship, or of any other entity in which the debtor holds  
3       a substantial or controlling interest.

4       (b) PURPOSE.—The purpose of the rules and reports  
5       under subsection (a) shall be to assist parties in interest  
6       taking steps to ensure that the debtor’s interest in any  
7       entity referred to in subsection (a)(2) is used for the pay-  
8       ment of allowed claims against debtor.

9                   **Subtitle B—Small Business**  
10                   **Bankruptcy Provisions**

11 **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**  
12                   **AND PLAN.**

13       Section 1125 of title 11, United States Code, is  
14       amended—

15               (1) in subsection (a)(1), by inserting before the  
16       semicolon “and in determining whether a disclosure  
17       statement provides adequate information, the court  
18       shall consider the complexity of the case, the benefit  
19       of additional information to creditors and other par-  
20       ties in interest, and the cost of providing additional  
21       information”; and

22               (2) by striking subsection (f), and inserting the  
23       following:

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

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

4           “(2) the court may approve a disclosure state-  
5           ment submitted on standard forms approved by the  
6           court or adopted under section 2075 of title 28; and

7           “(3)(A) the court may conditionally approve a  
8           disclosure statement subject to final approval after  
9           notice and a hearing;

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

18          “(C) the hearing on the disclosure statement  
19          may be combined with the hearing on confirmation  
20          of a plan.”.

21 **SEC. 432. DEFINITIONS.**

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

1           “(51C) ‘small business case’ means a case filed  
2           under chapter 11 of this title in which the debtor is  
3           a small business debtor;

4           “(51D) ‘small business debtor’—

5           “(A) subject to subparagraph (B), means a  
6           person engaged in commercial or business ac-  
7           tivities (including any affiliate of such person  
8           that is also a debtor under this title and exclud-  
9           ing a person whose primary activity is the busi-  
10          ness of owning or operating real property or ac-  
11          tivities incidental thereto) that has aggregate  
12          noncontingent, liquidated secured and unse-  
13          cured debts as of the date of the petition or the  
14          order for relief in an amount not more than  
15          \$2,000,000 (excluding debts owed to 1 or more  
16          affiliates or insiders) for a case in which the  
17          United States trustee has not appointed under  
18          section 1102(a)(1) a committee of unsecured  
19          creditors or where the court has determined  
20          that the committee of unsecured creditors is not  
21          sufficiently active and representative to provide  
22          effective oversight of the debtor; and

23          “(B) does not include any member of a  
24          group of affiliated debtors that has aggregate  
25          noncontingent liquidated secured and unsecured

1           debts in an amount greater than \$2,000,000  
2           (excluding debt owed to 1 or more affiliates or  
3           insiders);”.

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

7           (c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section  
8 104(b) of title 11, United States Code, as amended by  
9 section 226, is amended by inserting “101(51D),” after  
10 “101(3),” each place it appears.

11 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**  
12 **PLAN.**

13           Within a reasonable period of time after the date of  
14 enactment of this Act, the Advisory Committee on Bank-  
15 ruptcy Rules of the Judicial Conference of the United  
16 States shall propose for adoption standard form disclosure  
17 statements and plans of reorganization for small business  
18 debtors (as defined in section 101 of title 11, United  
19 States Code, as amended by this Act), designed to achieve  
20 a practical balance between—

21           (1) the reasonable needs of the courts, the  
22           United States trustee, creditors, and other parties in  
23           interest for reasonably complete information; and

24           (2) economy and simplicity for debtors.

1 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**  
2 **MENTS.**

3 (a) REPORTING REQUIRED.—

4 (1) IN GENERAL.—Chapter 3 of title 11, United  
5 States Code, is amended by inserting after section  
6 307 the following:

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

8 “(a) For purposes of this section, the term  
9 ‘profitability’ means, with respect to a debtor, the amount  
10 of money that the debtor has earned or lost during current  
11 and recent fiscal periods.

12 “(b) A small business debtor shall file periodic finan-  
13 cial and other reports containing information including—

14 “(1) the debtor’s profitability;

15 “(2) reasonable approximations of the debtor’s  
16 projected cash receipts and cash disbursements over  
17 a reasonable period;

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

20 “(4)(A) whether the debtor is—

21 “(i) in compliance in all material respects  
22 with postpetition requirements imposed by this  
23 title and the Federal Rules of Bankruptcy Pro-  
24 cedure; and

1           “(ii) timely filing tax returns and other re-  
2           quired government filings and paying taxes and  
3           other administrative expenses when due;

4           “(B) if the debtor is not in compliance with the  
5           requirements referred to in subparagraph (A)(i) or  
6           filing tax returns and other required government fil-  
7           ings and making the payments referred to in sub-  
8           paragraph (A)(ii), what the failures are and how, at  
9           what cost, and when the debtor intends to remedy  
10          such failures; and

11          “(C) such other matters as are in the best in-  
12          terests of the debtor and creditors, and in the public  
13          interest in fair and efficient procedures under chap-  
14          ter 11 of this title.”.

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

“308. Debtor reporting requirements.”.

19          (b) EFFECTIVE DATE.—The amendments made by  
20          subsection (a) shall take effect 60 days after the date on  
21          which rules are prescribed under section 2075 of title 28,  
22          United States Code, to establish forms to be used to com-  
23          ply with section 308 of title 11, United States Code, as  
24          added by subsection (a).

1 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**  
2 **SMALL BUSINESS CASES.**

3 (a) PROPOSAL OF RULES AND FORMS.—The Advi-  
4 sory Committee on Bankruptcy Rules of the Judicial Con-  
5 ference of the United States shall propose for adoption  
6 amended Federal Rules of Bankruptcy Procedure and Of-  
7 ficial Bankruptcy Forms to be used by small business  
8 debtors to file periodic financial and other reports con-  
9 taining information, including information relating to—

10 (1) the debtor's profitability;

11 (2) the debtor's cash receipts and disburse-  
12 ments; and

13 (3) whether the debtor is timely filing tax re-  
14 turns and paying taxes and other administrative ex-  
15 penses when due.

16 (b) PURPOSE.—The rules and forms proposed under  
17 subsection (a) shall be designed to achieve a practical bal-  
18 ance among—

19 (1) the reasonable needs of the bankruptcy  
20 court, the United States trustee, creditors, and other  
21 parties in interest for reasonably complete informa-  
22 tion;

23 (2) the small business debtor's interest that re-  
24 quired reports be easy and inexpensive to complete;  
25 and



1           “(2) attend, through its senior management  
2           personnel and counsel, meetings scheduled by the  
3           court or the United States trustee, including initial  
4           debtor interviews, scheduling conferences, and meet-  
5           ings of creditors convened under section 341 unless  
6           the court waives that requirement after notice and  
7           a hearing, upon a finding of extraordinary and com-  
8           pelling circumstances;

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

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

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

20          “(6)(A) timely file tax returns and other re-  
21          quired government filings; and

22          “(B) subject to section 363(c)(2), timely pay all  
23          taxes entitled to administrative expense priority ex-  
24          cept those being contested by appropriate pro-  
25          ceedings being diligently prosecuted; and

1           “(7) allow the United States trustee, or a des-  
2           ignated representative of the United States trustee,  
3           to inspect the debtor’s business premises, books, and  
4           records at reasonable times, after reasonable prior  
5           written notice, unless notice is waived by the debt-  
6           or.”.

7           (b) CLERICAL AMENDMENT.—The table of sections  
8           for chapter 11 of title 11, United States Code, as amended  
9           by section 321, is amended by inserting after the item re-  
10          lating to section 1115 the following:

          “1116. Duties of trustee or debtor in possession in small business cases.”.

11       **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

12          Section 1121 of title 11, United States Code, is  
13          amended by striking subsection (e) and inserting the fol-  
14          lowing:

15          “(e) In a small business case—

16               “(1) only the debtor may file a plan until after  
17               180 days after the date of the order for relief, unless  
18               that period is—

19                       “(A) extended as provided by this sub-  
20                       section, after notice and a hearing; or

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

22               “(2) the plan, and any necessary disclosure  
23               statement, shall be filed not later than 300 days  
24               after the date of the order for relief; and

1           “(3) the time periods specified in paragraphs  
2           (1) and (2), and the time fixed in section 1129(e)  
3           within which the plan shall be confirmed, may be ex-  
4           tended only if—

5                   “(A) the debtor, after providing notice to  
6                   parties in interest (including the United States  
7                   trustee), demonstrates by a preponderance of  
8                   the evidence that it is more likely than not that  
9                   the court will confirm a plan within a reason-  
10                  able period of time;

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

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

15 **SEC. 438. PLAN CONFIRMATION DEADLINE.**

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

18                   “(e) In a small business case, the court shall confirm  
19                   a plan that complies with the applicable provisions of this  
20                   title and that is filed in accordance with section 1121(e)  
21                   not later than 45 days after such plan is filed unless the  
22                   time for confirmation is extended in accordance with sec-  
23                   tion 1121(e)(3).”.

1 **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

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

4 (1) in paragraph (3)—

5 (A) in subparagraph (G), by striking  
6 “and” at the end;

7 (B) by redesignating subparagraph (H) as  
8 subparagraph (I); and

9 (C) by inserting after subparagraph (G)  
10 the following:

11 “(H) in small business cases (as defined in  
12 section 101 of title 11), performing the addi-  
13 tional duties specified in title 11 pertaining to  
14 such cases; and”;

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

17 (3) in paragraph (6), by striking the period at  
18 the end and inserting a semicolon; and

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

20 “(7) in each of such small business cases—

21 “(A) conduct an initial debtor interview as  
22 soon as practicable after the entry of order for  
23 relief but before the first meeting scheduled  
24 under section 341(a) of title 11, at which time  
25 the United States trustee shall—

1           “(i) begin to investigate the debtor’s  
2           viability;

3           “(ii) inquire about the debtor’s busi-  
4           ness plan;

5           “(iii) explain the debtor’s obligations  
6           to file monthly operating reports and other  
7           required reports;

8           “(iv) attempt to develop an agreed  
9           scheduling order; and

10           “(v) inform the debtor of other obliga-  
11           tions;

12           “(B) if determined to be appropriate and  
13           advisable, visit the appropriate business prem-  
14           ises of the debtor and ascertain the state of the  
15           debtor’s books and records and verify that the  
16           debtor has filed its tax returns; and

17           “(C) review and monitor diligently the  
18           debtor’s activities, to identify as promptly as  
19           possible whether the debtor will be unable to  
20           confirm a plan; and

21           “(8) in any case in which the United States  
22           trustee finds material grounds for any relief under  
23           section 1112 of title 11, the United States trustee  
24           shall apply promptly after making that finding to  
25           the court for relief.”.

1 **SEC. 440. SCHEDULING CONFERENCES.**

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

4 (1) in the matter preceding paragraph (1), by  
5 striking “, may”; and

6 (2) by striking paragraph (1) and inserting the  
7 following:

8 “(1) shall hold such status conferences as are  
9 necessary to further the expeditious and economical  
10 resolution of the case; and”.

11 **SEC. 441. SERIAL FILER PROVISIONS.**

12 Section 362 of title 11, United States Code, as  
13 amended by sections 106, 305, and 311, is amended—

14 (1) in subsection (k), as so redesignated by sec-  
15 tion 305—

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

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

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

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

25 “(n)(1) Except as provided in paragraph (2), sub-  
26 section (a) does not apply in a case in which the debtor—

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

3           “(B) was a debtor in a small business case that  
4           was dismissed for any reason by an order that be-  
5           came final in the 2-year period ending on the date  
6           of the order for relief entered with respect to the pe-  
7           tition;

8           “(C) was a debtor in a small business case in  
9           which a plan was confirmed in the 2-year period  
10          ending on the date of the order for relief entered  
11          with respect to the petition; or

12          “(D) is an entity that has acquired substan-  
13          tially all of the assets or business of a small business  
14          debtor described in subparagraph (A), (B), or (C),  
15          unless such entity establishes by a preponderance of  
16          the evidence that such entity acquired substantially  
17          all of the assets or business of such small business  
18          debtor in good faith and not for the purpose of evad-  
19          ing this paragraph.

20          “(2) Paragraph (1) does not apply—

21                 “(A) to an involuntary case involving no collu-  
22                 sion by the debtor with creditors; or

23                 “(B) to the filing of a petition if—

24                         “(i) the debtor proves by a preponderance  
25                         of the evidence that the filing of that petition

1           resulted from circumstances beyond the control  
2           of the debtor not foreseeable at the time the  
3           case then pending was filed; and

4                   “(ii) it is more likely than not that the  
5           court will confirm a feasible plan, but not a liq-  
6           uidating plan, within a reasonable period of  
7           time.”.

8 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
9                   **VERSION AND APPOINTMENT OF TRUSTEE.**

10           (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-  
11           VERSION.—Section 1112 of title 11, United States Code,  
12           is amended by striking subsection (b) and inserting the  
13           following:

14                   “(b)(1) Except as provided in paragraph (2) of this  
15           subsection, subsection (c) of this section, and section  
16           1104(a)(3), on request of a party in interest, and after  
17           notice and a hearing, absent unusual circumstances spe-  
18           cifically identified by the court that establish that the re-  
19           quested conversion or dismissal is not in the best interests  
20           of creditors and the estate, the court shall convert a case  
21           under this chapter to a case under chapter 7 or dismiss  
22           a case under this chapter, whichever is in the best inter-  
23           ests of creditors and the estate, if the movant establishes  
24           cause.

1       “(2) The relief provided in paragraph (1) shall not  
2 be granted absent unusual circumstances specifically iden-  
3 tified by the court that establish that such relief is not  
4 in the best interests of creditors and the estate, if the  
5 debtor or another party in interest objects and establishes  
6 that—

7           “(A) there is a reasonable likelihood that a plan  
8 will be confirmed within the timeframes established  
9 in sections 1121(e) and 1129(e) of this title, or if  
10 such sections do not apply, within a reasonable pe-  
11 riod of time; and

12           “(B) the grounds for granting such relief in-  
13 clude an act or omission of the debtor other than  
14 under paragraph (4)(A)—

15           “(i) for which there exists a reasonable  
16 justification for the act or omission; and

17           “(ii) that will be cured within a reasonable  
18 period of time fixed by the court.

19       “(3) The court shall commence the hearing on a mo-  
20 tion under this subsection not later than 30 days after  
21 filing of the motion, and shall decide the motion not later  
22 than 15 days after commencement of such hearing, unless  
23 the movant expressly consents to a continuance for a spe-  
24 cific period of time or compelling circumstances prevent

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

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

5 “(A) substantial or continuing loss to or dimi-  
6 nution of the estate and the absence of a reasonable  
7 likelihood of rehabilitation;

8 “(B) gross mismanagement of the estate;

9 “(C) failure to maintain appropriate insurance  
10 that poses a risk to the estate or to the public;

11 “(D) unauthorized use of cash collateral sub-  
12 stantially harmful to 1 or more creditors;

13 “(E) failure to comply with an order of the  
14 court;

15 “(F) unexcused failure to satisfy timely any fil-  
16 ing or reporting requirement established by this title  
17 or by any rule applicable to a case under this chap-  
18 ter;

19 “(G) failure to attend the meeting of creditors  
20 convened under section 341(a) or an examination or-  
21 dered under rule 2004 of the Federal Rules of  
22 Bankruptcy Procedure without good cause shown by  
23 the debtor;

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

4           “(I) failure timely to pay taxes owed 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;

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;

18           “(O) termination of a confirmed plan by reason  
19 of the occurrence of a condition specified in the plan;  
20 and

21           “(P) failure of the debtor to pay any domestic  
22 support obligation that first becomes payable after  
23 the date on which the petition is filed.

24           “(5) The court shall commence the hearing on a  
25 motion under this subsection not later than 30 days after

1 filing of the motion, and shall decide the motion not later  
2 than 15 days after commencement of such hearing, unless  
3 the movant expressly consents to a continuance for a spe-  
4 cific period of time or compelling circumstances prevent  
5 the court from meeting the time limits established by this  
6 paragraph.”.

7 (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF  
8 TRUSTEE.—Section 1104(a) of title 11, United States  
9 Code, is amended—

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

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

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

15 “(3) if grounds exist to convert or dismiss the  
16 case under section 1112, but the court determines  
17 that the appointment of a trustee or an examiner is  
18 in the best interests of creditors and the estate.”.

19 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**  
20 **STATES CODE, WITH RESPECT TO SMALL**  
21 **BUSINESSES.**

22 Not later than 2 years after the date of enactment  
23 of this Act, the Administrator of the Small Business Ad-  
24 ministration, in consultation with the Attorney General,  
25 the Director of the Executive Office for United States

1 Trustees, and the Director of the Administrative Office  
2 of the United States Courts, shall—

3 (1) conduct a study to determine—

4 (A) the internal and external factors that  
5 cause small businesses, especially sole propri-  
6 etorships, to become debtors in cases under title  
7 11, United States Code, and that cause certain  
8 small businesses to successfully complete cases  
9 under chapter 11 of such title; and

10 (B) how Federal laws relating to bank-  
11 ruptcy may be made more effective and efficient  
12 in assisting small businesses to remain viable;  
13 and

14 (2) submit to the President pro tempore of the  
15 Senate and the Speaker of the House of Representa-  
16 tives a report summarizing that study.

17 **SEC. 444. PAYMENT OF INTEREST.**

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

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

24 (2) by striking subparagraph (B) and inserting  
25 the following:

1           “(B) the debtor has commenced monthly  
2           payments that—

3                   “(i) may, in the debtor’s sole discre-  
4                   tion, notwithstanding section 363(c)(2), be  
5                   made from rents or other income generated  
6                   before or after the commencement of the  
7                   case by or from the property to each cred-  
8                   itor whose claim is secured by such real es-  
9                   tate (other than a claim secured by a judg-  
10                  ment lien or by an unmatured statutory  
11                  lien); and

12                   “(ii) are in an amount equal to inter-  
13                  est at the then applicable nondefault con-  
14                  tract rate of interest on the value of the  
15                  creditor’s interest in the real estate; or”.

16 **SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

17           Section 503(b) of title 11, United States Code, is  
18           amended—

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

21                   (2) in paragraph (6), by striking the period at  
22                   the end and inserting a semicolon; and

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

24                   “(7) with respect to a nonresidential real prop-  
25                   erty lease previously assumed under section 365,

1 and subsequently rejected, a sum equal to all mone-  
2 tary obligations due, excluding those arising from or  
3 relating to a failure to operate or a penalty provi-  
4 sion, for the period of 2 years following the later of  
5 the rejection date or the date of actual turnover of  
6 the premises, without reduction or setoff for any  
7 reason whatsoever except for sums actually received  
8 or to be received from a nondebtor, and the claim  
9 for remaining sums due for the balance of the term  
10 of the lease shall be a claim under section  
11 502(b)(6);”.

12 **SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A**  
13 **PLAN ADMINISTRATOR OF AN EMPLOYEE**  
14 **BENEFIT PLAN.**

15 (a) IN GENERAL.—Section 521(a) of title 11, United  
16 States Code, as amended by section 106, is amended—

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

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

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

22 “(6) unless a trustee is serving in the case, if  
23 at the time of filing the debtor served as the admin-  
24 istrator (as defined in section 3 of the Employee Re-  
25 tirement Income Security Act of 1974 of an em-

1        ployee benefit plan, continue to perform the obliga-  
2        tions required of the administrator.”.

3        (b) DUTIES OF TRUSTEES.—Section 704(a) of title  
4 11, United States Code, as amended by sections 102 and  
5 219, is amended—

6            (1) in paragraph (9), by striking “and” at the  
7        end;

8            (2) in paragraph (10), by striking the period at  
9        the end; and

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

11            “(11) if, at the time of the commencement of  
12        the case, the debtor served as the administrator (as  
13        defined in section 3 of the Employee Retirement In-  
14        come Security Act of 1974) of an employee benefit  
15        plan, continue to perform the obligations required of  
16        the administrator; and”.

17        (c) CONFORMING AMENDMENT.—Section 1106(a)(1)  
18 of title 11, United States Code, is amended to read as  
19 follows:

20            “(1) perform the duties of the trustee, as speci-  
21        fied in paragraphs (2), (5), (7), (8), (9), (10), and  
22        (11) of section 704;”.



1 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
2 **TER 9.**

3 Section 901(a) of title 11, United States Code, is  
4 amended—

5 (1) by inserting “555, 556,” after “553,”; and

6 (2) by inserting “559, 560, 561, 562” after  
7 “557.”.

8 **TITLE VI—BANKRUPTCY DATA**

9 **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

10 (a) IN GENERAL.—Chapter 6 of title 28, United  
11 States Code, is amended by adding at the end the fol-  
12 lowing:

13 **“§ 159. Bankruptcy statistics**

14 “(a) The clerk of the district court, or the clerk of  
15 the bankruptcy court if one is certified pursuant to section  
16 156(b) of this title, shall collect statistics regarding debt-  
17 ors who are individuals with primarily consumer debts  
18 seeking relief under chapters 7, 11, and 13 of title 11.  
19 Those statistics shall be in a standardized format pre-  
20 scribed by the Director of the Administrative Office of the  
21 United States Courts (referred to in this section as the  
22 ‘Director’).

23 “(b) The Director shall—

24 “(1) compile the statistics referred to in sub-  
25 section (a);

1           “(2) make the statistics available to the public;  
2           and

3           “(3) not later than June 1, 2005, and annually  
4           thereafter, prepare, and submit to Congress a report  
5           concerning the information collected under sub-  
6           section (a) that contains an analysis of the informa-  
7           tion.

8           “(c) The compilation required under subsection (b)  
9           shall—

10           “(1) be itemized, by chapter, with respect to  
11           title 11;

12           “(2) be presented in the aggregate and for each  
13           district; and

14           “(3) include information concerning—

15           “(A) the total assets and total liabilities of  
16           the debtors described in subsection (a), and in  
17           each category of assets and liabilities, as re-  
18           ported in the schedules prescribed pursuant to  
19           section 2075 of this title and filed by those  
20           debtors;

21           “(B) the current monthly income, average  
22           income, and average expenses of those debtors  
23           as reported on the schedules and statements  
24           that each such debtor files under sections 521  
25           and 1322 of title 11;

1           “(C) the aggregate amount of debt dis-  
2 charged in cases filed during the reporting pe-  
3 riod, determined as the difference between the  
4 total amount of debt and obligations of a debtor  
5 reported on the schedules and the amount of  
6 such debt reported in categories which are pre-  
7 dominantly nondischargeable;

8           “(D) the average period of time between  
9 the filing of the petition and the closing of the  
10 case for cases closed during the reporting pe-  
11 riod;

12           “(E) for cases closed during the reporting  
13 period—

14               “(i) the number of cases in which a  
15 reaffirmation was filed; and

16               “(ii)(I) the total number of reaffirma-  
17 tions filed;

18               “(II) of those cases in which a reaffir-  
19 mation was filed, the number of cases in  
20 which the debtor was not represented by  
21 an attorney; and

22               “(III) of those cases in which a reaf-  
23 firmation was filed, the number of cases in  
24 which the reaffirmation was approved by  
25 the court;

1           “(F) with respect to cases filed under  
2 chapter 13 of title 11, for the reporting  
3 period—

4           “(i)(I) the number of cases in which a  
5 final order was entered determining the  
6 value of property securing a claim in an  
7 amount less than the amount of the claim;  
8 and

9           “(II) the number of final orders en-  
10 tered determining the value of property se-  
11 curing a claim;

12           “(ii) the number of cases dismissed,  
13 the number of cases dismissed for failure  
14 to make payments under the plan, the  
15 number of cases refiled after dismissal,  
16 and the number of cases in which the plan  
17 was completed, separately itemized with re-  
18 spect to the number of modifications made  
19 before completion of the plan, if any; and

20           “(iii) the number of cases in which  
21 the debtor filed another case during the 6-  
22 year period preceding the filing;

23           “(G) the number of cases in which credi-  
24 tors were fined for misconduct and any amount

1 of punitive damages awarded by the court for  
2 creditor misconduct; and

3 “(H) the number of cases in which sanc-  
4 tions under rule 9011 of the Federal Rules of  
5 Bankruptcy Procedure were imposed against  
6 debtor’s attorney or damages awarded under  
7 such Rule.”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
9 for chapter 6 of title 28, United States Code, is amended  
10 by adding at the end the following:

“159. Bankruptcy statistics.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect 18 months after the date of  
13 enactment of this Act.

14 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**  
15 **RUPTCY DATA.**

16 (a) AMENDMENT.—Chapter 39 of title 28, United  
17 States Code, is amended by adding at the end the fol-  
18 lowing:

19 **“§ 589b. Bankruptcy data**

20 “(a) RULES.—The Attorney General shall, within a  
21 reasonable time after the effective date of this section,  
22 issue rules requiring uniform forms for (and from time  
23 to time thereafter to appropriately modify and approve)—

24 “(1) final reports by trustees in cases under  
25 chapters 7, 12, and 13 of title 11; and

1           “(2) periodic reports by debtors in possession or  
2 trustees in cases under chapter 11 of title 11.

3           “(b) REPORTS.—Each report referred to in sub-  
4 section (a) shall be designed (and the requirements as to  
5 place and manner of filing shall be established) so as to  
6 facilitate compilation of data and maximum possible ac-  
7 cess of the public, both by physical inspection at one or  
8 more central filing locations, and by electronic access  
9 through the Internet or other appropriate media.

10          “(c) REQUIRED INFORMATION.—The information re-  
11 quired to be filed in the reports referred to in subsection  
12 (b) shall be that which is in the best interests of debtors  
13 and creditors, and in the public interest in reasonable and  
14 adequate information to evaluate the efficiency and practi-  
15 cality of the Federal bankruptcy system. In issuing rules  
16 proposing the forms referred to in subsection (a), the At-  
17 torney General shall strike the best achievable practical  
18 balance between—

19           “(1) the reasonable needs of the public for in-  
20 formation about the operational results of the Fed-  
21 eral bankruptcy system;

22           “(2) economy, simplicity, and lack of undue  
23 burden on persons with a duty to file reports; and

24           “(3) appropriate privacy concerns and safe-  
25 guards.

1       “(d) FINAL REPORTS.—The uniform forms for final  
2 reports required under subsection (a) for use by trustees  
3 under chapters 7, 12, and 13 of title 11 shall, in addition  
4 to such other matters as are required by law or as the  
5 Attorney General in the discretion of the Attorney General  
6 shall propose, include with respect to a case under such  
7 title—

8           “(1) information about the length of time the  
9 case was pending;

10          “(2) assets abandoned;

11          “(3) assets exempted;

12          “(4) receipts and disbursements of the estate;

13          “(5) expenses of administration, including for  
14 use under section 707(b), actual costs of admin-  
15 istering cases under chapter 13 of title 11;

16          “(6) claims asserted;

17          “(7) claims allowed; and

18          “(8) distributions to claimants and claims dis-  
19 charged without payment,

20 in each case by appropriate category and, in cases under  
21 chapters 12 and 13 of title 11, date of confirmation of  
22 the plan, each modification thereto, and defaults by the  
23 debtor in performance under the plan.

24       “(e) PERIODIC REPORTS.—The uniform forms for  
25 periodic reports required under subsection (a) for use by

1 trustees or debtors in possession under chapter 11 of title  
2 11 shall, in addition to such other matters as are required  
3 by law or as the Attorney General in the discretion of the  
4 Attorney General shall propose, include—

5           “(1) information about the standard industry  
6 classification, published by the Department of Com-  
7 merce, for the businesses conducted by the debtor;

8           “(2) length of time the case has been pending;

9           “(3) number of full-time employees as of the  
10 date of the order for relief and at the end of each  
11 reporting period since the case was filed;

12           “(4) cash receipts, cash disbursements and  
13 profitability of the debtor for the most recent period  
14 and cumulatively since the date of the order for re-  
15 lief;

16           “(5) compliance with title 11, whether or not  
17 tax returns and tax payments since the date of the  
18 order for relief have been timely filed and made;

19           “(6) all professional fees approved by the court  
20 in the case for the most recent period and cumula-  
21 tively since the date of the order for relief  
22 (separately reported, for the professional fees in-  
23 curred by or on behalf of the debtor, between those  
24 that would have been incurred absent a bankruptcy  
25 case and those not); and

1           “(7) plans of reorganization filed and confirmed  
2           and, with respect thereto, by class, the recoveries of  
3           the holders, expressed in aggregate dollar values  
4           and, in the case of claims, as a percentage of total  
5           claims of the class allowed.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7           for chapter 39 of title 28, United States Code, is amended  
8           by adding at the end the following:

          “589b. Bankruptcy data.”.

9           **SEC. 603. AUDIT PROCEDURES.**

10          (a) IN GENERAL.—

11           (1) ESTABLISHMENT OF PROCEDURES.—The  
12           Attorney General (in judicial districts served by  
13           United States trustees) and the Judicial Conference  
14           of the United States (in judicial districts served by  
15           bankruptcy administrators) shall establish proce-  
16           dures to determine the accuracy, veracity, and com-  
17           pleteness of petitions, schedules, and other informa-  
18           tion which the debtor is required to provide under  
19           sections 521 and 1322 of title 11, United States  
20           Code, and, if applicable, section 111 of such title, in  
21           cases filed under chapter 7 or 13 of such title in  
22           which the debtor is an individual. Such audits shall  
23           be in accordance with generally accepted auditing  
24           standards and performed by independent certified  
25           public accountants or independent licensed public ac-

1 countants, provided that the Attorney General and  
2 the Judicial Conference, as appropriate, may develop  
3 alternative auditing standards not later than 2 years  
4 after the date of enactment of this Act.

5 (2) PROCEDURES.—Those procedures required  
6 by paragraph (1) shall—

7 (A) establish a method of selecting appro-  
8 priate qualified persons to contract to perform  
9 those audits;

10 (B) establish a method of randomly select-  
11 ing cases to be audited, except that not less  
12 than 1 out of every 250 cases in each Federal  
13 judicial district shall be selected for audit;

14 (C) require audits for schedules of income  
15 and expenses which reflect greater than average  
16 variances from the statistical norm of the dis-  
17 trict in which the schedules were filed if those  
18 variances occur by reason of higher income or  
19 higher expenses than the statistical norm of the  
20 district in which the schedules were filed; and

21 (D) establish procedures for providing, not  
22 less frequently than annually, public informa-  
23 tion concerning the aggregate results of such  
24 audits including the percentage of cases, by dis-

1           trict, in which a material misstatement of in-  
2           come or expenditures is reported.

3           (b) AMENDMENTS.—Section 586 of title 28, United  
4 States Code, is amended—

5           (1) in subsection (a), by striking paragraph (6)  
6           and inserting the following:

7           “(6) make such reports as the Attorney General  
8           directs, including the results of audits performed  
9           under section 603(a) of the Bankruptcy Abuse Pre-  
10          vention and Consumer Protection Act of 2002;”;

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

12          “(f)(1) The United States trustee for each district is  
13          authorized to contract with auditors to perform audits in  
14          cases designated by the United States trustee, in accord-  
15          ance with the procedures established under section 603(a)  
16          of the Bankruptcy Abuse Prevention and Consumer Pro-  
17          tection Act of 2002.

18          “(2)(A) The report of each audit referred to in para-  
19          graph (1) shall be filed with the court and transmitted  
20          to the United States trustee. Each report shall clearly and  
21          conspicuously specify any material misstatement of income  
22          or expenditures or of assets identified by the person per-  
23          forming the audit. In any case in which a material  
24          misstatement of income or expenditures or of assets has  
25          been reported, the clerk of the district court (or the clerk

1 of the bankruptcy court if one is certified under section  
2 156(b) of this title) shall give notice of the misstatement  
3 to the creditors in the case.

4 “(B) If a material misstatement of income or expend-  
5 itures or of assets is reported, the United States trustee  
6 shall—

7 “(i) report the material misstatement, if appro-  
8 priate, to the United States Attorney pursuant to  
9 section 3057 of title 18; and

10 “(ii) if advisable, take appropriate action, in-  
11 cluding but not limited to commencing an adversary  
12 proceeding to revoke the debtor’s discharge pursuant  
13 to section 727(d) of title 11.”.

14 (c) AMENDMENTS TO SECTION 521 OF TITLE 11,  
15 U.S.C.—Section 521(a) of title 11, United States Code,  
16 as so designated by section 106, is amended in each of  
17 paragraphs (3) and (4) by inserting “or an auditor ap-  
18 pointed under section 586(f) of title 28” after “serving  
19 in the case”.

20 (d) AMENDMENTS TO SECTION 727 OF TITLE 11,  
21 U.S.C.—Section 727(d) of title 11, United States Code,  
22 is amended—

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

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

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

4           “(4) the debtor has failed to explain satisfac-  
5 torily—

6                   “(A) a material misstatement in an audit  
7 referred to in section 586(f) of title 28; or

8                   “(B) a failure to make available for inspec-  
9 tion all necessary accounts, papers, documents,  
10 financial records, files, and all other papers,  
11 things, or property belonging to the debtor that  
12 are requested for an audit referred to in section  
13 586(f) of title 28.”.

14       (e) EFFECTIVE DATE.—The amendments made by  
15 this section shall take effect 18 months after the date of  
16 enactment of this Act.

17 **SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**  
18 **OF BANKRUPTCY DATA.**

19       It is the sense of Congress that—

20           (1) the national policy of the United States  
21 should be that all data held by bankruptcy clerks in  
22 electronic form, to the extent such data reflects only  
23 public records (as defined in section 107 of title 11,  
24 United States Code), should be released in a usable  
25 electronic form in bulk to the public, subject to such

1 appropriate privacy concerns and safeguards as Con-  
2 gress and the Judicial Conference of the United  
3 States may determine; and

4 (2) there should be established a bankruptcy  
5 data system in which—

6 (A) a single set of data definitions and  
7 forms are used to collect data nationwide; and

8 (B) data for any particular bankruptcy  
9 case are aggregated in the same electronic  
10 record.

## 11 **TITLE VII—BANKRUPTCY TAX** 12 **PROVISIONS**

### 13 **SEC. 701. TREATMENT OF CERTAIN LIENS.**

14 (a) TREATMENT OF CERTAIN LIENS.—Section 724  
15 of title 11, United States Code, is amended—

16 (1) in subsection (b), in the matter preceding  
17 paragraph (1), by inserting “(other than to the ex-  
18 tent that there is a properly perfected unavoidable  
19 tax lien arising in connection with an ad valorem tax  
20 on real or personal property of the estate)” after  
21 “under this title”;

22 (2) in subsection (b)(2), by inserting “(except  
23 that such expenses, other than claims for wages, sal-  
24 aries, or commissions which arise after the filing of  
25 a petition, shall be limited to expenses incurred

1 under chapter 7 of this title and shall not include ex-  
2 penses incurred under chapter 11 of this title)” after  
3 “507(a)(1)”;

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

5 “(e) Before subordinating a tax lien on real or per-  
6 sonal property of the estate, the trustee shall—

7 “(1) exhaust the unencumbered assets of the  
8 estate; and

9 “(2) in a manner consistent with section  
10 506(c), recover from property securing an allowed  
11 secured claim the reasonable, necessary costs and  
12 expenses of preserving or disposing of that property.

13 “(f) Notwithstanding the exclusion of ad valorem tax  
14 liens under this section and subject to the requirements  
15 of subsection (e), the following may be paid from property  
16 of the estate which secures a tax lien, or the proceeds of  
17 such property:

18 “(1) Claims for wages, salaries, and commis-  
19 sions that are entitled to priority under section  
20 507(a)(4).

21 “(2) Claims for contributions to an employee  
22 benefit plan entitled to priority under section  
23 507(a)(5).”.

24 (b) DETERMINATION OF TAX LIABILITY.—Section  
25 505(a)(2) of title 11, United States Code, is amended—

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

3           (2) in subparagraph (B), by striking the period  
4 at the end and inserting “; or”; and

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

6           “(C) the amount or legality of any amount aris-  
7 ing in connection with an ad valorem tax on real or  
8 personal property of the estate, if the applicable pe-  
9 riod for contesting or redetermining that amount  
10 under any law (other than a bankruptcy law) has ex-  
11 pired.”.

12 **SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

13       Section 501 of title 11, United States Code, is  
14 amended by adding at the end the following:

15       “(e) A claim arising from the liability of a debtor for  
16 fuel use tax assessed consistent with the requirements of  
17 section 31705 of title 49 may be filed by the base jurisdic-  
18 tion designated pursuant to the International Fuel Tax  
19 Agreement (as defined in section 31701 of title 49) and,  
20 if so filed, shall be allowed as a single claim.”.

21 **SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF**  
22 **TAXES.**

23       Section 505(b) of title 11, United States Code, is  
24 amended—

1 (1) in the first sentence, by inserting “at the  
2 address and in the manner designated in paragraph  
3 (1)” after “determination of such tax”;

4 (2) by striking “(1) upon payment” and insert-  
5 ing “(A) upon payment”;

6 (3) by striking “(A) such governmental unit”  
7 and inserting “(i) such governmental unit”;

8 (4) by striking “(B) such governmental unit”  
9 and inserting “(ii) such governmental unit”;

10 (5) by striking “(2) upon payment” and insert-  
11 ing “(B) upon payment”;

12 (6) by striking “(3) upon payment” and insert-  
13 ing “(C) upon payment”;

14 (7) by striking “(b)” and inserting “(2)”; and

15 (8) by inserting before paragraph (2), as so  
16 designated, the following:

17 “(b)(1)(A) The clerk shall maintain a listing under  
18 which a Federal, State, or local governmental unit respon-  
19 sible for the collection of taxes within the district may—

20 “(i) designate an address for service of requests  
21 under this subsection; and

22 “(ii) describe where further information con-  
23 cerning additional requirements for filing such re-  
24 quests may be found.

1 “(B) If a governmental unit referred to in subpara-  
2 graph (A) does not designate an address and provide that  
3 address to the clerk under that subparagraph, any request  
4 made under this subsection may be served at the address  
5 for the filing of a tax return or protest with the appro-  
6 priate taxing authority of that governmental unit.”.

7 **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

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

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

12 “(a) If any provision of this title requires the pay-  
13 ment of interest on a tax claim or on an administrative  
14 expense tax, or the payment of interest to enable a creditor  
15 to receive the present value of the allowed amount of a  
16 tax claim, the rate of interest shall be the rate determined  
17 under applicable nonbankruptcy law.

18 “(b) In the case of taxes paid under a confirmed plan  
19 under this title, the rate of interest shall be determined  
20 as of the calendar month in which the plan is confirmed.”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 for subchapter 1 of chapter 5 of title 11, United States  
23 Code, is amended by adding at the end the following:

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

1 **SEC. 705. PRIORITY OF TAX CLAIMS.**

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

4 (1) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by  
6 inserting “for a taxable year ending on or be-  
7 fore the date of the filing of the petition” after  
8 “gross receipts”;

9 (B) in clause (i), by striking “for a taxable  
10 year ending on or before the date of the filing  
11 of the petition”; and

12 (C) by striking clause (ii) and inserting the  
13 following:

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

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

22 “(II) any time during which a  
23 stay of proceedings against collections  
24 was in effect in a prior case under  
25 this title during that 240-day period,  
26 plus 90 days.”; and

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

2 “An otherwise applicable time period specified in  
3 this paragraph shall be suspended for any period  
4 during which a governmental unit is prohibited  
5 under applicable nonbankruptcy law from collecting  
6 a tax as a result of a request by the debtor for a  
7 hearing and an appeal of any collection action taken  
8 or proposed against the debtor, plus 90 days; plus  
9 any time during which the stay of proceedings was  
10 in effect in a prior case under this title or during  
11 which collection was precluded by the existence of 1  
12 or more confirmed plans under this title, plus 90  
13 days.”.

14 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

15 Section 507(a)(8)(B) of title 11, United States Code,  
16 is amended by striking “assessed” and inserting  
17 “incurred”.

18 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**

19 **TER 13.**

20 Section 1328(a)(2) of title 11, United States Code,  
21 as amended by section 314, is amended by striking  
22 “paragraph” and inserting “section 507(a)(8)(C) or in  
23 paragraph (1)(B), (1)(C),”.

1 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
2 **TER 11.**

3 Section 1141(d) of title 11, United States Code, as  
4 amended by section 321, is amended by adding at the end  
5 the following:

6 “(6) Notwithstanding paragraph (1), the confirma-  
7 tion of a plan does not discharge a debtor that is a cor-  
8 poration from any debt—

9 “(A) of a kind specified in paragraph (2)(A) or  
10 (2)(B) of section 523(a) that is owed to a domestic  
11 governmental unit, or owed to a person as the result  
12 of an action filed under subchapter III of chapter 37  
13 of title 31 or any similar State statute; or

14 “(B) for a tax or customs duty with respect to  
15 which the debtor—

16 “(i) made a fraudulent return; or

17 “(ii) willfully attempted in any manner to  
18 evade or to defeat such tax or such customs  
19 duty.”.

20 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**  
21 **PREPETITION TAXES.**

22 Section 362(a)(8) of title 11, United States Code, is  
23 amended by striking “the debtor” and inserting “a cor-  
24 porate debtor’s tax liability for a taxable period the bank-  
25 ruptcy court may determine or concerning the tax liability

1 of a debtor who is an individual for a taxable period end-  
2 ing before the order for relief under this title”.

3 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**

4 **CASES.**

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

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

9 (2) in subparagraph (C), by striking “deferred  
10 cash payments,” and all that follows through the  
11 end of the subparagraph, and inserting “regular in-  
12 stallment payments in cash—

13 “(i) of a total value, as of the effective  
14 date of the plan, equal to the allowed  
15 amount of such claim;

16 “(ii) over a period ending not later  
17 than 5 years after the date of the entry of  
18 the order for relief under section 301, 302,  
19 or 303; and

20 “(iii) in a manner not less favorable  
21 than the most favored nonpriority unse-  
22 cured claim provided for by the plan (other  
23 than cash payments made to a class of  
24 creditors under section 1122(b)); and”;  
25 and

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

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

10 **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
11 **ITED.**

12 Section 545(2) of title 11, United States Code, is  
13 amended by inserting before the semicolon at the end the  
14 following: “, except in any case in which a purchaser is  
15 a purchaser described in section 6323 of the Internal Rev-  
16 enue Code of 1986, or in any other similar provision of  
17 State or local law”.

18 **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
19 **NESS.**

20 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
21 title 28, United States Code, is amended—

22 (1) by inserting “(a)” before “Any”; and

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

1 “(b) A tax under subsection (a) shall be paid on or  
2 before the due date of the tax under applicable nonbank-  
3 ruptcy law, unless—

4 “(1) the tax is a property tax secured by a lien  
5 against property that is abandoned within a reason-  
6 able period of time after the lien attaches by the  
7 trustee of a bankruptcy estate under section 554 of  
8 title 11; or

9 “(2) payment of the tax is excused under a spe-  
10 cific provision of title 11.

11 “(c) In a case pending under chapter 7 of title 11,  
12 payment of a tax may be deferred until final distribution  
13 is made under section 726 of title 11, if—

14 “(1) the tax was not incurred by a trustee duly  
15 appointed under chapter 7 of title 11; or

16 “(2) before the due date of the tax, an order of  
17 the court makes a finding of probable insufficiency  
18 of funds of the estate to pay in full the administra-  
19 tive expenses allowed under section 503(b) of title  
20 11 that have the same priority in distribution under  
21 section 726(b) of title 11 as the priority of that  
22 tax.”.

23 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
24 Section 503(b)(1)(B)(i) of title 11, United States Code,  
25 is amended by inserting “whether secured or unsecured,

1 including property taxes for which liability is in rem, in  
2 personam, or both,” before “except”.

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

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

8 (2) in subparagraph (C), by adding “and” at  
9 the end; and

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

11 “(D) notwithstanding the requirements of sub-  
12 section (a), a governmental unit shall not be re-  
13 quired to file a request for the payment of an ex-  
14 pense described in subparagraph (B) or (C), as a  
15 condition of its being an allowed administrative ex-  
16 pense;”.

17 (d) PAYMENT OF TAXES AND FEES AS SECURED  
18 CLAIMS.—Section 506 of title 11, United States Code, is  
19 amended—

20 (1) in subsection (b), by inserting “or State  
21 statute” after “agreement”; and

22 (2) in subsection (c), by inserting “, including  
23 the payment of all ad valorem property taxes with  
24 respect to the property” before the period at the  
25 end.

1 **SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

2 Section 726(a)(1) of title 11, United States Code, is  
3 amended by striking “before the date on which the trustee  
4 commences distribution under this section;” and inserting  
5 the following: “on or before the earlier of—

6 “(A) the date that is 10 days after the  
7 mailing to creditors of the summary of the  
8 trustee’s final report; or

9 “(B) the date on which the trustee com-  
10 mences final distribution under this section;”.

11 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**  
12 **THORITIES.**

13 Section 523(a) of title 11, United States Code, as  
14 amended by sections 215 and 224, is amended—

15 (1) in paragraph (1)(B)—

16 (A) in the matter preceding clause (i), by  
17 inserting “or equivalent report or notice,” after  
18 “a return,”;

19 (B) in clause (i), by inserting “or given”  
20 after “filed”; and

21 (C) in clause (ii)—

22 (i) by inserting “or given” after  
23 “filed”; and

24 (ii) by inserting “, report, or notice”  
25 after “return”; and

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

1 “For purposes of this subsection, the term ‘return’ means  
2 a return that satisfies the requirements of applicable non-  
3 bankruptcy law (including applicable filing requirements).  
4 Such term includes a return prepared pursuant to section  
5 6020(a) of the Internal Revenue Code of 1986, or similar  
6 State or local law, or a written stipulation to a judgment  
7 or a final order entered by a nonbankruptcy tribunal, but  
8 does not include a return made pursuant to section  
9 6020(b) of the Internal Revenue Code of 1986, or a simi-  
10 lar State or local law.”.

11 **SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
12 **PAID TAXES.**

13 Section 505(b)(2) of title 11, United States Code, as  
14 amended by section 703, is amended by inserting “the es-  
15 tate,” after “misrepresentation,”.

16 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
17 **FIRM CHAPTER 13 PLANS.**

18 (a) **FILING OF PREPETITION TAX RETURNS RE-**  
19 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of  
20 title 11, United States Code, as amended by sections 102,  
21 213, and 306, is amended by inserting after paragraph  
22 (8) the following:

23 “(9) the debtor has filed all applicable Federal,  
24 State, and local tax returns as required by section  
25 1308.”.

1 (b) ADDITIONAL TIME PERMITTED FOR FILING TAX  
2 RETURNS.—

3 (1) IN GENERAL.—Subchapter I of chapter 13  
4 of title 11, United States Code, is amended by add-  
5 ing at the end the following:

6 **“§ 1308. Filing of prepetition tax returns**

7 “(a) Not later than the day before the date on which  
8 the meeting of the creditors is first scheduled to be held  
9 under section 341(a), if the debtor was required to file  
10 a tax return under applicable nonbankruptcy law, the  
11 debtor shall file with appropriate tax authorities all tax  
12 returns for all taxable periods ending during the 4-year  
13 period ending on the date of the filing of the petition.

14 “(b)(1) Subject to paragraph (2), if the tax returns  
15 required by subsection (a) have not been filed by the date  
16 on which the meeting of creditors is first scheduled to be  
17 held under section 341(a), the trustee may hold open that  
18 meeting for a reasonable period of time to allow the debtor  
19 an additional period of time to file any unfiled returns,  
20 but such additional period of time shall not extend be-  
21 yond—

22 “(A) for any return that is past due as of the  
23 date of the filing of the petition, the date that is 120  
24 days after the date of that meeting; or

1           “(B) for any return that is not past due as of  
2           the date of the filing of the petition, the later of—

3                   “(i) the date that is 120 days after the  
4           date of that meeting; or

5                   “(ii) the date on which the return is due  
6           under the last automatic extension of time for  
7           filing that return to which the debtor is enti-  
8           tled, and for which request is timely made, in  
9           accordance with applicable nonbankruptcy law.

10          “(2) After notice and a hearing, and order entered  
11 before the tolling of any applicable filing period deter-  
12 mined under this subsection, if the debtor demonstrates  
13 by a preponderance of the evidence that the failure to file  
14 a return as required under this subsection is attributable  
15 to circumstances beyond the control of the debtor, the  
16 court may extend the filing period established by the trust-  
17 ee under this subsection for—

18                   “(A) a period of not more than 30 days for re-  
19           turns described in paragraph (1); and

20                   “(B) a period not to extend after the applicable  
21           extended due date for a return described in para-  
22           graph (2).

23          “(c) For purposes of this section, the term ‘return’  
24 includes a return prepared pursuant to subsection (a) or  
25 (b) of section 6020 of the Internal Revenue Code of 1986,

1 or a similar State or local law, or a written stipulation  
2 to a judgment or a final order entered by a nonbankruptcy  
3 tribunal.”.

4 (2) CONFORMING AMENDMENT.—The table of  
5 sections for subchapter I of chapter 13 of title 11,  
6 United States Code, is amended by adding at the  
7 end the following:

“1308. Filing of prepetition tax returns.”.

8 (c) DISMISSAL OR CONVERSION ON FAILURE TO  
9 COMPLY.—Section 1307 of title 11, United States Code,  
10 is amended—

11 (1) by redesignating subsections (e) and (f) as  
12 subsections (f) and (g), respectively; and

13 (2) by inserting after subsection (d) the fol-  
14 lowing:

15 “(e) Upon the failure of the debtor to file a tax return  
16 under section 1308, on request of a party in interest or  
17 the United States trustee and after notice and a hearing,  
18 the court shall dismiss a case or convert a case under this  
19 chapter to a case under chapter 7 of this title, whichever  
20 is in the best interest of the creditors and the estate.”.

21 (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
22 title 11, United States Code, is amended by inserting be-  
23 fore the period at the end the following: “, and except that  
24 in a case under chapter 13, a claim of a governmental  
25 unit for a tax with respect to a return filed under section

1 1308 shall be timely if the claim is filed on or before the  
2 date that is 60 days after the date on which such return  
3 was filed as required”.

4 (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
5 CONFIRMATION.—It is the sense of Congress that the Ad-  
6 visory Committee on Bankruptcy Rules of the Judicial  
7 Conference of the United States should, as soon as prac-  
8 ticable after the date of enactment of this Act, propose  
9 for adoption amended Federal Rules of Bankruptcy Proce-  
10 dure which provide that—

11 (1) notwithstanding the provisions of Rule  
12 3015(f), in cases under chapter 13 of title 11,  
13 United States Code, an objection to the confirmation  
14 of a plan filed by a governmental unit on or before  
15 the date that is 60 days after the date on which the  
16 debtor files all tax returns required under sections  
17 1308 and 1325(a)(7) of title 11, United States  
18 Code, shall be treated for all purposes as if such ob-  
19 jection had been timely filed before such confirma-  
20 tion; and

21 (2) in addition to the provisions of Rule 3007,  
22 in a case under chapter 13 of title 11, United States  
23 Code, no objection to a claim for a tax with respect  
24 to which a return is required to be filed under sec-

1       tion 1308 of title 11, United States Code, shall be  
2       filed until such return has been filed as required.

3       **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

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

6               (1) by inserting “including a discussion of the  
7       potential material Federal tax consequences of the  
8       plan to the debtor, any successor to the debtor, and  
9       a hypothetical investor typical of the holders of  
10      claims or interests in the case,” after “records”; and

11              (2) by striking “a hypothetical reasonable inves-  
12      tor typical of holders of claims or interests” and in-  
13      serting “such a hypothetical investor”.

14      **SEC. 718. SETOFF OF TAX REFUNDS.**

15      Section 362(b) of title 11, United States Code, as  
16      amended by sections 224, 303, 311, and 401, is amended  
17      by inserting after paragraph (25) the following:

18              “(26) under subsection (a), of the setoff under  
19      applicable nonbankruptcy law of an income tax re-  
20      fund, by a governmental unit, with respect to a tax-  
21      able period that ended before the order for relief  
22      against an income tax liability for a taxable period  
23      that also ended before the order for relief, except  
24      that in any case in which the setoff of an income tax  
25      refund is not permitted under applicable nonbank-

1        rruptcy law because of a pending action to determine  
2        the amount or legality of a tax liability, the govern-  
3        mental unit may hold the refund pending the resolu-  
4        tion of the action, unless the court, on the motion  
5        of the trustee and after notice and a hearing, grants  
6        the taxing authority adequate protection (within the  
7        meaning of section 361) for the secured claim of  
8        that authority in the setoff under section 506(a);”.

9        **SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREAT-**  
10        **MENT OF STATE AND LOCAL TAXES.**

11        (a) IN GENERAL.—

12                (1) SPECIAL PROVISIONS.—Section 346 of title  
13        11, United States Code, is amended to read as fol-  
14        lows:

15        **“§ 346. Special provisions related to the treatment of**  
16        **State and local taxes**

17        “(a) Whenever the Internal Revenue Code of 1986  
18        provides that a separate taxable estate or entity is created  
19        in a case concerning a debtor under this title, and the in-  
20        come, gain, loss, deductions, and credits of such estate  
21        shall be taxed to or claimed by the estate, a separate tax-  
22        able estate is also created for purposes of any State and  
23        local law imposing a tax on or measured by income and  
24        such income, gain, loss, deductions, and credits shall be  
25        taxed to or claimed by the estate and may not be taxed

1 to or claimed by the debtor. The preceding sentence shall  
2 not apply if the case is dismissed. The trustee shall make  
3 tax returns of income required under any such State or  
4 local law.

5       “(b) Whenever the Internal Revenue Code of 1986  
6 provides that no separate taxable estate shall be created  
7 in a case concerning a debtor under this title, and the in-  
8 come, gain, loss, deductions, and credits of an estate shall  
9 be taxed to or claimed by the debtor, such income, gain,  
10 loss, deductions, and credits shall be taxed to or claimed  
11 by the debtor under a State or local law imposing a tax  
12 on or measured by income and may not be taxed to or  
13 claimed by the estate. The trustee shall make such tax  
14 returns of income of corporations and of partnerships as  
15 are required under any State or local law, but with respect  
16 to partnerships, shall make said returns only to the extent  
17 such returns are also required to be made under such  
18 Code. The estate shall be liable for any tax imposed on  
19 such corporation or partnership, but not for any tax im-  
20 posed on partners or members.

21       “(c) With respect to a partnership or any entity treat-  
22 ed as a partnership under a State or local law imposing  
23 a tax on or measured by income that is a debtor in a case  
24 under this title, any gain or loss resulting from a distribu-  
25 tion of property from such partnership, or any distributive

1 share of any income, gain, loss, deduction, or credit of a  
2 partner or member that is distributed, or considered dis-  
3 tributed, from such partnership, after the commencement  
4 of the case, is gain, loss, income, deduction, or credit, as  
5 the case may be, of the partner or member, and if such  
6 partner or member is a debtor in a case under this title,  
7 shall be subject to tax in accordance with subsection (a)  
8 or (b).

9       “(d) For purposes of any State or local law imposing  
10 a tax on or measured by income, the taxable period of  
11 a debtor in a case under this title shall terminate only  
12 if and to the extent that the taxable period of such debtor  
13 terminates under the Internal Revenue Code of 1986.

14       “(e) The estate in any case described in subsection  
15 (a) shall use the same accounting method as the debtor  
16 used immediately before the commencement of the case,  
17 if such method of accounting complies with applicable non-  
18 bankruptcy tax law.

19       “(f) For purposes of any State or local law imposing  
20 a tax on or measured by income, a transfer of property  
21 from the debtor to the estate or from the estate to the  
22 debtor shall not be treated as a disposition for purposes  
23 of any provision assigning tax consequences to a disposi-  
24 tion, except to the extent that such transfer is treated as  
25 a disposition under the Internal Revenue Code of 1986.

1           “(g) Whenever a tax is imposed pursuant to a State  
2 or local law imposing a tax on or measured by income pur-  
3 suant to subsection (a) or (b), such tax shall be imposed  
4 at rates generally applicable to the same types of entities  
5 under such State or local law.

6           “(h) The trustee shall withhold from any payment of  
7 claims for wages, salaries, commissions, dividends, inter-  
8 est, or other payments, or collect, any amount required  
9 to be withheld or collected under applicable State or local  
10 tax law, and shall pay such withheld or collected amount  
11 to the appropriate governmental unit at the time and in  
12 the manner required by such tax law, and with the same  
13 priority as the claim from which such amount was with-  
14 held or collected was paid.

15           “(i)(1) To the extent that any State or local law im-  
16 posing a tax on or measured by income provides for the  
17 carryover of any tax attribute from one taxable period to  
18 a subsequent taxable period, the estate shall succeed to  
19 such tax attribute in any case in which such estate is sub-  
20 ject to tax under subsection (a).

21           “(2) After such a case is closed or dismissed, the  
22 debtor shall succeed to any tax attribute to which the es-  
23 tate succeeded under paragraph (1) to the extent con-  
24 sistent with the Internal Revenue Code of 1986.

1       “(3) The estate may carry back any loss or tax at-  
2 tribute to a taxable period of the debtor that ended before  
3 the order for relief under this title to the extent that—

4               “(A) applicable State or local tax law provides  
5 for a carryback in the case of the debtor; and

6               “(B) the same or a similar tax attribute may be  
7 carried back by the estate to such a taxable period  
8 of the debtor under the Internal Revenue Code of  
9 1986.

10       “(j)(1) For purposes of any State or local law impos-  
11 ing a tax on or measured by income, income is not realized  
12 by the estate, the debtor, or a successor to the debtor by  
13 reason of discharge of indebtedness in a case under this  
14 title, except to the extent, if any, that such income is sub-  
15 ject to tax under the Internal Revenue Code of 1986.

16       “(2) Whenever the Internal Revenue Code of 1986  
17 provides that the amount excluded from gross income in  
18 respect of the discharge of indebtedness in a case under  
19 this title shall be applied to reduce the tax attributes of  
20 the debtor or the estate, a similar reduction shall be made  
21 under any State or local law imposing a tax on or meas-  
22 ured by income to the extent such State or local law recog-  
23 nizes such attributes. Such State or local law may also  
24 provide for the reduction of other attributes to the extent

1 that the full amount of income from the discharge of in-  
2 debtedness has not been applied.

3 “(k)(1) Except as provided in this section and section  
4 505, the time and manner of filing tax returns and the  
5 items of income, gain, loss, deduction, and credit of any  
6 taxpayer shall be determined under applicable nonbank-  
7 ruptcy law.

8 “(2) For Federal tax purposes, the provisions of this  
9 section are subject to the Internal Revenue Code of 1986  
10 and other applicable Federal nonbankruptcy law.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for chapter 3 of title 11, United States Code,  
13 is amended by striking the item relating to section  
14 346 and inserting the following:

“346. Special provisions related to the treatment of State and local taxes.”.

15 (b) CONFORMING AMENDMENTS.—Title 11 of the  
16 United States Code is amended—

17 (1) by striking section 728;

18 (2) in the table of sections for chapter 7 by  
19 striking the item relating to section 728;

20 (3) in section 1146—

21 (A) by striking subsections (a) and (b);

22 and

23 (B) by redesignating subsections (c) and

24 (d) as subsections (a) and (b), respectively; and

25 (4) in section 1231—

1 (A) by striking subsections (a) and (b);  
2 and  
3 (B) by redesignating subsections (c) and  
4 (d) as subsections (a) and (b), respectively.

5 **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX**  
6 **RETURNS.**

7 Section 521 of title 11, United States Code, as  
8 amended by sections 106, 225, 305, 315, and 316, is  
9 amended by adding at the end the following:

10 “(k)(1) Notwithstanding any other provision of this  
11 title, if the debtor fails to file a tax return that becomes  
12 due after the commencement of the case or to properly  
13 obtain an extension of the due date for filing such return,  
14 the taxing authority may request that the court enter an  
15 order converting or dismissing the case.

16 “(2) If the debtor does not file the required return  
17 or obtain the extension referred to in paragraph (1) within  
18 90 days after a request is filed by the taxing authority  
19 under that paragraph, the court shall convert or dismiss  
20 the case, whichever is in the best interests of creditors and  
21 the estate.”.

1       **TITLE VIII—ANCILLARY AND**  
 2       **OTHER CROSS-BORDER CASES**

3       **SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
 4                               **UNITED STATES CODE.**

5           (a) IN GENERAL.—Title 11, United States Code, is  
 6 amended by inserting after chapter 13 the following:

7       **“CHAPTER 15—ANCILLARY AND OTHER**  
 8                               **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.

“1516. Presumptions concerning recognition.

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“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND  
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“1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.

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

6               “(1) cooperation between—

7                       “(A) courts of the United States, United  
8 States trustees, trustees, examiners, debtors,  
9 and debtors in possession; and

10                      “(B) the courts and other competent au-  
11 thorities of foreign countries involved in cross-  
12 border insolvency cases;

13               “(2) greater legal certainty for trade and in-  
14 vestment;

15               “(3) fair and efficient administration of cross-  
16 border insolvencies that protects the interests of all  
17 creditors, and other interested entities, including the  
18 debtor;

1           “(4) protection and maximization of the value  
2 of the debtor’s assets; and

3           “(5) facilitation of the rescue of financially  
4 troubled businesses, thereby protecting investment  
5 and preserving employment.

6           “(b) This chapter applies where—

7           “(1) assistance is sought in the United States  
8 by a foreign court or a foreign representative in con-  
9 nection with a foreign proceeding;

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

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

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

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

20           “(1) a proceeding concerning an entity, other  
21 than a foreign insurance company, identified by ex-  
22 clusion in section 109(b);

23           “(2) an individual, or to an individual and such  
24 individual’s spouse, who have debts within the limits  
25 specified in section 109(e) and who are citizens of

1 the United States or aliens lawfully admitted for  
2 permanent residence in the United States; or

3 “(3) an entity subject to a proceeding under the  
4 Securities Investor Protection Act of 1970, a stock-  
5 broker subject to subchapter III of chapter 7 of this  
6 title, or a commodity broker subject to subchapter  
7 IV of chapter 7 of this title.

8 “(d) The court may not grant relief under this chap-  
9 ter with respect to any deposit, escrow, trust fund, or  
10 other security required or permitted under any applicable  
11 State insurance law or regulation for the benefit of claim  
12 holders in the United States.

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 pro-  
6 ceeding, taking place in a country where the debtor  
7 has 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;

11           “(7) ‘recognition’ means the entry of an order  
12 granting recognition of a foreign main proceeding or  
13 foreign nonmain proceeding under this chapter; and

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

23 **“§ 1503. International obligations of the United States**

24           “To the extent that this chapter conflicts with an ob-  
25 ligation of the United States arising out of any treaty or

1 other form of agreement to which it is a party with one  
2 or more other countries, the requirements of the treaty  
3 or agreement prevail.

4 **“§ 1504. Commencement of ancillary case**

5 “A case under this chapter is commenced by the filing  
6 of a petition for recognition of a foreign proceeding under  
7 section 1515.

8 **“§ 1505. Authorization to act in a foreign country**

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

14 **“§ 1506. Public policy exception**

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

19 **“§ 1507. Additional assistance**

20 “(a) Subject to the specific limitations stated else-  
21 where in this chapter the court, if recognition is granted,  
22 may provide additional assistance to a foreign representa-  
23 tive under this title or under other laws of the United  
24 States.

1       “(b) In determining whether to provide additional as-  
2       sistance under this title or under other laws of the United  
3       States, the court shall consider whether such additional  
4       assistance, consistent with the principles of comity, will  
5       reasonably assure—

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

8               “(2) protection of claim holders in the United  
9       States against prejudice and inconvenience in the  
10       processing of claims in such foreign proceeding;

11              “(3) prevention of preferential or fraudulent  
12       dispositions of property of the debtor;

13              “(4) distribution of proceeds of the debtor’s  
14       property substantially in accordance with the order  
15       prescribed by this title; and

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

19       **“§ 1508. Interpretation**

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

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

4 “§ 1509. Right of direct access

5 “(a) A foreign representative may commence a case  
6 under section 1504 by filing directly with the court a peti-  
7 tion for recognition of a foreign proceeding under section  
8 1515.

9 “(b) If the court grants recognition under section  
10 1515, and subject to any limitations that the court may  
11 impose consistent with the policy of this chapter—

12 “(1) the foreign representative has the capacity  
13 to sue and be sued in a court in the United States;

14 “(2) the foreign representative may apply di-  
15 rectly to a court in the United States for appropriate  
16 relief in that court; and

17 “(3) a court in the United States shall grant  
18 comity or cooperation to the foreign representative.

19 “(c) A request for comity or cooperation by a foreign  
20 representative in a court in the United States other than  
21 the court which granted recognition shall be accompanied  
22 by a certified copy of an order granting recognition under  
23 section 1517.

24 “(d) If the court denies recognition under this chap-  
25 ter, the court may issue any appropriate order necessary

1 to prevent the foreign representative from obtaining com-  
2 ity or cooperation from courts in the United States.

3 “(e) Whether or not the court grants recognition, and  
4 subject to sections 306 and 1510, a foreign representative  
5 is subject to applicable nonbankruptcy law.

6 “(f) Notwithstanding any other provision of this sec-  
7 tion, the failure of a foreign representative to commence  
8 a case or to obtain recognition under this chapter does  
9 not affect any right the foreign representative may have  
10 to sue in a court in the United States to collect or recover  
11 a claim which is the property of the debtor.

12 **“§ 1510. Limited jurisdiction**

13 “The sole fact that a foreign representative files a  
14 petition under section 1515 does not subject the foreign  
15 representative to the jurisdiction of any court in the  
16 United States for any other purpose.

17 **“§ 1511. Commencement of case under section 301 or**  
18 **303**

19 “(a) Upon recognition, a foreign representative may  
20 commence—

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

22 “(2) a voluntary case under section 301 or 302,  
23 if the foreign proceeding is a foreign main pro-  
24 ceeding.





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

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

5           “(3) contain any other information required to  
6 be included in such a notification to creditors under  
7 this title and the orders of the court.

8           “(d) Any rule of procedure or order of the court as  
9 to notice or the filing of a claim shall provide such addi-  
10 tional time to creditors with foreign addresses as is rea-  
11 sonable under the circumstances.

12           “SUBCHAPTER III—RECOGNITION OF A  
13 FOREIGN PROCEEDING AND RELIEF

14 **“§ 1515. Application for recognition**

15           “(a) A foreign representative applies to the court for  
16 recognition of the foreign proceeding in which the foreign  
17 representative has been appointed by filing a petition for  
18 recognition.

19           “(b) A petition for recognition shall be accompanied  
20 by—

21           “(1) a certified copy of the decision com-  
22 mencing the foreign proceeding and appointing the  
23 foreign representative;

1           “(2) a certificate from the foreign court affirm-  
2           ing the existence of the foreign proceeding and of  
3           the appointment of the foreign representative; or

4           “(3) in the absence of evidence referred to in  
5           paragraphs (1) and (2), any other evidence accept-  
6           able to the court of the existence of the foreign pro-  
7           ceeding and of the appointment of the foreign rep-  
8           resentative.

9           “(c) A petition for recognition shall also be accom-  
10          panied by a statement identifying all foreign proceedings  
11          with respect to the debtor that are known to the foreign  
12          representative.

13          “(d) The documents referred to in paragraphs (1)  
14          and (2) of subsection (b) shall be translated into English.  
15          The court may require a translation into English of addi-  
16          tional documents.

17          **“§ 1516. Presumptions concerning recognition**

18          “(a) If the decision or certificate referred to in section  
19          1515(b) indicates that the foreign proceeding is a foreign  
20          proceeding and that the person or body is a foreign rep-  
21          resentative, the court is entitled to so presume.

22          “(b) The court is entitled to presume that documents  
23          submitted in support of the petition for recognition are  
24          authentic, whether or not they have been legalized.

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

5 **“§ 1517. Order granting recognition**

6       “(a) Subject to section 1506, after notice and a hear-  
7 ing, an order recognizing a foreign proceeding shall be en-  
8 tered if—

9           “(1) the foreign proceeding for which recogni-  
10 tion is sought is a foreign main proceeding or for-  
11 eign nonmain proceeding within the meaning of sec-  
12 tion 1502;

13           “(2) the foreign representative applying for rec-  
14 ognition is a person or body; and

15           “(3) the petition meets the requirements of sec-  
16 tion 1515.

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

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

21           “(2) as a foreign nonmain proceeding if the  
22 debtor has an establishment within the meaning of  
23 section 1502 in the foreign country where the pro-  
24 ceeding is pending.

1       “(c) A petition for recognition of a foreign proceeding  
2 shall be decided upon at the earliest possible time. Entry  
3 of an order recognizing a foreign proceeding constitutes  
4 recognition under this chapter.

5       “(d) The provisions of this subchapter do not prevent  
6 modification or termination of recognition if it is shown  
7 that the grounds for granting it were fully or partially  
8 lacking or have ceased to exist, but in considering such  
9 action the court shall give due weight to possible prejudice  
10 to parties that have relied upon the order granting rec-  
11 ognition. The case under this chapter may be closed in  
12 the manner prescribed under section 350.

13 **“§ 1518. Subsequent information**

14       “From the time of filing the petition for recognition  
15 of the foreign proceeding, the foreign representative shall  
16 file with the court promptly a notice of change of status  
17 concerning—

18               “(1) any substantial change in the status of the  
19 foreign proceeding or the status of the foreign rep-  
20 resentative’s appointment; and

21               “(2) any other foreign proceeding regarding the  
22 debtor that becomes known to the foreign represent-  
23 ative.

1 **“§ 1519. Relief that may be granted upon filing peti-**  
2 **tion for recognition**

3 “(a) From the time of filing a petition for recognition  
4 until the court rules on the petition, the court may, at  
5 the request of the foreign representative, where relief is  
6 urgently needed to protect the assets of the debtor or the  
7 interests of the creditors, grant relief of a provisional na-  
8 ture, including—

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

11 “(2) entrusting the administration or realiza-  
12 tion of all or part of the debtor’s assets located in  
13 the United States to the foreign representative or  
14 another person authorized by the court, including an  
15 examiner, in order to protect and preserve the value  
16 of assets that, by their nature or because of other  
17 circumstances, are perishable, susceptible to devalu-  
18 ation or otherwise in jeopardy; and

19 “(3) any relief referred to in paragraph (3),  
20 (4), or (7) of section 1521(a).

21 “(b) Unless extended under section 1521(a)(6), the  
22 relief granted under this section terminates when the peti-  
23 tion for recognition is granted.

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

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

4       “(e) The standards, procedures, and limitations ap-  
5 plicable to an injunction shall apply to relief under this  
6 section.

7       “(f) The exercise of rights not subject to the stay  
8 arising under section 362(a) pursuant to paragraph (6),  
9 (7), (17), or (27) of section 362(b) or pursuant to section  
10 362(n) shall not be stayed by any order of a court or ad-  
11 ministrative agency in any proceeding under this chapter.

12 **“§ 1520. Effects of recognition of a foreign main pro-**  
13 **ceeding**

14       “(a) Upon recognition of a foreign proceeding that  
15 is a foreign main proceeding—

16               “(1) sections 361 and 362 apply with respect to  
17 the debtor and that property of the debtor that is  
18 within the territorial jurisdiction of the United  
19 States;

20               “(2) sections 363, 549, and 552 of this title  
21 apply to a transfer of an interest of the debtor in  
22 property that is within the territorial jurisdiction of  
23 the United States to the same extent that the sec-  
24 tions would apply to property of an estate;

1           “(3) unless the court orders otherwise, the for-  
2           foreign representative may operate the debtor’s busi-  
3           ness and may exercise the rights and powers of a  
4           trustee under and to the extent provided by sections  
5           363 and 552; and

6           “(4) section 552 applies to property of the debt-  
7           or that is within the territorial jurisdiction of the  
8           United States.

9           “(b) Subsection (a) does not affect the right to com-  
10          mence an individual action or proceeding in a foreign  
11          country to the extent necessary to preserve a claim against  
12          the debtor.

13          “(c) Subsection (a) does not affect the right of a for-  
14          eign representative or an entity to file a petition com-  
15          mencing a case under this title or the right of any party  
16          to file claims or take other proper actions in such a case.

17          **“§ 1521. Relief that may be granted upon recognition**

18          “(a) Upon recognition of a foreign proceeding, wheth-  
19          er main or nonmain, where necessary to effectuate the  
20          purpose of this chapter and to protect the assets of the  
21          debtor or the interests of the creditors, the court may, at  
22          the request of the foreign representative, grant any appro-  
23          priate relief, including—

24                  “(1) staying the commencement or continuation  
25          of an individual action or proceeding concerning the

1 debtor's assets, rights, obligations or liabilities to the  
2 extent they have not been stayed under section  
3 1520(a);

4 “(2) staying execution against the debtor's as-  
5 sets to the extent it has not been stayed under sec-  
6 tion 1520(a);

7 “(3) suspending the right to transfer, encumber  
8 or otherwise dispose of any assets of the debtor to  
9 the extent this right has not been suspended under  
10 section 1520(a);

11 “(4) providing for the examination of witnesses,  
12 the taking of evidence or the delivery of information  
13 concerning the debtor's assets, affairs, rights, obliga-  
14 tions or liabilities;

15 “(5) entrusting the administration or realiza-  
16 tion of all or part of the debtor's assets within the  
17 territorial jurisdiction of the United States to the  
18 foreign representative or another person, including  
19 an examiner, authorized by the court;

20 “(6) extending relief granted under section  
21 1519(a); and

22 “(7) granting any additional relief that may be  
23 available to a trustee, except for relief available  
24 under sections 522, 544, 545, 547, 548, 550, and  
25 724(a).

1           “(b) Upon recognition of a foreign proceeding, wheth-  
2 er main or nonmain, the court may, at the request of the  
3 foreign representative, entrust the distribution of all or  
4 part of the debtor’s assets located in the United States  
5 to the foreign representative or another person, including  
6 an examiner, authorized by the court, provided that the  
7 court is satisfied that the interests of creditors in the  
8 United States are sufficiently protected.

9           “(c) In granting relief under this section to a rep-  
10 resentative of a foreign nonmain proceeding, the court  
11 must be satisfied that the relief relates to assets that,  
12 under the law of the United States, should be adminis-  
13 tered in the foreign nonmain proceeding or concerns infor-  
14 mation required in that proceeding.

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

18           “(e) The standards, procedures, and limitations ap-  
19 plicable to an injunction shall apply to relief under para-  
20 graphs (1), (2), (3), and (6) of subsection (a).

21           “(f) The exercise of rights not subject to the stay  
22 arising under section 362(a) pursuant to paragraph (6),  
23 (7), (17), or (27) of section 362(b) or pursuant to section  
24 362(n) shall not be stayed by any order of a court or ad-  
25 ministrative agency in any proceeding under this chapter.

1 **“§ 1522. Protection of creditors and other interested**  
2 **persons**

3 “(a) The court may grant relief under section 1519  
4 or 1521, or may modify or terminate relief under sub-  
5 section (c), only if the interests of the creditors and other  
6 interested entities, including the debtor, are sufficiently  
7 protected.

8 “(b) The court may subject relief granted under sec-  
9 tion 1519 or 1521, or the operation of the debtor’s busi-  
10 ness under section 1520(a)(3) of this title, to conditions  
11 it considers appropriate, including the giving of security  
12 or the filing of a bond.

13 “(c) The court may, at the request of the foreign rep-  
14 resentative or an entity affected by relief granted under  
15 section 1519 or 1521, or at its own motion, modify or  
16 terminate such relief.

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

21 **“§ 1523. Actions to avoid acts detrimental to creditors**

22 “(a) Upon recognition of a foreign proceeding, the  
23 foreign representative has standing in a case concerning  
24 the debtor pending under another chapter of this title to  
25 initiate actions under sections 522, 544, 545, 547, 548,  
26 550, 553, and 724(a).

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

6       **“§ 1524. Intervention by a foreign representative**

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

11       “SUBCHAPTER IV—COOPERATION WITH FOR-  
12       EIGN COURTS AND FOREIGN REPRESENTA-  
13       TIVES

14       **“§ 1525. Cooperation and direct communication be-**  
15                       **tween the court and foreign courts or for-**  
16                       **ign representatives**

17       “(a) Consistent with section 1501, the court shall co-  
18 operate to the maximum extent possible with foreign  
19 courts or foreign representatives, either directly or  
20 through the trustee.

21       “(b) The court is entitled to communicate directly  
22 with, or to request information or assistance directly from,  
23 foreign courts or foreign representatives, subject to the  
24 rights of parties in interest to notice and participation.

1 **“§ 1526. Cooperation and direct communication be-**  
2 **tween the trustee and foreign courts or**  
3 **foreign representatives**

4 “(a) Consistent with section 1501, the trustee or  
5 other person, including an examiner, authorized by the  
6 court, shall, subject to the supervision of the court, cooper-  
7 ate to the maximum extent possible with foreign courts  
8 or foreign representatives.

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

13 **“§ 1527. Forms of cooperation**

14 “Cooperation referred to in sections 1525 and 1526  
15 may be implemented by any appropriate means, includ-  
16 ing—

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

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

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

23 “(4) approval or implementation of agreements  
24 concerning the coordination of proceedings; and

25 “(5) coordination of concurrent proceedings re-  
26 garding the same debtor.

1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

2 **“§ 1528. Commencement of a case under this title**

3 **after recognition of a foreign main pro-**

4 **ceeding**

5 “After recognition of a foreign main proceeding, a  
6 case under another chapter of this title may be commenced  
7 only if the debtor has assets in the United States. The  
8 effects of such case shall be restricted to the assets of the  
9 debtor that are within the territorial jurisdiction of the  
10 United States and, to the extent necessary to implement  
11 cooperation and coordination under sections 1525, 1526,  
12 and 1527, to other assets of the debtor that are within  
13 the jurisdiction of the court under sections 541(a) of this  
14 title, and 1334(e) of title 28, to the extent that such other  
15 assets are not subject to the jurisdiction and control of  
16 a foreign proceeding that has been recognized under this  
17 chapter.

18 **“§ 1529. Coordination of a case under this title and a**

19 **foreign proceeding**

20 “If a foreign proceeding and a case under another  
21 chapter of this title are taking place concurrently regard-  
22 ing the same debtor, the court shall seek cooperation and  
23 coordination under sections 1525, 1526, and 1527, and  
24 the following shall apply:

1           “(1) If the case in the United States is taking  
2 place at the time the petition for recognition of the  
3 foreign proceeding is filed—

4                   “(A) any relief granted under section 1519  
5 or 1521 must be consistent with the relief  
6 granted in the case in the United States; and

7                   “(B) even if the foreign proceeding is rec-  
8 ognized as a foreign main proceeding, section  
9 1520 does not apply.

10           “(2) If a case in the United States under this  
11 title commences after recognition, or after the filing  
12 of the petition for recognition, of the foreign pro-  
13 ceeding—

14                   “(A) any relief in effect under section  
15 1519 or 1521 shall be reviewed by the court  
16 and shall be modified or terminated if incon-  
17 sistent with the case in the United States; and

18                   “(B) if the foreign proceeding is a foreign  
19 main proceeding, the stay and suspension re-  
20 ferred to in section 1520(a) shall be modified or  
21 terminated if inconsistent with the relief grant-  
22 ed in the case in the United States.

23           “(3) In granting, extending, or modifying relief  
24 granted to a representative of a foreign nonmain  
25 proceeding, the court must be satisfied that the re-

1        relief relates to assets that, under the laws of the  
2        United States, should be administered in the foreign  
3        nonmain proceeding or concerns information re-  
4        quired in that proceeding.

5            “(4) In achieving cooperation and coordination  
6        under sections 1528 and 1529, the court may grant  
7        any of the relief authorized under section 305.

8        **“§ 1530. Coordination of more than 1 foreign pro-**  
9            **ceeding**

10        “In matters referred to in section 1501, with respect  
11        to more than 1 foreign proceeding regarding the debtor,  
12        the court shall seek cooperation and coordination under  
13        sections 1525, 1526, and 1527, and the following shall  
14        apply:

15            “(1) Any relief granted under section 1519 or  
16        1521 to a representative of a foreign nonmain pro-  
17        ceeding after recognition of a foreign main pro-  
18        ceeding must be consistent with the foreign main  
19        proceeding.

20            “(2) If a foreign main proceeding is recognized  
21        after recognition, or after the filing of a petition for  
22        recognition, of a foreign nonmain proceeding, any  
23        relief in effect under section 1519 or 1521 shall be  
24        reviewed by the court and shall be modified or termi-

1 nated if inconsistent with the foreign main pro-  
2 ceeding.

3 “(3) If, after recognition of a foreign nonmain  
4 proceeding, another foreign nonmain proceeding is  
5 recognized, the court shall grant, modify, or termi-  
6 nate relief for the purpose of facilitating coordina-  
7 tion of the proceedings.

8 **“§ 1531. Presumption of insolvency based on recogni-  
9 tion of a foreign main proceeding**

10 “In the absence of evidence to the contrary, recogni-  
11 tion of a foreign main proceeding is, for the purpose of  
12 commencing a proceeding under section 303, proof that  
13 the debtor is generally not paying its debts as such debts  
14 become due.

15 **“§ 1532. Rule of payment in concurrent proceedings**

16 “Without prejudice to secured claims or rights in  
17 rem, a creditor who has received payment with respect to  
18 its claim in a foreign proceeding pursuant to a law relating  
19 to insolvency may not receive a payment for the same  
20 claim in a case under any other chapter of this title re-  
21 garding the debtor, so long as the payment to other credi-  
22 tors of the same class is proportionately less than the pay-  
23 ment the creditor has already received.”.

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

“15. Ancillary and Other Cross-Border Cases ..... 1501”.

4 **SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28,**  
 5 **UNITED STATES CODE.**

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

8 (1) in subsection (a), by inserting before the pe-  
 9 riod the following: “, and this chapter, sections 307,  
 10 362(n), 555 through 557, and 559 through 562  
 11 apply in a case under chapter 15”; and

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

13 “(k) Chapter 15 applies only in a case under such  
 14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all  
 16 cases under this title; and

17 “(2) section 1509 applies whether or not a case  
 18 under this title is pending.”.

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

22 “(23) ‘foreign proceeding’ means a collective ju-  
 23 dicial or administrative proceeding in a foreign coun-  
 24 try, including an interim proceeding, under a law re-  
 25 lating to insolvency or adjustment of debt in which

1 proceeding the assets and affairs of the debtor are  
2 subject to control or supervision by a foreign court,  
3 for the purpose of reorganization or liquidation;

4 “(24) ‘foreign representative’ means a person  
5 or body, including a person or body appointed on an  
6 interim basis, authorized in a foreign proceeding to  
7 administer the reorganization or the liquidation of  
8 the debtor’s assets or affairs or to act as a rep-  
9 resentative of the foreign proceeding;”.

10 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
11 CODE.—

12 (1) PROCEDURES.—Section 157(b)(2) of title  
13 28, United States Code, is amended—

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

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

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

19 “(P) recognition of foreign proceedings and  
20 other matters under chapter 15 of title 11.”.

21 (2) BANKRUPTCY CASES AND PROCEEDINGS.—  
22 Section 1334(c) of title 28, United States Code, is  
23 amended by striking “Nothing in” and inserting  
24 “Except with respect to a case under chapter 15 of  
25 title 11, nothing in”.

1           (3) DUTIES OF TRUSTEES.—Section 586(a)(3)  
2 of title 28, United States Code, is amended by strik-  
3 ing “or 13” and inserting “13, or 15”.

4           (4) VENUE OF CASES ANCILLARY TO FOREIGN  
5 PROCEEDINGS.—Section 1410 of title 28, United  
6 States Code, is amended to read as follows:

7 **“§ 1410. Venue of cases ancillary to foreign pro-**  
8 **ceedings**

9           “A case under chapter 15 of title 11 may be com-  
10 menced in the district court of the United States for the  
11 district—

12           “(1) in which the debtor has its principal place  
13 of business or principal assets in the United States;

14           “(2) if the debtor does not have a place of busi-  
15 ness or assets in the United States, in which there  
16 is pending against the debtor an action or pro-  
17 ceeding in a Federal or State court; or

18           “(3) in a case other than those specified in  
19 paragraph (1) or (2), in which venue will be con-  
20 sistent with the interests of justice and the conven-  
21 ience of the parties, having regard to the relief  
22 sought by the foreign representative.”.

23           (d) OTHER SECTIONS OF TITLE 11.—Title 11 of the  
24 United States Code is amended—

1           (1) in section 109(b), by striking paragraph (3)  
2           and inserting the following:

3           “(3)(A) a foreign insurance company, engaged  
4           in such business in the United States; or

5           “(B) a foreign bank, savings bank, cooperative  
6           bank, savings and loan association, building and  
7           loan association, or credit union, that has a branch  
8           or agency (as defined in section 1(b) of the Inter-  
9           national Banking Act of 1978 in the United  
10          States.”;

11          (2) in section 303, by striking subsection (k);

12          (3) by striking section 304;

13          (4) in the table of sections for chapter 3 by  
14          striking the item relating to section 304;

15          (5) in section 306 by striking “, 304,” each  
16          place it appears;

17          (6) in section 305(a) by striking paragraph (2)  
18          and inserting the following:

19          “(2)(A) a petition under section 1515 of this  
20          title for recognition of a foreign proceeding has been  
21          granted; and

22          “(B) the purposes of chapter 15 of this title  
23          would be best served by such dismissal or suspen-  
24          sion.”; and

25          (7) in section 508—

- 1 (A) by striking subsection (a); and  
 2 (B) in subsection (b), by striking “(b)”.

3 **TITLE IX—FINANCIAL**  
 4 **CONTRACT PROVISIONS**

5 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
 6 **SERVATORS OR RECEIVERS OF INSURED DE-**  
 7 **POSITORY INSTITUTIONS.**

8 (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
 9 TRACT.—Section 11(e)(8)(D) of the Federal Deposit In-  
 10 surance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

11 (1) by striking “subsection—” and inserting  
 12 “subsection, the following definitions shall apply:”;  
 13 and

14 (2) in clause (i), by inserting “, resolution, or  
 15 order” after “any similar agreement that the Cor-  
 16 poration determines by regulation”.

17 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-  
 18 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act  
 19 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-  
 20 lows:

21 “(ii) SECURITIES CONTRACT.—The  
 22 term ‘securities contract’—

23 “(I) means a contract for the  
 24 purchase, sale, or loan of a security, a  
 25 certificate of deposit, a mortgage loan,

1 or any interest in a mortgage loan, a  
2 group or index of securities, certifi-  
3 cates of deposit, or mortgage loans or  
4 interests therein (including any inter-  
5 est therein or based on the value  
6 thereof) or any option on any of the  
7 foregoing, including any option to  
8 purchase or sell any such security,  
9 certificate of deposit, mortgage loan,  
10 interest, group or index, or option,  
11 and including any repurchase or re-  
12 verse repurchase transaction on any  
13 such security, certificate of deposit,  
14 mortgage loan, interest, group or  
15 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, mortgage  
16          loan, interest, group or index, or op-  
17          tion;

18          “(V) means any margin loan;

19          “(VI) means any other agree-  
20          ment or transaction that is similar to  
21          any agreement or transaction referred  
22          to in this clause;

23          “(VII) means any combination of  
24          the agreements or transactions re-  
25          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, including any guarantee or re-

1                   imbursement obligation in connection  
2                   with any agreement or transaction re-  
3                   ferred to in this clause.”.

4           (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
5 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
6 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
7 lows:

8                   “(iii) COMMODITY CONTRACT.—The  
9                   term ‘commodity contract’ means—

10                   “(I) with respect to a futures  
11                   commission merchant, a contract for  
12                   the purchase or sale of a commodity  
13                   for future delivery on, or subject to  
14                   the rules of, a contract market or  
15                   board of trade;

16                   “(II) with respect to a foreign fu-  
17                   tures commission merchant, a foreign  
18                   future;

19                   “(III) with respect to a leverage  
20                   transaction merchant, a leverage  
21                   transaction;

22                   “(IV) with respect to a clearing  
23                   organization, a contract for the pur-  
24                   chase or sale of a commodity for fu-  
25                   ture delivery on, or subject to the

1 rules of, a contract market or board  
2 of trade that is cleared by such clear-  
3 ing organization, or commodity option  
4 traded on, or subject to the rules of,  
5 a contract market or board of trade  
6 that is cleared by such clearing orga-  
7 nization;

8 “(V) with respect to a commodity  
9 options dealer, a commodity option;

10 “(VI) any other agreement or  
11 transaction that is similar to any  
12 agreement or transaction referred to  
13 in this clause;

14 “(VII) any combination of the  
15 agreements or transactions referred to  
16 in this clause;

17 “(VIII) any option to enter into  
18 any agreement or transaction referred  
19 to in this clause;

20 “(IX) a master agreement that  
21 provides for an agreement or trans-  
22 action referred to in subclause (I),  
23 (II), (III), (IV), (V), (VI), (VII), or  
24 (VIII), together with all supplements  
25 to any such master agreement, with-

1 out regard to whether the master  
2 agreement provides for an agreement  
3 or transaction that is not a com-  
4 modity contract under this clause, ex-  
5 cept that the master agreement shall  
6 be considered to be a commodity con-  
7 tract under this clause only with re-  
8 spect to each agreement or trans-  
9 action under the master agreement  
10 that is referred to in subclause (I),  
11 (II), (III), (IV), (V), (VI), (VII), or  
12 (VIII); or

13 “(X) any security agreement or  
14 arrangement or other credit enhance-  
15 ment related to any agreement or  
16 transaction referred to in this clause,  
17 including any guarantee or reimburse-  
18 ment obligation in connection with  
19 any agreement or transaction referred  
20 to in this clause.”.

21 (d) DEFINITION OF FORWARD CONTRACT.—Section  
22 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
23 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

24 “(iv) FORWARD CONTRACT.—The  
25 term ‘forward contract’ means—

1           “(I) a contract (other than a  
2 commodity contract) for the purchase,  
3 sale, or transfer of a commodity or  
4 any similar good, article, service,  
5 right, or interest which is presently or  
6 in the future becomes the subject of  
7 dealing in the forward contract trade,  
8 or product or byproduct thereof, with  
9 a maturity date more than 2 days  
10 after the date the contract is entered  
11 into, including, a repurchase trans-  
12 action, reverse repurchase transaction,  
13 consignment, lease, swap, hedge  
14 transaction, deposit, loan, option, allo-  
15 cated transaction, unallocated trans-  
16 action, or any other similar agree-  
17 ment;

18           “(II) any combination of agree-  
19 ments or transactions referred to in  
20 subclauses (I) and (III);

21           “(III) any option to enter into  
22 any agreement or transaction referred  
23 to in subclause (I) or (II);

24           “(IV) a master agreement that  
25 provides for an agreement or trans-

1 action referred to in subclauses (I),  
2 (II), or (III), together with all supple-  
3 ments to any such master agreement,  
4 without regard to whether the master  
5 agreement provides for an agreement  
6 or transaction that is not a forward  
7 contract under this clause, except that  
8 the master agreement shall be consid-  
9 ered to be a forward contract under  
10 this clause only with respect to each  
11 agreement or transaction under the  
12 master agreement that is referred to  
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or  
15 arrangement or other credit enhance-  
16 ment related to any agreement or  
17 transaction referred to in subclause  
18 (I), (II), (III), or (IV), including any  
19 guarantee or reimbursement obliga-  
20 tion in connection with any agreement  
21 or transaction referred to in any such  
22 subclause.”.

23 (e) DEFINITION OF REPURCHASE AGREEMENT.—  
24 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as  
2 follows:

3 “(v) REPURCHASE AGREEMENT.—The  
4 term ‘repurchase agreement’ (which defini-  
5 tion also applies to a reverse repurchase  
6 agreement)—

7 “(I) means an agreement, includ-  
8 ing related terms, which provides for  
9 the transfer of one or more certifi-  
10 cates of deposit, mortgage-related se-  
11 curities (as such term is defined in  
12 the Securities Exchange Act of 1934),  
13 mortgage loans, interests in mortgage-  
14 related securities or mortgage loans,  
15 eligible bankers’ acceptances, qualified  
16 foreign government securities or secu-  
17 rities that are direct obligations of, or  
18 that are fully guaranteed by, the  
19 United States or any agency of the  
20 United States against the transfer of  
21 funds by the transferee of such certifi-  
22 cates of deposit, eligible bankers’ ac-  
23 ceptances, securities, mortgage loans,  
24 or interests with a simultaneous  
25 agreement by such transferee to

1 transfer to the transferor thereof cer-  
2 tificates of deposit, eligible bankers'  
3 acceptances, securities, mortgage  
4 loans, or interests as described above,  
5 at a date certain not later than 1 year  
6 after such transfers or on demand,  
7 against the transfer of funds, or any  
8 other similar agreement;

9 “(II) does not include any repur-  
10 chase obligation under a participation  
11 in a commercial mortgage loan unless  
12 the Corporation determines by regula-  
13 tion, resolution, or order to include  
14 any such participation within the  
15 meaning of such term;

16 “(III) means any combination of  
17 agreements or transactions referred to  
18 in subclauses (I) and (IV);

19 “(IV) means any option to enter  
20 into any agreement or transaction re-  
21 ferred to in subclause (I) or (III);

22 “(V) means a master agreement  
23 that provides for an agreement or  
24 transaction referred to in subclause  
25 (I), (III), or (IV), together with all

1 supplements to any such master  
2 agreement, without regard to whether  
3 the master agreement provides for an  
4 agreement or transaction that is not a  
5 repurchase agreement under this  
6 clause, except that the master agree-  
7 ment shall be considered to be a re-  
8 purchase agreement under this sub-  
9 clause only with respect to each agree-  
10 ment or transaction under the master  
11 agreement that is referred to in sub-  
12 clause (I), (III), or (IV); and

13 “(VI) means any security agree-  
14 ment or arrangement or other credit  
15 enhancement related to any agree-  
16 ment or transaction referred to in  
17 subclause (I), (III), (IV), or (V), in-  
18 cluding any guarantee or reimburse-  
19 ment obligation in connection with  
20 any agreement or transaction referred  
21 to in any such subclause.

22 For purposes of this clause, the term  
23 ‘qualified foreign government security’  
24 means a security that is a direct obligation  
25 of, or that is fully guaranteed by, the cen-

1           tral government of a member of the Orga-  
2           nization for Economic Cooperation and  
3           Development (as determined by regulation  
4           or order adopted by the appropriate Fed-  
5           eral banking authority).”.

6           (f) DEFINITION OF SWAP AGREEMENT.—Section  
7 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12  
8 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

9                   “(vi) SWAP AGREEMENT.—The term  
10           ‘swap agreement’ means—

11                           “(I) any agreement, including the  
12                           terms and conditions incorporated by  
13                           reference in any such agreement,  
14                           which is an interest rate swap, option,  
15                           future, or forward agreement, includ-  
16                           ing a rate floor, rate cap, rate collar,  
17                           cross-currency rate swap, and basis  
18                           swap; a spot, same day-tomorrow, to-  
19                           morrow-next, forward, or other for-  
20                           eign exchange or precious metals  
21                           agreement; a currency swap, option,  
22                           future, or forward agreement; an eq-  
23                           uity index or equity swap, option, fu-  
24                           ture, or forward agreement; a debt  
25                           index or debt swap, option, future, or

1 forward agreement; a total return,  
2 credit spread or credit swap, option,  
3 future, or forward agreement; a com-  
4 modity index or commodity swap, op-  
5 tion, future, or forward agreement; or  
6 a weather swap, weather derivative, or  
7 weather option;

8 “(II) any agreement or trans-  
9 action that is similar to any other  
10 agreement or transaction referred to  
11 in this clause and that is of a type  
12 that has been, is presently, or in the  
13 future becomes, the subject of recur-  
14 rent dealings in the swap markets  
15 (including terms and conditions incor-  
16 porated by reference in such agree-  
17 ment) and that is a forward, swap, fu-  
18 ture, or option on one or more rates,  
19 currencies, commodities, equity securi-  
20 ties or other equity instruments, debt  
21 securities or other debt instruments,  
22 quantitative measures associated with  
23 an occurrence, extent of an occur-  
24 rence, or contingency associated with  
25 a financial, commercial, or economic

1 consequence, or economic or financial  
2 indices or measures of economic or fi-  
3 nancial 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 subclause  
5           (I), (II), (III), (IV), or (V), including  
6           any guarantee or reimbursement obli-  
7           gation in connection with any agree-  
8           ment or transaction referred to in any  
9           such subclause.

10           Such term is applicable for purposes of  
11           this subsection only and shall not be con-  
12           strued or applied so as to challenge or af-  
13           fect the characterization, definition, or  
14           treatment of any swap agreement under  
15           any other statute, regulation, or rule, in-  
16           cluding the Securities Act of 1933, the Se-  
17           curities Exchange Act of 1934, the Public  
18           Utility Holding Company Act of 1935, the  
19           Trust Indenture Act of 1939, the Invest-  
20           ment Company Act of 1940, the Invest-  
21           ment Advisers Act of 1940, the Securities  
22           Investor Protection Act of 1970, the Com-  
23           modity Exchange Act, the Gramm-Leach-  
24           Bliley Act, and the Legal Certainty for  
25           Bank Products Act of 2000.”.

1 (g) DEFINITION OF TRANSFER.—Section  
2 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
3 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

4 “(viii) TRANSFER.—The term  
5 ‘transfer’ means every mode, direct or indi-  
6 rect, absolute or conditional, voluntary or  
7 involuntary, of disposing of or parting with  
8 property or with an interest in property,  
9 including retention of title as a security in-  
10 terest and foreclosure of the depository in-  
11 stitution’s equity of redemption.”.

12 (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
13 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-  
14 ance Act (12 U.S.C. 1821(e)(8)) is amended—

15 (1) in subparagraph (A)—

16 (A) by striking “paragraph (10)” and in-  
17 serting “paragraphs (9) and (10)”;

18 (B) in clause (i), by striking “to cause the  
19 termination or liquidation” and inserting “such  
20 person has to cause the termination, liquida-  
21 tion, or acceleration”; and

22 (C) by striking clause (ii) and inserting the  
23 following:

24 “(ii) any right under any security  
25 agreement or arrangement or other credit

1 enhancement related to one or more quali-  
2 fied financial contracts described in clause  
3 (i);” and

4 (2) in subparagraph (E), by striking clause (ii)  
5 and inserting the following:

6 “(ii) any right under any security  
7 agreement or arrangement or other credit  
8 enhancement related to one or more quali-  
9 fied financial contracts described in clause  
10 (i);”.

11 (i) AVOIDANCE OF TRANSFERS.—Section  
12 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
13 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
14 5242 of the Revised Statutes of the United States or any  
15 other Federal or State law relating to the avoidance of  
16 preferential or fraudulent transfers,” before “the Corpora-  
17 tion”.

18 **SEC. 902. AUTHORITY OF THE CORPORATION WITH RE-**  
19 **SPECT TO FAILED AND FAILING INSTITU-**  
20 **TIONS.**

21 (a) IN GENERAL.—Section 11(e)(8) of the Federal  
22 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amend-  
23 ed—

24 (1) in subparagraph (E), by striking “other  
25 than paragraph (12) of this subsection, subsection

1 (d)(9)” and inserting “other than subsections (d)(9)  
2 and (e)(10)”;

3 (2) by adding at the end the following new sub-  
4 paragraphs:

5 “(F) CLARIFICATION.—No provision of law  
6 shall be construed as limiting the right or  
7 power of the Corporation, or authorizing any  
8 court or agency to limit or delay, in any man-  
9 ner, the right or power of the Corporation to  
10 transfer any qualified financial contract in ac-  
11 cordance with paragraphs (9) and (10) of this  
12 subsection or to disaffirm or repudiate any such  
13 contract in accordance with subsection (e)(1) of  
14 this section.

15 “(G) WALKAWAY CLAUSES NOT EFFEC-  
16 TIVE.—

17 “(i) IN GENERAL.—Notwithstanding  
18 the provisions of subparagraphs (A) and  
19 (E), and sections 403 and 404 of the Fed-  
20 eral Deposit Insurance Corporation Im-  
21 provement Act of 1991, no walkaway  
22 clause shall be enforceable in a qualified fi-  
23 nancial contract of an insured depository  
24 institution in default.

1                   “(ii) WALKAWAY CLAUSE DEFINED.—  
2                   For purposes of this subparagraph, the  
3                   term ‘walkaway clause’ means a provision  
4                   in a qualified financial contract that, after  
5                   calculation of a value of a party’s position  
6                   or an amount due to or from 1 of the par-  
7                   ties in accordance with its terms upon ter-  
8                   mination, liquidation, or acceleration of the  
9                   qualified financial contract, either does not  
10                  create a payment obligation of a party or  
11                  extinguishes a payment obligation of a  
12                  party in whole or in part solely because of  
13                  such party’s status as a nondefaulting  
14                  party.”.

15               (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16 Section 11(e)(12)(A) of the Federal Deposit Insurance  
17 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
18 “or the exercise of rights or powers by” after “the ap-  
19 pointment of”.

20 **SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF**  
21 **QUALIFIED FINANCIAL CONTRACTS.**

22               (a) TRANSFERS OF QUALIFIED FINANCIAL CON-  
23 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)  
24 of the Federal Deposit Insurance Act (12 U.S.C.  
25 1821(e)(9)) is amended to read as follows:

1           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
2 TRACTS.—

3           “(A) IN GENERAL.—In making any trans-  
4 fer of assets or liabilities of a depository institu-  
5 tion in default which includes any qualified fi-  
6 nancial contract, the conservator or receiver for  
7 such depository institution shall either—

8           “(i) transfer to one financial institu-  
9 tion, other than a financial institution for  
10 which a conservator, receiver, trustee in  
11 bankruptcy, or other legal custodian has  
12 been appointed or which is otherwise the  
13 subject of a bankruptcy or insolvency pro-  
14 ceeding—

15           “(I) all qualified financial con-  
16 tracts between any person or any af-  
17 filiate of such person and the deposi-  
18 tory institution in default;

19           “(II) all claims of such person or  
20 any affiliate of such person against  
21 such depository institution under any  
22 such contract (other than any claim  
23 which, under the terms of any such  
24 contract, is subordinated to the claims

1 of general unsecured creditors of such  
2 institution);

3 “(III) all claims of such deposi-  
4 tory institution against such person or  
5 any affiliate of such person under any  
6 such contract; and

7 “(IV) all property securing or  
8 any other credit enhancement for any  
9 contract described in subclause (I) or  
10 any claim described in subclause (II)  
11 or (III) under any such contract; or

12 “(ii) transfer none of the qualified fi-  
13 nancial contracts, claims, property or other  
14 credit enhancement referred to in clause (i)  
15 (with respect to such person and any affil-  
16 iate of such person).

17 “(B) TRANSFER TO FOREIGN BANK, FOR-  
18 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
19 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
20 STITUTION.—In transferring any qualified fi-  
21 nancial contracts and related claims and prop-  
22 erty under subparagraph (A)(i), the conservator  
23 or receiver for the depository institution shall  
24 not make such transfer to a foreign bank, fi-  
25 nancial institution organized under the laws of

1 a foreign country, or a branch or agency of a  
2 foreign bank or financial institution unless,  
3 under the law applicable to such bank, financial  
4 institution, branch or agency, to the qualified  
5 financial contracts, and to any netting contract,  
6 any security agreement or arrangement or other  
7 credit enhancement related to one or more  
8 qualified financial contracts, the contractual  
9 rights of the parties to such qualified financial  
10 contracts, netting contracts, security agree-  
11 ments or arrangements, or other credit en-  
12 hancements are enforceable substantially to the  
13 same extent as permitted under this section.

14 “(C) TRANSFER OF CONTRACTS SUBJECT  
15 TO THE RULES OF A CLEARING ORGANIZA-  
16 TION.—In the event that a conservator or re-  
17 ceiver transfers any qualified financial contract  
18 and related claims, property, and credit en-  
19 hancements pursuant to subparagraph (A)(i)  
20 and such contract is cleared by or subject to the  
21 rules of a clearing organization, the clearing or-  
22 ganization shall not be required to accept the  
23 transferee as a member by virtue of the trans-  
24 fer.

1           “(D) DEFINITIONS.—For purposes of this  
2 paragraph, the term ‘financial institution’  
3 means a broker or dealer, a depository institu-  
4 tion, a futures commission merchant, or any  
5 other institution, as determined by the Corpora-  
6 tion by regulation to be a financial institution,  
7 and the term ‘clearing organization’ has the  
8 same meaning as in section 402 of the Federal  
9 Deposit Insurance Corporation Improvement  
10 Act of 1991.”.

11       (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
12 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
13 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
14 amended in the material immediately following clause (ii)  
15 by striking “the conservator” and all that follows through  
16 the period and inserting the following: “the conservator  
17 or receiver shall notify any person who is a party to any  
18 such contract of such transfer by 5:00 p.m. (eastern time)  
19 on the business day following the date of the appointment  
20 of the receiver in the case of a receivership, or the business  
21 day following such transfer in the case of a conservator-  
22 ship.”.

23       (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF  
24 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-

1 posit Insurance Act (12 U.S.C. 1821(e)(10)) is amend-  
2 ed—

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

5 (2) by inserting after subparagraph (A) the fol-  
6 lowing new subparagraphs:

7 “(B) CERTAIN RIGHTS NOT ENFORCE-  
8 ABLE.—

9 “(i) RECEIVERSHIP.—A person who is  
10 a party to a qualified financial contract  
11 with an insured depository institution may  
12 not exercise any right that such person has  
13 to terminate, liquidate, or net such con-  
14 tract under paragraph (8)(A) of this sub-  
15 section or section 403 or 404 of the Fed-  
16 eral Deposit Insurance Corporation Im-  
17 provement Act of 1991, solely by reason of  
18 or incidental to the appointment of a re-  
19 ceiver for the depository institution (or the  
20 insolvency or financial condition of the de-  
21 pository institution for which the receiver  
22 has been appointed)—

23 “(I) until 5:00 p.m. (eastern  
24 time) on the business day following

1 the date of the appointment of the re-  
2 ceiver; or

3 “(II) after the person has re-  
4 ceived notice that the contract has  
5 been transferred pursuant to para-  
6 graph (9)(A).

7 “(ii) CONSERVATORSHIP.—A person  
8 who is a party to a qualified financial con-  
9 tract with an insured depository institution  
10 may not exercise any right that such per-  
11 son has to terminate, liquidate, or net such  
12 contract under paragraph (8)(E) of this  
13 subsection or section 403 or 404 of the  
14 Federal Deposit Insurance Corporation  
15 Improvement Act of 1991, solely by reason  
16 of or incidental to the appointment of a  
17 conservator for the depository institution  
18 (or the insolvency or financial condition of  
19 the depository institution for which the  
20 conservator has been appointed).

21 “(iii) NOTICE.—For purposes of this  
22 paragraph, the Corporation as receiver or  
23 conservator of an insured depository insti-  
24 tution shall be deemed to have notified a  
25 person who is a party to a qualified finan-

1           cial contract with such depository institu-  
2           tion if the Corporation has taken steps  
3           reasonably calculated to provide notice to  
4           such person by the time specified in sub-  
5           paragraph (A).

6           “(C) TREATMENT OF BRIDGE BANKS.—

7           The following institutions shall not be consid-  
8           ered to be a financial institution for which a  
9           conservator, receiver, trustee in bankruptcy, or  
10          other legal custodian has been appointed or  
11          which is otherwise the subject of a bankruptcy  
12          or insolvency proceeding for purposes of para-  
13          graph (9):

14                 “(i) A bridge bank.

15                 “(ii) A depository institution orga-  
16                 nized by the Corporation, for which a con-  
17                 servator is appointed either—

18                         “(I) immediately upon the orga-  
19                         nization of the institution; or

20                         “(II) at the time of a purchase  
21                         and assumption transaction between  
22                         the depository institution and the Cor-  
23                         poration as receiver for a depository  
24                         institution in default.”.

1 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
2 **REPUDIATION OF QUALIFIED FINANCIAL**  
3 **CONTRACTS.**

4 Section 11(e) of the Federal Deposit Insurance Act  
5 (12 U.S.C. 1821(e)) is amended—

6 (1) by redesignating paragraphs (11) through  
7 (15) as paragraphs (12) through (16), respectively;

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

10 “(11) DISAFFIRMANCE OR REPUDIATION OF  
11 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
12 the rights of disaffirmance or repudiation of a con-  
13 servator or receiver with respect to any qualified fi-  
14 nancial contract to which an insured depository in-  
15 stitution is a party, the conservator or receiver for  
16 such institution shall either—

17 “(A) disaffirm or repudiate all qualified fi-  
18 nancial contracts between—

19 “(i) any person or any affiliate of  
20 such person; and

21 “(ii) the depository institution in de-  
22 fault; or

23 “(B) disaffirm or repudiate none of the  
24 qualified financial contracts referred to in sub-  
25 paragraph (A) (with respect to such person or  
26 any affiliate of such person).”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(17) SAVINGS CLAUSE.—The meanings of  
4 terms used in this subsection are applicable for pur-  
5 poses of this subsection only, and shall not be con-  
6 strued or applied so as to challenge or affect the  
7 characterization, definition, or treatment of any  
8 similar terms under any other statute, regulation, or  
9 rule, including the Gramm-Leach-Bliley Act, the  
10 Legal Certainty for Bank Products Act of 2000, the  
11 securities laws (as that term is defined in section  
12 3(a)(47) of the Securities Exchange Act of 1934),  
13 and the Commodity Exchange Act.”.

14 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**  
15 **AGREEMENTS.**

16           Section 11(e)(8)(D)(vii) of the Federal Deposit In-  
17 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to  
18 read as follows:

19           “(vii) TREATMENT OF MASTER  
20 AGREEMENT AS ONE AGREEMENT.—Any  
21 master agreement for any contract or  
22 agreement described in any preceding  
23 clause of this subparagraph (or any master  
24 agreement for such master agreement or  
25 agreements), together with all supplements

1 to such master agreement, shall be treated  
2 as a single agreement and a single quali-  
3 fied financial contract. If a master agree-  
4 ment contains provisions relating to agree-  
5 ments or transactions that are not them-  
6 selves qualified financial contracts, the  
7 master agreement shall be deemed to be a  
8 qualified financial contract only with re-  
9 spect to those transactions that are them-  
10 selves qualified financial contracts.”.

11 **SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION**  
12 **IMPROVEMENT ACT OF 1991.**

13 (a) DEFINITIONS.—Section 402 of the Federal De-  
14 posit Insurance Corporation Improvement Act of 1991 (12  
15 U.S.C. 4402) is amended—

16 (1) in paragraph (2)—

17 (A) in subparagraph (A)(ii), by inserting  
18 before the semicolon “, or is exempt from such  
19 registration by order of the Securities and Ex-  
20 change Commission”; and

21 (B) in subparagraph (B), by inserting be-  
22 fore the period “, that has been granted an ex-  
23emption under section 4(c)(1) of the Com-  
24modity Exchange Act, or that is a multilateral

1 clearing organization (as defined in section 408  
2 of this Act)’’;

3 (2) in paragraph (6)—

4 (A) by redesignating subparagraphs (B)  
5 through (D) as subparagraphs (C) through (E),  
6 respectively;

7 (B) by inserting after subparagraph (A)  
8 the following new subparagraph:

9 “(B) an uninsured national bank or an un-  
10 insured State bank that is a member of the  
11 Federal Reserve System, if the national bank or  
12 State member bank is not eligible to make ap-  
13 plication to become an insured bank under sec-  
14 tion 5 of the Federal Deposit Insurance Act;’’;  
15 and

16 (C) by amending subparagraph (C), so re-  
17 designated, to read as follows:

18 “(C) a branch or agency of a foreign bank,  
19 a foreign bank and any branch or agency of the  
20 foreign bank, or the foreign bank that estab-  
21 lished the branch or agency, as those terms are  
22 defined in section 1(b) of the International  
23 Banking Act of 1978;’’;

24 (3) in paragraph (11), by inserting before the  
25 period “and any other clearing organization with

1       which such clearing organization has a netting con-  
2       tract”;

3               (4) by amending paragraph (14)(A)(i) to read  
4       as follows:

5                       “(i) means a contract or agreement  
6                       between 2 or more financial institutions,  
7                       clearing organizations, or members that  
8                       provides for netting present or future pay-  
9                       ment obligations or payment entitlements  
10                      (including liquidation or close out values  
11                      relating to such obligations or entitle-  
12                      ments) among the parties to the agree-  
13                      ment; and”;

14               (5) by adding at the end the following new  
15       paragraph:

16                       “(15) PAYMENT.—The term ‘payment’ means a  
17                       payment of United States dollars, another currency,  
18                       or a composite currency, and a noncash delivery, in-  
19                       cluding a payment or delivery to liquidate an  
20                       unmatured obligation.”.

21       (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
22       TRACTS.—Section 403 of the Federal Deposit Insurance  
23       Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
24       is amended—

1           (1) by striking subsection (a) and inserting the  
2           following:

3           “(a) GENERAL RULE.—Notwithstanding any other  
4           provision of State or Federal law (other than paragraphs  
5           (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
6           Deposit Insurance Act or any order authorized under sec-  
7           tion 5(b)(2) of the Securities Investor Protection Act of  
8           1970), the covered contractual payment obligations and  
9           the covered contractual payment entitlements between any  
10          2 financial institutions shall be netted in accordance with,  
11          and subject to the conditions of, the terms of any applica-  
12          ble netting contract (except as provided in section  
13          561(b)(2) of title 11, United States Code).”;

14          (2) by adding at the end the following new sub-  
15          section:

16          “(f) ENFORCEABILITY OF SECURITY AGREEE-  
17          MENTS.—The provisions of any security agreement or ar-  
18          rangement or other credit enhancement related to one or  
19          more netting contracts between any 2 financial institu-  
20          tions shall be enforceable in accordance with their terms  
21          (except as provided in section 561(b)(2) of title 11, United  
22          States Code), and shall not be stayed, avoided, or other-  
23          wise limited by any State or Federal law (other than para-  
24          graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the

1 Federal Deposit Insurance Act and section 5(b)(2) of the  
2 Securities Investor Protection Act of 1970).”.

3 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
4 NETTING CONTRACTS.—Section 404 of the Federal De-  
5 posit Insurance Corporation Improvement Act of 1991 (12  
6 U.S.C. 4404) is amended—

7 (1) by striking subsection (a) and inserting the  
8 following:

9 “(a) GENERAL RULE.—Notwithstanding any other  
10 provision of State or Federal law (other than paragraphs  
11 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
12 Deposit Insurance Act and any order authorized under  
13 section 5(b)(2) of the Securities Investor Protection Act  
14 of 1970), the covered contractual payment obligations and  
15 the covered contractual payment entitlements of a member  
16 of a clearing organization to and from all other members  
17 of a clearing organization shall be netted in accordance  
18 with and subject to the conditions of any applicable net-  
19 ting contract (except as provided in section 561(b)(2) of  
20 title 11, United States Code).”; and

21 (2) by adding at the end the following new sub-  
22 section:

23 “(h) ENFORCEABILITY OF SECURITY AGREE-  
24 MENTS.—The provisions of any security agreement or ar-  
25 rangement or other credit enhancement related to one or

1 more netting contracts between any 2 members of a clear-  
2 ing organization shall be enforceable in accordance with  
3 their terms (except as provided in section 561(b)(2) of  
4 title 11, United States Code), and shall not be stayed,  
5 avoided, or otherwise limited by any State or Federal law  
6 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
7 tion 11(e) of the Federal Deposit Insurance Act and sec-  
8 tion 5(b)(2) of the Securities Investor Protection Act of  
9 1970).”.

10 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
11 SURED NATIONAL BANKS, UNINSURED FEDERAL  
12 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE  
13 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The  
14 Federal Deposit Insurance Corporation Improvement Act  
15 of 1991 (12 U.S.C. 4401 et seq.) is amended—

16 (1) by redesignating section 407 as section  
17 407A; and

18 (2) by inserting after section 406 the following  
19 new section:

1 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
2 **NATIONAL BANKS, UNINSURED FEDERAL**  
3 **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
4 **SURED STATE MEMBER BANKS, AND EDGE**  
5 **ACT CORPORATIONS.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-  
7 vision of law, paragraphs (8), (9), (10), and (11) of section  
8 11(e) of the Federal Deposit Insurance Act shall apply  
9 to an uninsured national bank or uninsured Federal  
10 branch or Federal agency, a corporation chartered under  
11 section 25A of the Federal Reserve Act, or an uninsured  
12 State member bank which operates, or operates as, a mul-  
13 tilateral clearing organization pursuant to section 409 of  
14 this Act, except that for such purpose—

15 “(1) any reference to the ‘Corporation as re-  
16 ceiver’ or ‘the receiver or the Corporation’ shall refer  
17 to the receiver appointed by the Comptroller of the  
18 Currency in the case of an uninsured national bank  
19 or uninsured Federal branch or agency, or to the re-  
20 ceiver appointed by the Board of Governors of the  
21 Federal Reserve System in the case of a corporation  
22 chartered under section 25A of the Federal Reserve  
23 Act or an uninsured State member bank;

24 “(2) any reference to the ‘Corporation’ (other  
25 than in section 11(e)(8)(D) of such Act), the  
26 ‘Corporation, whether acting as such or as conser-

1 vator or receiver’, a ‘receiver’, or a ‘conservator’  
2 shall refer to the receiver or conservator appointed  
3 by the Comptroller of the Currency in the case of an  
4 uninsured national bank or uninsured Federal  
5 branch or agency, or to the receiver or conservator  
6 appointed by the Board of Governors of the Federal  
7 Reserve System in the case of a corporation char-  
8 tered under section 25A of the Federal Reserve Act  
9 or an uninsured State member bank; and

10 “(3) any reference to an ‘insured depository in-  
11 stitution’ or ‘depository institution’ shall refer to an  
12 uninsured national bank, an uninsured Federal  
13 branch or Federal agency, a corporation chartered  
14 under section 25A of the Federal Reserve Act, or an  
15 uninsured State member bank which operates, or op-  
16 erates as, a multilateral clearing organization pursu-  
17 ant to section 409 of this Act.

18 “(b) LIABILITY.—The liability of a receiver or conser-  
19 vator of an uninsured national bank, uninsured Federal  
20 branch or agency, a corporation chartered under section  
21 25A of the Federal Reserve Act, or an uninsured State  
22 member bank which operates, or operates as, a multilat-  
23 eral clearing organization pursuant to section 409 of this  
24 Act, shall be determined in the same manner and subject  
25 to the same limitations that apply to receivers and con-

1 servators of insured depository institutions under section  
2 11(e) of the Federal Deposit Insurance Act.

3 “(c) REGULATORY AUTHORITY.—

4 “(1) IN GENERAL.—The Comptroller of the  
5 Currency in the case of an uninsured national bank  
6 or uninsured Federal branch or agency and the  
7 Board of Governors of the Federal Reserve System  
8 in the case of a corporation chartered under section  
9 25A of the Federal Reserve Act, or an uninsured  
10 State member bank that operates, or operates as, a  
11 multilateral clearing organization pursuant to sec-  
12 tion 409 of this Act, in consultation with the Fed-  
13 eral Deposit Insurance Corporation, may each pro-  
14 mulgate regulations solely to implement this section.

15 “(2) SPECIFIC REQUIREMENT.—In promul-  
16 gating regulations, limited solely to implementing  
17 paragraphs (8), (9), (10), and (11) of section 11(e)  
18 of the Federal Deposit Insurance Act, the Comp-  
19 troller of the Currency and the Board of Governors  
20 of the Federal Reserve System each shall ensure  
21 that the regulations generally are consistent with the  
22 regulations and policies of the Federal Deposit In-  
23 surance Corporation adopted pursuant to the Fed-  
24 eral Deposit Insurance Act.

1           “(d) DEFINITIONS.—For purposes of this section, the  
2 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
3 bank’ have the same meanings as in section 1(b) of the  
4 International Banking Act of 1978.”.

5 **SEC. 907. BANKRUPTCY LAW AMENDMENTS.**

6           (a) DEFINITIONS OF FORWARD CONTRACT,  
7 REPURCHASE AGREEMENT, SECURITIES CLEARING  
8 AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT,  
9 AND SECURITIES CONTRACT.—Title 11, United States  
10 Code, is amended—

11                   (1) in section 101—

12                           (A) in paragraph (25)—

13                                   (i) by striking “means a contract”

14                                   and inserting “means—

15                                   “(A) a contract”;

16                                   (ii) by striking “, or any combination

17                                   thereof or option thereon;” and inserting

18                                   “, or any other similar agreement;”; and

19                                   (iii) by adding at the end the fol-

20                                   lowing:

21                                   “(B) any combination of agreements or

22                                   transactions referred to in subparagraphs (A)

23                                   and (C);

1           “(C) any option to enter into an agreement  
2 or transaction referred to in subparagraph (A)  
3 or (B);

4           “(D) a master agreement that provides for  
5 an agreement or transaction referred to in sub-  
6 paragraph (A), (B), or (C), together with all  
7 supplements to any such master agreement,  
8 without regard to whether such master agree-  
9 ment provides for an agreement or transaction  
10 that is not a forward contract under this para-  
11 graph, except that such master agreement shall  
12 be considered to be a forward contract under  
13 this paragraph only with respect to each agree-  
14 ment or transaction under such master agree-  
15 ment that is referred to in subparagraph (A),  
16 (B), or (C); or

17           “(E) any security agreement or arrange-  
18 ment, or other credit enhancement related to  
19 any agreement or transaction referred to in  
20 subparagraph (A), (B), (C), or (D), including  
21 any guarantee or reimbursement obligation by  
22 or to a forward contract merchant or financial  
23 participant in connection with any agreement or  
24 transaction referred to in any such subpara-  
25 graph, but not to exceed the damages in con-

1 nection with any such agreement or transaction,  
2 measured in accordance with section 562 of this  
3 title;”;

4 (B) in paragraph (46), by striking “on any  
5 day during the period beginning 90 days before  
6 the date of” and inserting “at any time before”;

7 (C) by amending paragraph (47) to read  
8 as follows:

9 “(47) ‘repurchase agreement’ (which definition  
10 also applies to a reverse repurchase agreement)—

11 “(A) means—

12 “(i) an agreement, including related  
13 terms, which provides for the transfer of  
14 one or more certificates of deposit, mort-  
15 gage related securities (as defined in sec-  
16 tion 3 of the Securities Exchange Act of  
17 1934), mortgage loans, interests in mort-  
18 gage related securities or mortgage loans,  
19 eligible bankers’ acceptances, qualified for-  
20 eign government securities (defined as a  
21 security that is a direct obligation of, or  
22 that is fully guaranteed by, the central  
23 government of a member of the Organiza-  
24 tion for Economic Cooperation and Devel-  
25 opment), or securities that are direct obli-

1 gations of, or that are fully guaranteed by,  
2 the United States or any agency of the  
3 United States against the transfer of funds  
4 by the transferee of such certificates of de-  
5 posit, eligible bankers' acceptances, securi-  
6 ties, mortgage loans, or interests, with a  
7 simultaneous agreement by such transferee  
8 to transfer to the transferor thereof certifi-  
9 cates of deposit, eligible bankers' accept-  
10 ance, securities, mortgage loans, or inter-  
11 ests of the kind described in this clause, at  
12 a date certain not later than 1 year after  
13 such transfer or on demand, against the  
14 transfer of funds;

15 “(ii) any combination of agreements  
16 or transactions referred to in clauses (i)  
17 and (iii);

18 “(iii) an option to enter into an agree-  
19 ment or transaction referred to in clause  
20 (i) or (ii);

21 “(iv) a master agreement that pro-  
22 vides for an agreement or transaction re-  
23 ferred to in clause (i), (ii), or (iii), together  
24 with all supplements to any such master  
25 agreement, without regard to whether such

1 master agreement provides for an agree-  
2 ment or transaction that is not a repur-  
3 chase agreement under this paragraph, ex-  
4 cept that such master agreement shall be  
5 considered to be a repurchase agreement  
6 under this paragraph only with respect to  
7 each agreement or transaction under the  
8 master agreement that is referred to in  
9 clause (i), (ii), or (iii); or

10 “(v) any security agreement or ar-  
11 rangement or other credit enhancement re-  
12 lated to any agreement or transaction re-  
13 ferred to in clause (i), (ii), (iii), or (iv), in-  
14 cluding any guarantee or reimbursement  
15 obligation by or to a repo participant or fi-  
16 nancial participant in connection with any  
17 agreement or transaction referred to in  
18 any such clause, but not to exceed the  
19 damages in connection with any such  
20 agreement or transaction, measured in ac-  
21 cordance with section 562 of this title; and

22 “(B) does not include a repurchase obliga-  
23 tion under a participation in a commercial  
24 mortgage loan;”;

1 (D) in paragraph (48), by inserting “, or  
2 exempt from such registration under such sec-  
3 tion pursuant to an order of the Securities and  
4 Exchange Commission,” after “1934”; and

5 (E) by amending paragraph (53B) to read  
6 as follows:

7 “(53B) ‘swap agreement’—

8 “(A) means—

9 “(i) any agreement, including the  
10 terms and conditions incorporated by ref-  
11 erence in such agreement, which is—

12 “(I) an interest rate swap, op-  
13 tion, future, or forward agreement, in-  
14 cluding a rate floor, rate cap, rate col-  
15 lar, cross-currency rate swap, and  
16 basis swap;

17 “(II) a spot, same day-tomorrow,  
18 tomorrow-next, forward, or other for-  
19 eign exchange or precious metals  
20 agreement;

21 “(III) a currency swap, option,  
22 future, or forward agreement;

23 “(IV) an equity index or equity  
24 swap, option, future, or forward  
25 agreement;

1                   “(V) a debt index or debt swap,  
2                   option, future, or forward agreement;

3                   “(VI) a total return, credit  
4                   spread or credit swap, option, future,  
5                   or forward agreement;

6                   “(VII) a commodity index or a  
7                   commodity swap, option, future, or  
8                   forward agreement; or

9                   “(VIII) a weather swap, weather  
10                  derivative, or weather option;

11                  “(ii) any agreement or transaction  
12                  that is similar to any other agreement or  
13                  transaction referred to in this paragraph  
14                  and that—

15                  “(I) is of a type that has been, is  
16                  presently, or in the future becomes,  
17                  the subject of recurrent dealings in  
18                  the swap markets (including terms  
19                  and conditions incorporated by ref-  
20                  erence therein); and

21                  “(II) is a forward, swap, future,  
22                  or option on one or more rates, cur-  
23                  rencies, commodities, equity securities,  
24                  or other equity instruments, debt se-  
25                  curities or other debt instruments,

1 quantitative measures associated with  
2 an occurrence, extent of an occur-  
3 rence, or contingency associated with  
4 a financial, commercial, or economic  
5 consequence, or economic or financial  
6 indices or measures of economic or fi-  
7 nancial risk or value;

8 “(iii) any combination of agreements  
9 or transactions referred to in this subpara-  
10 graph;

11 “(iv) any option to enter into an  
12 agreement or transaction referred to in  
13 this subparagraph;

14 “(v) a master agreement that provides  
15 for an agreement or transaction referred to  
16 in clause (i), (ii), (iii), or (iv), together  
17 with all supplements to any such master  
18 agreement, and without regard to whether  
19 the master agreement contains an agree-  
20 ment or transaction that is not a swap  
21 agreement under this paragraph, except  
22 that the master agreement shall be consid-  
23 ered to be a swap agreement under this  
24 paragraph only with respect to each agree-  
25 ment or transaction under the master

1 agreement that is referred to in clause (i),  
2 (ii), (iii), or (iv); or

3 “(vi) any security agreement or ar-  
4 rangement or other credit enhancement re-  
5 lated to any agreements or transactions re-  
6 ferred to in clause (i) through (v), includ-  
7 ing any guarantee or reimbursement obli-  
8 gation by or to a swap participant or fi-  
9 nancial participant in connection with any  
10 agreement or transaction referred to in  
11 any such clause, but not to exceed the  
12 damages in connection with any such  
13 agreement or transaction, measured in ac-  
14 cordance with section 562 of this title; and

15 “(B) is applicable for purposes of this title  
16 only, and shall not be construed or applied so  
17 as to challenge or affect the characterization,  
18 definition, or treatment of any swap agreement  
19 under any other statute, regulation, or rule, in-  
20 cluding the Securities Act of 1933, the Securi-  
21 ties Exchange Act of 1934, the Public Utility  
22 Holding Company Act of 1935, the Trust In-  
23 denture Act of 1939, the Investment Company  
24 Act of 1940, the Investment Advisers Act of  
25 1940, the Securities Investor Protection Act of

1           1970, the Commodity Exchange Act, the  
2           Gramm-Leach-Bliley Act, and the Legal Cer-  
3           tainty for Bank Products Act of 2000;”;

4           (2) in section 741(7), by striking paragraph (7)  
5           and inserting the following:

6           “(7) ‘securities contract’—

7           “(A) means—

8                   “(i) a contract for the purchase, sale,  
9                   or loan of a security, a certificate of de-  
10                  posit, a mortgage loan or any interest in a  
11                  mortgage loan, a group or index of securi-  
12                  ties, certificates of deposit, or mortgage  
13                  loans or interests therein (including an in-  
14                  terest therein or based on the value there-  
15                  of), or option on any of the foregoing, in-  
16                  cluding an option to purchase or sell any  
17                  such security, certificate of deposit, mort-  
18                  gage loan, interest, group or index, or op-  
19                  tion, and including any repurchase or re-  
20                  verse repurchase transaction on any such  
21                  security, certificate of deposit, mortgage  
22                  loan, interest, group or index, or option;

23                   “(ii) any option entered into on a na-  
24                  tional securities exchange relating to for-  
25                  eign currencies;

1           “(iii) the guarantee by or to any secu-  
2           rities clearing agency of a settlement of  
3           cash, securities, certificates of deposit,  
4           mortgage loans or interests therein, group  
5           or index of securities, or mortgage loans or  
6           interests therein (including any interest  
7           therein or based on the value thereof), or  
8           option on any of the foregoing, including  
9           an option to purchase or sell any such se-  
10          curity, certificate of deposit, mortgage  
11          loan, interest, group or index, or option;

12           “(iv) any margin loan;

13           “(v) any other agreement or trans-  
14          action that is similar to an agreement or  
15          transaction referred to in this subpara-  
16          graph;

17           “(vi) any combination of the agree-  
18          ments or transactions referred to in this  
19          subparagraph;

20           “(vii) any option to enter into any  
21          agreement or transaction referred to in  
22          this subparagraph;

23           “(viii) a master agreement that pro-  
24          vides for an agreement or transaction re-  
25          ferred to in clause (i), (ii), (iii), (iv), (v),

1 (vi), or (vii), together with all supplements  
2 to any such master agreement, without re-  
3 gard to whether the master agreement pro-  
4 vides for an agreement or transaction that  
5 is not a securities contract under this sub-  
6 paragraph, except that such master agree-  
7 ment shall be considered to be a securities  
8 contract under this subparagraph only with  
9 respect to each agreement or transaction  
10 under such master agreement that is re-  
11 ferred to in clause (i), (ii), (iii), (iv), (v),  
12 (vi), or (vii); or

13 “(ix) any security agreement or ar-  
14 rangement or other credit enhancement re-  
15 lated to any agreement or transaction re-  
16 ferred to in this subparagraph, including  
17 any guarantee or reimbursement obligation  
18 by or to a stockbroker, securities clearing  
19 agency, financial institution, or financial  
20 participant in connection with any agree-  
21 ment or transaction referred to in this sub-  
22 paragraph, but not to exceed the damages  
23 in connection with any such agreement or  
24 transaction, measured in accordance with  
25 section 562 of this title; and

1           “(B) does not include any purchase, sale,  
2           or repurchase obligation under a participation  
3           in a commercial mortgage loan;” and

4           (3) in section 761(4)—

5           (A) by striking “or” at the end of subpara-  
6           graph (D); and

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

8           “(F) any other agreement or transaction  
9           that is similar to an agreement or transaction  
10          referred to in this paragraph;

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

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

16          “(I) a master agreement that provides for  
17          an agreement or transaction referred to in sub-  
18          paragraph (A), (B), (C), (D), (E), (F), (G), or  
19          (H), together with all supplements to such mas-  
20          ter agreement, without regard to whether the  
21          master agreement provides for an agreement or  
22          transaction that is not a commodity contract  
23          under this paragraph, except that the master  
24          agreement shall be considered to be a com-  
25          modity contract under this paragraph only with

1           respect to each agreement or transaction under  
2           the master agreement that is referred to in sub-  
3           paragraph (A), (B), (C), (D), (E), (F), (G), or  
4           (H); or

5           “(J) any security agreement or arrange-  
6           ment or other credit enhancement related to  
7           any agreement or transaction referred to in this  
8           paragraph, including any guarantee or reim-  
9           bursement obligation by or to a commodity  
10          broker or financial participant in connection  
11          with any agreement or transaction referred to  
12          in this paragraph, but not to exceed the dam-  
13          ages in connection with any such agreement or  
14          transaction, measured in accordance with sec-  
15          tion 562 of this title;”.

16          (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
17          NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
18          CHANT.—Section 101 of title 11, United States Code, is  
19          amended—

20                 (1) by striking paragraph (22) and inserting  
21          the following:

22                 “(22) ‘financial institution’ means—

23                         “(A) a Federal reserve bank, or an entity  
24                         (domestic or foreign) that is a commercial or  
25                         savings bank, industrial savings bank, savings

1 and loan association, trust company, or receiver  
2 or conservator for such entity and, when any  
3 such Federal reserve bank, receiver, conservator  
4 or entity is acting as agent or custodian for a  
5 customer in connection with a securities con-  
6 tract (as defined in section 741) such customer;  
7 or

8 “(B) in connection with a securities con-  
9 tract (as defined in section 741) an investment  
10 company registered under the Investment Com-  
11 pany Act of 1940;”;

12 (2) by inserting after paragraph (22) the fol-  
13 lowing:

14 “(22A) ‘financial participant’ means—

15 “(A) an entity that, at the time it enters  
16 into a securities contract, commodity contract,  
17 swap agreement, repurchase agreement, or for-  
18 ward contract, or at the time of the filing of the  
19 petition, has one or more agreements or trans-  
20 actions described in paragraph (1), (2), (3), (4),  
21 (5), or (6) of section 561(a) with the debtor or  
22 any other entity (other than an affiliate) of a  
23 total gross dollar value of not less than  
24 \$1,000,000,000 in notional or actual principal  
25 amount outstanding on any day during the pre-

1           vious 15-month period, or has gross mark-to-  
2           market positions of not less than \$100,000,000  
3           (aggregated across counterparties) in one or  
4           more such agreements or transactions with the  
5           debtor or any other entity (other than an affil-  
6           iate) on any day during the previous 15-month  
7           period; or

8                   “(B) a clearing organization (as defined in  
9           section 402 of the Federal Deposit Insurance  
10          Corporation Improvement Act of 1991);”;

11          (3) by striking paragraph (26) and inserting  
12          the following:

13                   “(26) ‘forward contract merchant’ means a  
14          Federal reserve bank, or an entity the business of  
15          which consists in whole or in part of entering into  
16          forward contracts as or with merchants in a com-  
17          modity (as defined in section 761) or any similar  
18          good, article, service, right, or interest which is pres-  
19          ently or in the future becomes the subject of dealing  
20          in the forward contract trade;”.

21          (c) DEFINITION OF MASTER NETTING AGREEMENT  
22          AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
23          tion 101 of title 11, United States Code, is amended by  
24          inserting after paragraph (38) the following new para-  
25          graphs:

1 “(38A) ‘master netting agreement’—

2 “(A) means an agreement providing for  
3 the exercise of rights, including rights of net-  
4 ting, setoff, liquidation, termination, accelera-  
5 tion, or close out, under or in connection with  
6 one or more contracts that are described in any  
7 one or more of paragraphs (1) through (5) of  
8 section 561(a), or any security agreement or ar-  
9 rangement or other credit enhancement related  
10 to one or more of the foregoing, including any  
11 guarantee or reimbursement obligation related  
12 to 1 or more of the foregoing; and

13 “(B) if the agreement contains provisions  
14 relating to agreements or transactions that are  
15 not contracts described in paragraphs (1)  
16 through (5) of section 561(a), shall be deemed  
17 to be a master netting agreement only with re-  
18 spect to those agreements or transactions that  
19 are described in any one or more of paragraphs  
20 (1) through (5) of section 561(a);

21 “(38B) ‘master netting agreement participant’  
22 means an entity that, at any time before the filing  
23 of the petition, is a party to an outstanding master  
24 netting agreement with the debtor;”.

1 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
2 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
3 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
4 MENTS UNDER THE AUTOMATIC-STAY.—

5 (1) IN GENERAL.—Section 362(b) of title 11,  
6 United States Code, as amended by sections 224,  
7 303, 311, 401, and 718, is amended—

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

11 (B) in paragraph (7), by inserting  
12 “, pledged to, under the control of,” after “held  
13 by”;

14 (C) by striking paragraph (17) and insert-  
15 ing the following:

16 “(17) under subsection (a), of the setoff by a  
17 swap participant or financial participant of a mutual  
18 debt and claim under or in connection with one or  
19 more swap agreements that constitutes the setoff of  
20 a claim against the debtor for any payment or other  
21 transfer of property due from the debtor under or in  
22 connection with any swap agreement against any  
23 payment due to the debtor from the swap partici-  
24 pant or financial participant under or in connection  
25 with any swap agreement or against cash, securities,

1 or other property held by, pledged to, under the con-  
2 trol of, or due from such swap participant or finan-  
3 cial participant to margin, guarantee, secure, or set-  
4 tle any swap agreement;” and

5 (D) by inserting after paragraph (26) the  
6 following:

7 “(27) under subsection (a), of the setoff by a  
8 master netting agreement participant of a mutual  
9 debt and claim under or in connection with one or  
10 more master netting agreements or any contract or  
11 agreement subject to such agreements that con-  
12 stitutes the setoff of a claim against the debtor for  
13 any payment or other transfer of property due from  
14 the debtor under or in connection with such agree-  
15 ments or any contract or agreement subject to such  
16 agreements against any payment due to the debtor  
17 from such master netting agreement participant  
18 under or in connection with such agreements or any  
19 contract or agreement subject to such agreements or  
20 against cash, securities, or other property held by,  
21 pledged to, under the control of, or due from such  
22 master netting agreement participant to margin,  
23 guarantee, secure, or settle such agreements or any  
24 contract or agreement subject to such agreements,  
25 to the extent that such participant is eligible to exer-

1       cise such offset rights under paragraph (6), (7), or  
2       (17) for each individual contract covered by the mas-  
3       ter netting agreement in issue.”.

4           (2) LIMITATION.—Section 362 of title 11,  
5       United States Code, as amended by sections 106,  
6       305, 311, and 441, is amended by adding at the end  
7       the following:

8       “(o) The exercise of rights not subject to the stay  
9       arising under subsection (a) pursuant to paragraph (6),  
10      (7), (17), or (27) of subsection (b) shall not be stayed  
11      by any order of a court or administrative agency in any  
12      proceeding under this title.”.

13       (e) LIMITATION OF AVOIDANCE POWERS UNDER  
14      MASTER NETTING AGREEMENT.—Section 546 of title 11,  
15      United States Code, is amended—

16           (1) in subsection (g) (as added by section 103  
17      of Public Law 101–311)—

18           (A) by striking “under a swap agreement”;

19           (B) by striking “in connection with a swap  
20      agreement” and inserting “under or in connec-  
21      tion with any swap agreement”; and

22           (C) by inserting “or financial participant”  
23      after “swap participant” each place such term  
24      appears; and

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

1       “(j) Notwithstanding sections 544, 545, 547,  
2 548(a)(1)(B), and 548(b) the trustee may not avoid a  
3 transfer made by or to a master netting agreement partici-  
4 pant under or in connection with any master netting  
5 agreement or any individual contract covered thereby that  
6 is made before the commencement of the case, except  
7 under section 548(a)(1)(A) and except to the extent that  
8 the trustee could otherwise avoid such a transfer made  
9 under an individual contract covered by such master net-  
10 ting agreement.”.

11       (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
12 AGREEMENTS.—Section 548(d)(2) of title 11, United  
13 States Code, is amended—

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

16           (2) in subparagraph (D), by striking the period  
17 and inserting “; and”; and

18           (3) by adding at the end the following new sub-  
19 paragraph:

20           “(E) a master netting agreement participant  
21 that receives a transfer in connection with a master  
22 netting agreement or any individual contract covered  
23 thereby takes for value to the extent of such trans-  
24 fer, except that, with respect to a transfer under any  
25 individual contract covered thereby, to the extent

1 that such master netting agreement participant oth-  
2 erwise did not take (or is otherwise not deemed to  
3 have taken) such transfer for value.”.

4 (g) TERMINATION OR ACCELERATION OF SECURITIES  
5 CONTRACTS.—Section 555 of title 11, United States Code,  
6 is amended—

7 (1) by amending the section heading to read as  
8 follows:

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

11 and

12 (2) in the first sentence, by striking  
13 “liquidation” and inserting “liquidation, termi-  
14 nation, or acceleration”.

15 (h) TERMINATION OR ACCELERATION OF COMMOD-  
16 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
17 United States Code, is amended—

18 (1) by amending the section heading to read as  
19 follows:

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

23 (2) in the first sentence, by striking  
24 “liquidation” and inserting “liquidation, termi-  
25 nation, or acceleration”; and

1           (3) in the second sentence, by striking “As  
2           used” and all that follows through “right,” and in-  
3           serting “As used in this section, the term  
4           ‘contractual right’ includes a right set forth in a rule  
5           or bylaw of a derivatives clearing organization (as  
6           defined in the Commodity Exchange Act), a multi-  
7           lateral clearing organization (as defined in the Fed-  
8           eral Deposit Insurance Corporation Improvement  
9           Act of 1991), a national securities exchange, a na-  
10          tional securities association, a securities clearing  
11          agency, a contract market designated under the  
12          Commodity Exchange Act, a derivatives transaction  
13          execution facility registered under the Commodity  
14          Exchange Act, or a board of trade (as defined in the  
15          Commodity Exchange Act) or in a resolution of the  
16          governing board thereof and a right,”.

17          (i) TERMINATION OR ACCELERATION OF REPUR-  
18          CHASE AGREEMENTS.—Section 559 of title 11, United  
19          States Code, is amended—

20                 (1) by amending the section heading to read as  
21          follows:

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

3 (2) in the first sentence, by striking  
4 “liquidation” and inserting “liquidation, termi-  
5 nation, or acceleration”; and

6 (3) in the third sentence, by striking “As used”  
7 and all that follows through “right,” and inserting  
8 “As used in this section, the term ‘contractual right’  
9 includes a right set forth in a rule or bylaw of a de-  
10 rivatives clearing organization (as defined in the  
11 Commodity Exchange Act), a multilateral clearing  
12 organization (as defined in the Federal Deposit In-  
13 surance Corporation Improvement Act of 1991), a  
14 national securities exchange, a national securities as-  
15 sociation, a securities clearing agency, a contract  
16 market designated under the Commodity Exchange  
17 Act, a derivatives transaction execution facility reg-  
18 istered under the Commodity Exchange Act, or a  
19 board of trade (as defined in the Commodity Ex-  
20 change Act) or in a resolution of the governing  
21 board thereof and a right,”.

22 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
23 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
24 States Code, is amended—

25 (1) by amending the section heading to read as  
26 follows:

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

3 (2) in the first sentence, by striking  
4 “termination of a swap agreement” and inserting  
5 “liquidation, termination, or acceleration of one or  
6 more swap agreements”;

7 (3) by striking “in connection with any swap  
8 agreement” and inserting “in connection with the  
9 termination, liquidation, or acceleration of one or  
10 more swap agreements”; and

11 (4) in the second sentence, by striking “As  
12 used” and all that follows through “right,” and in-  
13 sserting “As used in this section, the term  
14 ‘contractual right’ includes a right set forth in a rule  
15 or bylaw of a derivatives clearing organization (as  
16 defined in the Commodity Exchange Act), a multi-  
17 lateral clearing organization (as defined in the Fed-  
18 eral Deposit Insurance Corporation Improvement  
19 Act of 1991), a national securities exchange, a na-  
20 tional securities association, a securities clearing  
21 agency, a contract market designated under the  
22 Commodity Exchange Act, a derivatives transaction  
23 execution facility registered under the Commodity  
24 Exchange Act, or a board of trade (as defined in the  
25 Commodity Exchange Act) or in a resolution of the  
26 governing board thereof and a right,”.

1 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
2 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
3 ACROSS CONTRACTS.—

4 (1) IN GENERAL.—Title 11, United States  
5 Code, is amended by inserting after section 560 the  
6 following:

7 **“§ 561. Contractual right to terminate, liquidate, ac-**  
8 **celerate, or offset under a master netting**  
9 **agreement and across contracts; pro-**  
10 **ceedings under chapter 15**

11 “(a) Subject to subsection (b), the exercise of any  
12 contractual right, because of a condition of the kind speci-  
13 fied in section 365(e)(1), to cause the termination, liquida-  
14 tion, or acceleration of or to offset or net termination val-  
15 ues, payment amounts, or other transfer obligations aris-  
16 ing under or in connection with one or more (or the termi-  
17 nation, liquidation, or acceleration of one or more)—

18 “(1) securities contracts, as defined in section  
19 741(7);

20 “(2) commodity contracts, as defined in section  
21 761(4);

22 “(3) forward contracts;

23 “(4) repurchase agreements;

24 “(5) swap agreements; or

25 “(6) master netting agreements,

1 shall not be stayed, avoided, or otherwise limited by oper-  
2 ation of any provision of this title or by any order of a  
3 court or administrative agency in any proceeding under  
4 this title.

5       “(b)(1) A party may exercise a contractual right de-  
6 scribed in subsection (a) to terminate, liquidate, or accel-  
7 erate only to the extent that such party could exercise such  
8 a right under section 555, 556, 559, or 560 for each indi-  
9 vidual contract covered by the master netting agreement  
10 in issue.

11       “(2) If a debtor is a commodity broker subject to sub-  
12 chapter IV of chapter 7—

13               “(A) a party may not net or offset an obligation  
14 to the debtor arising under, or in connection with,  
15 a commodity contract traded on or subject to the  
16 rules of a contract market designated under the  
17 Commodity Exchange Act or a derivatives trans-  
18 action execution facility registered under the Com-  
19modity Exchange Act against any claim arising  
20 under, or in connection with, other instruments, con-  
21 tracts, or agreements listed in subsection (a) except  
22 to the extent that the party has positive net equity  
23 in the commodity accounts at the debtor, as cal-  
24 culated under such subchapter; and

1           “(B) another commodity broker may not net or  
2           offset an obligation to the debtor arising under, or  
3           in connection with, a commodity contract entered  
4           into or held on behalf of a customer of the debtor  
5           and traded on or subject to the rules of a contract  
6           market designated under the Commodity Exchange  
7           Act or a derivatives transaction execution facility  
8           registered under the Commodity Exchange Act  
9           against any claim arising under, or in connection  
10          with, other instruments, contracts, or agreements  
11          listed in subsection (a).

12          “(3) No provision of subparagraph (A) or (B) of  
13          paragraph (2) shall prohibit the offset of claims and obli-  
14          gations that arise under—

15                 “(A) a cross-margining agreement or similar  
16                 arrangement that has been approved by the Com-  
17                 modity Futures Trading Commission or submitted  
18                 to the Commodity Futures Trading Commission  
19                 under paragraph (1) or (2) of section 5c(c) of the  
20                 Commodity Exchange Act and has not been abro-  
21                 gated or rendered ineffective by the Commodity Fu-  
22                 tures Trading Commission; or

23                 “(B) any other netting agreement between a  
24                 clearing organization (as defined in section 761) and

1 another entity that has been approved by the Com-  
2 modity Futures Trading Commission.

3 “(c) As used in this section, the term ‘contractual  
4 right’ includes a right set forth in a rule or bylaw of a  
5 derivatives clearing organization (as defined in the Com-  
6 modity Exchange Act), a multilateral clearing organiza-  
7 tion (as defined in the Federal Deposit Insurance Cor-  
8 poration Improvement Act of 1991), a national securities  
9 exchange, a national securities association, a securities  
10 clearing agency, a contract market designated under the  
11 Commodity Exchange Act, a derivatives transaction execu-  
12 tion facility registered under the Commodity Exchange  
13 Act, or a board of trade (as defined in the Commodity  
14 Exchange Act) or in a resolution of the governing board  
15 thereof, and a right, whether or not evidenced in writing,  
16 arising under common law, under law merchant, or by rea-  
17 son of normal business practice.

18 “(d) Any provisions of this title relating to securities  
19 contracts, commodity contracts, forward contracts, repur-  
20 chase agreements, swap agreements, or master netting  
21 agreements shall apply in a case under chapter 15, so that  
22 enforcement of contractual provisions of such contracts  
23 and agreements in accordance with their terms will not  
24 be stayed or otherwise limited by operation of any provi-  
25 sion of this title or by order of a court in any case under

1 this title, and to limit avoidance powers to the same extent  
2 as in a proceeding under chapter 7 or 11 of this title (such  
3 enforcement not to be limited based on the presence or  
4 absence of assets of the debtor in the United States).”.

5 (2) CONFORMING AMENDMENT.—The table of  
6 sections for chapter 5 of title 11, United States  
7 Code, is amended by inserting after the item relating  
8 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a  
master netting agreement and across contracts; proceedings  
under chapter 15.”.

9 (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
10 United States Code, is amended by inserting after section  
11 766 the following:

12 **“§ 767. Commodity broker liquidation and forward**  
13 **contract merchants, commodity brokers,**  
14 **stockbrokers, financial institutions, fi-**  
15 **ancial participants, securities clearing**  
16 **agencies, swap participants, repo partici-**  
17 **pants, and master netting agreement par-**  
18 **ticipants**

19 “Notwithstanding any other provision of this title,  
20 the exercise of rights by a forward contract merchant,  
21 commodity broker, stockbroker, financial institution, fi-  
22 nancial participant, securities clearing agency, swap par-  
23 ticipant, repo participant, or master netting agreement  
24 participant under this title shall not affect the priority of

1 any unsecured claim it may have after the exercise of such  
2 rights.”.

3 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
4 United States Code, is amended by inserting after section  
5 752 the following:

6 **“§ 753. Stockbroker liquidation and forward contract**  
7 **merchants, commodity brokers, stock-**  
8 **brokers, financial institutions, financial**  
9 **participants, securities clearing agencies,**  
10 **swap participants, repo participants, and**  
11 **master netting agreement participants**

12 “Notwithstanding any other provision of this title,  
13 the exercise of rights by a forward contract merchant,  
14 commodity broker, stockbroker, financial institution, secu-  
15 rities clearing agency, swap participant, repo participant,  
16 financial participant, or master netting agreement partici-  
17 pant under this title shall not affect the priority of any  
18 unsecured claim it may have after the exercise of such  
19 rights.”.

20 (n) SETOFF.—Section 553 of title 11, United States  
21 Code, is amended—

22 (1) in subsection (a)(2)(B)(ii), by inserting be-  
23 fore the semicolon the following: “(except for a  
24 setoff of a kind described in section 362(b)(6),

1 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559,  
2 560, or 561”);

3 (2) in subsection (a)(3)(C), by inserting before  
4 the period the following: “(except for a setoff of a  
5 kind described in section 362(b)(6), 362(b)(7),  
6 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561  
7 of this title)”; and

8 (3) in subsection (b)(1), by striking  
9 “362(b)(14),” and inserting “362(b)(17),  
10 362(b)(27), 555, 556, 559, 560, 561.”.

11 (o) SECURITIES CONTRACTS, COMMODITY CON-  
12 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
13 States Code, is amended—

14 (1) in section 362(b)(6), by striking “financial  
15 institutions,” each place such term appears and in-  
16 serting “financial institution, financial participant,”;

17 (2) in sections 362(b)(7) and 546(f), by insert-  
18 ing “or financial participant” after “repo partici-  
19 pant” each place such term appears;

20 (3) in section 546(e), by inserting “financial  
21 participant,” after “financial institution,”;

22 (4) in section 548(d)(2)(B), by inserting  
23 “financial participant,” after “financial institution,”;

24 (5) in section 548(d)(2)(C), by inserting “or fi-  
25 nancial participant” after “repo participant”;

1           (6) in section 548(d)(2)(D), by inserting “or fi-  
2           nancial participant” after “swap participant”;

3           (7) in section 555—

4           (A) by inserting “financial participant,”  
5           after “financial institution,”; and

6           (B) by striking the second sentence and in-  
7           serting the following: “As used in this section,  
8           the term ‘contractual right’ includes a right set  
9           forth in a rule or bylaw of a derivatives clearing  
10          organization (as defined in the Commodity Ex-  
11          change Act), a multilateral clearing organiza-  
12          tion (as defined in the Federal Deposit Insur-  
13          ance Corporation Improvement Act of 1991), a  
14          national securities exchange, a national securi-  
15          ties association, a securities clearing agency, a  
16          contract market designated under the Com-  
17          modity Exchange Act, a derivatives transaction  
18          execution facility registered under the Com-  
19          modity Exchange Act, or a board of trade (as  
20          defined in the Commodity Exchange Act), or in  
21          a resolution of the governing board thereof, and  
22          a right, whether or not in writing, arising under  
23          common law, under law merchant, or by reason  
24          of normal business practice”;

1 (8) in section 556, by inserting “, financial par-  
2 ticipant,” after “commodity broker”;

3 (9) in section 559, by inserting “or financial  
4 participant” after “repo participant” each place  
5 such term appears; and

6 (10) in section 560, by inserting “or financial  
7 participant” after “swap participant”.

8 (p) CONFORMING AMENDMENTS.—Title 11, United  
9 States Code, is amended—

10 (1) in the table of sections for chapter 5—

11 (A) by amending the items relating to sec-  
12 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.”;

13 and

14 (B) by amending the items relating to sec-  
15 tions 559 and 560 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.”;

16 and

17 (2) in the table of sections for chapter 7—

18 (A) by inserting after the item relating to  
19 section 766 the following:

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

1 and

2 (B) by inserting after the item relating to  
3 section 752 the following:

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

4 **SEC. 908. RECORDKEEPING REQUIREMENTS.**

5 Section 11(e)(8) of the Federal Deposit Insurance  
6 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the  
7 end the following new subparagraph:

8 “(H) RECORDKEEPING REQUIREMENTS.—  
9 The Corporation, in consultation with the ap-  
10 propriate Federal banking agencies, may pre-  
11 scribe regulations requiring more detailed rec-  
12 ordkeeping by any insured depository institu-  
13 tion with respect to qualified financial contracts  
14 (including market valuations) only if such in-  
15 sured depository institution is in a troubled  
16 condition (as such term is defined by the Cor-  
17 poration pursuant to section 32).”.

18 **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-  
19 TION REQUIREMENT.**

20 Section 13(e)(2) of the Federal Deposit Insurance  
21 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

1           “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
2 EXECUTION REQUIREMENT.—An agreement to pro-  
3 vide for the lawful collateralization of—

4           “(A) deposits of, or other credit extension  
5 by, a Federal, State, or local governmental enti-  
6 ty, or of any depositor referred to in section  
7 11(a)(2), including an agreement to provide col-  
8 lateral in lieu of a surety bond;

9           “(B) bankruptcy estate funds pursuant to  
10 section 345(b)(2) of title 11, United States  
11 Code;

12           “(C) extensions of credit, including any  
13 overdraft, from a Federal reserve bank or Fed-  
14 eral home loan bank; or

15           “(D) one or more qualified financial con-  
16 tracts, as defined in section 11(e)(8)(D),  
17 shall not be deemed invalid pursuant to paragraph  
18 (1)(B) solely because such agreement was not exe-  
19 cuted contemporaneously with the acquisition of the  
20 collateral or because of pledges, delivery, or substi-  
21 tution of the collateral made in accordance with such  
22 agreement.”.

23 **SEC. 910. DAMAGE MEASURE.**

24           (a) IN GENERAL.—Title 11, United States Code, is  
25 amended—

1           (1) by inserting after section 561, as added by  
2           section 907, the following:

3   **“§ 562. Timing of damage measurement in connection**  
4                 **with swap agreements, securities con-**  
5                 **tracts, forward contracts, commodity con-**  
6                 **tracts, repurchase agreements, and mas-**  
7                 **ter netting agreements**

8           “(a) If the trustee rejects a swap agreement, securi-  
9           ties contract (as defined in section 741), forward contract,  
10          commodity contract (as defined in section 761), repur-  
11          chase agreement, or master netting agreement pursuant  
12          to section 365(a), or if a forward contract merchant,  
13          stockbroker, financial institution, securities clearing agen-  
14          cy, repo participant, financial participant, master netting  
15          agreement participant, or swap participant liquidates, ter-  
16          minates, or accelerates such contract or agreement, dam-  
17          ages shall be measured as of the earlier of—

18                 “(1) the date of such rejection; or

19                 “(2) the date or dates of such liquidation, ter-  
20          mination, or acceleration.

21          “(b) If there are not any commercially reasonable de-  
22          terminants of value as of any date referred to in para-  
23          graph (1) or (2) of subsection (a), damages shall be meas-  
24          ured as of the earliest subsequent date or dates on which  
25          there are commercially reasonable determinants of value.

1           “(c) For the purposes of subsection (b), if damages  
2 are not measured as of the date or dates of rejection, liq-  
3 uidation, termination, or acceleration, and the forward  
4 contract merchant, stockbroker, financial institution, secu-  
5 rities clearing agency, repo participant, financial partici-  
6 pant, master netting agreement participant, or swap par-  
7 ticipant or the trustee objects to the timing of the meas-  
8 urement of damages—

9           “(1) the trustee, in the case of an objection by  
10 a forward contract merchant, stockbroker, financial  
11 institution, securities clearing agency, repo partici-  
12 pant, financial participant, master netting agree-  
13 ment participant, or swap participant; or

14           “(2) the forward contract merchant, stock-  
15 broker, financial institution, securities clearing agen-  
16 cy, repo participant, financial participant, master  
17 netting agreement participant, or swap participant,  
18 in the case of an objection by the trustee,

19 has the burden of proving that there were no commercially  
20 reasonable determinants of value as of such date or  
21 dates.”; and

22           (2) in the table of sections for chapter 5, by in-  
23 serting after the item relating to section 561 (as  
24 added by section 907) the following new item:

“562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.

1 (b) CLAIMS ARISING FROM REJECTION.—Section  
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

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

5 “(2) A claim for damages calculated in accordance  
6 with section 562 of this title shall be allowed under sub-  
7 section (a), (b), or (c), or disallowed under subsection (d)  
8 or (e), as if such claim had arisen before the date of the  
9 filing of the petition.”.

10 **SEC. 911. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection  
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of  
16 title 11, United States Code, neither the  
17 filing of an application under subsection  
18 (a)(3) nor any order or decree obtained by  
19 SIPC from the court shall operate as a  
20 stay of any contractual rights of a creditor  
21 to liquidate, terminate, or accelerate a se-  
22 curities contract, commodity contract, for-  
23 ward contract, repurchase agreement, swap  
24 agreement, or master netting agreement,  
25 as those terms are defined in sections 101,

1           741, and 761 of title 11, United States  
2           Code, to offset or net termination values,  
3           payment amounts, or other transfer obliga-  
4           tions arising under or in connection with  
5           one or more of such contracts or agree-  
6           ments, or to foreclose on any cash collat-  
7           eral pledged by the debtor, whether or not  
8           with respect to one or more of such con-  
9           tracts or agreements.

10           “(ii) Notwithstanding clause (i), such  
11           application, order, or decree may operate  
12           as a stay of the foreclosure on, or disposi-  
13           tion of, securities collateral pledged by the  
14           debtor, whether or not with respect to one  
15           or more of such contracts or agreements,  
16           securities sold by the debtor under a repur-  
17           chase agreement, or securities lent under a  
18           securities lending agreement.

19           “(iii) As used in this subparagraph,  
20           the term ‘contractual right’ includes a  
21           right set forth in a rule or bylaw of a na-  
22           tional securities exchange, a national secu-  
23           rities association, or a securities clearing  
24           agency, a right set forth in a bylaw of a  
25           clearing organization or contract market or

1 in a resolution of the governing board  
2 thereof, and a right, whether or not in  
3 writing, arising under common law, under  
4 law merchant, or by reason of normal busi-  
5 ness practice.”.

6 **TITLE X—PROTECTION OF FAM-**  
7 **ILY FARMERS AND FAMILY**  
8 **FISHERMEN**

9 **SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

10 (a) REENACTMENT.—

11 (1) IN GENERAL.—Chapter 12 of title 11,  
12 United States Code, as reenacted by section 149 of  
13 division C of the Omnibus Consolidated and Emer-  
14 gency Supplemental Appropriations Act, 1999  
15 (Public Law 105–277), is hereby reenacted, and as  
16 here reenacted is amended by this Act.

17 (2) EFFECTIVE DATE.—Subsection (a) shall  
18 take effect on the date of the enactment of this Act.

19 (b) CONFORMING AMENDMENT.—Section 302 of the  
20 Bankruptcy Judges, United States Trustees, and Family  
21 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is  
22 amended by striking subsection (f).

1 **SEC. 1002. DEBT LIMIT INCREASE.**

2 Section 104(b) of title 11, United States Code, as  
3 amended by section 226, is amended by inserting  
4 “101(18),” after “101(3),” each place it appears.

5 **SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL**  
6 **UNITS.**

7 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title  
8 11, United States Code, is amended to read as follows:

9 “(2) provide for the full payment, in deferred  
10 cash payments, of all claims entitled to priority  
11 under section 507, unless—

12 “(A) the claim is a claim owed to a govern-  
13 mental unit that arises as a result of the sale,  
14 transfer, exchange, or other disposition of any  
15 farm asset used in the debtor’s farming oper-  
16 ation, in which case the claim shall be treated  
17 as an unsecured claim that is not entitled to  
18 priority under section 507, but the debt shall be  
19 treated in such manner only if the debtor re-  
20 ceives a discharge; or

21 “(B) the holder of a particular claim  
22 agrees to a different treatment of that claim;”.

23 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)  
24 of title 11, United States Code, as so designated by section  
25 719, is amended by striking “a State or local govern-  
26 mental unit” and inserting “any governmental unit”.

1           (c) EFFECTIVE DATE; APPLICATION OF AMEND-  
2 MENTS.—This section and the amendments made by this  
3 section shall take effect on the date of the enactment of  
4 this Act and shall not apply with respect to cases com-  
5 menced under title 11 of the United States Code before  
6 such date.

7 **SEC. 1004. DEFINITION OF FAMILY FARMER.**

8           Section 101(18) of title 11, United States Code, is  
9 amended—

10           (1) in subparagraph (A)—

11                   (A) by striking “\$1,500,000” and inserting  
12                   “\$3,237,000”; and

13                   (B) by striking “80” and inserting “50”;  
14           and

15           (2) in subparagraph (B)(ii)—

16                   (A) by striking “\$1,500,000” and inserting  
17                   “\$3,237,000”; and

18                   (B) by striking “80” and inserting “50”.

19 **SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY**  
20 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**  
21 **CENT OF INCOME FROM FARMING OPER-**  
22 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

23           Section 101(18)(A) of title 11, United States Code,  
24 is amended by striking “for the taxable year preceding the  
25 taxable year” and inserting the following:

1 “for—

2 “(i) the taxable year preceding; or

3 “(ii) each of the 2d and 3d taxable years  
4 preceding;

5 the taxable year”.

6 **SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF**  
7 **DISPOSABLE INCOME.**

8 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of  
9 title 11, United States Code, is amended—

10 (1) in subparagraph (A) by striking “or” at the  
11 end;

12 (2) in subparagraph (B) by striking the period  
13 at the end and inserting “; or”; and

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

15 “(C) the value of the property to be distributed  
16 under the plan in the 3-year period, or such longer  
17 period as the court may approve under section  
18 1222(c), beginning on the date that the first dis-  
19 tribution is due under the plan is not less than the  
20 debtor’s projected disposable income for such pe-  
21 riod.”.

22 (b) MODIFICATION OF PLAN.—Section 1229 of title  
23 11, United States Code, is amended by adding at the end  
24 the following:

25 “(d) A plan may not be modified under this section—

1           “(1) to increase the amount of any payment  
2 due before the plan as modified becomes the plan;

3           “(2) by anyone except the debtor, based on an  
4 increase in the debtor’s disposable income, to in-  
5 crease the amount of payments to unsecured credi-  
6 tors required for a particular month so that the ag-  
7 gregate of such payments exceeds the debtor’s dis-  
8 posable income for such month; or

9           “(3) in the last year of the plan by anyone ex-  
10 cept the debtor, to require payments that would  
11 leave the debtor with insufficient funds to carry on  
12 the farming operation after the plan is completed.”.

13 **SEC. 1007. FAMILY FISHERMEN.**

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

16           (1) by inserting after paragraph (7) the fol-  
17 lowing:

18           “(7A) ‘commercial fishing operation’ means—

19           “(A) the catching or harvesting of fish,  
20 shrimp, lobsters, urchins, seaweed, shellfish, or  
21 other aquatic species or products of such spe-  
22 cies; or

23           “(B) for purposes of section 109 and chap-  
24 ter 12, aquaculture activities consisting of rais-

1           ing for market any species or product described  
2           in subparagraph (A);

3           “(7B) ‘commercial fishing vessel’ means a ves-  
4           sel used by a family fisherman to carry out a com-  
5           mercial fishing operation;” and

6           (2) by inserting after paragraph (19) the fol-  
7           lowing:

8           “(19A) ‘family fisherman’ means—

9           “(A) an individual or individual and spouse  
10          engaged in a commercial fishing operation—

11          “(i) whose aggregate debts do not ex-  
12          ceed \$1,500,000 and not less than 80 per-  
13          cent of whose aggregate noncontingent, liq-  
14          uidated debts (excluding a debt for the  
15          principal residence of such individual or  
16          such individual and spouse, unless such  
17          debt arises out of a commercial fishing op-  
18          eration), on the date the case is filed, arise  
19          out of a commercial fishing operation  
20          owned or operated by such individual or  
21          such individual and spouse; and

22          “(ii) who receive from such commer-  
23          cial fishing operation more than 50 percent  
24          of such individual’s or such individual’s  
25          and spouse’s gross income for the taxable

1 year preceding the taxable year in which  
2 the case concerning such individual or such  
3 individual and spouse was filed; or

4 “(B) a corporation or partnership—

5 “(i) in which more than 50 percent of  
6 the outstanding stock or equity is held  
7 by—

8 “(I) 1 family that conducts the  
9 commercial fishing operation; or

10 “(II) 1 family and the relatives  
11 of the members of such family, and  
12 such family or such relatives conduct  
13 the commercial fishing operation; and

14 “(ii)(I) more than 80 percent of the  
15 value of its assets consists of assets related  
16 to the commercial fishing operation;

17 “(II) its aggregate debts do not ex-  
18 ceed \$1,500,000 and not less than 80 per-  
19 cent of its aggregate noncontingent, liq-  
20 uidated debts (excluding a debt for 1  
21 dwelling which is owned by such corpora-  
22 tion or partnership and which a share-  
23 holder or partner maintains as a principal  
24 residence, unless such debt arises out of a  
25 commercial fishing operation), on the date

1           the case is filed, arise out of a commercial  
2           fishing operation owned or operated by  
3           such corporation or such partnership; and

4                   “(III) if such corporation issues stock,  
5           such stock is not publicly traded;

6           “(19B) ‘family fisherman with regular annual  
7           income’ means a family fisherman whose annual in-  
8           come is sufficiently stable and regular to enable such  
9           family fisherman to make payments under a plan  
10          under chapter 12 of this title;”.

11          (b) WHO MAY BE A DEBTOR.—Section 109(f) of title  
12 11, United States Code, is amended by inserting “or fam-  
13 ily fisherman” after “family farmer”.

14          (c) CHAPTER 12.—Chapter 12 of title 11, United  
15 States Code, is amended—

16           (1) in the chapter heading, by inserting “**OR**  
17           **FISHERMAN**” after “**FAMILY FARMER**”;

18           (2) in section 1203, by inserting “or commer-  
19           cial fishing operation” after “farm”; and

20           (3) in section 1206, by striking “if the property  
21           is farmland or farm equipment” and inserting “if  
22           the property is farmland, farm equipment, or prop-  
23           erty used to carry out a commercial fishing oper-  
24           ation (including a commercial fishing vessel)”.

1 (d) CLERICAL AMENDMENT.—In the table of chap-  
 2 ters for title 11, United States Code, the item relating to  
 3 chapter 12, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family  
 Fisherman with Regular Annual Income .... 1201”.**

4 (e) APPLICABILITY.—Nothing in this section shall  
 5 change, affect, or amend the Fishery Conservation and  
 6 Management Act of 1976 (16 U.S.C. 1801, et seq.).

## 7 **TITLE XI—HEALTH CARE AND** 8 **EMPLOYEE BENEFITS**

9 **SEC. 1101. DEFINITIONS.**

10 (a) HEALTH CARE BUSINESS DEFINED.—Section  
 11 101 of title 11, United States Code, as amended by section  
 12 306, is amended—

13 (1) by redesignating paragraph (27A) as para-  
 14 graph (27B); and

15 (2) by inserting after paragraph (27) the fol-  
 16 lowing:

17 “(27A) ‘health care business’—

18 “(A) means any public or private entity  
 19 (without regard to whether that entity is orga-  
 20 nized for profit or not for profit) that is pri-  
 21 marily engaged in offering to the general public  
 22 facilities and services for—

23 “(i) the diagnosis or treatment of in-  
 24 jury, deformity, or disease; and

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

1 in offering room, board, laundry, or  
2 personal assistance with activities of  
3 daily living and incidentals to activi-  
4 ties of daily living;”.

5 (b) PATIENT AND PATIENT RECORDS DEFINED.—  
6 Section 101 of title 11, United States Code, is amended  
7 by inserting after paragraph (40) the following:

8 “(40A) ‘patient’ means any person who obtains  
9 or receives services from a health care business;

10 “(40B) ‘patient records’ means any written doc-  
11 ument relating to a patient or a record recorded in  
12 a magnetic, optical, or other form of electronic me-  
13 dium;”.

14 (c) RULE OF CONSTRUCTION.—The amendments  
15 made by subsection (a) of this section shall not affect the  
16 interpretation of section 109(b) of title 11, United States  
17 Code.

18 **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

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

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

23 “If a health care business commences a case under  
24 chapter 7, 9, or 11, and the trustee does not have a suffi-  
25 cient amount of funds to pay for the storage of patient

1 records in the manner required under applicable Federal  
2 or State law, the following requirements shall apply:

3 “(1) The trustee shall—

4 “(A) promptly publish notice, in 1 or more  
5 appropriate newspapers, that if patient records  
6 are not claimed by the patient or an insurance  
7 provider (if applicable law permits the insur-  
8 ance provider to make that claim) by the date  
9 that is 365 days after the date of that notifica-  
10 tion, the trustee will destroy the patient  
11 records; and

12 “(B) during the first 180 days of the 365-  
13 day period described in subparagraph (A),  
14 promptly attempt to notify directly each patient  
15 that is the subject of the patient records and  
16 appropriate insurance carrier concerning the  
17 patient records by mailing to the most recent  
18 known address of that patient, or a family  
19 member or contact person for that patient, and  
20 to the appropriate insurance carrier an appro-  
21 priate notice regarding the claiming or dis-  
22 posing of patient records.

23 “(2) If, after providing the notification under  
24 paragraph (1), patient records are not claimed dur-  
25 ing the 365-day period described under that para-

1 graph, the trustee shall mail, by certified mail, at  
2 the end of such 365-day period a written request to  
3 each appropriate Federal agency to request permis-  
4 sion from that agency to deposit the patient records  
5 with that agency, except that no Federal agency is  
6 required to accept patient records under this para-  
7 graph.

8 “(3) If, following the 365-day period described  
9 in paragraph (2) and after providing the notification  
10 under paragraph (1), patient records are not claimed  
11 by a patient or insurance provider, or request is not  
12 granted by a Federal agency to deposit such records  
13 with that agency, the trustee shall destroy those  
14 records by—

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

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

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 for subchapter III of chapter 3 of title 11, United States  
23 Code, is amended by adding at the end the following:

“351. Disposal of patient records.”.

1 **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**  
2 **OF CLOSING A HEALTH CARE BUSINESS AND**  
3 **OTHER ADMINISTRATIVE EXPENSES.**

4 Section 503(b) of title 11, United States Code, as  
5 amended by section 445, is amended by adding at the end  
6 the following:

7 “(8) the actual, necessary costs and expenses of  
8 closing a health care business incurred by a trustee  
9 or by a Federal agency (as defined in section 551(1)  
10 of title 5) or a department or agency of a State or  
11 political subdivision thereof, including any cost or  
12 expense incurred—

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

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

19 **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**  
20 **TIENT ADVOCATE.**

21 (a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

22 (1) APPOINTMENT OF OMBUDSMAN.—Title 11,  
23 United States Code, as amended by section 232, is  
24 amended by inserting after section 332 the fol-  
25 lowing:

1 **“§ 333. Appointment of patient care ombudsman**

2       “(a)(1) If the debtor in a case under chapter 7, 9,  
3 or 11 is a health care business, the court shall order, not  
4 later than 30 days after the commencement of the case,  
5 the appointment of an ombudsman to monitor the quality  
6 of patient care and to represent the interests of the pa-  
7 tients of the health care business unless the court finds  
8 that the appointment of such ombudsman is not necessary  
9 for the protection of patients under the specific facts of  
10 the case.

11       “(2)(A) If the court orders the appointment of an  
12 ombudsman under paragraph (1), the United States trust-  
13 ee shall appoint 1 disinterested person (other than the  
14 United States trustee) to serve as such ombudsman.

15       “(B) If the debtor is a health care business that pro-  
16 vides long-term care, then the United States trustee may  
17 appoint the State Long-Term Care Ombudsman appointed  
18 under the Older Americans Act of 1965 for the State in  
19 which the case is pending to serve as the ombudsman re-  
20 quired by paragraph (1).

21       “(C) If the United States trustee does not appoint  
22 a State Long-Term Care Ombudsman under subpara-  
23 graph (B), the court shall notify the State Long-Term  
24 Care Ombudsman appointed under the Older Americans  
25 Act of 1965 for the State in which the case is pending,

1 of the name and address of the person who is appointed  
2 under subparagraph (A).

3 “(b) An ombudsman appointed under subsection (a)  
4 shall—

5 “(1) monitor the quality of patient care pro-  
6 vided to patients of the debtor, to the extent nec-  
7 essary under the circumstances, including inter-  
8 viewing patients and physicians;

9 “(2) not later than 60 days after the date of  
10 appointment, and not less frequently than at 60-day  
11 intervals thereafter, report to the court, at a hearing  
12 or in writing, regarding the quality of patient care  
13 provided to patients of the debtor; and

14 “(3) if such ombudsman determines that the  
15 quality of patient care provided to patients of the  
16 debtor is declining significantly or is otherwise being  
17 materially compromised, file with the court a motion  
18 or a written report, with notice to the parties in in-  
19 terest immediately upon making such determination.

20 “(c)(1) An ombudsman appointed under subsection  
21 (a) shall maintain any information obtained by such om-  
22 budsman under this section that relates to patients  
23 (including information relating to patient records) as con-  
24 fidential information. Such ombudsman may not review  
25 confidential patient records unless the court approves such

1 review in advance and imposes restrictions on such om-  
 2 budsman to protect the confidentiality of such records.

3 “(2) An ombudsman appointed under subsection  
 4 (a)(2)(B) shall have access to patient records consistent  
 5 with authority of such ombudsman under the Older Amer-  
 6 icans Act of 1965 and under non-Federal laws governing  
 7 the State Long-Term Care Ombudsman program.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-  
 9 tions for subchapter II of chapter 3 of title 11,  
 10 United States Code, as amended by section 232, is  
 11 amended by adding at the end the following:

“333. Appointment of ombudsman.”.

12 (b) COMPENSATION OF OMBUDSMAN.—Section  
 13 330(a)(1) of title 11, United States Code, is amended—

14 (1) in the matter preceding subparagraph (A),  
 15 by inserting “an ombudsman appointed under sec-  
 16 tion 333, or” before “a professional person”; and

17 (2) in subparagraph (A), by inserting  
 18 “ombudsman,” before “professional person”.

19 **SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**  
 20 **TRANSFER PATIENTS.**

21 (a) IN GENERAL.—Section 704(a) of title 11, United  
 22 States Code, as amended by sections 102, 219, and 446,  
 23 is amended by adding at the end the following:



1 or any other Federal health care program (as de-  
2 fined in section 1128B(f) of the Social Security Act  
3 pursuant to title XI of such Act or title XVIII of  
4 such Act.”.

## 5 **TITLE XII—TECHNICAL** 6 **AMENDMENTS**

### 7 **SEC. 1201. DEFINITIONS.**

8 Section 101 of title 11, United States Code, as here-  
9 inbefore amended by this Act, is amended—

10 (1) by striking “In this title—” and inserting  
11 “In this title the following definitions shall apply:”;

12 (2) in each paragraph, by inserting “The term”  
13 after the paragraph designation;

14 (3) in paragraph (35)(B), by striking  
15 “paragraphs (21B) and (33)(A)” and inserting  
16 “paragraphs (23) and (35)”;

17 (4) in each of paragraphs (35A), (38), and  
18 (54A), by striking “; and” at the end and inserting  
19 a period;

20 (5) in paragraph (51B)—

21 (A) by inserting “who is not a family farm-  
22 er” after “debtor” the first place it appears;  
23 and

1 (B) by striking “thereto having aggregate”  
2 and all that follows through the end of the  
3 paragraph and inserting a semicolon;

4 (6) by striking paragraph (54) and inserting  
5 the following:

6 “(54) The term ‘transfer’ means—

7 “(A) the creation of a lien;

8 “(B) the retention of title as a security in-  
9 terest;

10 “(C) the foreclosure of a debtor’s equity of  
11 redemption; or

12 “(D) each mode, direct or indirect, abso-  
13 lute or conditional, voluntary or involuntary, of  
14 disposing of or parting with—

15 “(i) property; or

16 “(ii) an interest in property;”;

17 (7) by indenting the left margin of paragraph  
18 (54A) 2 ems to the right; and

19 (8) in each of paragraphs (1) through (35), in  
20 each of paragraphs (36), (37), (38A), (38B) and  
21 (39A), and in each of paragraphs (40) through (55),  
22 by striking the semicolon at the end and inserting a  
23 period.

1 **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

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

5 **SEC. 1203. EXTENSION OF TIME.**

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

9 **SEC. 1204. TECHNICAL AMENDMENTS.**

10 Title 11, United States Code, is amended—

11 (1) in section 109(b)(2), by striking “subsection  
12 (c) or (d) of”; and

13 (2) in section 552(b)(1), by striking “product”  
14 each place it appears and inserting “products”.

15 **SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
16 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
17 **TITIONS.**

18 Section 110(j)(4) of title 11, United States Code, as  
19 so redesignated by section 221, is amended by striking  
20 “attorney’s” and inserting “attorneys’ ”.

21 **SEC. 1206. LIMITATION ON COMPENSATION OF PROFES-**  
22 **SIONAL PERSONS.**

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

1 **SEC. 1207. EFFECT OF CONVERSION.**

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

5 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

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

9 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

10 Section 523 of title 11, United States Code, as  
11 amended by sections 215 and 314, is amended—

12 (1) by transferring paragraph (15), as added by  
13 section 304(e) of Public Law 103–394 (108 Stat.  
14 4133), so as to insert such paragraph after sub-  
15 section (a)(14A);

16 (2) in subsection (a)(9), by striking “motor ve-  
17 hicle” and inserting “motor vehicle, vessel, or air-  
18 craft”; and

19 (3) in subsection (e), by striking “a insured”  
20 and inserting “an insured”.

21 **SEC. 1210. EFFECT OF DISCHARGE.**

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

1 **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
2 **MENT.**

3 Section 525(e) of title 11, United States Code, is  
4 amended—

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

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

10 **SEC. 1212. PROPERTY OF THE ESTATE.**

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

13 **SEC. 1213. PREFERENCES.**

14 (a) IN GENERAL.—Section 547 of title 11, United  
15 States Code, as amended by section 201, is amended—

16 (1) in subsection (b), by striking “subsection  
17 (c)” and inserting “subsections (c) and (i)”; and

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

19 “(i) If the trustee avoids under subsection (b) a  
20 transfer made between 90 days and 1 year before the date  
21 of the filing of the petition, by the debtor to an entity  
22 that is not an insider for the benefit of a creditor that  
23 is an insider, such transfer shall be considered to be avoid-  
24 ed under this section only with respect to the creditor that  
25 is an insider.”.

1 (b) APPLICABILITY.—The amendments made by this  
2 section shall apply to any case that is pending or com-  
3 menced on or after the date of enactment of this Act.

4 **SEC. 1214. POSTPETITION TRANSACTIONS.**

5 Section 549(e) of title 11, United States Code, is  
6 amended—

7 (1) by inserting “an interest in” after “transfer  
8 of” each place it appears;

9 (2) by striking “such property” and inserting  
10 “such real property”; and

11 (3) by striking “the interest” and inserting  
12 “such interest”.

13 **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

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

16 **SEC. 1216. GENERAL PROVISIONS.**

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

19 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

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

1 **SEC. 1218. CONTENTS OF PLAN.**

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

5 **SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.**

6 Section 1334(d) of title 28, United States Code, is  
7 amended—

8 (1) by striking “made under this subsection”  
9 and inserting “made under subsection (c)”; and

10 (2) by striking “This subsection” and inserting  
11 “Subsection (c) and this subsection”.

12 **SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
13 **RULE.**

14 Section 156(a) of title 18, United States Code, is  
15 amended—

16 (1) in the first undesignated paragraph—

17 (A) by inserting “(1) the term” before  
18 “bankruptcy”; and

19 (B) by striking the period at the end and  
20 inserting “; and”; and

21 (2) in the second undesignated paragraph—

22 (A) by inserting “(2) the term” before  
23 “document”; and

24 (B) by striking “this title” and inserting  
25 “title 11”.

1 **SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
2 **CORPORATIONS.**

3 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
4 of title 11, United States Code, is amended by striking  
5 “only” and all that follows through the end of the sub-  
6 section and inserting “only—

7 “(1) in accordance with applicable nonbank-  
8 ruptcy law that governs the transfer of property by  
9 a corporation or trust that is not a moneyed, busi-  
10 ness, or commercial corporation or trust; and

11 “(2) to the extent not inconsistent with any re-  
12 lief granted under subsection (c), (d), (e), or (f) of  
13 section 362.”.

14 (b) CONFIRMATION OF PLAN FOR REORGANIZA-  
15 TION.—Section 1129(a) of title 11, United States Code,  
16 as amended by sections 213, 321, and 331, is amended  
17 by adding at the end the following:

18 “(17) All transfers of property of the plan shall  
19 be made in accordance with any applicable provi-  
20 sions of nonbankruptcy law that govern the transfer  
21 of property by a corporation or trust that is not a  
22 moneyed, business, or commercial corporation or  
23 trust.”.

24 (c) TRANSFER OF PROPERTY.—Section 541 of title  
25 11, United States Code, as amended by section 225, is  
26 amended by adding at the end the following:

1           “(f) Notwithstanding any other provision of this title,  
2 property that is held by a debtor that is a corporation de-  
3 scribed in section 501(c)(3) of the Internal Revenue Code  
4 of 1986 and exempt from tax under section 501(a) of such  
5 Code may be transferred to an entity that is not such a  
6 corporation, but only under the same conditions as would  
7 apply if the debtor had not filed a case under this title.”.

8           (d) APPLICABILITY.—The amendments made by this  
9 section shall apply to a case pending under title 11, United  
10 States Code, on the date of enactment of this Act, or filed  
11 under that title on or after that date of enactment, except  
12 that the court shall not confirm a plan under chapter 11  
13 of title 11, United States Code, without considering  
14 whether this section would substantially affect the rights  
15 of a party in interest who first acquired rights with respect  
16 to the debtor after the date of the petition. The parties  
17 who may appear and be heard in a proceeding under this  
18 section include the attorney general of the State in which  
19 the debtor is incorporated, was formed, or does business.

20           (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
21 tion shall be construed to require the court in which a  
22 case under chapter 11 of title 11, United States Code, is  
23 pending to remand or refer any proceeding, issue, or con-  
24 troversy to any other court or to require the approval of  
25 any other court for the transfer of property.

1 **SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SE-**  
2 **CURITY INTERESTS.**

3 Section 547(c)(3)(B) of title 11, United States Code,  
4 is amended by striking “20” and inserting “30”.

5 **SEC. 1223. COMPENSATING TRUSTEES.**

6 Section 1326 of title 11, United States Code, is  
7 amended—

8 (1) in subsection (b)—

9 (A) in paragraph (1), by striking “and”;

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

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

13 “(3) if a chapter 7 trustee has been allowed  
14 compensation due to the conversion or dismissal of  
15 the debtor’s prior case pursuant to section 707(b),  
16 and some portion of that compensation remains un-  
17 paid in a case converted to this chapter or in the  
18 case dismissed under section 707(b) and refiled  
19 under this chapter, the amount of any such unpaid  
20 compensation, which shall be paid monthly—

21 “(A) by prorating such amount over the  
22 remaining duration of the plan; and

23 “(B) by monthly payments not to exceed  
24 the greater of—

25 “(i) \$25; or

1           “(ii) the amount payable to unsecured  
2           nonpriority creditors, as provided by the  
3           plan, multiplied by 5 percent, and the re-  
4           sult divided by the number of months in  
5           the plan.”; and

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

7           “(d) Notwithstanding any other provision of this  
8           title—

9           “(1) compensation referred to in subsection  
10          (b)(3) is payable and may be collected by the trustee  
11          under that paragraph, even if such amount has been  
12          discharged in a prior proceeding under this title; and

13          “(2) such compensation is payable in a case  
14          under this chapter only to the extent permitted by  
15          subsection (b)(3).”.

16 **SEC. 1224. AMENDMENT TO SECTION 362 OF TITLE 11,**  
17 **UNITED STATES CODE.**

18          Section 362(b)(18) of title 11, United States Code,  
19 is amended to read as follows:

20          “(18) under subsection (a) of the creation or  
21          perfection of a statutory lien for an ad valorem  
22          property tax, or a special tax or special assessment  
23          on real property whether or not ad valorem, imposed  
24          by a governmental unit, if such tax or assessment  
25          comes due after the filing of the petition;”.

1 **SEC. 1225. JUDICIAL EDUCATION.**

2       The Director of the Federal Judicial Center, in con-  
3 sultation with the Director of the Executive Office for  
4 United States Trustees, shall develop materials and con-  
5 duct such training as may be useful to courts in imple-  
6 menting this Act and the amendments made by this Act,  
7 including the requirements relating to the means test and  
8 reaffirmations under section 707(b) of title 11, United  
9 States Code, as amended by this Act.

10 **SEC. 1226. RECLAMATION.**

11       (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-  
12 tion 546(c) of title 11, United States Code, is amended  
13 to read as follows:

14       “(c)(1) Except as provided in subsection (d) of this  
15 section and subsection (c) of section 507, and subject to  
16 the prior rights of holders of security interests in such  
17 goods or the proceeds thereof, the rights and powers of  
18 the trustee under sections 544(a), 545, 547, and 549 are  
19 subject to the right of a seller of goods that has sold goods  
20 to the debtor, in the ordinary course of such seller’s busi-  
21 ness, to reclaim such goods if the debtor has received such  
22 goods while insolvent, within 45 days before the date of  
23 the commencement of a case under this title, but such sell-  
24 er may not reclaim such goods unless such seller demands  
25 in writing reclamation of such goods—

1           “(A) not later than 45 days after the date of  
2 receipt of such goods by the debtor; or

3           “(B) not later than 20 days after the date of  
4 commencement of the case, if the 45-day period ex-  
5 pires after the commencement of the case.

6           “(2) If a seller of goods fails to provide notice in the  
7 manner described in paragraph (1), the seller still may  
8 assert the rights contained in section 503(b)(9).”.

9           (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of  
10 title 11, United States Code, as amended by sections 445  
11 and 1103, is amended by adding at the end the following:

12           “(9) the value of any goods received by the  
13 debtor within 20 days before the date of commence-  
14 ment of a case under this title in which the goods  
15 have been sold to the debtor in the ordinary course  
16 of such debtor’s business.”.

17 **SEC. 1227. PROVIDING REQUESTED TAX DOCUMENTS TO**  
18 **THE COURT.**

19           (a) CHAPTER 7 CASES.—The court shall not grant  
20 a discharge in the case of an individual seeking bank-  
21 ruptcy under chapter 7 of title 11, United States Code,  
22 unless requested tax documents have been provided to the  
23 court.

24           (b) CHAPTER 11 AND CHAPTER 13 CASES.—The  
25 court shall not confirm a plan of reorganization in the case

1 of an individual under chapter 11 or 13 of title 11, United  
2 States Code, unless requested tax documents have been  
3 filed with the court.

4 (c) DOCUMENT RETENTION.—The court shall de-  
5 stroy documents submitted in support of a bankruptcy  
6 claim not sooner than 3 years after the date of the conclu-  
7 sion of a bankruptcy case filed by an individual under  
8 chapter 7, 11, or 13 of title 11, United States Code. In  
9 the event of a pending audit or enforcement action, the  
10 court may extend the time for destruction of such re-  
11 quested tax documents.

12 **SEC. 1228. ENCOURAGING CREDITWORTHINESS.**

13 (a) SENSE OF THE CONGRESS.—It is the sense of the  
14 Congress that—

15 (1) certain lenders may sometimes offer credit  
16 to consumers indiscriminately, without taking steps  
17 to ensure that consumers are capable of repaying  
18 the resulting debt, and in a manner which may en-  
19 courage certain consumers to accumulate additional  
20 debt; and

21 (2) resulting consumer debt may increasingly be  
22 a major contributing factor to consumer insolvency.

23 (b) STUDY REQUIRED.—The Board of Governors of  
24 the Federal Reserve System (hereafter in this section re-  
25 ferred to as the “Board”) shall conduct a study of—

1           (1) consumer credit industry practices of solici-  
2           iting and extending credit—

3                   (A) indiscriminately;

4                   (B) without taking steps to ensure that  
5           consumers are capable of repaying the resulting  
6           debt; and

7                   (C) in a manner that encourages con-  
8           sumers to accumulate additional debt; and

9           (2) the effects of such practices on consumer  
10          debt and insolvency.

11          (c) REPORT AND REGULATIONS.—Not later than 12  
12          months after the date of enactment of this Act, the  
13          Board—

14                   (1) shall make public a report on its findings  
15          with respect to the indiscriminate solicitation and  
16          extension of credit by the credit industry;

17                   (2) may issue regulations that would require  
18          additional disclosures to consumers; and

19                   (3) may take any other actions, consistent with  
20          its existing statutory authority, that the Board finds  
21          necessary to ensure responsible industrywide prac-  
22          tices and to prevent resulting consumer debt and in-  
23          solvency.

1 **SEC. 1229. PROPERTY NO LONGER SUBJECT TO REDEMP-**  
2 **TION.**

3 Section 541(b) of title 11, United States Code, as  
4 amended by sections 225 and 323, is amended by adding  
5 at the end the following:

6 “(8) subject to subchapter III of chapter 5, any  
7 interest of the debtor in property where the debtor  
8 pledged or sold tangible personal property (other  
9 than securities or written or printed evidences of in-  
10 debtedness or title) as collateral for a loan or ad-  
11 vance of money given by a person licensed under law  
12 to make such loans or advances, where—

13 “(A) the tangible personal property is in  
14 the possession of the pledgee or transferee;

15 “(B) the debtor has no obligation to repay  
16 the money, redeem the collateral, or buy back  
17 the property at a stipulated price; and

18 “(C) neither the debtor nor the trustee  
19 have exercised any right to redeem provided  
20 under the contract or State law, in a timely  
21 manner as provided under State law and sec-  
22 tion 108(b) of this title; or”.

23 **SEC. 1230. TRUSTEES.**

24 (a) **SUSPENSION AND TERMINATION OF PANEL**  
25 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of  
26 title 28, United States Code, is amended—

1 (1) by inserting “(1)” after “(d)”; and

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

3 “(2) A trustee whose appointment under subsection  
4 (a)(1) or under subsection (b) is terminated or who ceases  
5 to be assigned to cases filed under title 11, United States  
6 Code, may obtain judicial review of the final agency deci-  
7 sion by commencing an action in the district court of the  
8 United States for the district for which the panel to which  
9 the trustee is appointed under subsection (a)(1), or in the  
10 district court of the United States for the district in which  
11 the trustee is appointed under subsection (b) resides, after  
12 first exhausting all available administrative remedies,  
13 which if the trustee so elects, shall also include an admin-  
14 istrative hearing on the record. Unless the trustee elects  
15 to have an administrative hearing on the record, the trust-  
16 ee shall be deemed to have exhausted all administrative  
17 remedies for purposes of this paragraph if the agency fails  
18 to make a final agency decision within 90 days after the  
19 trustee requests administrative remedies. The Attorney  
20 General shall prescribe procedures to implement this para-  
21 graph. The decision of the agency shall be affirmed by  
22 the district court unless it is unreasonable and without  
23 cause based on the administrative record before the agen-  
24 cy.”.

1 (b) EXPENSES OF STANDING TRUSTEES.—Section  
2 586(e) of title 28, United States Code, is amended by add-  
3 ing at the end the following:

4 “(3) After first exhausting all available administra-  
5 tive remedies, an individual appointed under subsection  
6 (b) may obtain judicial review of final agency action to  
7 deny a claim of actual, necessary expenses under this sub-  
8 section by commencing an action in the district court of  
9 the United States for the district where the individual re-  
10 sides. The decision of the agency shall be affirmed by the  
11 district court unless it is unreasonable and without cause  
12 based upon the administrative record before the agency.

13 “(4) The Attorney General shall prescribe procedures  
14 to implement this subsection.”.

15 **SEC. 1231. BANKRUPTCY FORMS.**

16 Section 2075 of title 28, United States Code, is  
17 amended by adding at the end the following:

18 “The bankruptcy rules promulgated under this section  
19 shall prescribe a form for the statement required under  
20 section 707(b)(2)(C) of title 11 and may provide general  
21 rules on the content of such statement.”.

22 **SEC. 1232. DIRECT APPEALS OF BANKRUPTCY MATTERS TO**  
23 **COURTS OF APPEALS.**

24 (a) APPEALS.—Section 158 of title 28, United States  
25 Code, is amended—

1           (1) in subsection (c)(1), by striking “Subject to  
2           subsection (b),” and inserting “Subject to sub-  
3           sections (b) and (d)(2),”; and

4           (2) in subsection (d)—

5                 (A) by inserting “(1)” after “(d)”; and

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

7           “(2)(A) The appropriate court of appeals shall have  
8           jurisdiction of appeals described in the first sentence of  
9           subsection (a) if the bankruptcy court, the district court,  
10          or the bankruptcy appellate panel involved, acting on its  
11          own motion or on the request of a party to the judgment,  
12          order, or decree described in such first sentence, or all the  
13          appellants and appellees (if any) acting jointly, certify  
14          that—

15                 “(i) the judgment, order, or decree involves a  
16                 question of law as to which there is no controlling  
17                 decision of the court of appeals for the circuit or of  
18                 the Supreme Court of the United States, or involves  
19                 a matter of public importance;

20                 “(ii) the judgment, order, or decree involves a  
21                 question of law requiring resolution of conflicting de-  
22                 cisions; or

23                 “(iii) an immediate appeal from the judgment,  
24                 order, or decree may materially advance the progress

1 of the case or proceeding in which the appeal is  
2 taken;  
3 and if the court of appeals authorizes the direct appeal  
4 of the judgment, order, or decree.

5 “(B) If the bankruptcy court, the district court, or  
6 the bankruptcy appellate panel—

7 “(i) on its own motion or on the request of a  
8 party, determines that a circumstance specified in  
9 clause (i), (ii), or (iii) of subparagraph (A) exists; or

10 “(ii) receives a request made by a majority of  
11 the appellants and a majority of appellees (if any)  
12 to make the certification described in subparagraph  
13 (A);

14 then the bankruptcy court, the district court, or the bank-  
15 ruptcy appellate panel shall make the certification de-  
16 scribed in subparagraph (A).

17 “(C) The parties may supplement the certification  
18 with a short statement of the basis for the certification.

19 “(D) An appeal under this paragraph does not stay  
20 any proceeding of the bankruptcy court, the district court,  
21 or the bankruptcy appellate panel from which the appeal  
22 is taken, unless the respective bankruptcy court, district  
23 court, or bankruptcy appellate panel, or the court of ap-  
24 peals in which the appeal is pending, issues a stay of such  
25 proceeding pending the appeal.

1       “(E) Any request under subparagraph (B) for certifi-  
2 cation shall be made not later than 60 days after the entry  
3 of the judgment, order, or decree.”.

4       (b) PROCEDURAL RULES.—

5           (1) TEMPORARY APPLICATION.—A provision of  
6 this subsection shall apply to appeals under section  
7 158(d)(2) of title 28, United States Code, until a  
8 rule of practice and procedure relating to such provi-  
9 sion and such appeals is promulgated or amended  
10 under chapter 131 of such title.

11          (2) CERTIFICATION.—A district court, a bank-  
12 ruptcy court, or a bankruptcy appellate panel may  
13 make a certification under section 158(d)(2) of title  
14 28, United States Code, only with respect to matters  
15 pending in the respective bankruptcy court, district  
16 court, or bankruptcy appellate panel.

17          (3) PROCEDURE.—Subject to any other provi-  
18 sion of this subsection, an appeal authorized by the  
19 court of appeals under section 158(d)(2)(A) of title  
20 28, United States Code, shall be taken in the man-  
21 ner prescribed in subdivisions (a)(1), (b), (c), and  
22 (d) of rule 5 of the Federal Rules of Appellate Pro-  
23 cedure. For purposes of subdivision (a)(1) of rule  
24 5—

1 (A) a reference in such subdivision to a  
2 district court shall be deemed to include a ref-  
3 erence to a bankruptcy court and a bankruptcy  
4 appellate panel, as appropriate;

5 (B) a reference in such subdivision to the  
6 parties requesting permission to appeal to be  
7 served with the petition shall be deemed to in-  
8 clude a reference to the parties to the judg-  
9 ment, order, or decree from which the appeal is  
10 taken.

11 (4) FILING OF PETITION WITH ATTACHMENT.—

12 A petition requesting permission to appeal, that is  
13 based on a certification made under subparagraph  
14 (A) or (B) of section 158(d)(2) shall—

15 (A) be filed with the circuit clerk not later  
16 than 10 days after the certification is entered  
17 on the docket of the bankruptcy court, the dis-  
18 trict court, or the bankruptcy appellate panel  
19 from which the appeal is taken; and

20 (B) have attached a copy of such certifi-  
21 cation.

22 (5) REFERENCES IN RULE 5.—For purposes of  
23 rule 5 of the Federal Rules of Appellate Proce-  
24 dure—

1           (A) a reference in such rule to a district  
2           court shall be deemed to include a reference to  
3           a bankruptcy court and to a bankruptcy appel-  
4           late panel; and

5           (B) a reference in such rule to a district  
6           clerk shall be deemed to include a reference to  
7           a clerk of a bankruptcy court and to a clerk of  
8           a bankruptcy appellate panel.

9           (6) APPLICATION OF RULES.—The Federal  
10          Rules of Appellate Procedure shall apply in the  
11          courts of appeals with respect to appeals authorized  
12          under section 158(d)(2)(A), to the extent relevant  
13          and as if such appeals were taken from final judg-  
14          ments, orders, or decrees of the district courts or  
15          bankruptcy appellate panels exercising appellate ju-  
16          risdiction under subsection (a) or (b) of section 158  
17          of title 28, United States Code.

18 **SEC. 1233. INVOLUNTARY CASES.**

19          (a) AMENDMENTS.—Section 303 of title 11, United  
20          States Code, is amended—

21                 (1) in subsection (b)(1), by—

22                         (A) inserting “as to liability or amount”  
23                         after “bona fide dispute”; and

1 (B) striking “if such claims” and inserting  
2 “if such noncontingent, undisputed claims”;  
3 and

4 (2) in subsection (h)(1), by inserting “as to li-  
5 ability or amount” before the semicolon at the end.

6 (b) EFFECTIVE DATE; APPLICATION OF AMEND-  
7 MENTS.—This section and the amendments made by this  
8 section shall take effect on the date of the enactment of  
9 this Act and shall apply with respect to cases commenced  
10 under title 11 of the United States Code before, on, and  
11 after such date.

12 **SEC. 1234. FEDERAL ELECTION LAW FINES AND PENALTIES**  
13 **AS NONDISCHARGEABLE DEBT.**

14 Section 523(a) of title 11, United States Code, as  
15 amended by section 314, is amended by inserting after  
16 paragraph (14A) the following:

17 “(14B) incurred to pay fines or penalties im-  
18 posed under Federal election law;”.

19 **TITLE XIII—CONSUMER CREDIT**  
20 **DISCLOSURE**

21 **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**  
22 **CREDIT PLAN.**

23 (a) MINIMUM PAYMENT DISCLOSURES.—Section  
24 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))  
25 is amended by adding at the end the following:

1           “(11)(A) In the case of an open end credit plan  
2           that requires a minimum monthly payment of not  
3           more than 4 percent of the balance on which finance  
4           charges are accruing, the following statement, lo-  
5           cated on the front of the billing statement, disclosed  
6           clearly and conspicuously: ‘Minimum Payment  
7           Warning: Making only the minimum payment will  
8           increase the interest you pay and the time it takes  
9           to repay your balance. For example, making only the  
10          typical 2% minimum monthly payment on a balance  
11          of \$1,000 at an interest rate of 17% would take 88  
12          months to repay the balance in full. For an estimate  
13          of the time it would take to repay your balance,  
14          making only minimum payments, call this toll-free  
15          number: \_\_\_\_\_.’ (the blank space to be  
16          filled in by the creditor).

17          “(B) In the case of an open end credit plan  
18          that requires a minimum monthly payment of more  
19          than 4 percent of the balance on which finance  
20          charges are accruing, the following statement, in a  
21          prominent location on the front of the billing state-  
22          ment, disclosed clearly and conspicuously: ‘Minimum  
23          Payment Warning: Making only the required min-  
24          imum payment will increase the interest you pay and  
25          the time it takes to repay your balance. Making a

1 typical 5% minimum monthly payment on a balance  
2 of \$300 at an interest rate of 17% would take 24  
3 months to repay the balance in full. For an estimate  
4 of the time it would take to repay your balance,  
5 making only minimum monthly payments, call this  
6 toll-free number: \_\_\_\_\_.’ (the blank space to  
7 be filled in by the creditor).

8 “(C) Notwithstanding subparagraphs (A) and  
9 (B), in the case of a creditor with respect to which  
10 compliance with this title is enforced by the Federal  
11 Trade Commission, the following statement, in a  
12 prominent location on the front of the billing state-  
13 ment, disclosed clearly and conspicuously: ‘Minimum  
14 Payment Warning: Making only the required min-  
15 imum payment will increase the interest you pay and  
16 the time it takes to repay your balance. For exam-  
17 ple, making only the typical 5% minimum monthly  
18 payment on a balance of \$300 at an interest rate of  
19 17% would take 24 months to repay the balance in  
20 full. For an estimate of the time it would take to  
21 repay your balance, making only minimum monthly  
22 payments, call the Federal Trade Commission at  
23 this toll-free number: \_\_\_\_\_.’ (the blank  
24 space to be filled in by the creditor). A creditor who

1 is subject to this subparagraph shall not be subject  
2 to subparagraph (A) or (B).

3 “(D) Notwithstanding subparagraph (A), (B),  
4 or (C), in complying with any such subparagraph, a  
5 creditor may substitute an example based on an in-  
6 terest rate that is greater than 17 percent. Any  
7 creditor that is subject to subparagraph (B) may  
8 elect to provide the disclosure required under sub-  
9 paragraph (A) in lieu of the disclosure required  
10 under subparagraph (B).

11 “(E) The Board shall, by rule, periodically re-  
12 calculate, as necessary, the interest rate and repay-  
13 ment period under subparagraphs (A), (B), and (C).

14 “(F)(i) The toll-free telephone number disclosed  
15 by a creditor or the Federal Trade Commission  
16 under subparagraph (A), (B), or (G), as appro-  
17 priate, may be a toll-free telephone number estab-  
18 lished and maintained by the creditor or the Federal  
19 Trade Commission, as appropriate, or may be a toll-  
20 free telephone number established and maintained  
21 by a third party for use by the creditor or multiple  
22 creditors or the Federal Trade Commission, as ap-  
23 propriate. The toll-free telephone number may con-  
24 nect consumers to an automated device through  
25 which consumers may obtain information described

1 in subparagraph (A), (B), or (C), by inputting infor-  
2 mation using a touch-tone telephone or similar de-  
3 vice, if consumers whose telephones are not equipped  
4 to use such automated device are provided the op-  
5 portunity to be connected to an individual from  
6 whom the information described in subparagraph  
7 (A), (B), or (C), as applicable, may be obtained. A  
8 person that receives a request for information de-  
9 scribed in subparagraph (A), (B), or (C) from an ob-  
10 ligor through the toll-free telephone number dis-  
11 closed under subparagraph (A), (B), or (C), as ap-  
12 plicable, shall disclose in response to such request  
13 only the information set forth in the table promul-  
14 gated by the Board under subparagraph (H)(i).

15 “(ii)(I) The Board shall establish and maintain  
16 for a period not to exceed 24 months following the  
17 effective date of the Bankruptcy Abuse Prevention  
18 and Consumer Protection Act of 2002, a toll-free  
19 telephone number, or provide a toll-free telephone  
20 number established and maintained by a third party,  
21 for use by creditors that are depository institutions  
22 (as defined in section 3 of the Federal Deposit In-  
23 surance Act), including a Federal credit union or  
24 State credit union (as defined in section 101 of the  
25 Federal Credit Union Act, with total assets not ex-

1 ceeding \$250,000,000. The toll-free telephone num-  
2 ber may connect consumers to an automated device  
3 through which consumers may obtain information  
4 described in subparagraph (A) or (B), as applicable,  
5 by inputting information using a touch-tone tele-  
6 phone or similar device, if consumers whose tele-  
7 phones are not equipped to use such automated de-  
8 vice are provided the opportunity to be connected to  
9 an individual from whom the information described  
10 in subparagraph (A) or (B), as applicable, may be  
11 obtained. A person that receives a request for infor-  
12 mation described in subparagraph (A) or (B) from  
13 an obligor through the toll-free telephone number  
14 disclosed under subparagraph (A) or (B), as applica-  
15 ble, shall disclose in response to such request only  
16 the information set forth in the table promulgated  
17 by the Board under subparagraph (H)(i). The dollar  
18 amount contained in this subclause shall be adjusted  
19 according to an indexing mechanism established by  
20 the Board.

21 “(II) Not later than 6 months prior to the expi-  
22 ration of the 24-month period referenced in sub-  
23 clause (I), the Board shall submit to the Committee  
24 on Banking, Housing, and Urban Affairs of the Sen-  
25 ate and the Committee on Financial Services of the

1 House of Representatives a report on the program  
2 described in subclause (I).

3 “(G) The Federal Trade Commission shall es-  
4 tablish and maintain a toll-free number for the pur-  
5 pose of providing to consumers the information re-  
6 quired to be disclosed under subparagraph (C).

7 “(H) The Board shall—

8 “(i) establish a detailed table illustrating  
9 the approximate number of months that it  
10 would take to repay an outstanding balance if  
11 a consumer pays only the required minimum  
12 monthly payments and if no other advances are  
13 made, which table shall clearly present stand-  
14 ardized information to be used to disclose the  
15 information required to be disclosed under sub-  
16 paragraph (A), (B), or (C), as applicable;

17 “(ii) establish the table required under  
18 clause (i) by assuming—

19 “(I) a significant number of different  
20 annual percentage rates;

21 “(II) a significant number of different  
22 account balances;

23 “(III) a significant number of dif-  
24 ferent minimum payment amounts; and

1                   “(IV) that only minimum monthly  
2                   payments are made and no additional ex-  
3                   tensions of credit are obtained; and

4                   “(iii) promulgate regulations that provide  
5                   instructional guidance regarding the manner in  
6                   which the information contained in the table es-  
7                   tablished under clause (i) should be used in re-  
8                   sponding to the request of an obligor for any  
9                   information required to be disclosed under sub-  
10                  paragraph (A), (B), or (C).

11                  “(I) The disclosure requirements of this para-  
12                  graph do not apply to any charge card account, the  
13                  primary purpose of which is to require payment of  
14                  charges in full each month.

15                  “(J) A creditor that maintains a toll-free tele-  
16                  phone number for the purpose of providing cus-  
17                  tomers with the actual number of months that it will  
18                  take to repay the customer’s outstanding balance is  
19                  not subject to the requirements of subparagraph (A)  
20                  or (B).

21                  “(K) A creditor that maintains a toll-free tele-  
22                  phone number for the purpose of providing cus-  
23                  tomers with the actual number of months that it will  
24                  take to repay an outstanding balance shall include  
25                  the following statement on each billing statement:

1       ‘Making only the minimum payment will increase  
2       the interest you pay and the time it takes to repay  
3       your balance. For more information, call this toll-  
4       free number: \_\_\_\_\_.’ (the blank space to be filled  
5       in by the creditor).”.

6       (b) REGULATORY IMPLEMENTATION.—

7           (1) IN GENERAL.—The Board of Governors of  
8       the Federal Reserve System (hereafter in this title  
9       referred to as the “Board”) shall promulgate regula-  
10      tions implementing the requirements of section  
11      127(b)(11) of the Truth in Lending Act, as added  
12      by subsection (a) of this section.

13          (2) EFFECTIVE DATE.—Section 127(b)(11) of  
14      the Truth in Lending Act, as added by subsection  
15      (a) of this section, and the regulations issued under  
16      paragraph (1) of this subsection shall not take effect  
17      until the later of—

18           (A) 18 months after the date of enactment  
19      of this Act; or

20           (B) 12 months after the publication of  
21      such final regulations by the Board.

22      (c) STUDY OF FINANCIAL DISCLOSURES.—

23           (1) IN GENERAL.—The Board may conduct a  
24      study to determine the types of information available  
25      to potential borrowers from consumer credit lending

1 institutions regarding factors qualifying potential  
2 borrowers for credit, repayment requirements, and  
3 the consequences of default.

4 (2) FACTORS FOR CONSIDERATION.—In con-  
5 ducting a study under paragraph (1), the Board  
6 should, in consultation with the other Federal bank-  
7 ing agencies (as defined in section 3 of the Federal  
8 Deposit Insurance Act), the National Credit Union  
9 Administration, and the Federal Trade Commission,  
10 consider the extent to which—

11 (A) consumers, in establishing new credit  
12 arrangements, are aware of their existing pay-  
13 ment obligations, the need to consider those ob-  
14 ligations in deciding to take on new credit, and  
15 how taking on excessive credit can result in fi-  
16 nancial difficulty;

17 (B) minimum periodic payment features  
18 offered in connection with open end credit plans  
19 impact consumer default rates;

20 (C) consumers make only the required  
21 minimum payment under open end credit plans;

22 (D) consumers are aware that making only  
23 required minimum payments will increase the  
24 cost and repayment period of an open end cred-  
25 it obligation; and

1 (E) the availability of low minimum pay-  
2 ment options is a cause of consumers experi-  
3 encing financial difficulty.

4 (3) REPORT TO CONGRESS.—Findings of the  
5 Board in connection with any study conducted under  
6 this subsection shall be submitted to Congress. Such  
7 report shall also include recommendations for legis-  
8 lative initiatives, if any, of the Board, based on its  
9 findings.

10 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
11 **SIONS SECURED BY A DWELLING.**

12 (a) OPEN END CREDIT EXTENSIONS.—

13 (1) CREDIT APPLICATIONS.—Section  
14 127A(a)(13) of the Truth in Lending Act (15  
15 U.S.C. 1637a(a)(13)) is amended—

16 (A) by striking “CONSULTATION OF TAX  
17 ADVISER.—A statement that the” and inserting  
18 the following: “TAX DEDUCTIBILITY.—A state-  
19 ment that—

20 “(A) the”; and

21 (B) by striking the period at the end and  
22 inserting the following: “; and

23 “(B) in any case in which the extension of  
24 credit exceeds the fair market value (as defined  
25 under the Internal Revenue Code of 1986) of

1 the dwelling, the interest on the portion of the  
2 credit extension that is greater than the fair  
3 market value of the dwelling is not tax deduct-  
4 ible for Federal income tax purposes.”.

5 (2) CREDIT ADVERTISEMENTS.—Section 147(b)  
6 of the Truth in Lending Act (15 U.S.C. 1665b(b))  
7 is amended—

8 (A) by striking “If any” and inserting the  
9 following:

10 “(1) IN GENERAL.—If any”; and

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

12 “(2) CREDIT IN EXCESS OF FAIR MARKET  
13 VALUE.—Each advertisement described in subsection  
14 (a) that relates to an extension of credit that may  
15 exceed the fair market value of the dwelling, and  
16 which advertisement is disseminated in paper form  
17 to the public or through the Internet, as opposed to  
18 by radio or television, shall include a clear and con-  
19 spicuous statement that—

20 “(A) the interest on the portion of the  
21 credit extension that is greater than the fair  
22 market value of the dwelling is not tax deduct-  
23 ible for Federal income tax purposes; and

1           “(B) the consumer should consult a tax  
2           adviser for further information regarding the  
3           deductibility of interest and charges.”.

4           (b) NON-OPEN END CREDIT EXTENSIONS.—

5           (1) CREDIT APPLICATIONS.—Section 128 of the  
6           Truth in Lending Act (15 U.S.C. 1638) is amend-  
7           ed—

8           (A) in subsection (a), by adding at the end  
9           the following:

10           “(15) In the case of a consumer credit trans-  
11           action that is secured by the principal dwelling of  
12           the consumer, in which the extension of credit may  
13           exceed the fair market value of the dwelling, a clear  
14           and conspicuous statement that—

15           “(A) the interest on the portion of the  
16           credit extension that is greater than the fair  
17           market value of the dwelling is not tax deduct-  
18           ible for Federal income tax purposes; and

19           “(B) the consumer should consult a tax  
20           adviser for further information regarding the  
21           deductibility of interest and charges.”; and

22           (B) in subsection (b), by adding at the end  
23           the following:

24           “(3) In the case of a credit transaction described in  
25           paragraph (15) of subsection (a), disclosures required by

1 that paragraph shall be made to the consumer at the time  
2 of application for such extension of credit.”.

3 (2) CREDIT ADVERTISEMENTS.—Section 144 of  
4 the Truth in Lending Act (15 U.S.C. 1664) is  
5 amended by adding at the end the following:

6 “(e) Each advertisement to which this section applies  
7 that relates to a consumer credit transaction that is se-  
8 cured by the principal dwelling of a consumer in which  
9 the extension of credit may exceed the fair market value  
10 of the dwelling, and which advertisement is disseminated  
11 in paper form to the public or through the Internet, as  
12 opposed to by radio or television, shall clearly and con-  
13 spicuously state that—

14 “(1) the interest on the portion of the credit ex-  
15 tension that is greater than the fair market value of  
16 the dwelling is not tax deductible for Federal income  
17 tax purposes; and

18 “(2) the consumer should consult a tax adviser  
19 for further information regarding the deductibility of  
20 interest and charges.”.

21 (c) REGULATORY IMPLEMENTATION.—

22 (1) IN GENERAL.—The Board shall promulgate  
23 regulations implementing the amendments made by  
24 this section.

1           (2) EFFECTIVE DATE.—Regulations issued  
2           under paragraph (1) shall not take effect until the  
3           later of—

4                   (A) 12 months after the date of enactment  
5                   of this Act; or

6                   (B) 12 months after the date of publica-  
7                   tion of such final regulations by the Board.

8 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**  
9                   **RATES”.**

10           (a) INTRODUCTORY RATE DISCLOSURES.—Section  
11 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))  
12 is amended by adding at the end the following:

13                   “(6) ADDITIONAL NOTICE CONCERNING  
14                   ‘INTRODUCTORY RATES’.—

15                           “(A) IN GENERAL.—Except as provided in  
16                           subparagraph (B), an application or solicitation  
17                           to open a credit card account and all pro-  
18                           motional materials accompanying such applica-  
19                           tion or solicitation for which a disclosure is re-  
20                           quired under paragraph (1), and that offers a  
21                           temporary annual percentage rate of interest,  
22                           shall—

23                                   “(i) use the term ‘introductory’ in im-  
24                                   mediate proximity to each listing of the  
25                                   temporary annual percentage rate applica-

1 ble to such account, which term shall ap-  
2 pear clearly and conspicuously;

3 “(ii) if the annual percentage rate of  
4 interest that will apply after the end of the  
5 temporary rate period will be a fixed rate,  
6 state in a clear and conspicuous manner in  
7 a prominent location closely proximate to  
8 the first listing of the temporary annual  
9 percentage rate (other than a listing of the  
10 temporary annual percentage rate in the  
11 tabular format described in section  
12 122(c)), the time period in which the intro-  
13 ductory period will end and the annual  
14 percentage rate that will apply after the  
15 end of the introductory period; and

16 “(iii) if the annual percentage rate  
17 that will apply after the end of the tem-  
18 porary rate period will vary in accordance  
19 with an index, state in a clear and con-  
20 spicuous manner in a prominent location  
21 closely proximate to the first listing of the  
22 temporary annual percentage rate (other  
23 than a listing in the tabular format pre-  
24 scribed by section 122(c)), the time period  
25 in which the introductory period will end

1           and the rate that will apply after that,  
2           based on an annual percentage rate that  
3           was in effect within 60 days before the  
4           date of mailing the application or solicita-  
5           tion.

6           “(B) EXCEPTION.—Clauses (ii) and (iii) of  
7           subparagraph (A) do not apply with respect to  
8           any listing of a temporary annual percentage  
9           rate on an envelope or other enclosure in which  
10          an application or solicitation to open a credit  
11          card account is mailed.

12          “(C) CONDITIONS FOR INTRODUCTORY  
13          RATES.—An application or solicitation to open  
14          a credit card account for which a disclosure is  
15          required under paragraph (1), and that offers a  
16          temporary annual percentage rate of interest  
17          shall, if that rate of interest is revocable under  
18          any circumstance or upon any event, clearly  
19          and conspicuously disclose, in a prominent man-  
20          ner on or with such application or solicitation—

21                  “(i) a general description of the cir-  
22                  cumstances that may result in the revoca-  
23                  tion of the temporary annual percentage  
24                  rate; and

1           “(ii) if the annual percentage rate  
2 that will apply upon the revocation of the  
3 temporary annual percentage rate—

4           “(I) will be a fixed rate, the an-  
5 nual percentage rate that will apply  
6 upon the revocation of the temporary  
7 annual percentage rate; or

8           “(II) will vary in accordance with  
9 an index, the rate that will apply after  
10 the temporary rate, based on an an-  
11 nual percentage rate that was in ef-  
12 fect within 60 days before the date of  
13 mailing the application or solicitation.

14           “(D) DEFINITIONS.—In this paragraph—

15           “(i) the terms ‘temporary annual per-  
16 centage rate of interest’ and ‘temporary  
17 annual percentage rate’ mean any rate of  
18 interest applicable to a credit card account  
19 for an introductory period of less than 1  
20 year, if that rate is less than an annual  
21 percentage rate that was in effect within  
22 60 days before the date of mailing the ap-  
23 plication or solicitation; and

24           “(ii) the term ‘introductory period’  
25 means the maximum time period for which

1           the temporary annual percentage rate may  
2           be applicable.

3           “(E) RELATION TO OTHER DISCLOSURE  
4           REQUIREMENTS.—Nothing in this paragraph  
5           may be construed to supersede subsection (a) of  
6           section 122, or any disclosure required by para-  
7           graph (1) or any other provision of this sub-  
8           section.”.

9           (b) REGULATORY IMPLEMENTATION.—

10           (1) IN GENERAL.—The Board shall promulgate  
11           regulations implementing the requirements of section  
12           127(c)(6) of the Truth in Lending Act, as added by  
13           this section.

14           (2) EFFECTIVE DATE.—Section 127(c)(6) of  
15           the Truth in Lending Act, as added by this section,  
16           and regulations issued under paragraph (1) of this  
17           subsection shall not take effect until the later of—

18                   (A) 12 months after the date of enactment  
19                   of this Act; or

20                   (B) 12 months after the date of publica-  
21                   tion of such final regulations by the Board.

22   **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

23           (a) INTERNET-BASED SOLICITATIONS.—Section  
24           127(c) of the Truth in Lending Act (15 U.S.C. 1637(c))  
25           is amended by adding at the end the following:

1 “(7) INTERNET-BASED SOLICITATIONS.—

2 “(A) IN GENERAL.—In any solicitation to  
3 open a credit card account for any person under  
4 an open end consumer credit plan using the  
5 Internet or other interactive computer service,  
6 the person making the solicitation shall clearly  
7 and conspicuously disclose—

8 “(i) the information described in sub-  
9 paragraphs (A) and (B) of paragraph (1);  
10 and

11 “(ii) the information described in  
12 paragraph (6).

13 “(B) FORM OF DISCLOSURE.—The disclo-  
14 sures required by subparagraph (A) shall be—

15 “(i) readily accessible to consumers in  
16 close proximity to the solicitation to open  
17 a credit card account; and

18 “(ii) updated regularly to reflect the  
19 current policies, terms, and fee amounts  
20 applicable to the credit card account.

21 “(C) DEFINITIONS.—For purposes of this  
22 paragraph—

23 “(i) the term ‘Internet’ means the  
24 international computer network of both

1 Federal and non-Federal interoperable  
2 packet switched data networks; and

3 “(ii) the term ‘interactive computer  
4 service’ means any information service,  
5 system, or access software provider that  
6 provides or enables computer access by  
7 multiple users to a computer server, in-  
8 cluding specifically a service or system that  
9 provides access to the Internet and such  
10 systems operated or services offered by li-  
11 braries or educational institutions.”.

12 (b) REGULATORY IMPLEMENTATION.—

13 (1) IN GENERAL.—The Board shall promulgate  
14 regulations implementing the requirements of section  
15 127(c)(7) of the Truth in Lending Act, as added by  
16 this section.

17 (2) EFFECTIVE DATE.—The amendment made  
18 by subsection (a) and the regulations issued under  
19 paragraph (1) of this subsection shall not take effect  
20 until the later of—

21 (A) 12 months after the date of enactment  
22 of this Act; or

23 (B) 12 months after the date of publica-  
24 tion of such final regulations by the Board.

1 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**  
2 **DEADLINES AND PENALTIES.**

3 (a) DISCLOSURES RELATED TO LATE PAYMENT  
4 DEADLINES AND PENALTIES.—Section 127(b) of the  
5 Truth in Lending Act (15 U.S.C. 1637(b)) is amended  
6 by adding at the end the following:

7 “(12) If a late payment fee is to be imposed  
8 due to the failure of the obligor to make payment on  
9 or before a required payment due date, the following  
10 shall be stated clearly and conspicuously on the bill-  
11 ing statement:

12 “(A) The date on which that payment is  
13 due or, if different, the earliest date on which  
14 a late payment fee may be charged.

15 “(B) The amount of the late payment fee  
16 to be imposed if payment is made after such  
17 date.”.

18 (b) REGULATORY IMPLEMENTATION.—

19 (1) IN GENERAL.—The Board shall promulgate  
20 regulations implementing the requirements of section  
21 127(b)(12) of the Truth in Lending Act, as added  
22 by this section.

23 (2) EFFECTIVE DATE.—The amendment made  
24 by subsection (a) and regulations issued under para-  
25 graph (1) of this subsection shall not take effect  
26 until the later of—

1 (A) 12 months after the date of enactment  
2 of this Act; or

3 (B) 12 months after the date of publica-  
4 tion of such final regulations by the Board.

5 **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
6 **URE TO INCUR FINANCE CHARGES.**

7 (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
8 URE TO INCUR FINANCE CHARGES.—Section 127 of the  
9 Truth in Lending Act (15 U.S.C. 1637) is amended by  
10 adding at the end the following:

11 “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
12 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-  
13 count under an open end consumer credit plan may not  
14 terminate an account prior to its expiration date solely be-  
15 cause the consumer has not incurred finance charges on  
16 the account. Nothing in this subsection shall prohibit a  
17 creditor from terminating an account for inactivity in 3  
18 or more consecutive months.”.

19 (b) REGULATORY IMPLEMENTATION.—

20 (1) IN GENERAL.—The Board shall promulgate  
21 regulations implementing the requirements of section  
22 127(h) of the Truth in Lending Act, as added by  
23 this section.

24 (2) EFFECTIVE DATE.—The amendment made  
25 by subsection (a) and regulations issued under para-

1 graph (1) of this subsection shall not take effect  
2 until the later of—

3 (A) 12 months after the date of enactment  
4 of this Act; or

5 (B) 12 months after the date of publica-  
6 tion of such final regulations by the Board.

7 **SEC. 1307. DUAL USE DEBIT CARD.**

8 (a) REPORT.—The Board may conduct a study of,  
9 and present to Congress a report containing its analysis  
10 of, consumer protections under existing law to limit the  
11 liability of consumers for unauthorized use of a debit card  
12 or similar access device. Such report, if submitted, shall  
13 include recommendations for legislative initiatives, if any,  
14 of the Board, based on its findings.

15 (b) CONSIDERATIONS.—In preparing a report under  
16 subsection (a), the Board may include—

17 (1) the extent to which section 909 of the Elec-  
18 tronic Fund Transfer Act (15 U.S.C. 1693g), as in  
19 effect at the time of the report, and the imple-  
20 menting regulations promulgated by the Board to  
21 carry out that section provide adequate unauthorized  
22 use liability protection for consumers;

23 (2) the extent to which any voluntary industry  
24 rules have enhanced or may enhance the level of pro-

1       tection afforded consumers in connection with such  
2       unauthorized use liability; and

3               (3) whether amendments to the Electronic  
4       Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-  
5       visions to regulations promulgated by the Board to  
6       carry out that Act, are necessary to further address  
7       adequate protection for consumers concerning unau-  
8       thorized use liability.

9       **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
10               **TENDED TO DEPENDENT STUDENTS.**

11       (a) STUDY.—

12               (1) IN GENERAL.—The Board shall conduct a  
13       study regarding the impact that the extension of  
14       credit described in paragraph (2) has on the rate of  
15       bankruptcy cases filed under title 11, United States  
16       Code.

17               (2) EXTENSION OF CREDIT.—The extension of  
18       credit described in this paragraph is the extension of  
19       credit to individuals who are—

20                       (A) claimed as dependents for purposes of  
21                       the Internal Revenue Code of 1986; and

22                       (B) enrolled within 1 year of successfully  
23                       completing all required secondary education re-  
24                       quirements and on a full-time basis, in postsec-  
25                       ondary educational institutions.

1 (b) REPORT.—Not later than 1 year after the date  
2 of enactment of this Act, the Board shall submit to the  
3 Senate and the House of Representatives a report summa-  
4 rizing the results of the study conducted under subsection  
5 (a).

6 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

7 (a) REGULATIONS.—Not later than 6 months after  
8 the date of enactment of this Act, the Board, in consulta-  
9 tion with the other Federal banking agencies (as defined  
10 in section 3 of the Federal Deposit Insurance Act), the  
11 National Credit Union Administration Board, and the  
12 Federal Trade Commission, shall promulgate regulations  
13 to provide guidance regarding the meaning of the term  
14 “clear and conspicuous”, as used in subparagraphs (A),  
15 (B), and (C) of section 127(b)(11) and clauses (ii) and  
16 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

17 (b) EXAMPLES.—Regulations promulgated under  
18 subsection (a) shall include examples of clear and con-  
19 spicuous model disclosures for the purposes of disclosures  
20 required by the provisions of the Truth in Lending Act  
21 referred to in subsection (a).

22 (c) STANDARDS.—In promulgating regulations under  
23 this section, the Board shall ensure that the clear and con-  
24 spicuous standard required for disclosures made under the  
25 provisions of the Truth in Lending Act referred to in sub-

1 section (a) can be implemented in a manner which results  
 2 in disclosures which are reasonably understandable and  
 3 designed to call attention to the nature and significance  
 4 of the information in the notice.

5 **TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF**  
 6 **AMENDMENTS**

8 **SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMEND-**  
 9 **MENTS.**

10 (a) EFFECTIVE DATE.—Except as otherwise provided  
 11 in this Act, this Act and the amendments made by this  
 12 Act shall take effect 180 days after the date of enactment  
 13 of this Act.

14 (b) APPLICATION OF AMENDMENTS.—

15 (1) IN GENERAL.—Except as otherwise pro-  
 16 vided in this Act and paragraph (2), the amend-  
 17 ments made by this Act shall not apply with respect  
 18 to cases commenced under title 11, United States  
 19 Code, before the effective date of this Act.

20 (2) CERTAIN LIMITATIONS APPLICABLE TO  
 21 DEBTORS.—The amendments made by sections 308,  
 22 322, and 330 shall apply with respect to cases com-  
 23 menced under title 11, United States Code, on or  
 24 after the date of the enactment of this Act.

○