

In the Senate of the United States,

September 23, 1998.

Resolved, That the bill from the House of Representatives (H.R. 3150) entitled “An Act to amend title 11 of the United States Code, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.

Sec. 102. Dismissal or conversion.

***TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR
CONSUMERS***

Sec. 201. Allowance of claims or interests.

Sec. 202. Exceptions to discharge.

Sec. 203. Effect of discharge.

Sec. 204. Automatic stay.

- Sec. 205. Discharge.*
- Sec. 206. Discouraging predatory lending practices.*
- Sec. 207. Enhanced disclosure for credit extensions secured by dwelling.*
- Sec. 208. Dual-use debit card.*
- Sec. 209. Enhanced disclosures under an open end credit plan.*
- Sec. 210. Violations of the automatic stay.*
- Sec. 211. Discouraging abusive reaffirmation practices.*
- Sec. 212. Sense of the Senate regarding the homestead exemption.*
- Sec. 213. Encouraging creditworthiness.*
- Sec. 214. Treasury Department study regarding security interests under an open end credit plan.*

**TITLE III—IMPROVED PROCEDURES FOR EFFICIENT
ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

- Sec. 301. Notice of alternatives.*
- Sec. 302. Fair treatment of secured creditors under chapter 13.*
- Sec. 303. Discouragement of bad faith repeat filings.*
- Sec. 304. Timely filing and confirmation of plans under chapter 13.*
- Sec. 305. Application of the codebtor stay only when the stay protects the debtor.*
- Sec. 306. Improved bankruptcy statistics.*
- Sec. 307. Audit procedures.*
- Sec. 308. Creditor representation at first meeting of creditors.*
- Sec. 309. Fair notice for creditors in chapter 7 and 13 cases.*
- Sec. 310. Stopping abusive conversions from chapter 13.*
- Sec. 311. Prompt relief from stay in individual cases.*
- Sec. 312. Dismissal for failure to timely file schedules or provide required information.*
- Sec. 313. Adequate time for preparation for a hearing on confirmation of the plan.*
- Sec. 314. Discharge under chapter 13.*
- Sec. 315. Nondischargeable debts.*
- Sec. 316. Credit extensions on the eve of bankruptcy presumed nondischargeable.*
- Sec. 317. Definition of household goods and antiques.*
- Sec. 318. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.*
- Sec. 319. Adequate protection of lessors and purchase money secured creditors.*
- Sec. 320. Limitation.*
- Sec. 321. Miscellaneous improvements.*
- Sec. 322. Bankruptcy judgeships.*
- Sec. 323. Definition of domestic support obligation.*
- Sec. 324. Priorities for claims for domestic support obligations.*
- Sec. 325. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.*
- Sec. 326. Exceptions to automatic stay in domestic support obligation proceedings.*
- Sec. 327. Nondischargeability of certain debts for alimony, maintenance, and support.*
- Sec. 328. Continued liability of property.*
- Sec. 329. Protection of domestic support claims against preferential transfer motions.*
- Sec. 330. Protection of retirement savings in bankruptcy.*
- Sec. 331. Additional amendments to title 11, United States Code.*
- Sec. 332. Debt limit increase.*

- Sec. 333. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.*
- Sec. 334. Prohibit retroactive assessment of disposable income.*
- Sec. 335. Amendment to section 1325 of title 11, United States Code.*
- Sec. 336. Protection of savings earmarked for the postsecondary education of children.*

TITLE IV—FINANCIAL INSTRUMENTS

- Sec. 401. Bankruptcy Code amendments.*
- Sec. 402. Recordkeeping requirements.*
- Sec. 403. Damage measure.*
- Sec. 404. Asset-backed securitizations.*
- Sec. 405. Prohibition on certain actions for failure to incur finance charges.*
- Sec. 406. Fees arising from certain ownership interests.*
- Sec. 407. Bankruptcy fees.*
- Sec. 408. Applicability.*

TITLE V—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 501. Amendment to add a chapter 6 to title 11, United States Code.*
- Sec. 502. Amendments to other chapters in title 11, United States Code.*

TITLE VI—MISCELLANEOUS

- Sec. 601. Executory contracts and unexpired leases.*
- Sec. 602. Expedited appeals of bankruptcy cases to courts of appeals.*
- Sec. 603. Creditors and equity security holders committees.*
- Sec. 604. Repeal of sunset provision.*
- Sec. 605. Cases ancillary to foreign proceedings.*
- Sec. 606. Limitation.*
- Sec. 607. Amendment to section 546 of title 11, United States Code.*
- Sec. 608. Amendment to section 330(a) of title 11, United States Code.*

TITLE VII—TECHNICAL CORRECTIONS

- Sec. 701. Definitions.*
- Sec. 702. Adjustment of dollar amounts.*
- Sec. 703. Extension of time.*
- Sec. 704. Who may be a debtor.*
- Sec. 705. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.*
- Sec. 706. Limitation on compensation of professional persons.*
- Sec. 707. Special tax provisions.*
- Sec. 708. Effect of conversion.*
- Sec. 709. Automatic stay.*
- Sec. 710. Amendment to table of sections.*
- Sec. 711. Allowance of administrative expenses.*
- Sec. 712. Priorities.*
- Sec. 713. Exemptions.*
- Sec. 714. Exceptions to discharge.*
- Sec. 715. Effect of discharge.*
- Sec. 716. Protection against discriminatory treatment.*
- Sec. 717. Property of the estate.*
- Sec. 718. Preferences.*
- Sec. 719. Postpetition transactions.*

- Sec. 720. *Technical amendment.*
 Sec. 721. *Disposition of property of the estate.*
 Sec. 722. *General provisions.*
 Sec. 723. *Appointment of elected trustee.*
 Sec. 724. *Abandonment of railroad line.*
 Sec. 725. *Contents of plan.*
 Sec. 726. *Discharge under chapter 12.*
 Sec. 727. *Extensions.*
 Sec. 728. *Bankruptcy cases and proceedings.*
 Sec. 729. *Knowing disregard of bankruptcy law or rule.*
 Sec. 730. *Rolling stock equipment.*
 Sec. 731. *Curbing abusive filings.*
 Sec. 732. *Study of operation of title 11 of the United States Code with respect to small businesses.*
 Sec. 733. *Transfers made by nonprofit charitable corporations.*
 Sec. 734. *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 inserting
 10 the following:

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

13 and

14 (2) in subsection (b)—

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

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

18 (i) in the first sentence—

1 (I) by striking “but not” and in-
2 serting “or”;

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

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

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

11 “(2) In considering under paragraph (1) whether the
12 granting of relief would be an abuse of the provisions of
13 this chapter, the court shall consider whether—

14 “(A) under section 1325(b)(1), on the basis of the
15 current income of the debtor, the debtor could pay an
16 amount greater than or equal to 30 percent of unse-
17 cured claims that are not considered to be priority
18 claims (as determined under subchapter I of chapter
19 5); or

20 “(B) the debtor filed a petition for the relief in
21 bad faith.

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

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

5 “(B) *If the court finds that the attorney for the debtor*
6 *violated Rule 9011, at a minimum, the court shall order—*

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

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

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

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

16 “(ii) *determined that the petition—*

17 “(I) *is well grounded in fact; and*

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

23 “(4)(A) *Except as provided in subparagraph (B), the*
24 *court may award a debtor all reasonable costs in contesting*
25 *a motion brought by a party in interest (other than a panel*

1 trustee or United States trustee) under this subsection (in-
2 cluding reasonable attorneys' fees) if—

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

4 “(ii) the court finds that—

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

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

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

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

23 (b) CLERICAL AMENDMENT.—The table of sections at
24 the beginning of chapter 7 of title 11, United States Code,

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

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

3 **TITLE II—ENHANCED PROCE-**
 4 **DURAL PROTECTIONS FOR**
 5 **CONSUMERS**

6 **SEC. 201. ALLOWANCE OF CLAIMS OR INTERESTS.**

7 *Section 502 of title 11, United States Code, is amended*
 8 *by adding at the end the following:*

9 *“(k)(1) The court may award the debtor reasonable at-*
 10 *torneys’ fees and costs if, after an objection is filed by a*
 11 *debtor, the court—*

12 *“(A)(i) disallows the claim; or*

13 *“(ii) reduces the claim by an amount greater*
 14 *than 20 percent of the amount of the initial claim*
 15 *filed by a party in interest; and*

16 *“(B) finds the position of the party filing the*
 17 *claim is not substantially justified.*

18 *“(2) If the court finds that the position of a claimant*
 19 *under this section is not substantially justified, the court*
 20 *may, in addition to awarding a debtor reasonable attor-*
 21 *neys’ fees and costs under paragraph (1), award such dam-*
 22 *ages as may be required by the equities of the case.”.*

23 **SEC. 202. EXCEPTIONS TO DISCHARGE.**

24 *Section 523 of title 11, United States Code, is amend-*
 25 *ed—*

1 (1) *in subsection (a)(2)(A), by striking “a false*
2 *representation” and inserting “a material false rep-*
3 *resentation upon which the defrauded person justifi-*
4 *ably relied”;* and

5 (2) *by striking subsection (d) and inserting the*
6 *following:*

7 “(d)(1) *Subject to paragraph (3), if a creditor requests*
8 *a determination of dischargeability of a consumer debt*
9 *under this section and that debt is discharged, the court*
10 *shall award the debtor reasonable attorneys’ fees and costs.*

11 “(2) *In addition to making an award to a debtor*
12 *under paragraph (1), if the court finds that the position*
13 *of a creditor in a proceeding covered under this section is*
14 *not substantially justified, the court may award reasonable*
15 *attorneys’ fees and costs under paragraph (1) and such*
16 *damages as may be required by the equities of the case.*

17 “(3)(A) *A creditor may not request a determination*
18 *of dischargeability of a consumer debt under subsection*
19 *(a)(2) if—*

20 *“(i) before the filing of the petition, the debtor*
21 *made a good faith effort to negotiate a reasonable al-*
22 *ternative repayment schedule (including making an*
23 *offer of a reasonable alternative repayment schedule);*
24 *and*

1 “(i) that creditor refused to negotiate an alter-
2 native payment schedule, and that refusal was not
3 reasonable.

4 “(B) For purposes of this paragraph, the debtor shall
5 have the burden of proof of establishing that—

6 “(i) an offer made by that debtor under subpara-
7 graph (A)(i) was reasonable; and

8 “(ii) the refusal to negotiate by the creditor in-
9 volved to was not reasonable.”.

10 **SEC. 203. EFFECT OF DISCHARGE.**

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

13 “(i) The willful failure of a creditor to credit payments
14 received under a plan confirmed under this title (including
15 a plan of reorganization confirmed under chapter 11 of this
16 title) in the manner required by the plan (including credit-
17 ing the amounts required under the plan) shall constitute
18 a violation of an injunction under subsection (a)(2).

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

24 “(1) the greater of—

1 “(A)(i) the amount of actual damages; mul-
2 *tiplied by*
3 “(ii) 3; or
4 “(B) \$5,000; and
5 “(2) costs and attorneys’ fees.”.

6 **SEC. 204. AUTOMATIC STAY.**

7 *Section 362(h) of title 11, United States Code, is*
8 *amended to read as follows:*

9 “(h)(1) *An individual who is injured by any willful*
10 *violation of a stay provided in this section shall be entitled*
11 *to recover—*

12 “(A) *actual damages; and*

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

14 “(2) *In addition to recovering actual damages, costs,*
15 *and attorneys’ fees under paragraph (1), an individual de-*
16 *scribed in paragraph (1) may recover punitive damages in*
17 *appropriate circumstances.”.*

18 **SEC. 205. DISCHARGE.**

19 *Section 727 of title 11, United States Code, is amend-*
20 *ed—*

21 (1) *in subsection (c), by adding at the end the*
22 *following:*

23 “(3)(A) *A creditor may not request a determination*
24 *of dischargeability of a consumer debt under subsection (a)*
25 *if—*

1 “(i) before the filing of the petition, the debtor
2 made a good faith effort to negotiate a reasonable al-
3 ternative repayment schedule (including making an
4 offer of a reasonable alternative repayment schedule);
5 and

6 “(ii) that creditor refused to negotiate an alter-
7 native payment schedule, and that refusal was not
8 reasonable.

9 “(B) For purposes of this paragraph, the debtor shall
10 have the burden of proof of establishing that—

11 “(i) an offer made by that debtor under subpara-
12 graph (A)(i) was reasonable; and

13 “(ii) the refusal to negotiate by the creditor in-
14 volved to was not reasonable.”; and

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

16 “(f)(1) The court may award the debtor reasonable at-
17 torneys’ fees and costs in any case in which a creditor files
18 a motion to deny relief to a debtor under this section and
19 that motion—

20 “(A) is denied; or

21 “(B) is withdrawn after the debtor has replied.

22 “(2) If the court finds that the position of a party fil-
23 ing a motion under this section is not substantially justi-
24 fied, the court may assess against the creditor such damages
25 as may be required by the equities of the case.”.

1 **SEC. 206. DISCOURAGING PREDATORY LENDING PRACTICES.**
 2 **TICES.**

3 *Section 502(b) of title 11, United States Code, is*
 4 *amended—*

5 *(1) in paragraph (8), by striking “or” at the*
 6 *end;*

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

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

10 *“(10) the claim is based on a secured debt if the*
 11 *creditor has failed to comply with the requirements of*
 12 *subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of*
 13 *section 129 of the Truth in Lending Act (15 U.S.C.*
 14 *1639).”.*

15 **SEC. 207. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY DWELLING.**

16 **(a) OPEN-END CREDIT EXTENSIONS.—**

17 *(1) CREDIT APPLICATIONS.—Section 127A(a)(13)*
 18 *of the Truth in Lending Act (15 U.S.C. 1637a(a)(13))*
 19 *is amended—*

20 *(A) by striking “CONSULTATION OF TAX AD-*
 21 *VISOR.—A statement that the” and inserting the*
 22 *following: “TAX DEDUCTIBILITY.—A statement*
 23 *that—*

24 *“(A) the”; and*

1 (B) by striking the period at the end and
2 inserting the following: “; and

3 “(B) in any case in which the extension of
4 credit exceeds the fair market value of the dwell-
5 ing, the interest on the portion of the credit ex-
6 tension that is greater than the fair market value
7 of the dwelling is not tax deductible for Federal
8 income tax purposes.”.

9 (2) CREDIT ADVERTISEMENTS.—Section 147(b)
10 of the Truth in Lending Act (15 U.S.C. 1665b(b)) is
11 amended—

12 (A) by striking “If any” and inserting the
13 following:

14 “(1) IN GENERAL.—If any”; and

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

16 “(2) CREDIT IN EXCESS OF FAIR MARKET
17 VALUE.—Each advertisement described in subsection
18 (a) that relates to an extension of credit that may ex-
19 ceed the fair market value of the dwelling shall in-
20 clude a clear and conspicuous statement that—

21 “(A) the interest on the portion of the credit
22 extension that is greater than the fair market
23 value of the dwelling is not tax deductible for
24 Federal income tax purposes; and

1 “(B) the consumer may want to consult a
2 tax advisor 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 amended—

7 (A) in subsection (a), by adding at the end
8 the following:

9 “(15) In the case of a consumer credit trans-
10 action that is secured by the principal dwelling of the
11 consumer, in which the extension of credit may exceed
12 the fair market value of the dwelling, a clear and con-
13 spicuous statement that—

14 “(A) the interest on the portion of the credit
15 extension that is greater than the fair market
16 value of the dwelling is not tax deductible for
17 Federal income tax purposes; and

18 “(B) the consumer should consult a tax ad-
19 visor for further information regarding the de-
20 ductibility of interest and charges.”; and

21 (B) in subsection (b), by adding at the end
22 the following:

23 “(3) In the case of a credit transaction described in
24 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 amend-*
5 *ed 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 secured*
8 *by the principal dwelling of a consumer in which the exten-*
9 *sion of credit may exceed the fair market value of the dwell-*
10 *ing shall clearly and conspicuously state that—*

11 “(1) *the interest on the portion of the credit ex-*
12 *tension that is greater than the fair market value of*
13 *the dwelling is not tax deductible for Federal income*
14 *tax purposes; and*

15 “(2) *the consumer may want to consult a tax ad-*
16 *visor for further information regarding the deductibil-*
17 *ity of interest and charges.”.*

18 (c) *EFFECTIVE DATE.—This section shall become effec-*
19 *tive one year after the date of enactment of this Act.*

20 **SEC. 208. DUAL-USE DEBIT CARD.**

21 (a) *CONSUMER LIABILITY.—*

22 (1) *IN GENERAL.—Section 909 of the Electronic*
23 *Fund Transfer Act (15 U.S.C. 1693g) is amended—*

24 (A) *by redesignating subsections (b) through*
25 (e) *as subsections (d) through (g), respectively;*

1 (B) in subsection (a)—

2 (i) by redesignating paragraphs (1)
3 and (2) as subparagraphs (A) and (B), re-
4 spectively, and indenting appropriately;

5 (ii) by inserting “CARDS NECESSITAT-
6 ING UNIQUE IDENTIFIER.—

7 “(1) IN GENERAL.—” after “(a)”;

8 (iii) by striking “other means of access
9 can be identified as the person authorized to
10 use it, such as by signature, photograph,”
11 and inserting “other means of access can be
12 identified as the person authorized to use it
13 by a unique identifier, such as a photo-
14 graph, retina scan,”; and

15 (iv) by striking “Notwithstanding the
16 foregoing,” and inserting the following:

17 “(2) NOTIFICATION.—Notwithstanding para-
18 graph (1),”; and

19 (C) by inserting before subsection (d), as so
20 designated by this section, the following new sub-
21 sections:

22 “(b) CARDS NOT NECESSITATING UNIQUE IDENTI-
23 FIER.—A consumer shall be liable for an unauthorized elec-
24 tronic fund transfer only if—

25 “(1) the liability is not in excess of \$50;

1 “(2) *the unauthorized electronic fund transfer is*
2 *initiated by the use of a card that has been properly*
3 *issued to a consumer other than the person making*
4 *the unauthorized transfer as a means of access to the*
5 *account of that consumer for the purpose of initiating*
6 *an electronic fund transfer;*

7 “(3) *the unauthorized electronic fund transfer oc-*
8 *curs before the card issuer has been notified that an*
9 *unauthorized use of the card has occurred or may*
10 *occur as the result of loss, theft, or otherwise; and*

11 “(4) *such unauthorized electronic fund transfer*
12 *did not require the use of a code or other unique iden-*
13 *tifier (other than a signature), such as a photograph,*
14 *fingerprint, or retina scan.*

15 “(c) *NOTICE OF LIABILITY AND RESPONSIBILITY TO*
16 *REPORT LOSS OF CARD, CODE, OR OTHER MEANS OF AC-*
17 *CESS.—No consumer shall be liable under this title for any*
18 *unauthorized electronic fund transfer unless the consumer*
19 *has received in a timely manner the notice required under*
20 *section 905(a)(1), and any subsequent notice required under*
21 *section 905(b) with regard to any change in the information*
22 *which is the subject of the notice required under section*
23 *905(a)(1).”.*

1 (2) *CONFORMING AMENDMENT.*—Section
2 905(a)(1) of the *Electronic Fund Transfer Act* (15
3 U.S.C. 1693c(a)(1)) is amended to read as follows:

4 “(1) the liability of the consumer for any unau-
5 thorized electronic fund transfer and the requirement
6 for promptly reporting any loss, theft, or unauthor-
7 ized use of a card, code, or other means of access in
8 order to limit the liability of the consumer for any
9 such unauthorized transfer;”.

10 (b) *VALIDATION REQUIREMENT FOR DUAL-USE DEBIT*
11 *CARDS.*—

12 (1) *IN GENERAL.*—Section 911 of the *Electronic*
13 *Fund Transfer Act* (15 U.S.C. 1693i) is amended—

14 (A) by redesignating subsection (c) as sub-
15 section (d); and

16 (B) by inserting after subsection (b) the fol-
17 lowing new subsection:

18 “(c) *VALIDATION REQUIREMENT.*—No person may
19 issue a card described in subsection (a), the use of which
20 to initiate an electronic fund transfer does not require the
21 use of a code or other unique identifier other than a signa-
22 ture (such as a fingerprint or retina scan), unless—

23 “(1) the requirements of paragraphs (1) through
24 (4) of subsection (b) are met; and

1 “(2) the issuer has provided to the consumer a
2 clear and conspicuous disclosure that use of the card
3 may not require the use of such code or other unique
4 identifier.”.

5 (2) *TECHNICAL AND CONFORMING AMEND-*
6 *MENT.—Section 911(d) of the Electronic Fund Trans-*
7 *fer Act (15 U.S.C. 1993i(d)) (as redesignated by sub-*
8 *section (a)(1) of this section) is amended by striking*
9 *“For the purpose of subsection (b)” and inserting*
10 *“For purposes of subsections (b) and (c)”.*

11 **SEC. 209. ENHANCED DISCLOSURES UNDER AN OPEN END**
12 **CREDIT PLAN.**

13 (a) *AMENDMENTS TO THE TRUTH IN LENDING ACT.—*

14 (1) *ENHANCED DISCLOSURE OF REPAYMENT*
15 *TERMS.—*

16 (A) *IN GENERAL.—Section 127(b) of the*
17 *Truth in Lending Act (15 U.S.C. 1637(b)) is*
18 *amended by adding at the end the following:*

19 “(11)(A) *In a clear and conspicuous manner, re-*
20 *payment information that would apply to the out-*
21 *standing balance of the consumer under the credit*
22 *plan, including—*

23 “(i) *the required minimum monthly pay-*
24 *ment on that balance, represented as both a dol-*
25 *lar figure and a percentage of that balance;*

1 “(ii) the number of months (rounded to the
2 nearest month) that it would take to pay the en-
3 tire amount of that current balance if the con-
4 sumer pays only the required minimum monthly
5 payments and if no further advances are made;

6 “(iii) the total cost to the consumer, includ-
7 ing interest and principal payments, of paying
8 that balance in full if the consumer pays only
9 the required minimum monthly payments and if
10 no further advances are made; and

11 “(iv) the following statement: ‘If your cur-
12 rent rate is a temporary introductory rate, your
13 total costs may be higher.’.

14 “(B) In making the disclosures under subpara-
15 graph (A) the creditor shall apply the annual interest
16 rate that applies to that balance with respect to the
17 current billing cycle for that consumer in effect on the
18 date on which the disclosure is made.”.

19 (B) PUBLICATION OF MODEL FORMS.—Not
20 later than 180 days after the date of enactment
21 of this Act, the Board of Governors of the Federal
22 Reserve System shall publish model disclosure
23 forms in accordance with section 195 of the
24 Truth in Lending Act for the purpose of compli-

1 *ance with section 127(b)(11) of the Truth in*
2 *Lending Act, as added by this paragraph.*

3 (C) *CIVIL LIABILITY.*—Section 130(a) of the
4 *Truth in Lending Act (15 U.S.C. 1640(a)) is*
5 *amended, in the undesignated paragraph follow-*
6 *ing paragraph (4), by striking the second sen-*
7 *tence and inserting the following: “In connection*
8 *with the disclosures referred to in subsections (a)*
9 *and (b) of section 1637 of this title, a creditor*
10 *shall have a liability determined under para-*
11 *graph (2) only for failing to comply with the re-*
12 *quirements of section 1635, 1637(a), or of para-*
13 *graph (4), (5), (6), (7), (8), (9), (10), or (11) of*
14 *section 1637(b) or for failing to comply with dis-*
15 *closure requirements under State law for any*
16 *term or item that the Board has determined to*
17 *be substantially the same in meaning under sec-*
18 *tion 1610(a)(2) as any of the terms or items re-*
19 *ferred to in section 1637(a), paragraph (4), (5),*
20 *(6), (7), (8), (9), (10), or (11) of section 1637(b)*
21 *of this title.”.*

22 (2) *DISCLOSURES IN CONNECTION WITH SOLICI-*
23 *TATIONS.*—

24 (A) *IN GENERAL.*—Section 127(c)(1)(B) of
25 *the Truth in Lending Act (15 U.S.C.*

1 1637(c)(1)(B)) is amended by adding the follow-
2 ing:

3 “(iv) *CREDIT WORKSHEET.*—An easily
4 understandable credit worksheet designed to
5 aid consumers in determining their ability
6 to assume more debt, including consider-
7 ation of the personal expenses of the con-
8 sumer and a simple formula for the con-
9 sumer to determine whether the assumption
10 of additional debt is advisable.

11 “(v) *BASIS OF PREAPPROVAL.*—In any
12 case in which the application or solicitation
13 states that the consumer has been
14 preapproved for an account under an open
15 end consumer credit plan, the following
16 statement must appear in a clear and con-
17 spicuous manner: ‘Your preapproval for
18 this credit card does not mean that we have
19 reviewed your individual financial cir-
20 cumstances. You should review your own
21 budget before accepting this offer of credit.’.

22 “(vi) *AVAILABILITY OF CREDIT RE-*
23 *PORT.*—That the consumer is entitled to a
24 copy of his or her credit report in accord-
25 ance with the Fair Credit Reporting Act.”.

1 (1) in subsection (c)(2)(B) by adding at the end
2 the following:

3 “(C) such agreement contains a clear and
4 conspicuous statement which advises the debtor
5 what portion of the debt to be reaffirmed is at-
6 tributable to principal, interest, late fees, credi-
7 tor’s attorneys fees, expenses or other costs relat-
8 ing to the collection of the debt.”.

9 (2)(A) in subsection (c)(6)(B), by inserting after
10 “real property” the following: “or is a debt described
11 in subsection (c)(7)”; and

12 (B) by adding at the end of subsection (c) the
13 following:

14 “(7) in a case concerning an individual, if the
15 consideration for such agreement is based in whole or
16 in part on an unsecured consumer debt, or is based
17 in whole or in part upon a debt for an item of per-
18 sonalty the value of which at point of purchase was
19 \$250 or less, and in which the creditor asserts a pur-
20 chase money security interest, the court, approves
21 such agreement as—

22 “(A) in the best interest of the debtor in
23 light of the debtor’s income and expenses;

24 “(B) not imposing an undue hardship on
25 the debtor’s future ability of the debtor to pay for

1 *the needs of children and other dependents (in-*
2 *cluding court ordered support);*

3 “(C) *not requiring the debtor to pay the*
4 *creditor’s attorney’s fees, expenses or other costs*
5 *relating to the collection of the debt;*

6 “(D) *not entered into to protect property*
7 *that is necessary for the care and maintenance*
8 *of children or other dependents that would have*
9 *nominal value on repossession;*

10 “(E) *not entered into after coercive threats*
11 *or actions by the creditor in the creditor’s course*
12 *of dealings with the debtor.*

13 “(F) *not unfair because excessive in amount*
14 *based upon the value of the collateral.”.*

15 (3) *in subsection (d)(2) by striking “subsections*
16 *(c)(6)” and inserting “subsections (c)(6) and (c)(7)”,*
17 *and after “of this section,” by striking “if the consid-*
18 *eration for such agreement is based in whole or in*
19 *part on a consumer debt that is not secured by real*
20 *property of the debtor” and adding at the end: “as*
21 *applicable”.*

22 **SEC. 212. SENSE OF THE SENATE REGARDING THE HOME-**
23 **STEAD EXEMPTION.**

24 (a) *FINDINGS.—The Senate finds that—*

1 (1) *one of the most flagrant abuses of the bank-*
2 *ruptcy system involves misuse of the homestead ex-*
3 *emption, which allows a debtor to exempt his or her*
4 *home, up to a certain value, as established by State*
5 *law, from being sold off to satisfy debts;*

6 (2) *while the vast majority of States responsibly*
7 *cap the exemption at not more than \$40,000, 5 States*
8 *exempt homes regardless of their value;*

9 (3) *in the few States with unlimited homestead*
10 *exemptions, debtors can shield their assets in luxury*
11 *homes while legitimate creditors get little or nothing;*

12 (4) *beneficiaries of the homestead exemption in-*
13 *clude convicted insider traders and savings and loan*
14 *criminals, while shortchanged creditors include chil-*
15 *dren, spouses, governments, and banks; and*

16 (5) *the homestead exemption should be capped at*
17 *\$100,000 to prevent such high-profile abuses.*

18 (b) *SENSE OF THE SENATE.—It is the sense of the Sen-*
19 *ate that—*

20 (1) *meaningful bankruptcy reform cannot be*
21 *achieved without capping the homestead exemption;*
22 *and*

23 (2) *bankruptcy reform legislation should include*
24 *a cap of \$100,000 on the homestead exemption to the*
25 *bankruptcy laws.*

1 **SEC. 213. ENCOURAGING CREDITWORTHINESS.**

2 (a) *SENSE OF THE CONGRESS.*—*It is the sense of the*
3 *Congress that—*

4 (1) *certain lenders may sometimes offer credit to*
5 *consumers indiscriminately, without taking steps to*
6 *ensure that consumers are capable of repaying the re-*
7 *sulting debt, and in a manner which may encourage*
8 *certain consumers to accumulate additional debt; and*

9 (2) *resulting consumer debt may increasingly be*
10 *a major contributing factor to consumer insolvency.*

11 (b) *STUDY REQUIRED.*—*The Board of Governors of the*
12 *Federal Reserve System (hereafter in this section referred*
13 *to as the “Board”) shall conduct a study of—*

14 (1) *consumer credit industry practices of solicit-*
15 *ing and extending credit—*

16 (A) *indiscriminately;*

17 (B) *without taking steps to ensure that con-*
18 *sumers are capable of repaying the resulting*
19 *debt; and*

20 (C) *in a manner that encourages consumers*
21 *to accumulate additional debt; and*

22 (2) *the effects of such practices on consumer debt*
23 *and insolvency.*

24 (c) *REPORT AND REGULATIONS.*—*Not later than 24*
25 *months after the date of enactment of this Act, the Board—*

1 (1) shall make public a report on its findings
2 with respect to the credit industry's indiscriminate
3 solicitation and extension of credit;

4 (2) may issue regulations that would require ad-
5 ditional disclosures to consumers; and

6 (3) may take any other actions, consistent with
7 its existing statutory authority, that the Board finds
8 necessary to ensure responsible industrywide practices
9 and to prevent resulting consumer debt and insol-
10 vency.

11 **SEC. 214. TREASURY DEPARTMENT STUDY REGARDING SE-**
12 **CURITY INTERESTS UNDER AN OPEN END**
13 **CREDIT PLAN.**

14 (a) *STUDY.*—Within 180 days of the enactment of this
15 *Act*, the Federal Reserve Board in consultation with the
16 *Treasury Department*, the general credit industry, and con-
17 *sumer groups*, shall prepare a study regarding the adequacy
18 *of information received by consumers regarding the creation*
19 *of security interests under open end credit plans.*

20 (b) *FINDINGS.*—This study shall include the Board's
21 *findings regarding—*

22 (1) *whether consumers understand at the time of*
23 *purchase of property under an open end credit plan*
24 *that such property may serve as collateral under that*
25 *credit plan;*

1 (2) *whether consumers understand at the time of*
2 *purchase the legal consequences of disposing of prop-*
3 *erty that is purchased under an open end credit plan*
4 *and is subject to a security interest under that plan;*
5 *and*

6 (3) *whether creditors holding security interests*
7 *in property purchased under an open end credit plan*
8 *use such security interests to coerce reaffirmations of*
9 *existing debts under section 524 of the United States*
10 *Bankruptcy Code.*

11 *In formulating these findings, the Board shall consider,*
12 *among other factors it deems relevant, prevailing industry*
13 *practices in this area.*

14 (c) *DISCLOSURE RECOMMENDATIONS.*—*This study*
15 *shall also include the Board’s recommendations regarding*
16 *the utility and practicality of additional disclosures by*
17 *credit card issuers at the time of purchase regarding secu-*
18 *rity interests under open end credit plans, including, but*
19 *not limited to—*

20 (1) *disclosures of the specific property in which*
21 *the creditor will receive a security interest;*

22 (2) *disclosures of the consequences of non-*
23 *payment of the card balance, including how the secu-*
24 *rity interest may be enforced; and*

1 (3) disclosures of the process by which payments
2 made on the card will be credited with respect to the
3 lien created by the security contract and other debts
4 on the card.

5 (d) *SUBMISSION OF REPORT.*—The Board shall submit
6 this report to the Senate Committee on the Judiciary, the
7 Senate Committee on Banking, Housing, and Urban Af-
8 fairs, the House Committee on the Judiciary, and the House
9 Committee on Banking and Financial Services within the
10 time allotted by this section.

11 **TITLE III—IMPROVED PROCEDURES FOR EFFICIENT AD-**
12 **MINISTRATION OF THE BANK-**
13 **RUPTCY SYSTEM**

14 **SEC. 301. NOTICE OF ALTERNATIVES.**

15 (a) *IN GENERAL.*—Section 342 of title 11, United
16 States Code, is amended by striking subsection (b) and in-
17 serting the following:
18

19 “(b) Before the commencement of a case under this title
20 by an individual whose debts are primarily consumer debts,
21 that individual shall be given or obtain (as required in sec-
22 tion 521(a)(1), as part of the certification process under
23 subchapter 1 of chapter 5) a written notice prescribed by
24 the United States trustee for the district in which the peti-

1 tion is filed pursuant to section 586 of title 28. The notice
2 shall contain the following:

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

6 “(2) A brief description of services that may be
7 available to that individual from a credit counseling
8 service that is approved by the United States trustee
9 or the bankruptcy administrator for that district.”.

10 (b) *DEBTOR’S DUTIES*.—Section 521 of title 11,
11 *United States Code*, is amended—

12 (1) by inserting “(a)” before “The debtor
13 shall—”;

14 (2) by striking paragraph (1) and inserting the
15 following:

16 “(1) file—

17 “(A) a list of creditors; and

18 “(B) unless the court orders otherwise—

19 “(i) a schedule of assets and liabilities;

20 “(ii) a schedule of current income and
21 current expenditures;

22 “(iii) a statement of the debtor’s finan-
23 cial affairs and, if applicable, a certifi-
24 cate—

1 “(I) of an attorney whose name is
2 on the petition as the attorney for the
3 debtor or any bankruptcy petition pre-
4 parer signing the petition pursuant to
5 section 110(b)(1) indicating that such
6 attorney or bankruptcy petition pre-
7 parer delivered to the debtor any notice
8 required by section 342(b); or

9 “(II) if no attorney for the debtor
10 is indicated and no bankruptcy peti-
11 tion preparer signed the petition, of the
12 debtor that such notice was obtained
13 and read by the debtor;

14 “(iv) copies of any Federal tax returns,
15 including any schedules or attachments,
16 filed by the debtor for the 3-year period pre-
17 ceding the order for relief;

18 “(v) copies of all payment advices or
19 other evidence of payment, if any, received
20 by the debtor from any employer of the
21 debtor in the period 60 days prior to the fil-
22 ing of the petition;

23 “(vi) a statement of the amount of pro-
24 jected monthly net income, itemized to show
25 how calculated; and

1 “(vii) a statement disclosing any rea-
2 sonably anticipated increase in income or
3 expenditures over the 12-month period fol-
4 lowing the date of filing;” and

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

6 “(b)(1) At any time, a creditor, in the case of an indi-
7 vidual under chapter 7 or 13, may file with the court notice
8 that the creditor requests the petition, schedules, and a
9 statement of affairs filed by the debtor in the case and the
10 court shall make those documents available to the creditor
11 who requests those documents.

12 “(2) At any time, a creditor, in a case under chapter
13 13, may file with the court notice that the creditor requests
14 the plan filed by the debtor in the case and the court shall
15 make that plan available to the creditor who requests that
16 plan.

17 “(c) An individual debtor in a case under chapter 7
18 or 13 shall file with the court—

19 “(1) at the time filed with the taxing authority,
20 all tax returns, including any schedules or attach-
21 ments, with respect to the period from the commence-
22 ment of the case until such time as the case is closed;

23 “(2) at the time filed with the taxing authority,
24 all tax returns, including any schedules or attach-
25 ments, that were not filed with the taxing authority

1 *when the schedules under subsection (a)(1) were filed*
2 *with respect to the period that is 3 years before the*
3 *order for relief;*

4 *“(3) any amendments to any of the tax returns,*
5 *including schedules or attachments, described in para-*
6 *graph (1) or (2); and*

7 *“(4) in a case under chapter 13, a statement*
8 *subject to the penalties of perjury by the debtor of the*
9 *debtor’s income and expenditures in the preceding tax*
10 *year and monthly income, that shows how the*
11 *amounts are calculated—*

12 *“(A) beginning on the date that is the later*
13 *of 90 days after the close of the debtor’s tax year*
14 *or 1 year after the order for relief, unless a plan*
15 *has been confirmed; and*

16 *“(B) thereafter, on or before the date that is*
17 *45 days before each anniversary of the confirma-*
18 *tion of the plan until the case is closed.*

19 *“(d)(1) A statement referred to in subsection (c)(4)*
20 *shall disclose—*

21 *“(A) the amount and sources of income of the*
22 *debtor;*

23 *“(B) the identity of any persons responsible with*
24 *the debtor for the support of any dependents of the*
25 *debtor; and*

1 “(C) the identity of any persons who contributed,
2 and the amount contributed, to the household in
3 which the debtor resides.

4 “(2) The tax returns, amendments, and statement of
5 income and expenditures described in paragraph (1) shall
6 be available to the United States trustee, any bankruptcy
7 administrator, any trustee, and any party in interest for
8 inspection and copying, subject to the requirements of sub-
9 section (e).

10 “(e)(1) Not later than 30 days after the date of enact-
11 ment of the Consumer Bankruptcy Reform Act of 1998, the
12 Director of the Administrative Office of the United States
13 Courts shall establish procedures for safeguarding the con-
14 fidentiality of any tax information required to be provided
15 under this section.

16 “(2) The procedures under paragraph (1) shall include
17 restrictions on creditor access to tax information that is re-
18 quired to be provided under this section.

19 “(3) Not later than 1 year after the date of enactment
20 of the Consumer Bankruptcy Reform Act of 1998, the Direc-
21 tor of the Administrative Office of the United States Courts
22 shall prepare, and submit to Congress a report that—

23 “(A) assesses the effectiveness of the procedures
24 under paragraph (1); and

1 “(B) if appropriate, includes proposed legisla-
2 tion—

3 “(i) to further protect the confidentiality of
4 tax information; and

5 “(ii) to provide penalties for the improper
6 use by any person of the tax information re-
7 quired to be provided under this section.

8 “(f) If requested by the United States trustee or a trust-
9 ee serving in the case, the debtor provide a document that
10 establishes the identity of the debtor, including a driver’s
11 license, passport, or other document that contains a photo-
12 graph of the debtor and such other personal identifying in-
13 formation relating to the debtor that establishes the identity
14 of the debtor.”.

15 (c) TITLE 28.—Section 586(a) of title 28, United
16 States Code, is amended—

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

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

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

22 “(7) on or before January 1 of each calendar
23 year, and also not later than 30 days after any
24 change in the nonprofit debt counseling services reg-
25 istered with the bankruptcy court, prescribe and make

1 “(2) *Except as provided in subsections (d) through (f),*
2 *the stay under subsection (a) with respect to any action*
3 *taken with respect to a debt or property securing such debt*
4 *or with respect to any lease shall terminate with respect*
5 *to the debtor on the 30th day after the filing of the later*
6 *case if—*

7 “(A) *a single or joint case is filed by or against*
8 *an individual debtor under chapter 7, 11, or 13; and*

9 “(B) *a single or joint case of that debtor (other*
10 *than a case refiled under a chapter other than chapter*
11 *7 after dismissal under section 707(b)) was pending*
12 *during the preceding year but was dismissed.*

13 “(3) *If a party in interest so requests, the court may*
14 *extend the stay in a particular case with respect to 1 or*
15 *more creditors (subject to such conditions or limitations as*
16 *the court may impose) after providing notice and a hearing*
17 *completed before the expiration of the 30-day period de-*
18 *scribed in paragraph (2) only if the party in interest dem-*
19 *onstrates that the filing of the later case is in good faith*
20 *with respect to the creditors to be stayed.*

21 “(4) *A case shall be presumed to have not been filed*
22 *in good faith (except that such presumption may be rebutted*
23 *by clear and convincing evidence to the contrary)—*

24 “(A) *with respect to the creditors involved, if—*

1 “(i) more than 1 previous case under any
2 of chapters 7, 11, or 13 in which the individual
3 was a debtor was pending during the 1-year pe-
4 riod described in paragraph (1);

5 “(ii) a previous case under any of chapters
6 7, 11, or 13 in which the individual was a debt-
7 or was dismissed within the period specified in
8 paragraph (2) after—

9 “(I) the debtor, after having received
10 from the court a request to do so, failed to
11 file or amend the petition or other docu-
12 ments as required by this title; or

13 “(II) the debtor, without substantial
14 excuse, failed to perform the terms of a plan
15 that was confirmed by the court; or

16 “(iii)(I) during the period commencing
17 with the dismissal of the next most previous case
18 under chapter 7, 11, or 13 there has not been a
19 substantial change in the financial or personal
20 affairs of the debtor;

21 “(II) if the case is a chapter 7 case, there
22 is no other reason to conclude that the later case
23 will be concluded with a discharge; or

1 “(III) if the case is a chapter 11 or 13 case,
2 there is not a confirmed plan that will be fully
3 performed; and

4 “(B) with respect to any creditor that com-
5 menced an action under subsection (d) in a previous
6 case in which the individual was a debtor, if, as of
7 the date of dismissal of that case, that action was still
8 pending or had been resolved by terminating, condi-
9 tioning, or limiting the stay with respect to actions
10 of that creditor.

11 “(5)(A) If a request is made for relief from the stay
12 under subsection (a) with respect to real or personal prop-
13 erty of any kind, and the request is granted in whole or
14 in part, the court may, in addition to making any other
15 order under this subsection, order that the relief so granted
16 shall be in rem either—

17 “(i) for a definite period of not less than 1 year;
18 or

19 “(ii) indefinitely.

20 “(B)(i) After an order is issued under subparagraph
21 (A), the stay under subsection (a) shall not apply to any
22 property subject to such an in rem order in any case of
23 the debtor.

24 “(ii) If an in rem order issued under subparagraph
25 (A) so provides, the stay shall, in addition to being inap-

1 *plicable to the debtor involved, not apply with respect to*
2 *an entity under this title if—*

3 “(I) *the entity had reason to know of the order*
4 *at the time that the entity obtained an interest in the*
5 *property affected; or*

6 “(II) *the entity was notified of the commence-*
7 *ment of the proceeding for relief from the stay, and*
8 *at the time of the notification, no case in which the*
9 *entity was a debtor was pending.*

10 “(6) *For purposes of this section, a case is pending*
11 *during the period beginning with the issuance of the order*
12 *for relief and ending at such time as the case involved is*
13 *closed.”.*

14 **SEC. 304. TIMELY FILING AND CONFIRMATION OF PLANS**
15 **UNDER CHAPTER 13.**

16 (a) *FILING OF PLAN.*—Section 1321 of title 11, United
17 *States Code, is amended to read as follows:*

18 **“§ 1321. Filing of plan**

19 *“The debtor shall file a plan not later than 90 days*
20 *after the order for relief under this chapter, except that the*
21 *court may extend such period if the need for an extension*
22 *is attributable to circumstances for which the debtor should*
23 *not justly be held accountable.”.*

24 (b) *CONFIRMATION OF HEARING.*—Section 1324 of
25 *title 11, United States Code, is amended by adding at the*

1 *end the following: “That hearing shall be held not later than*
2 *45 days after the filing of the plan, unless the court, after*
3 *providing notice and a hearing, orders otherwise.”.*

4 **SEC. 305. APPLICATION OF THE CODEBTOR STAY ONLY**
5 **WHEN THE STAY PROTECTS THE DEBTOR.**

6 *Section 1301(b) of title 11, United States Code, is*
7 *amended—*

8 *(1) by inserting “(1)” after “(b)”;* and

9 *(2) by adding at the end the following:*

10 *“(2)(A) Notwithstanding subsection (c) and except as*
11 *provided in subparagraph (B), in any case in which the*
12 *debtor did not receive the consideration for the claim held*
13 *by a creditor, the stay provided by subsection (a) shall*
14 *apply to that creditor for a period not to exceed 30 days*
15 *beginning on the date of the order for relief, to the extent*
16 *the creditor proceeds against—*

17 *“(i) the individual that received that consider-*
18 *ation; or*

19 *“(ii) property not in the possession of the debtor*
20 *that secures that claim.*

21 *“(B) Notwithstanding subparagraph (A), the stay pro-*
22 *vided by subsection (a) shall apply in any case in which*
23 *the debtor is primarily obligated to pay the creditor in*
24 *whole or in part with respect to a claim described in sub-*
25 *paragraph (A) under a legally binding separation or prop-*

1 *erty settlement agreement or divorce or dissolution decree*
2 *with respect to—*

3 “(i) *an individual described in subparagraph*
4 *(A)(i); or*

5 “(ii) *property described in subparagraph (A)(ii).*

6 “(3) *Notwithstanding subsection (c), the stay provided*
7 *by subsection (a) shall terminate as of the date of confirma-*
8 *tion of the plan, in any case in which the plan of the debtor*
9 *provides that the debtor’s interest in personal property sub-*
10 *ject to a lease with respect to which the debtor is the lessee*
11 *will be surrendered or abandoned or no payments will be*
12 *made under the plan on account of the debtor’s obligations*
13 *under the lease.”.*

14 **SEC. 306. IMPROVED BANKRUPTCY STATISTICS.**

15 (a) *AMENDMENT.—Chapter 6 of part I of title 28,*
16 *United States Code, is amended by adding at the end the*
17 *following:*

18 **“§ 159. Bankruptcy statistics**

19 “(a) *The clerk of each district shall compile statistics*
20 *regarding individual debtors with primarily consumer*
21 *debts seeking relief under chapters 7, 11, and 13 of title*
22 *11. Those statistics shall be in a form prescribed by the Di-*
23 *rector of the Administrative Office of the United States*
24 *Courts (referred to in this section as the ‘Office’).*

25 “(b) *The Director shall—*

1 “(1) compile the statistics referred to in sub-
2 section (a);

3 “(2) make the statistics available to the public;
4 and

5 “(3) not later than October 31, 1998, and annu-
6 ally thereafter, prepare, and submit to Congress a re-
7 port concerning the information collected under sub-
8 section (a) that contains an analysis of the informa-
9 tion.

10 “(c) The compilation required under subsection (b)
11 shall—

12 “(1) be itemized, by chapter, with respect to title
13 11;

14 “(2) be presented in the aggregate and for each
15 district; and

16 “(3) include information concerning—

17 “(A) the total assets and total liabilities of
18 the debtors described in subsection (a), and in
19 each category of assets and liabilities, as re-
20 ported in the schedules prescribed pursuant to
21 section 2075 of this title and filed by those debt-
22 ors;

23 “(B) the current total monthly income, pro-
24 jected monthly net income, and average income
25 and average expenses of those debtors as reported

1 *on the schedules and statements that each such*
2 *debtor files under sections 111, 521, and 1322 of*
3 *title 11;*

4 “(C) *the aggregate amount of debt dis-*
5 *charged in the reporting period, determined as*
6 *the difference between the total amount of debt*
7 *and obligations of a debtor reported on the sched-*
8 *ules and the amount of such debt reported in cat-*
9 *egories which are predominantly nondischarge-*
10 *able;*

11 “(D) *the average period of time between the*
12 *filing of the petition and the closing of the case;*

13 “(E) *for the reporting period—*

14 “(i) *the number of cases in which a re-*
15 *affirmation 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 in which the*
20 *debtor was not represented by an attorney;*
21 *and*

22 “(III) *of those cases, the number of*
23 *cases in which the reaffirmation was ap-*
24 *proved by the court;*

1 “(F) with respect to cases filed under chap-
2 ter 13 of title 11, for the reporting period—

3 “(i)(I) the number of cases in which a
4 final order was entered determining the
5 value of property securing a claim in an
6 amount less than the amount of the claim;
7 and

8 “(II) the number of final orders deter-
9 mining the value of property securing a
10 claim issued;

11 “(ii) the number of cases dismissed for
12 failure to make payments under the plan;
13 and

14 “(iii) the number of cases in which the
15 debtor filed another case within the 6 years
16 previous to the filing; and

17 “(G) the extent of creditor misconduct and
18 any amount of punitive damages awarded by the
19 court for creditor misconduct.”.

20 (b) *CLERICAL AMENDMENT.*—The table of sections at
21 the beginning of chapter 6 of title 28, United States Code,
22 is amended by adding at the end the following:

 “159. *Bankruptcy statistics.*”.

23 (c) *EFFECTIVE DATE.*—The amendments made by this
24 section shall take effect 18 months after the date of enact-
25 ment of this Act.

1 **SEC. 307. AUDIT PROCEDURES.**

2 (a) *AMENDMENTS.*—Section 586 of title 28, United
3 States Code, is amended—

4 (1) in subsection (a), as amended by section 301
5 of this Act, by striking paragraph (6) and inserting
6 the following:

7 “(6) make such reports as the Attorney General
8 directs, including the results of audits performed
9 under subsection (f); and”; and

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

11 “(f)(1)(A) The Attorney General shall establish proce-
12 dures to determine the accuracy and completeness of peti-
13 tions, schedules, and other information which the debtor is
14 required to provide under sections 521 and 1322 of title
15 11, and, if applicable, section 111 of title 11, in individual
16 cases filed under chapter 7 or 13 of such title.

17 “(B) Those procedures shall—

18 (i) establish a method of selecting appropriate
19 qualified persons to contract to perform those audits;

20 (ii) establish a method of randomly selecting
21 cases to be audited, except that not less than 1 out of
22 every 500 cases in each Federal judicial district shall
23 be selected for audit;

24 (iii) require audits for schedules of income and
25 expenses which reflect greater than average variances

1 *from the statistical norm of the district in which the*
2 *schedules were filed; and*

3 “(iv) *establish procedures for providing, not less*
4 *frequently than annually, public information concern-*
5 *ing the aggregate results of such audits including the*
6 *percentage of cases, by district, in which a material*
7 *misstatement of income or expenditures is reported.*

8 “(2) *The United States trustee for each district is au-*
9 *thorized to contract with auditors to perform audits in cases*
10 *designated by the United States trustee according to the*
11 *procedures established under paragraph (1).*

12 “(3)(A) *The report of each audit conducted under this*
13 *subsection shall be filed with the court and transmitted to*
14 *the United States trustee. Each report shall clearly and con-*
15 *spicuously specify any material misstatement of income or*
16 *expenditures or of assets identified by the person performing*
17 *the audit. In any case where a material misstatement of*
18 *income or expenditures or of assets has been reported, the*
19 *clerk of the bankruptcy court shall give notice of the*
20 *misstatement to the creditors in the case.*

21 “(B) *If a material misstatement of income or expendi-*
22 *tures or of assets is reported the United States trustee*
23 *shall—*

24 “(i) *report the material misstatement,*
25 *if appropriate, to the United States Attor-*

1 *ney pursuant to section 3057 of title 18,*
2 *United States Code; and*

3 *“(ii) if advisable, take appropriate ac-*
4 *tion, including but not limited to commenc-*
5 *ing an adversary proceeding to revoke the*
6 *debtor’s discharge pursuant to section*
7 *727(d) of title 11, United States Code.”.*

8 *(b) AMENDMENTS TO SECTION 521 OF TITLE 11,*
9 *U.S.C.—Section 521 of title 11, United States Code, is*
10 *amended in paragraphs (3) and (4) by adding “or an audi-*
11 *tor appointed pursuant to section 586 of title 28, United*
12 *States Code” after “serving in the case”.*

13 *(c) AMENDMENTS TO SECTION 727 OF TITLE 11,*
14 *U.S.C.—Section 727(d) of title 11, United States Code, is*
15 *amended—*

16 *(1) by deleting “or” at the end of paragraph (2);*

17 *(2) by substituting “; or” for the period at the*
18 *end of paragraph (3); and*

19 *(3) adding the following at the end of paragraph*

20 *(3)—*

21 *“(4) the debtor has failed to explain satisfac-*
22 *torily—*

23 *“(A) a material misstatement in an audit*
24 *performed pursuant to section 586(f) of title 28,*
25 *United States Code; or*

1 “(B) a failure to make available for inspec-
2 tion all necessary accounts, papers, documents,
3 financial records, files and all other papers,
4 things, or property belonging to the debtor that
5 are requested for an audit conducted pursuant to
6 section 586(f) of title 28, United States Code.”.

7 (d) *EFFECTIVE DATE.*—The amendments made by this
8 section shall take effect 18 months after the date of enact-
9 ment of this Act.

10 **SEC. 308. CREDITOR REPRESENTATION AT FIRST MEETING**
11 **OF CREDITORS.**

12 Section 341(c) of title 11, United States Code, is
13 amended by inserting after the first sentence the following:
14 “Notwithstanding any local court rule, provision of a State
15 constitution, any other Federal or State law that is not a
16 bankruptcy law, or other requirement that representation
17 at the meeting of creditors under subsection (a) be by an
18 attorney, a creditor holding a consumer debt or any rep-
19 resentative of the creditor (which may include an entity or
20 an employee of an entity and may be a representative for
21 more than one creditor) shall be permitted to appear at and
22 participate in the meeting of creditors in a case under chap-
23 ter 7 or 13, either alone or in conjunction with an attorney
24 for the creditor. Nothing in this subsection shall be con-

1 *strued to require any creditor to be represented by an attor-*
2 *ney at any meeting of creditors.”.*

3 **SEC. 309. FAIR NOTICE FOR CREDITORS IN CHAPTER 7 AND**
4 **13 CASES.**

5 *Section 342 of title 11, United States Code, is amend-*
6 *ed—*

7 *(1) in subsection (c), by striking “, but the fail-*
8 *ure of such notice to contain such information shall*
9 *not invalidate the legal effect of such notice”; and*

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

11 *“(d)(1) If the credit agreement between the debtor and*
12 *the creditor or the last communication before the filing of*
13 *the petition in a voluntary case from the creditor to a debtor*
14 *who is an individual states an account number of the debtor*
15 *that is the current account number of the debtor with re-*
16 *spect to any debt held by the creditor against the debtor,*
17 *the debtor shall include that account number in any notice*
18 *to the creditor required to be given under this title.*

19 *“(2) If the creditor has specified to the debtor, in the*
20 *last communication before the filing of the petition, an ad-*
21 *dress at which the creditor wishes to receive correspondence*
22 *regarding the debtor’s account, any notice to the creditor*
23 *required to be given by the debtor under this title shall be*
24 *given at such address.*

1 “(3) For purposes of this section, the term ‘notice’ shall
2 include—

3 “(A) any correspondence from the debtor to the
4 creditor after the commencement of the case;

5 “(B) any statement of the debtor’s intention
6 under section 521(a)(2);

7 “(C) notice of the commencement of any proceed-
8 ing in the case to which the creditor is a party; and

9 “(D) any notice of a hearing under section 1324.

10 “(e)(1) At any time, a creditor, in a case of an indi-
11 vidual under chapter 7 or 13, may file with the court and
12 serve on the debtor a notice of the address to be used to
13 notify the creditor in that case.

14 “(2) If the court or the debtor is required to give the
15 creditor notice, not later than 5 days after receipt of the
16 notice under paragraph (1), that notice shall be given at
17 that address.

18 “(f) An entity may file with the court a notice stating
19 its address for notice in cases under chapter 7 or 13. After
20 the date that is 30 days following the filing of that notice,
21 any notice in any case filed under chapter 7 or 13 given
22 by the court shall be to that address unless specific notice
23 is given under subsection (e) with respect to a particular
24 case.

1 “(g)(1) Notice given to a creditor other than as pro-
2 vided in this section shall not be effective notice until that
3 notice has been brought to the attention of the creditor.

4 “(2) If the creditor has designated a person or depart-
5 ment to be responsible for receiving notices concerning
6 bankruptcy cases and has established reasonable procedures
7 so that bankruptcy notices received by the creditor will be
8 delivered to that department or person, notice shall not be
9 brought to the attention of the creditor until that notice is
10 received by that person or department.”.

11 **SEC. 310. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**

12 **TER 13.**

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

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

17 (2) in subparagraph (B)—

18 (A) by striking “in the converted case, with
19 allowed secured claims” and inserting “only in
20 a case converted to chapter 11 or 12 but not in
21 a case converted to chapter 7, with allowed se-
22 cured claims in cases under chapters 11 and
23 12”; and

24 (B) by striking the period and inserting “;
25 and”; and

1 “(i) by agreement of all parties in interest;

2 or

3 “(ii) by the court for such specific period of
4 time as the court finds is required for good
5 cause.”.

6 **SEC. 312. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**
7 **ULES OR PROVIDE REQUIRED INFORMATION.**

8 Section 707 of title 11, United States Code, as amend-
9 ed by section 102 of this Act, is amended by adding at the
10 end the following:

11 “(c)(1) Notwithstanding subsection (a), and subject to
12 paragraph (2), if an individual debtor in a voluntary case
13 under chapter 7 or 13 fails to file all of the information
14 required under section 521(a)(1) within 45 days after the
15 filing of the petition commencing the case, the case shall
16 be automatically dismissed effective on the 46th day after
17 the filing of the petition.

18 “(2) With respect to a case described in paragraph (1),
19 any party in interest may request the court to enter an
20 order dismissing the case. The court shall, if so requested,
21 enter an order of dismissal not later than 5 days after that
22 request.

23 “(3) Upon request of the debtor made within 45 days
24 after the filing of the petition commencing a case described
25 in paragraph (1), the court may allow the debtor an addi-

1 *tional period of not to exceed 50 days to file the information*
2 *required under section 521(a)(1) if the court finds justifica-*
3 *tion for extending the period for the filing.”.*

4 **SEC. 313. ADEQUATE TIME FOR PREPARATION FOR A HEAR-**
5 **ING ON CONFIRMATION OF THE PLAN.**

6 *Section 1324 of title 11, United States Code, as amend-*
7 *ed by section 304 of this Act, is amended—*

8 *(1) by striking “After” and inserting the follow-*
9 *ing:*

10 *“(a) Except as provided in subsection (b) and after”;*
11 *and*

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

13 *“(b) If not later than 5 days after receiving notice of*
14 *a hearing on confirmation of the plan, a creditor objects*
15 *to the confirmation of the plan, the hearing on confirmation*
16 *of the plan may be held no earlier than 20 days after the*
17 *first meeting of creditors under section 341(a).”.*

18 **SEC. 314. DISCHARGE UNDER CHAPTER 13.**

19 *Section 1328(a) of title 11, United States Code, is*
20 *amended by striking paragraphs (1) through (3) and insert-*
21 *ing the following:*

22 *“(1) provided for under section 1322(b)(5);*

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

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

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

8 **SEC. 315. NONDISCHARGEABLE DEBTS.**

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

11 “(14A) incurred to pay a debt that is non-
12 dischargeable by reason of section 727, 1141, 1228 (a)
13 or (b), or 1328(b), or any other provision of this sub-
14 section, where the debtor incurred the debt to pay
15 such a nondischargeable debt with the intent to dis-
16 charge in bankruptcy the newly-created debt.”.

17 **SEC. 316. CREDIT EXTENSIONS ON THE EVE OF BANK-**
18 **RUPTCY PRESUMED NONDISCHARGEABLE.**

19 Section 523(a)(2) of title 11, United States Code, as
20 amended by section 202 of this Act, is amended—

21 (1) in subparagraph (A), by striking the semi-
22 colon at the end and inserting the following: “(and,
23 for purposes of this subparagraph, consumer debts
24 owed in an aggregate amount greater than or equal
25 to \$400 incurred for goods or services not reasonably

1 *necessary for the maintenance or support of the debtor*
2 *or a dependent child of the debtor to a single creditor*
3 *that are incurred during the 90-day period preceding*
4 *the date of the order for relief shall be presumed to*
5 *be nondischargeable under this subparagraph); or”;*

6 *(2) in subparagraph (B), by striking “or” at the*
7 *end; and*

8 *(3) by striking subparagraph (C).*

9 **SEC. 317. DEFINITION OF HOUSEHOLD GOODS AND AN-**
10 **TIQUES.**

11 *Not later than 180 days after the date of enactment*
12 *of this Act, the Federal Trade Commission shall promulgate*
13 *regulations defining “household goods” under section*
14 *522(c)(3) in a manner suitable and appropriate for cases*
15 *under title 11 of the United States Code. If new regulations*
16 *are not effective within 180 days of enactment of this Act,*
17 *then “household goods” under section 522(c)(3) shall have*
18 *the meaning given that term in section 444.1(i) of title 16,*
19 *of the Code of Federal Regulations, except that the term*
20 *shall also include any tangible personal property reason-*
21 *ably necessary for the maintenance or support of a depend-*
22 *ent child.*

1 **SEC. 318. RELIEF FROM STAY WHEN THE DEBTOR DOES**
2 **NOT COMPLETE INTENDED SURRENDER OF**
3 **CONSUMER DEBT COLLATERAL.**

4 *(a) AUTOMATIC STAY.—Section 362 of title 11, United*
5 *States Code, as amended by section 303, is amended—*

6 *(1) in subsection (c)(1), in the matter preceding*
7 *subparagraph (A), by striking “(e) and (f)” and in-*
8 *serting “(e), (f), and (h)”;*

9 *(2) by redesignating subsection (h) as subsection*
10 *(i); and*

11 *(3) by inserting after subsection (g) the follow-*
12 *ing:*

13 *“(h) In an individual case under chapter 7, 11, or 13*
14 *the stay provided by subsection (a) is terminated with re-*
15 *spect to property of the estate securing in whole or in part*
16 *a claim that is in an amount greater than \$3,000, or subject*
17 *to an unexpired lease with a remaining term of at least*
18 *1 year (in any case in which the debtor owes at least \$3,000*
19 *for a 1-year period), if within 30 days after the expiration*
20 *of the applicable period under section 521(a)(2)—*

21 *“(1)(A) the debtor fails to timely file a statement*
22 *of intention to surrender or retain the property; or*

23 *“(B) if the debtor indicates in the filing that the*
24 *debtor will retain the property, the debtor fails to*
25 *meet an applicable requirement to—*

26 *“(i) either—*

1 “(I) redeem the property pursuant to
2 section 722; or

3 “(II) reaffirm the debt the property se-
4 cures pursuant to section 524(c); or

5 “(i) assume the unexpired lease pursuant
6 to section 365(d) if the trustee does not do so; or

7 “(2) the debtor fails to timely take the action
8 specified in a statement of intention referred to in
9 paragraph (1)(A) (as amended, if that statement is
10 amended before expiration of the period for taking ac-
11 tion), unless—

12 “(A) the statement of intention specifies re-
13 affirmation; and

14 “(B) the creditor refuses to reaffirm the debt
15 on the original contract terms for the debt.”.

16 (b) *DEBTOR’S DUTIES*.—Section 521(a)(2) of title 11,
17 *United States Code*, as redesignated by section 301(b) of
18 *this Act*, is amended—

19 (1) in the matter preceding subparagraph (A),
20 by striking “consumer”;

21 (2) in subparagraph (B)—

22 (A) by striking “forty-five days after the fil-
23 ing of a notice of intent under this section” and
24 inserting “30 days after the first meeting of
25 creditors under section 341(a)”; and

1 (B) by striking “forty-five-day period” and
2 inserting “30-day period”; and
3 (3) in subparagraph (C), by inserting “, except
4 as provided in section 362(h)” before the semicolon.

5 **SEC. 319. ADEQUATE PROTECTION OF LESSORS AND PUR-**
6 **CHASE MONEY SECURED CREDITORS.**

7 (a) *IN GENERAL.*—Chapter 13 of title 11, United
8 States Code, is amended by adding after section 1307 the
9 following:

10 **“§ 1307A. Adequate protection in chapter 13 cases**

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

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

16 “(ii) any creditor holding a claim secured by
17 personal property to the extent that the claim is at-
18 tributable to the purchase of that property by the
19 debtor.

20 “(B) The debtor or the plan shall continue making the
21 adequate protection payments until the earlier of the date
22 on which—

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

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

3 “(I) the lessor or creditor; or

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

6 “(2) The payments referred to in paragraph (1)(A)
7 shall be determined by the court.

8 “(b)(1) Subject to the limitations under paragraph (2),
9 the court may, after notice and hearing, change the amount
10 and timing of the dates of payment of payments made
11 under subsection (a).

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

14 “(B) The amount of a payment referred to in para-
15 graph (1) shall not be less than the reasonable depreciation
16 of the personal property described in subsection (a)(1), de-
17 termined on a month-to-month basis.

18 “(c) Notwithstanding section 1326(b), the payments
19 referred to in subsection (a)(1)(A) shall be continued in ad-
20 dition to plan payments under a confirmed plan until ac-
21 tual payments to the creditor begin under that plan, if the
22 confirmed plan provides—

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

1 “(2) for the deferral of payments to such creditor
2 or lessor under the plan until the payment of
3 amounts described in section 1326(b).

4 “(d) Notwithstanding sections 362, 542, and 543, a les-
5 sor or creditor described in subsection (a) may retain pos-
6 session of property described in that subsection that was
7 obtained in accordance with applicable law before the date
8 of filing of the petition until the first payment under sub-
9 section (a)(1)(A) is received by the lessor or creditor.”.

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

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

14 **SEC. 320. LIMITATION.**

15 Section 522 of title 11, United States Code, as amend-
16 ed by section 207(a), is amended—

17 (1) in subsection (b)(3)(A), by inserting “subject
18 to subsection (n),” before “any property”; and

19 (2) by adding at the end the following new sub-
20 section:

21 “(n)(1) Except as provided in paragraph (2), as a re-
22 sult of electing under subsection (b)(3)(A) to exempt prop-
23 erty under State or local law, a debtor may not exempt
24 any amount of interest that exceeds in the aggregate
25 \$100,000 in value in—

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

3 “(B) a cooperative that owns property that the
4 debtor or a dependent of the debtor uses as a resi-
5 dence; or

6 “(C) a burial plot for the debtor or a dependent
7 of the debtor.

8 “(2) The limitation under paragraph (1) shall not
9 apply to an exemption claimed under subsection (b)(2)(A)
10 by a family farmer for the principal residence of that farm-
11 er.”.

12 **SEC. 321. MISCELLANEOUS IMPROVEMENTS.**

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

16 “(h)(1) Subject to paragraphs (2) and (3) and not-
17 withstanding any other provision of this section, an indi-
18 vidual may not be a debtor under this title unless that indi-
19 vidual has, during the 90-day period preceding the date of
20 filing of the petition of that individual, received credit
21 counseling, including, at a minimum, participation in an
22 individual or group briefing that outlined the opportunities
23 for available credit counseling and assisted that individual
24 in performing an initial budget analysis, through a credit
25 counseling program (offered through an approved credit

1 *counseling service described in section 111(a)) that has been*
2 *approved by—*

3 *“(A) the United States trustee; or*

4 *“(B) the bankruptcy administrator for the dis-*
5 *trict in which the petition is filed.”.*

6 *“(2)(A) Paragraph (1) shall not apply with respect to*
7 *a debtor who resides in a district for which the United*
8 *States trustee or bankruptcy administrator of the bank-*
9 *ruptcy court of that district determines that the approved*
10 *credit counseling services for that district are not reason-*
11 *ably able to provide adequate services to the additional in-*
12 *dividuals who would otherwise seek credit counseling from*
13 *those programs by reason of the requirements of paragraph*
14 *(1).*

15 *“(B) Each United States trustee or bankruptcy admin-*
16 *istrator that makes a determination described in subpara-*
17 *graph (A) shall review that determination not later than*
18 *one year after the date of that determination, and not less*
19 *frequently than every year thereafter.*

20 *“(3)(A) Subject to subparagraph (B), the requirements*
21 *of paragraph (1) shall not apply with respect to a debtor*
22 *who submits to the court a certification that—*

23 *“(i) describes exigent circumstances that merit a*
24 *waiver of the requirements of paragraph (1);*

1 “(ii) states that the debtor requested credit coun-
2 seling services from an approved credit counseling
3 service, but was unable to obtain the services referred
4 to in paragraph (1) during the 5-day period begin-
5 ning on the date on which the debtor made that re-
6 quest; and

7 “(iii) is satisfactory to the court.

8 “(B) With respect to a debtor, an exemption under sub-
9 paragraph (A) shall cease to apply to that debtor on the
10 date on which the debtor meets the requirements of para-
11 graph (1), but in no case may the exemption apply to that
12 debtor after the date that is 30 days after the debtor files
13 a petition.”.

14 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
15 11, United States Code, is amended—

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

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

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

21 “(11) after the filing of the petition, the debtor
22 failed to complete an instructional course concerning
23 personal financial management described in section
24 111 that was administered or approved by—

25 “(A) the United States trustee; or

1 “(B) the bankruptcy administrator for the
2 district in which the petition is filed.”.

3 (c) *CHAPTER 13 DISCHARGE.*—Section 1328 of title
4 11, United States Code, is amended by adding at the end
5 the following:

6 “(f) The court shall not grant a discharge under this
7 section to a debtor, unless after filing a petition the debtor
8 has completed an instructional course concerning personal
9 financial management described in section 111 that was ad-
10 ministered or approved by—

11 “(1) the United States trustee; or

12 “(2) the bankruptcy administrator for the dis-
13 trict in which the petition is filed.”.

14 (d) *DEBTOR’S DUTIES.*—Section 521 of title 11,
15 United States Code, as amended by sections 301(b) and
16 318(b) of this Act, is amended by adding at the end the
17 following:

18 “(e) In addition to the requirements under subsection
19 (a), an individual debtor shall file with the court—

20 “(1) a certificate from the credit counseling serv-
21 ice that provided the debtor services under section
22 109(h); and

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

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

5 “(i) within the applicable period of time pre-
6 scribed under section 109(h), the debtor received credit
7 counseling through a credit counseling program in ac-
8 cordance with section 109(h); and”.

9 (f) *GENERAL PROVISIONS.*—

10 (1) *IN GENERAL.*—Chapter 1 of title 11, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 **“§111. Credit counseling services; financial manage-
14 ment instructional courses**

15 “(a) The clerk of each district shall maintain a list
16 of credit counseling services that provide 1 or more pro-
17 grams described in section 109(h) and that have been ap-
18 proved by—

19 “(1) the United States trustee; or

20 “(2) the bankruptcy administrator for the dis-
21 trict.

22 “(b) The United States trustee or each bankruptcy ad-
23 ministrator referred to in subsection (a)(1) shall—

24 “(1) make available to debtors who are individ-
25 uals an instructional course concerning personal fi-

1 *nancial management, under the direction of the bank-*
 2 *ruptcy court; and*

3 *“(2) maintain a list of instructional courses con-*
 4 *cerning personal financial management that are oper-*
 5 *ated by a private entity and that have been approved*
 6 *by the United States trustee or that bankruptcy ad-*
 7 *ministrator.”.*

8 *(2) CLERICAL AMENDMENT.—The table of sec-*
 9 *tions at the beginning of chapter 1 of title 11, United*
 10 *States Code, is amended by adding at the end the fol-*
 11 *lowing:*

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

12 *(g) DEFINITIONS.—Section 101 of title 11, United*
 13 *States Code, as amended by section 317 of this Act, is*
 14 *amended—*

15 *(1) by inserting after paragraph (13) the follow-*
 16 *ing:*

17 *“(13A) ‘debtor’s principal residence’—*

18 *“(A) means a residential structure, includ-*
 19 *ing incidental property, without regard to*
 20 *whether that structure is attached to real prop-*
 21 *erty; and*

22 *“(B) includes an individual condominium*
 23 *or co-operative unit;”;* and

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

1 “(27B) ‘incidental property’ means, with respect
2 to a debtor’s principal residence—

3 “(A) property commonly conveyed with a
4 principal residence in the area where the real es-
5 tate is located;

6 “(B) all easements, rights, appurtenances,
7 fixtures, rents, royalties, mineral rights, oil or
8 gas rights or profits, water rights, escrow funds,
9 or insurance proceeds; and

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

11 **SEC. 322. BANKRUPTCY JUDGESHIPS.**

12 (a) *SHORT TITLE.*—This section may be cited as the
13 “Bankruptcy Judgeship Act of 1998”.

14 (b) *TEMPORARY JUDGESHIPS.*—

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

20 (A) One additional bankruptcy judgeship
21 for the eastern district of California.

22 (B) Four additional bankruptcy judgeships
23 for the central district of California.

24 (C) One additional bankruptcy judgeship
25 for the southern district of Florida.

1 (D) *Two additional bankruptcy judgeships*
2 *for the district of Maryland.*

3 (E) *One additional bankruptcy judgeship*
4 *for the eastern district of Michigan.*

5 (F) *One additional bankruptcy judgeship*
6 *for the southern district of Mississippi.*

7 (G) *One additional bankruptcy judgeship*
8 *for the district of New Jersey.*

9 (H) *One additional bankruptcy judgeship*
10 *for the eastern district of New York.*

11 (I) *One additional bankruptcy judgeship for*
12 *the northern district of New York.*

13 (J) *One additional bankruptcy judgeship*
14 *for the southern district of New York.*

15 (K) *One additional bankruptcy judgeship*
16 *for the eastern district of Pennsylvania.*

17 (L) *One additional bankruptcy judgeship*
18 *for the middle district of Pennsylvania.*

19 (M) *One additional bankruptcy judgeship*
20 *for the western district of Tennessee.*

21 (N) *One additional bankruptcy judgeship*
22 *for the eastern district of Virginia.*

23 (2) *VACANCIES.—The first vacancy occurring in*
24 *the office of a bankruptcy judge in each of the judicial*
25 *districts set forth in paragraph (1) that—*

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

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

6 shall not be filled.

7 (c) *EXTENSIONS.*—

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

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

21 (B) 10 years or more after October 28,
22 1993, with respect to the district of Delaware;

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

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

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

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

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

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

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

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

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

1 “(i) the payment for the travel expenses is
2 paid by such bankruptcy judge from the personal
3 funds of such bankruptcy judge; and

4 “(ii) such bankruptcy judge does not receive
5 funds (including reimbursement) from the
6 United States or any other person or entity for
7 the payment of such travel expenses.

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

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

18 “(B) The annual report under this paragraph shall in-
19 clude—

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

23 “(ii) a description of the subject matter and pur-
24 pose of the travel relating to each travel expense iden-

1 *tified under clause (i), with the name of the bank-*
2 *ruptcy judge to whom the travel applies; and*

3 *“(iii) the number of days of each travel described*
4 *under clause (ii), with the name of the bankruptcy*
5 *judge to whom the travel applies.*

6 *“(4)(A) The Director of the Administrative Office of*
7 *the United States Courts shall—*

8 *“(i) consolidate the reports submitted under*
9 *paragraph (3) into a single report; and*

10 *“(ii) annually submit such consolidated report to*
11 *Congress.*

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

17 **SEC. 323. DEFINITION OF DOMESTIC SUPPORT OBLIGA-**
18 **TION.**

19 *Section 101 of title 11, United States Code, as amend-*
20 *ed by section 321(g) of this Act, is amended—*

21 *(1) by striking paragraph (12A); and*

22 *(2) by inserting after paragraph (14) the follow-*
23 *ing:*

1 “(14A) ‘domestic support obligation’ means a
2 debt that accrues before or after the entry of an order
3 for relief under this title that is—

4 “(A) owed to or recoverable by—

5 “(i) a spouse, former spouse, or child of
6 the debtor or that child’s legal guardian; or

7 “(ii) a governmental unit;

8 “(B) in the nature of alimony, mainte-
9 nance, or support (including assistance provided
10 by a governmental unit) of such spouse, former
11 spouse, or child, without regard to whether such
12 debt is expressly so designated;

13 “(C) established or subject to establishment
14 before or after entry of an order for relief under
15 this title, by reason of applicable provisions of—

16 “(i) a separation agreement, divorce
17 decree, or property settlement agreement;

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

19 “(iii) a determination made in accord-
20 ance with applicable nonbankruptcy law by
21 a governmental unit; and

22 “(D) not assigned to a nongovernmental en-
23 tity, unless that obligation is assigned volun-
24 tarily by the spouse, former spouse, child, or par-
25 ent solely for the purpose of collecting the debt.”.

1 **SEC. 324. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**
2 **PORT OBLIGATIONS.**

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

5 *(1) by striking paragraph (7);*

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

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

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

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

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

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

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

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

22 *“(1) First, allowed claims for domestic support obliga-*
23 *tions to be paid in the following order on the condition that*
24 *funds received under this paragraph by a governmental*
25 *unit in a case under this title be applied:*

1 “(A) Claims that, as of the date of entry of the
2 order for relief, are owed directly to a spouse, former
3 spouse, or child of the debtor, or the parent of such
4 child, without regard to whether the claim is filed by
5 the spouse, former spouse, child, or parent, or is filed
6 by a governmental unit on behalf of that person.

7 “(B) Claims that, as of the date of entry of the
8 order for relief, are assigned by a spouse, former
9 spouse, child of the debtor, or the parent of that child
10 to a governmental unit or are owed directly to a gov-
11 ernmental unit under applicable nonbankruptcy
12 law.”.

13 **SEC. 325. REQUIREMENTS TO OBTAIN CONFIRMATION AND**
14 **DISCHARGE IN CASES INVOLVING DOMESTIC**
15 **SUPPORT OBLIGATIONS.**

16 *Title 11, United States Code, is amended—*

17 (1) *in section 1129(a), by adding at the end the*
18 *following:*

19 “(14) *If the debtor is required by a judicial or*
20 *administrative order or statute to pay a domestic*
21 *support obligation, the debtor has paid all amounts*
22 *payable under such order or statute for such obliga-*
23 *tion that become payable after the date on which the*
24 *petition is filed.”;*

25 (2) *in section 1325(a)—*

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

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

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

6 “(7) if the debtor is required by a judicial or ad-
7 ministrative order or statute to pay a domestic sup-
8 port obligation, the debtor has paid all amounts pay-
9 able under such order for such obligation that become
10 payable after the date on which the petition is filed.”;
11 and

12 (3) in section 1328(a), as amended by section
13 314 of this Act, in the matter preceding paragraph
14 (1), by inserting “, and with respect to a debtor who
15 is required by a judicial or administrative order to
16 pay a domestic support obligation, certifies that all
17 amounts payable under such order or statute that are
18 due on or before the date of the certification (includ-
19 ing amounts due before or after the petition was filed)
20 have been paid” after “completion by the debtor of all
21 payments under the plan”.

22 **SEC. 326. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**
23 **SUPPORT OBLIGATION PROCEEDINGS.**

24 Section 362(b) of title 11, United States Code, is
25 amended—

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

3 “(2) *under subsection (a)—*

4 “(A) *of the commencement or continuation*
5 *of an action or proceeding for—*

6 “(i) *the establishment of paternity as a*
7 *part of an effort to collect domestic support*
8 *obligations; or*

9 “(ii) *the establishment or modification*
10 *of an order for domestic support obligations;*
11 *or*

12 “(B) *the collection of a domestic support ob-*
13 *ligation from property that is not property of the*
14 *estate;”;*

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

17 (3) *in paragraph (18), by striking the period at*
18 *the end and inserting a semicolon; and*

19 (4) *by adding at the end the following:*

20 “(19) *under subsection (a) with respect to the*
21 *withholding of income pursuant to an order as speci-*
22 *fied in section 466(b) of the Social Security Act (42*
23 *U.S.C. 666(b)); or*

24 “(20) *under subsection (a) with respect to—*

1 “(A) the withholding, suspension, or restric-
2 tion of drivers’ licenses, professional and occupa-
3 tional licenses, and recreational licenses pursu-
4 ant to State law, as specified in section
5 466(a)(16) of the Social Security Act (42 U.S.C.
6 666(a)(16)) or with respect to the reporting of
7 overdue support owed by an absent parent to
8 any consumer reporting agency as specified in
9 section 466(a)(7) of the Social Security Act (42
10 U.S.C. 666(a)(7));

11 “(B) the interception of tax refunds, as
12 specified in sections 464 and 466(a)(3) of the So-
13 cial Security Act (42 U.S.C. 664 and 666(a)(3));
14 or

15 “(C) the enforcement of medical obligations
16 as specified under title IV of the Social Security
17 Act (42 U.S.C. 601 et seq.).”.

18 **SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**

19 **ALIMONY, MAINTENANCE, AND SUPPORT.**

20 Section 523 of title 11, United States Code, as amend-
21 ed by section 202 of this Act, is amended—

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

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

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

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

6 **SEC. 328. CONTINUED LIABILITY OF PROPERTY.**

7 *Section 522 of title 11, United States Code, is amend-*
8 *ed—*

9 (1) *in subsection (c), by striking paragraph (1)*
10 *and inserting the following:*

11 “(1) *a debt of a kind specified in paragraph (1)*
12 *or (5) of section 523(a) (in which case, notwithstand-*
13 *ing any provision of applicable nonbankruptcy law to*
14 *the contrary, such property shall be liable for a debt*
15 *of a kind specified in section 523(a)(5);”*; and

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

20 **SEC. 329. PROTECTION OF DOMESTIC SUPPORT CLAIMS**
21 **AGAINST PREFERENTIAL TRANSFER MO-**
22 **TIONS.**

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

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

4 **SEC. 330. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
5 **RUPTCY.**

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

8 (1) in subsection (b)—

9 (A) in paragraph (2)—

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

11 and inserting:

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

13 “(A) any property”;

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

15 “and” at the end;

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

17 the period at the end and inserting “; and”;

18 and

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

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

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

22 taxation under section 401, 403, 408, 408A, 414, 457,

23 or 501(a) of the Internal Revenue Code of 1986 and

24 which has not been pledged or promised to any person

25 in connection with any extension of credit.”;

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

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

7 (C) in the matter preceding paragraph
8 (2)—

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

11 (ii) by striking “paragraph (2)” both
12 places it appears and inserting “paragraph
13 (3)”;

14 (iii) by striking “paragraph (1)” each
15 place it appears and inserting “paragraph
16 (2)”;

17 (iv) by striking “Such property is—”;
18 and

19 (D) by adding at the end of the subsection
20 the following:

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

23 “(A) If the retirement funds are in a retirement
24 fund that has received a favorable determination pur-
25 suant to section 7805 of the Internal Revenue Code of

1 1986, and that determination is in effect as of the
2 date of the commencement of the case under section
3 301, 302, or 303, those funds shall be presumed to be
4 exempt from the estate.

5 “(B) If the retirement funds are in a retirement
6 fund that has not received a favorable determination
7 pursuant to such section 7805, those funds are exempt
8 from the estate if the debtor demonstrates that—

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

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

15 “(II) the retirement fund fails to be in sub-
16 stantial compliance with such applicable require-
17 ments, the debtor is not materially responsible
18 for that failure.

19 “(C) A direct transfer of retirement funds from
20 1 fund or account that is exempt from taxation under
21 section 401, 403, 408, 408A, 414, 457, or 501(a) of
22 the Internal Revenue Code of 1986, pursuant to sec-
23 tion 401(a)(31) of the Internal Revenue Code of 1986,
24 or otherwise, shall not cease to qualify for exemption

1 *under paragraph (3)(C) by reason of that direct*
2 *transfer.*

3 “(D)(i) *Any distribution that qualifies as an eli-*
4 *gible rollover distribution within the meaning of sec-*
5 *tion 402(c) of the Internal Revenue Code of 1986 or*
6 *that is described in clause (ii) shall not cease to qual-*
7 *ify for exemption under paragraph (3)(C) by reason*
8 *of that distribution.*

9 “(ii) *A distribution described in this clause is an*
10 *amount that—*

11 “(I) *has been distributed from a fund or ac-*
12 *count that is exempt from taxation under section*
13 *401, 403, 408, 408A, 414, 457, or 501(a) of the*
14 *Internal Revenue Code of 1986; and*

15 “(II) *to the extent allowed by law, is depos-*
16 *ited in such a fund or account not later than 60*
17 *days after the distribution of that amount.”; and*
18 *(2) in subsection (d)—*

19 (A) *in the matter preceding paragraph (1),*
20 *by striking “subsection (b)(1)” and inserting*
21 *“subsection (b)(2)”;* and

22 (B) *by adding at the end the following:*

23 “(12) *Retirement funds to the extent that those funds*
24 *are in a fund or account that is exempt from taxation under*

1 *section 401, 403, 408, 408A, 414, 457, or 501(a) of the In-*
2 *ternal Revenue Code of 1986.”.*

3 (b) *AUTOMATIC STAY.*—*Section 362(b) of title 11,*
4 *United States Code, is amended—*

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

7 (2) *in paragraph (18), by striking the period*
8 *and inserting “; or”;*

9 (3) *by inserting after paragraph (18) the follow-*
10 *ing:*

11 “(19) *under subsection (a), of withholding of in-*
12 *come from a debtor’s wages and collection of amounts*
13 *withheld, pursuant to the debtor’s agreement authoriz-*
14 *ing that withholding and collection for the benefit of*
15 *a pension, profit-sharing, stock bonus, or other plan*
16 *established under section 401, 403, 408, 408A, 414,*
17 *457, or 501(a) of the Internal Revenue Code of 1986*
18 *that is sponsored by the employer of the debtor, or an*
19 *affiliate, successor, or predecessor of such employer—*

20 “(A) *to the extent that the amounts withheld*
21 *and collected are used solely for payments relat-*
22 *ing to a loan from a plan that satisfies the re-*
23 *quirements of section 408(b)(1) of the Employee*
24 *Retirement Income Security Act of 1974 (29*
25 *U.S.C. 1108(b)(1)); or*

1 “(B) in the case of a loan from a thrift sav-
2 ings plan described in subchapter III of title 5,
3 that satisfies the requirements of section 8433(g)
4 of that title.”; and

5 (4) by adding at the end of the flush material
6 following paragraph (19) the following: “Paragraph
7 (19) does not apply to any amount owed to a plan
8 referred to in that paragraph that is incurred under
9 a loan made during the 1-year period preceding the
10 filing of a petition. Nothing in paragraph (19) may
11 be construed to provide that any loan made under a
12 governmental plan under section 414(d) of the Inter-
13 nal Revenue Code of 1986 constitutes a claim or a
14 debt under this title.”.

15 (c) *EXCEPTIONS TO DISCHARGE.*—Section 523(a) of
16 title 11, United States Code, as amended by section 202,
17 is amended—

18 (1) by striking “or” at the end of paragraph
19 (17);

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

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

23 “(19) owed to a pension, profit-sharing, stock
24 bonus, or other plan established under section 401,

1 403, 408, 408A, 414, 457, or 501(c) of the Internal
2 Revenue Code of 1986, pursuant to—

3 “(A) a loan permitted under section
4 408(b)(1) of the Employee Retirement Income
5 Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

6 “(B) a loan from the thrift savings plan de-
7 scribed in subchapter III of title 5, that satisfies
8 the requirements of section 8433(g) of that title.

9 Paragraph (19) does not apply to any amount owed to a
10 plan referred to in that paragraph that is incurred under
11 a loan made during the 1-year period preceding the filing
12 of a petition. Nothing in paragraph (19) may be construed
13 to provide that any loan made under a governmental plan
14 under section 414(d) of the Internal Revenue Code of 1986
15 constitutes a claim or a debt under this title.”.

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

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

20 **SEC. 331. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**
21 **STATES CODE.**

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

24 “(10) Tenth, allowed claims for death or per-
25 sonal injuries resulting from the operation of a motor

1 *vehicle or vessel if such operation was unlawful be-*
2 *cause the debtor was intoxicated from using alcohol,*
3 *a drug or another substance.”.*

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

6 **SEC. 332. DEBT LIMIT INCREASE.**

7 *Section 104(b) of title 11, United States Code, is*
8 *amended by adding at the end the following:*

9 *“(4) The dollar amount in section 101(18) shall be ad-*
10 *justed at the same times and in the same manner as the*
11 *dollar amounts in paragraph (1) of this subsection, begin-*
12 *ning with the adjustment to be made on April 1, 2001.”.*

13 **SEC. 333. ELIMINATION OF REQUIREMENT THAT FAMILY**
14 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**
15 **CENT OF INCOME FROM FARMING OPER-**
16 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

17 *Section 101(18)(A) of title 11, United States Code, is*
18 *amended by striking “the taxable year preceding the taxable*
19 *year” and inserting “at least one of the three calendar years*
20 *preceding the year”.*

21 **SEC. 334. PROHIBITION OF RETROACTIVE ASSESSMENT OF**
22 **DISPOSABLE INCOME.**

23 *(a) Section 1225(b) of title 11, United States Code, is*
24 *amended by adding at the end the following:*

1 “(3) If the plan provides for specific amounts of prop-
2 erty to be distributed on account of allowed unsecured
3 claims as required by paragraph (1)(B) of this subsection,
4 those amounts equal or exceed the debtor’s projected dispo-
5 sable income for that period, and the plan meets the require-
6 ments for confirmation other than those of this subsection,
7 the plan shall be confirmed.

8 (b) Section 1229 of title 11, United States Code, is
9 amended by adding at the end the following:

10 “(d)(1) A modification of the plan under this section
11 may not increase the amount of payments that were due
12 prior to the date of the order modifying the plan.

13 “(2) A modification of the plan under this section to
14 increase payments based on an increase in the debtor’s dis-
15 posable income may not require payments to unsecured
16 creditors in any particular month greater than the debtor’s
17 disposable income for that month unless the debtor proposes
18 such a modification.

19 “(3) A modification of the plan in the last year of the
20 plan shall not require payments that would leave the debtor
21 with insufficient funds to carry on the farming operation
22 after the plan is completed unless the debtor proposes such
23 a modification.”.

1 **SEC. 335. AMENDMENT TO SECTION 1325 OF TITLE 11,**
2 **UNITED STATES CODE.**

3 *Section 1325(b)(2) of title 11, United States Code, is*
4 *amended by inserting after “received by the debtor”, “(other*
5 *than child support payments, foster care payments, or dis-*
6 *ability payments for a dependent child made in accordance*
7 *with applicable nonbankruptcy law and which is reason-*
8 *ably necessary to be expended)”.*

9 **SEC. 336. PROTECTION OF SAVINGS EARMARKED FOR THE**
10 **POSTSECONDARY EDUCATION OF CHILDREN**

11 *Section 541(b) of title 11, United States Code, as*
12 *amended by section 404 of this Act, is amended—*

13 *(1) in paragraph (6), by striking the period at*
14 *the end and inserting a semicolon; and*

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

17 *“(7) except as otherwise provided under applica-*
18 *ble State law, any funds placed in a qualified State*
19 *tuition program (as described in section 529(b) of the*
20 *Internal Revenue Code of 1986) at least 180 days be-*
21 *fore the date of entry of the order for relief; or*

22 *“(8) any funds placed in an education individ-*
23 *ual retirement account (as defined in section*
24 *530(b)(1) of the Internal Revenue Code of 1986) at*
25 *least 180 days before the date of entry of the order for*
26 *relief.”.*

1 **TITLE IV—FINANCIAL**
2 **INSTRUMENTS**

3 **SEC. 401. BANKRUPTCY CODE AMENDMENTS.**

4 (a) *DEFINITIONS OF SWAP AGREEMENT, SECURITIES*
5 *CONTRACT, FORWARD CONTRACT, COMMODITY CONTRACT,*
6 *AND REPURCHASE AGREEMENT.—Title 11, United States*
7 *Code, is amended—*

8 (1) *in section 101—*

9 (A) *in paragraph (25)—*

10 (i) *by striking “means a contract” and*
11 *inserting “means—*
12 *“(A) a contract”;*

13 (ii) *by striking “, or any combination*
14 *thereof or option thereon;” and inserting “,*
15 *or any other similar agreement;”; and*

16 (iii) *by adding at the end the following*
17 *new subparagraphs:*

18 “(B) *any combination of agreements or*
19 *transactions referred to in subparagraphs (A)*
20 *and (C);*

21 “(C) *any option to enter into any agree-*
22 *ment or transaction referred to in subparagraph*
23 *(A) or (B);*

24 “(D) *a master agreement that provides for*
25 *an agreement or transaction referred to in sub-*

1 paragraph (A), (B) or (C), together with all sup-
2 plements to any such master agreement, without
3 regard to whether the master agreement provides
4 for an agreement or transaction that is not a
5 forward contract under this paragraph, except
6 that the master agreement shall be considered to
7 be a forward contract under this paragraph only
8 with respect to each agreement or transaction
9 under the master agreement that is referred to in
10 subparagraph (A), (B) or (C); or

11 “(E) a security agreement or arrangement
12 or other credit enhancement related to any agree-
13 ment or transaction referred to in subparagraph
14 (A), (B), (C) or (D);”;

15 (B) by amending paragraph (47) to read as
16 follows:

17 “(47) the term ‘repurchase agreement’ (which
18 definition also applies to a reverse repurchase agree-
19 ment)—

20 “(A) means—

21 “(i) an agreement, including related
22 terms, which provides for the transfer of 1
23 or more certificates of deposit, mortgage-re-
24 lated securities (as such term is defined in
25 the Securities Exchange Act of 1934), mort-

1 *gage loans, interests in mortgage-related se-*
2 *curities or mortgage loans, eligible bankers’*
3 *acceptances, qualified foreign government*
4 *securities or securities that are direct obli-*
5 *gations of, or that are fully guaranteed as*
6 *to principal and interest by, the United*
7 *States or any agency of the United States*
8 *against the transfer of funds by the trans-*
9 *ferree of such certificates of deposit, eligible*
10 *bankers’ acceptances, securities, loans or in-*
11 *terests with a simultaneous agreement by*
12 *such transferee to transfer to the transferor*
13 *thereof certificates of deposit, eligible bank-*
14 *ers’ acceptances, securities, loans, or inter-*
15 *ests as described above, at a date certain not*
16 *later than 1 year after such transfers or on*
17 *demand, against the transfer of funds; or*
18 *any other similar agreement; and*

19 *“(ii) any combination of agreements or*
20 *transactions referred to in clauses (i) and*
21 *(iii);*

22 *“(iii) any option to enter into any*
23 *agreement or transaction referred to in*
24 *clause (i) or (ii);*

1 “(iv) a master agreement that provides
2 for an agreement or transaction referred to
3 in clauses (i), (ii) or (iii), together with all
4 supplements, without regard to whether the
5 master agreement provides for an agreement
6 or transaction that is not a repurchase
7 agreement under this subparagraph, except
8 that the master agreement shall be consid-
9 ered to be a repurchase agreement under
10 this subparagraph only with respect to each
11 agreement or transaction under the master
12 agreement that is referred to in clause (i),
13 (ii) or (iii); or

14 “(v) a security agreement or arrange-
15 ment or other credit enhancement related to
16 any agreement or transaction referred to in
17 clauses (i), (ii), (iii) or (iv); and

18 “(B) does not include any repurchase obli-
19 gation under a participation in a commercial
20 mortgage loan,

21 and, for purposes of this paragraph, the term ‘quali-
22 fied foreign government security’ means a security
23 that is a direct obligation of, or that is fully guaran-
24 teed by, the central government of a member of the

1 *Organization for Economic Cooperation and Develop-*
2 *ment.*”; and

3 (C) by amending paragraph (53B) to read
4 as follows:

5 “(53B) the term ‘swap agreement’—

6 “(A) means—

7 “(i) any agreement, including the
8 terms and conditions incorporated by ref-
9 erence in any such agreement, which is an
10 interest rate swap, option, future, or for-
11 ward agreement, including a rate floor, rate
12 cap, rate collar, cross-currency rate swap,
13 and basis swap; a spot, same day-tomorrow,
14 tomorrow-next, forward, or other foreign ex-
15 change or precious metals agreement; a cur-
16 rency swap, option, future, or forward
17 agreement; an equity index or equity swap,
18 option, future, or forward agreement; a debt
19 index or debt swap, option, future, or for-
20 ward agreement; a credit spread or credit
21 swap, option, future, or forward agreement;
22 a commodity index or commodity swap, op-
23 tion, future, or forward agreement;

1 “(ii) any agreement similar to any
2 other agreement or transaction referred to
3 in this subparagraph that—

4 “(I) is presently, or in the future
5 becomes, regularly entered into in the
6 swap agreement market (including
7 terms and conditions incorporated by
8 reference therein); and

9 “(II) is a forward, swap, future,
10 or option on 1 or more rates, cur-
11 rencies, commodities, equity securities
12 or other equity instruments, debt secu-
13 rities or other debt instruments, or eco-
14 nomic indices or measures of economic
15 risk or value;

16 “(iii) any combination of agreements
17 or transactions referred to in this subpara-
18 graph;

19 “(iv) any option to enter into any
20 agreement or transaction referred to in this
21 subparagraph;

22 “(v) a master agreement that provides
23 for an agreement or transaction referred to
24 in clause (i), (ii), (iii), or (iv), together
25 with all supplements to any such master

1 *agreement, without regard to whether the*
2 *master agreement contains an agreement or*
3 *transaction that is described in any of such*
4 *clause, except that the master agreement*
5 *shall be considered to be a swap agreement*
6 *only with respect to each agreement or*
7 *transaction under the master agreement*
8 *that is referred to in clause (i), (ii), (iii),*
9 *or (iv); or*

10 *“(C) is applicable for purposes of this title*
11 *only and shall not be construed or applied to*
12 *challenge or affect the characterization, defini-*
13 *tion, or treatment of any swap agreement or any*
14 *instrument defined as a swap agreement herein,*
15 *under any other statute, regulation, or rule, in-*
16 *cluding the Securities Act of 1933, the Securities*
17 *Exchange Act of 1934, the Public Utility Hold-*
18 *ing Company Act of 1935, the Trust Indenture*
19 *Act of 1939, the Investment Company Act of*
20 *1940, the Investment Advisers Act of 1940, the*
21 *Securities Investor Protection Act of 1970, the*
22 *Commodity Exchange Act, and the regulations*
23 *prescribed by the Securities and Exchange Com-*
24 *mission or the Commodity Futures Trading*
25 *Commission.”;*

1 (2) *by amending section 741(7) to read as fol-*
2 *lows:*

3 “(7) *the term ‘securities contract’—*

4 “(A) *means—*

5 “(i) *a contract for the purchase, sale,*
6 *or loan of a security, a certificate of deposit,*
7 *a mortgage loan or any interest in a mort-*
8 *gage loan, or a group or index of securities,*
9 *certificates of deposit, or mortgage loans or*
10 *interests therein (including any interest*
11 *therein or based on the value thereof) or op-*
12 *tion on any of the foregoing, including any*
13 *option to purchase or sell any such security,*
14 *certificate of deposit, loan, interest, group or*
15 *index or option;*

16 “(ii) *any option entered into on a na-*
17 *tional securities exchange relating to foreign*
18 *currencies;*

19 “(iii) *the guarantee by or to any secu-*
20 *rities clearing agency of any settlement of*
21 *cash, securities, certificates of deposit, mort-*
22 *gage loans or interest therein, or group or*
23 *index of securities, certificates of deposit, or*
24 *mortgage loans or interests therein (includ-*
25 *ing any interest therein or based on the*

1 *value thereof) or option on any of the fore-*
2 *going, including any option to purchase or*
3 *sell any such security, certificate of deposit,*
4 *loan, interest, group or index or option;*

5 “(iv) *any margin loan;*

6 “(v) *any other agreement or trans-*
7 *action that is similar to any agreement or*
8 *transaction referred to in this subpara-*
9 *graph;*

10 “(vi) *any combination of the agree-*
11 *ments or transactions referred to in this*
12 *subparagraph;*

13 “(vii) *any option to enter into any*
14 *agreement or transaction referred to in this*
15 *subparagraph;*

16 “(viii) *a master agreement that pro-*
17 *vides for an agreement or transaction re-*
18 *ferred to in clause (i), (ii), (iii), (iv), (v),*
19 *(vi), or (vii), together with all supplements*
20 *to any such master agreement, without re-*
21 *gard to whether the master agreement pro-*
22 *vides for an agreement or transaction that*
23 *is not a securities contract under this sub-*
24 *paragraph, except that the master agree-*
25 *ment shall be considered to be a securities*

1 *contract under this subparagraph only with*
2 *respect to each agreement or transaction*
3 *under the master agreement that is referred*
4 *to in clause (i), (ii), (iii), (iv), (v), (vi), or*
5 *(vii); and*

6 *“(ix) any security agreement or ar-*
7 *rangement or other credit enhancement re-*
8 *lated to any agreement or transaction re-*
9 *ferred to in this subparagraph; and*

10 *“(B) does not include any purchase, sale, or*
11 *repurchase obligation under a participation in*
12 *or servicing agreement for a commercial mort-*
13 *gage loan.”; and*

14 *(3) in section 761(4)—*

15 *(A) by striking “or” at the end of subpara-*
16 *graph (D); and*

17 *(B) by adding at the end the following new*
18 *subparagraphs:*

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

22 *“(G) any combination of the agreements or*
23 *transactions referred to in this paragraph;*

1 “(H) any option to enter into any agree-
2 ment or transaction referred to in this para-
3 graph;

4 “(I) a master agreement that provides for
5 an agreement or transaction referred to in sub-
6 paragraph (A), (B), (C), (D), (E), (F), (G) or
7 (H), together with all supplements to any such
8 master agreement, without regard to whether the
9 master agreement provides for an agreement or
10 transaction that is not a commodity contract
11 under this paragraph, except that the master
12 agreement shall be considered to be a commodity
13 contract under this paragraph only with respect
14 to each agreement or transaction under the mas-
15 ter agreement that is referred to in subparagraph
16 (A), (B), (C), (D), (E), (F), (G) or (H); or

17 “(J) a security agreement or arrangement
18 or other credit enhancement related to any agree-
19 ment or transaction referred to in this para-
20 graph;”.

21 (b) *DEFINITIONS OF FINANCIAL INSTITUTION, FINAN-*
22 *CIAL PARTICIPANT, AND FORWARD CONTRACT MER-*
23 *CHANT.*—Section 101 of title 11, United States Code, is
24 amended—

1 (1) *by amending paragraph (22) to read as fol-*
2 *lows:*

3 “(22) *the term ‘financial institution’ means a*
4 *Federal reserve bank, or a person that is a commer-*
5 *cial or savings bank, industrial savings bank, savings*
6 *and loan association, trust company, or receiver or*
7 *conservator for such person and, when any such Fed-*
8 *eral reserve bank, receiver, or conservator or person*
9 *acting as agent or custodian for a customer in con-*
10 *nection with a securities contract, as defined in sec-*
11 *tion 741(7) of this title, such customer;”;*

12 (2) *by inserting after paragraph (22) the follow-*
13 *ing new paragraph:*

14 “(22A) *the term ‘financial participant’ means*
15 *any entity that, at the time it enters into a securities*
16 *contract, commodity contract or forward contract, or*
17 *at the time of the filing of the petition, has 1 or more*
18 *agreements or transactions that is described in section*
19 *561(a)(2) with the debtor or any other entity (other*
20 *than an affiliate) of a total gross dollar value of at*
21 *least \$1,000,000,000 in notional or actual principal*
22 *amount outstanding on any day during the previous*
23 *15-month period, or has gross mark-to-market posi-*
24 *tions of at least \$100,000,000 (aggregated across*
25 *counterparties) in 1 or more such agreements or*

1 *transactions with the debtor or any other entity*
2 *(other than an affiliate) on any day during the pre-*
3 *vious 15-month period;”*; and

4 (3) *by amending paragraph (26) to read as fol-*
5 *lows:*

6 “(26) *the term ‘forward contract merchant’*
7 *means a Federal reserve bank, or a person whose busi-*
8 *ness consists in whole or in part of entering into for-*
9 *ward contracts as or with merchants or in a commod-*
10 *ity, as defined or in section 761(8) of this title, or*
11 *any similar good, article, service, right, or interest*
12 *which is presently or in the future becomes the subject*
13 *of dealing or in the forward contract trade;”*.

14 (c) *DEFINITION OF MASTER NETTING AGREEMENT*
15 *AND MASTER NETTING AGREEMENT PARTICIPANT.*—*Sec-*
16 *tion 101 of title 11, United States Code, is amended by in-*
17 *serting after paragraph (38) the following new paragraphs:*

18 “(38A) *the term ‘master netting agreement’*
19 *means an agreement providing for the exercise of*
20 *rights, including rights of netting, setoff, liquidation,*
21 *termination, acceleration, or closeout, under or in*
22 *connection with 1 or more contracts that are de-*
23 *scribed in any 1 or more of paragraphs (1) through*
24 *(5) of section 561(a), or any security agreement or*
25 *arrangement or other credit enhancement related to 1*

1 or more of the foregoing. If a master netting agree-
2 ment contains provisions relating to agreements or
3 transactions that are not contracts described in para-
4 graphs (1) through (5) of section 561(a), the master
5 netting agreement shall be deemed to be a master net-
6 ting agreement only with respect to those agreements
7 or transactions that are described in any 1 or more
8 of the paragraphs (1) through (5) of section 561(a);

9 “(38B) the term ‘master netting agreement par-
10 ticipant’ means an entity that, at any time before the
11 filing of the petition, is a party to an outstanding
12 master netting agreement with the debtor;”.

13 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
14 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
15 CHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS
16 UNDER THE AUTOMATIC-STAY.—

17 (1) IN GENERAL.—Section 362(b) of title 11,
18 United States Code, is amended—

19 (A) in paragraph (6), by inserting
20 “, pledged to, and under the control of,” after
21 “held by”;

22 (B) in paragraph (7), by inserting
23 “, pledged to, and under the control of,” after
24 “held by”;

1 (C) by amending paragraph (17) to read as
2 follows:

3 “(17) under subsection (a), of the setoff by a
4 swap participant of any mutual debt and claim
5 under or in connection with 1 or more swap agree-
6 ments that constitute the setoff of a claim against the
7 debtor for any payment due from the debtor under or
8 in connection with any swap agreement against any
9 payment due to the debtor from the swap participant
10 under or in connection with any swap agreement or
11 against cash, securities, or other property of the debt-
12 or held by, pledged to, and under the control of, or
13 due from such swap participant to guarantee, secure,
14 or settle any swap agreement;”;

15 (D) in paragraph (20), by striking “or” at
16 the end;

17 (E) in paragraph (21), by striking the pe-
18 riod and inserting “; or”; and

19 (F) by inserting after paragraph (18) the
20 following new paragraph:

21 “(22) under subsection (a), of the setoff by a
22 master netting agreement participant of a mutual
23 debt and claim under or in connection with 1 or more
24 master netting agreements to the extent such partici-
25 pant could offset the claim under paragraph (6), (7),

1 or (17) for each individual contract covered by the
2 master netting agreement in issue.”.

3 (2) *LIMITATION.*—Section 362 of title 11, United
4 States Code, is amended by adding at the end the fol-
5 lowing new subsection:

6 “(i) *LIMITATION.*—The exercise of rights not subject to
7 the stay arising under subsection (a) pursuant to para-
8 graph (6), (7), (17), or (22) of subsection (b) shall not be
9 stayed by any order of a court or administrative agency
10 in any proceeding under this title.”.

11 (e) *LIMITATION OF AVOIDANCE POWERS UNDER MAS-*
12 *TER NETTING AGREEMENT.*—Section 546 of title 11, United
13 States Code, is amended—

14 (1) in subsection (g) (as added by section 103 of
15 Public Law 101–311)—

16 (A) by striking “under a swap agreement”;

17 (B) by striking “in connection with a swap
18 agreement” and inserting “under or in connec-
19 tion with any swap agreement”;

20 (2) by redesignating subsection (g) (as added by
21 section 222(a) of Public Law 103–394) as subsection
22 (i); and

23 (3) by inserting before subsection (i) (as redesign-
24 ated) the following new subsection:

1 “(h) Notwithstanding sections 544, 545, 547,
2 548(a)(2), and 548(b) of this title, to the extent that under
3 subsection (e), (f), or (g), the trustee may not avoid a trans-
4 fer made by or to a master netting agreement participant
5 under or in connection with each individual contract cov-
6 ered by any master netting agreement that is made before
7 the commencement of the case, the trustee may not avoid
8 a transfer made by or to such master netting agreement
9 participant under or in connection with the master netting
10 agreement in issue, except under section 548(a)(1) of this
11 title.”.

12 (f) *FRAUDULENT TRANSFERS OF MASTER NETTING*
13 *AGREEMENTS*.—Section 548(d)(2) of title 11, United States
14 Code, is amended—

15 (1) in subparagraph (C), by striking “and”;

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 partici-
21 pant that receives a transfer in connection with
22 a master netting agreement takes for value to the
23 extent of such transfer, but only to the extent
24 that such participant would take for value under
25 paragraph (B), (C), or (D) for each individual

1 *contract covered by the master netting agreement*
2 *in issue.”.*

3 (g) *TERMINATION OR ACCELERATION OF SECURITIES*
4 *CONTRACTS.—Section 555 of title 11, United States Code,*
5 *is amended—*

6 (1) *by amending the section heading to read*
7 **“Contractual right to liquidate, termi-**
8 **nate, or accelerate a securities contract”;**
9 *and*

10 (2) *in the first sentence, by striking “liquida-*
11 *tion” and inserting “liquidation, termination, or ac-*
12 *celeration”.*

13 (h) *TERMINATION OR ACCELERATION OF COMMOD-*
14 *ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,*
15 *United States Code, is amended—*

16 (1) *by amending the section heading to read*
17 **“Contractual right to liquidate, termi-**
18 **nate, or accelerate a commodities con-**
19 **tract or forward contract”;** *and*

20 (2) *in the first sentence, by striking “liquida-*
21 *tion” and inserting “liquidation, termination, or ac-*
22 *celeration”.*

23 (i) *TERMINATION OR ACCELERATION OF REPURCHASE*
24 *AGREEMENTS.—Section 559 of title 11, United States Code,*
25 *is amended—*

1 (1) by amending the section heading to read
2 **“Contractual right to liquidate, termi-**
3 **nate, or accelerate a repurchase agree-**
4 **ment”**; and

5 (2) in the first sentence, by striking “liquida-
6 tion” and inserting “liquidation, termination, or ac-
7 celeration”.

8 (j) LIQUIDATION, TERMINATION, OR ACCELERATION OF
9 SWAP AGREEMENTS.—Section 560 of title 11, United States
10 Code, is amended—

11 (1) by amending the section heading to read
12 **“Contractual right to liquidate, termi-**
13 **nate, or accelerate a swap agreement”**; and

14 (2) in the first sentence, by striking “termi-
15 nation of a swap agreement” and inserting “liquida-
16 tion, termination, or acceleration of 1 or more swap
17 agreements”; and

18 (3) by striking “in connection with any swap
19 agreement” and inserting “in connection with the ter-
20 mination, liquidation, or acceleration of 1 or more
21 swap agreements”.

22 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
23 OFFSET UNDER A MASTER NETTING AGREEMENT AND
24 ACROSS CONTRACTS.—Title 11, United States Code, is

1 amended by inserting after section 560 the following new
2 section:

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

6 “(a) *IN GENERAL.*—Subject to subsection (b), the exer-
7 cise of any contractual right, because of a condition of the
8 kind specified in section 365(e)(1), to cause the termination,
9 liquidation, or acceleration of or to offset, or net termi-
10 nation values, payment amounts or other transfer obliga-
11 tions arising under or in connection with the termination,
12 liquidation, or acceleration of 1 or more—

13 “(1) securities contracts, as defined in section
14 741(7);

15 “(2) commodity contracts, as defined in section
16 761(4);

17 “(3) forward contracts;

18 “(4) repurchase agreements;

19 “(5) swap agreements; or

20 “(6) master netting agreements,

21 shall not be stayed, avoided, or otherwise limited by oper-
22 ation of any provision of this title or by any order of a
23 court or administrative agency in any proceeding under
24 this title.

25 “(b) *EXCEPTION.*—

1 “(1) A party may exercise a contractual right
2 described in subsection (a) to terminate, liquidate, or
3 accelerate only to the extent that such party could ex-
4 ercise such a right under section 555, 556, 559, or
5 560 for each individual contract covered by the mas-
6 ter netting agreement in issue.

7 “(2)(A) A party may not exercise a contractual
8 right described in subsection (a) to offset or to net ob-
9 ligations arising under, or in connection with, a com-
10 modity contract against obligations arising under, or
11 in connection with, any instrument listed in sub-
12 section (a) if the obligations are not mutual.

13 “(B) If a debtor is a commodity broker subject
14 to subchapter IV of chapter 7 of this title, a party
15 may not net or offset an obligation to the debtor aris-
16 ing under, or in connection with, a commodity con-
17 tract against any claim arising under, or in connec-
18 tion with, other instruments listed in subsection (a)
19 if the party has no positive net equity in the commod-
20 ity account at the debtor, as calculated under sub-
21 chapter IV.

22 “(c) DEFINITION.—As used in this section, the term
23 ‘contractual right’ includes a right set forth in a rule or
24 bylaw of a national securities exchange, a national securi-
25 ties association, or a securities clearing agency, a right set

1 *forth in a bylaw of a clearing organization or contract mar-*
2 *ket or in a resolution of the governing board thereof, and*
3 *a right whether or not evidenced in writing arising under*
4 *common law, under law merchant, or by reason of normal*
5 *business practice.”.*

6 *(l) MUNICIPAL BANKRUPTCIES.—Section 901 of title*
7 *11, United States Code, is amended—*

8 *(1) by inserting “, 555, 556” after “553”; and*

9 *(2) by inserting “, 559, 560, 561, 562” after*
10 *“557”.*

11 *(m) ANCILLARY PROCEEDINGS.—Section 304 of title*
12 *11, United States Code, is amended by adding at the end*
13 *the following new subsection:*

14 *“(d) Any provisions of this title relating to securities*
15 *contracts, commodity contracts, forward contracts, repur-*
16 *chase agreements, swap agreements, or master netting*
17 *agreements shall apply in a case ancillary to a foreign pro-*
18 *ceeding under this section or any other section of this title*
19 *so that enforcement of contractual provisions of such con-*
20 *tracts and agreements in accordance with their terms will*
21 *not be stayed or otherwise limited by operation of any pro-*
22 *vision of this title or by order of a court in any proceeding*
23 *under this title, and to limit avoidance powers to the same*
24 *extent as in a proceeding under chapter 7 or 11 of this title*

1 *(such enforcement not to be limited based on the presence*
2 *or absence of assets of the debtor in the United States).’’.*

3 *(n) COMMODITY BROKER LIQUIDATIONS.—Title 11,*
4 *United States Code, is amended by inserting after section*
5 *766 the following new section:*

6 **“§767. Commodity broker liquidation and forward**
7 **contract merchants, commodity brokers,**
8 **stockbrokers, financial institutions, secu-**
9 **rities clearing agencies, swap partici-**
10 **pants, repo participants, and master net-**
11 **ting agreement participants**

12 *“Notwithstanding any other provision of this title, the*
13 *exercise of rights by a forward contract merchant, commod-*
14 *ity broker, stockbroker, financial institution, securities*
15 *clearing agency, swap participant, repo participant, or*
16 *master netting agreement participant under this title shall*
17 *not affect the priority of any unsecured claim it may have*
18 *after the exercise of such rights or affect the provisions of*
19 *this subchapter IV regarding customer property or distribu-*
20 *tions.’’.*

21 *(o) STOCKBROKER LIQUIDATIONS.—Title 11, United*
22 *States Code, is amended by inserting after section 752 the*
23 *following new section:*

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

7 “Notwithstanding any other provision of this title, the
8 exercise of rights by a forward contract merchant, commod-
9 ity broker, stockbroker, financial institution, securities
10 clearing agency, swap participant, repo participant, or
11 master netting agreement participant under this title shall
12 not affect the priority of any unsecured claim it may have
13 after the exercise of rights or affect the provisions of this
14 subchapter regarding customer property or distributions.”.

15 (p) *SETOFF*.—Section 553 of title 11, United States
16 Code, is amended—

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

21 (2) in subsection (b)(1), by striking
22 “362(b)(14),” and inserting “362(b)(17), 555, 556,
23 559, 560, 561”.

24 (q) *SECURITIES CONTRACTS, COMMODITY CONTRACTS,*
25 *AND FORWARD CONTRACTS*.—Title 11, United States Code,
26 is amended—

1 (1) in section 362(b)(6), by striking “financial
2 institutions,” each place such term appears and in-
3 serting “financial institution, financial participant”;

4 (2) in section 546(e), by inserting “financial
5 participant” after “financial institution,”;

6 (3) in section 548(d)(2)(B), by inserting “finan-
7 cial participant” after “financial institution,”;

8 (4) in section 555—

9 (A) by inserting “financial participant”
10 after “financial institution,”; and

11 (B) by inserting before the period “, a right
12 set forth in a bylaw of a clearing organization
13 or contract market or in a resolution of the gov-
14 erning board thereof, and a right, whether or not
15 in writing, arising under common law, under
16 law merchant, or by reason of normal business
17 practice”; and

18 (5) in section 556, by inserting “, financial par-
19 ticipant” after “commodity broker”.

20 (r) *TECHNICAL AND CONFORMING AMENDMENT.*—Sec-
21 tion 104 of title 11, United States Code, is amended by add-
22 ing at the end the following new subsection:

23 “(c) *EXCEPTION FOR CERTAIN DEFINED TERMS.*—No
24 adjustments shall be made under this section to the dollar

1 amounts set forth in the definition of the term ‘financial
2 participant’ in section 101(22A).”.

3 **SEC. 402. RECORDKEEPING REQUIREMENTS.**

4 Section 11(e)(8) of the Federal Deposit Insurance Act
5 (12 U.S.C. 1821(e)(8)) is amended by adding at the end
6 the following new subparagraph:

7 **SEC. 403. DAMAGE MEASURE.**

8 (a) Title 11, United States Code, is amended by insert-
9 ing after section 561 (as added by section 7(k)) the following
10 new section:

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

16 “If the trustee rejects a swap agreement, securities con-
17 tract as defined in section 741 of this title, forward con-
18 tract, repurchase agreement, or master netting agreement
19 pursuant to section 365(a) of this title, or if a forward con-
20 tract merchant, stockbroker, financial institution, securities
21 clearing agency, repo participant, master netting agree-
22 ment participant, or swap participant liquidates, termi-
23 nates, or accelerates any such contract or agreement, dam-
24 ages shall be measured as of the earlier of—

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

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

3 (b) *CLAIMS ARISING FROM REJECTION.*—Section
4 502(g) of title 11, United States Code, is amended—

5 (1) by designating the existing text as paragraph
6 (1); and

7 (2) by adding at the end the following new para-
8 graph:

9 “(2) A claim for damages calculated in accord-
10 ance with section 562 of this title shall be allowed
11 under subsection (a), (b), or (c) of this section or dis-
12 allowed under subsection (d) or (e) of this section as
13 if such claim had arisen before the date of the filing
14 of the petition.”.

15 **SEC. 404. ASSET-BACKED SECURITIZATIONS.**

16 Section 541 of title 11, United States Code, is amend-
17 ed—

18 (1) in subsection (b), by striking “or” at the end
19 of paragraph (4);

20 (2) by redesignating paragraph (5) of subsection
21 (b) as paragraph (6);

22 (3) by inserting after paragraph (4) of sub-
23 section (b) the following new paragraph:

24 “(5) any eligible asset (or proceeds thereof), to
25 the extent that such eligible asset was transferred by

1 *the debtor, before the date of commencement of the*
2 *case, to an eligible entity in connection with an asset-*
3 *backed securitization, except to the extent such asset*
4 *(or proceeds or value thereof) may be recovered by the*
5 *trustee under section 550 by virtue of avoidance*
6 *under section 548(a); or”;* and

7 *(4) by adding at the end the following new sub-*
8 *section:*

9 “(e) *DEFINITIONS.—For purposes of this section, the*
10 *following definitions shall apply:*

11 “(1) *ASSET-BACKED SECURITIZATION.—The term*
12 *‘asset-backed securitization’ means a transaction in*
13 *which eligible assets transferred to an eligible entity*
14 *are used as the source of payment on securities, the*
15 *most senior of which are rated investment grade by*
16 *1 or more nationally recognized securities rating or-*
17 *ganizations, issued by an issuer;*

18 “(2) *ELIGIBLE ASSET.—The term ‘eligible asset’*
19 *means—*

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

1 *riod, plus any rights or other assets designed to*
2 *assure the servicing or timely distribution of*
3 *proceeds to security holders;*

4 *“(B) cash; and*

5 *“(C) securities.*

6 *“(3) ELIGIBLE ENTITY.—The term ‘eligible en-*
7 *tity’ means—*

8 *“(A) an issuer; or*

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

14 *“(4) ISSUER.—The term ‘issuer’ means a trust,*
15 *corporation, partnership, or other entity engaged ex-*
16 *clusively in the business of acquiring and holding eli-*
17 *gible assets, issuing securities backed by eligible as-*
18 *sets, and taking actions ancillary thereto.*

19 *“(5) TRANSFERRED.—The term ‘transferred’*
20 *means the debtor, pursuant to a written agreement,*
21 *represented and warranted that eligible assets were*
22 *sold, contributed, or otherwise conveyed with the in-*
23 *tention of removing them from the estate of the debtor*
24 *pursuant to subsection (b)(5), irrespective, without*
25 *limitation of—*

1 “(A) whether the debtor directly or indi-
2 rectly obtained or held an interest in the issuer
3 or in any securities issued by the issuer;

4 “(B) whether the debtor had an obligation
5 to repurchase or to service or supervise the serv-
6 icing of all or any portion of such eligible assets;
7 or

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

11 **SEC. 405. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE**
12 **TO INCUR FINANCE CHARGES.**

13 Section 106 of the Truth in Lending Act (15 U.S.C.
14 1605) is amended by adding at the end the following:

15 “(g) **PROHIBITION ON CERTAIN ACTIONS FOR FAILURE**
16 **TO INCUR FINANCE CHARGES.**—A creditor may not, solely
17 because a consumer has not incurred finance charges in
18 connection with an extension of credit—

19 “(1) refuse to renew or continue to offer the ex-
20 tension of credit to that consumer; or

21 “(2) charge a fee to that consumer in lieu of a
22 finance charge.”.

1 **SEC. 406. FEES ARISING FROM CERTAIN OWNERSHIP INTER-**
2 **ESTS.**

3 *Section 523(a)(16) of title 11, United States Code, is*
4 *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 owner-*
15 *ship interest in such unit, such corporation, or such*
16 *lot,”.*

17 **SEC. 407. BANKRUPTCY FEES.**

18 *Section 1930 of title 28, United States Code, is amend-*
19 *ed—*

20 *(1) in subsection (a), by striking “Notwithstand-*
21 *ing section 1915 of this title, the parties” and insert-*
22 *ing “Subject to subsection (f), the parties”; and*

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

24 *“(f)(1) The Judicial Conference of the United States*
25 *shall prescribe procedures for waiving fees under this sub-*
26 *section.*

1 “(2) Under the procedures described in paragraph (1),
2 the district court or the bankruptcy court may waive a fil-
3 ing fee described in paragraph (3) for a case commenced
4 under chapter 7 of title 11 if the court determines that an
5 individual debtor is unable to pay that fee in installments.

6 “(3) A filing fee referred to in paragraph (2) is—

7 “(A) a filing fee under subsection (a)(1); or

8 “(B) any other fee prescribed by the Judicial
9 Conference of the United States under subsection (b)
10 that is payable to the clerk of the district court or the
11 clerk of the bankruptcy court upon the commencement
12 of a case under chapter 7 of title 11.

13 “(4) In addition to waiving a fee described in para-
14 graph (3) under paragraph (2), the district court or the
15 bankruptcy court may waive any other fee prescribed under
16 subsection (b) or (c) if the court determines that the individ-
17 ual is unable to pay that fee in installments.”.

18 **SEC. 408. APPLICABILITY.**

19 *The amendments made by this title shall apply with*
20 *respect to cases commenced or appointments made under*
21 *any Federal or State law after the date of enactment of*
22 *this Act.*

1 **TITLE V—ANCILLARY AND**
 2 **OTHER CROSS-BORDER CASES**

3 **SEC. 501. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11,**
 4 **UNITED STATES CODE.**

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

7 **“CHAPTER 6—ANCILLARY AND OTHER**
 8 **CROSS-BORDER CASES**

“Sec.

“601. *Purpose and scope of application.*

“SUBCHAPTER I—GENERAL PROVISIONS

“602. *Definitions.*

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

“604. *Commencement of ancillary case.*

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

“606. *Public policy exception.*

“607. *Additional assistance.*

“608. *Interpretation.*

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

“609. *Right of direct access.*

“610. *Limited jurisdiction.*

“611. *Commencement of bankruptcy case under section 301 or 303.*

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

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

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

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND
 RELIEF

“615. *Application for recognition of a foreign proceeding.*

“616. *Presumptions concerning recognition.*

“617. *Order recognizing a foreign proceeding.*

“618. *Subsequent information.*

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

“620. *Effects of recognition of a foreign main proceeding.*

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

“622. *Protection of creditors and other interested persons.*

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

“624. *Intervention by a foreign representative.*

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND
FOREIGN REPRESENTATIVES

“625. Cooperation and direct communication between the court and foreign courts or foreign representatives.

“626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.

“627. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“628. Commencement of a case under this title after recognition of a foreign main proceeding.

“629. Coordination of a case under this title and a foreign proceeding.

“630. Coordination of more than 1 foreign proceeding.

“631. Presumption of insolvency based on recognition of a foreign main proceeding.

“632. Rule of payment in concurrent proceedings.

1 **“§ 601. Purpose and scope of application**

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

6 “(1) cooperation between—

7 “(A) United States courts, United States
8 *Trustees, trustees, examiners, debtors, and debt-*
9 *ors 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 invest-
14 *ment;*

15 “(3) fair and efficient administration of cross-
16 *border insolvencies that protects the interests of all*

1 *creditors, and other interested entities, including the*
2 *debtor;*

3 *“(4) protection and maximization of the value of*
4 *the debtor’s assets; and*

5 *“(5) facilitation of the rescue of financially trou-*
6 *bled businesses, thereby protecting investment and*
7 *preserving employment.*

8 *“(b) This chapter applies where—*

9 *“(1) assistance is sought in the United States by*
10 *a foreign court or a foreign representative in connec-*
11 *tion with a foreign proceeding;*

12 *“(2) assistance is sought in a foreign country in*
13 *connection with a case under this title;*

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

17 *“(4) creditors or other interested persons in a*
18 *foreign country have an interest in requesting the*
19 *commencement of, or participating in, a case or pro-*
20 *ceeding under this title.*

21 *“(c) This chapter does not apply to—*

22 *“(1) a proceeding concerning an entity identified*
23 *by exclusion in subsection 109(b); or*

24 *“(2) a natural person or a natural person and*
25 *that person’s spouse who have debts within the limits*

1 *specified in under section 109(e) and who are citizens*
2 *of the United States or aliens lawfully admitted for*
3 *permanent residence in the United States.*

4 **“SUBCHAPTER I—GENERAL PROVISIONS**

5 **“§ 602. Definitions**

6 *“For the purposes of this chapter, the term—*

7 *“(1) ‘debtor’ means an entity that is the subject*
8 *of a foreign proceeding;*

9 *“(2) ‘establishment’ means any place of oper-*
10 *ations where the debtor carries out a nontransitory*
11 *economic activity;*

12 *“(3) ‘foreign court’ means a judicial or other au-*
13 *thority competent to control or supervise a foreign*
14 *proceeding;*

15 *“(4) ‘foreign main proceeding’ means a foreign*
16 *proceeding taking place in the country where the debt-*
17 *or has the center of its main interests;*

18 *“(5) ‘foreign nonmain proceeding’ means a for-*
19 *oreign proceeding, other than a foreign main proceed-*
20 *ing, taking place in a country where the debtor has*
21 *an establishment;*

22 *“(6) ‘trustee’ includes a trustee, a debtor in pos-*
23 *session in a case under any chapter of this title, or*
24 *a debtor under chapters 9 or 13 of this title; and*

1 “(7) ‘within the territorial jurisdiction of the
2 United States’ when used with reference to property
3 of a debtor refers to tangible property located within
4 the territory of the United States and intangible
5 property deemed to be located within that territory,
6 including any property that may properly be seized
7 or garnished by an action in a Federal or State court
8 in the United States.

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

10 “To the extent that this chapter conflicts with an obli-
11 gation of the United States arising out of any treaty or
12 other form of agreement to which it is a party with 1 or
13 more other countries, the requirements of the treaty or
14 agreement prevail.

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

16 “A case under this chapter is commenced by the filing
17 of a petition for recognition of a foreign proceeding under
18 section 615.

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

20 “A trustee or another entity designated by the court
21 may be authorized by the court to act in a foreign country
22 on behalf of an estate created under section 541. An entity
23 authorized to act under this section may act in any way
24 permitted by the applicable foreign law.

1 **“§ 606. Public policy exception**

2 *“Nothing in this chapter prevents the court from refus-*
3 *ing to take an action governed by this chapter if the action*
4 *would be manifestly contrary to the public policy of the*
5 *United States.*

6 **“§ 607. Additional assistance**

7 *“(a) Nothing in this chapter limits the power of the*
8 *court, upon recognition of a foreign proceeding, to provide*
9 *additional assistance to a foreign representative under this*
10 *title or under other laws of the United States.*

11 *“(b) In determining whether to provide additional as-*
12 *sistance under this title or under other laws of the United*
13 *States, the court shall consider whether such additional as-*
14 *sistance, consistent with the principles of comity, will rea-*
15 *sonably assure—*

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

18 *“(2) protection of claim holders in the United*
19 *States against prejudice and inconvenience in the*
20 *processing of claims in such foreign proceeding;*

21 *“(3) prevention of preferential or fraudulent dis-*
22 *positions of property of the debtor;*

23 *“(4) distribution of proceeds of the debtor’s prop-*
24 *erty substantially in accordance with the order pre-*
25 *scribed by this title; and*

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

4 **“§ 608. Interpretation**

5 *“In interpreting this chapter, the court shall consider*
6 *its international origin, and the need to promote an appli-*
7 *cation of this chapter that is consistent with the application*
8 *of similar statutes adopted by foreign jurisdictions.*

9 “SUBCHAPTER II—ACCESS OF FOREIGN REP-
10 RESENTATIVES AND CREDITORS TO THE
11 COURT

12 **“§ 609. Right of direct access**

13 “(a) A foreign representative is entitled to commence
14 a case under section 604 by filing a petition for recognition
15 under section 615, and upon recognition, to apply directly
16 to other Federal and State courts for appropriate relief in
17 those courts.

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

20 “(c) Recognition under this chapter is prerequisite to
21 the granting of comity or cooperation to a foreign proceed-
22 ing in any State or Federal court in the United States.
23 Any request for comity or cooperation in any court shall
24 be accompanied by a sworn statement setting forth whether

1 *recognition under section 615 has been sought and the sta-*
2 *tus of any such petition.*

3 “(d) *Upon denial of recognition under this chapter,*
4 *the court may issue appropriate orders necessary to prevent*
5 *an attempt to obtain comity or cooperation from courts in*
6 *the United States without such recognition.*

7 **“§610. Limited jurisdiction**

8 “*The sole fact that a foreign representative files a peti-*
9 *tion under sections 604 and 615 does not subject the foreign*
10 *representative to the jurisdiction of any court in the United*
11 *States for any other purpose.*

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

14 “(a) *Upon filing a petition for recognition, a foreign*
15 *representative may commence—*

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

17 “(2) *a voluntary case under section 301 or 302,*
18 *if the foreign proceeding is a foreign main proceeding.*

19 “(b) *The petition commencing a case under subsection*
20 *(a) of this section must be accompanied by a statement de-*
21 *scribing the petition for recognition and its current status.*
22 *The court where the petition for recognition has been filed*
23 *must be advised of the foreign representative’s intent to*
24 *commence a case under subsection (a) of this section prior*
25 *to such commencement.*

1 “(B) Allowance and priority as to a foreign tax claim
2 or other foreign public law claim shall be governed by any
3 applicable tax treaty of the United States, under the condi-
4 tions and circumstances specified therein.

5 **“§614. Notification to foreign creditors concerning a**
6 **case under this title**

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

15 “(b) The notification to creditors with foreign address-
16 es described in subsection (a) shall be given individually,
17 unless the court considers that, under the circumstances,
18 some other form of notification would be more appropriate.
19 No letters rogatory or other similar formality is required.

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

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

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

1 to the court of the existence of the foreign proceeding
2 and of the appointment of the foreign representative.

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

7 “(d) The documents referred to in paragraphs (1) and
8 (2) of subsection (b) must be translated into English. The
9 court may require a translation into English of additional
10 documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **“§618. Subsequent information**

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

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

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

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

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

1 “(1) staying execution against the debtor’s assets;

2 “(2) entrusting the administration or realization
3 of all or part of the debtor’s assets located in the
4 United States to the foreign representative or another
5 person designated by the court, including an exam-
6 iner, in order to protect and preserve the value of as-
7 sets that, by their nature or because of other cir-
8 cumstances, are perishable, susceptible to devaluation
9 or otherwise in jeopardy; and

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

12 “(b) Unless extended under section 621(a)(6), the relief
13 granted under this section terminates when the petition for
14 recognition is decided upon.

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

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

21 “(e) The standards, procedures, and limitations appli-
22 cable to an injunction shall apply to relief under this sec-
23 tion.

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

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

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

8 *“(2) transfer, encumbrance, or any other disposi-*
9 *tion of an interest of the debtor in property within*
10 *the territorial jurisdiction of the United States is re-*
11 *strained as and to the extent that is provided for*
12 *property of an estate under sections 363, 549, and*
13 *552.*

14 *Unless the court orders otherwise, the foreign representative*
15 *may operate the debtor’s business and may exercise the pow-*
16 *ers of a trustee under section 549, subject to sections 363*
17 *and 552.*

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

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

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

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

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

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

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

21 “(2) *staying execution against the debtor’s assets*
22 *to the extent it has not been stayed under section*
23 *620(a);*

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

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

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

7 *“(5) entrusting the administration or realization*
8 *of all or part of the debtor’s assets within the terri-*
9 *torial jurisdiction of the United States to the foreign*
10 *representative or another person, including an exam-*
11 *iner, designated by the court;*

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

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

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

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

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

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

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

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

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

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

24 “(a) *Upon recognition of a foreign proceeding, the for-*
25 *ign representative has standing in a pending case under*

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **“§ 627. Forms of cooperation**

20 *“Cooperation referred to in sections 625 and 626 may*
21 *be implemented by any appropriate means, including—*

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

24 *“(2) communication of information by any*
25 *means considered appropriate by the court;*

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

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

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

7 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

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

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

22 “**§ 629. Coordination of a case under this title and a**
23 **foreign proceeding**

24 “Where a foreign proceeding and a case under another
25 chapter of this title are taking place concurrently regarding

1 *the same debtor, the court shall seek cooperation and coordi-*
2 *nation under sections 625, 626, and 627, and the following*
3 *shall apply:*

4 “(1) *When the case in the United States is tak-*
5 *ing place at the time the petition for recognition of*
6 *the foreign proceeding is filed—*

7 “(A) *any relief granted under sections 619*
8 *or 621 must be consistent with the case in the*
9 *United States; and*

10 “(B) *even if the foreign proceeding is recog-*
11 *nized as a foreign main proceeding, section 620*
12 *does not apply.*

13 “(2) *When a case in the United States under this*
14 *title commences after recognition, or after the filing of*
15 *the petition for recognition, of the foreign proceed-*
16 *ing—*

17 “(A) *any relief in effect under sections 619*
18 *or 621 shall be reviewed by the court and shall*
19 *be modified or terminated if inconsistent with*
20 *the case in the United States; and*

21 “(B) *if the foreign proceeding is a foreign*
22 *main proceeding, the stay and suspension re-*
23 *ferred to in section 620(a) shall be modified or*
24 *terminated if inconsistent with the case in the*
25 *United States.*

1 **SEC. 502. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11,**
2 **UNITED STATES CODE.**

3 (a) *APPLICABILITY OF CHAPTERS.*—Section 103 of
4 title 11, United States Code, is amended—

5 (1) in subsection (a), by inserting before the pe-
6 riod the following: “and this chapter, sections 307,
7 555 through 557, 559, and 560 apply in a case under
8 chapter 6”; and

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

10 “(j) Chapter 6 applies only in a case under that chap-
11 ter, except that section 605 applies to trustees and to any
12 other entity designated by the court, including an examiner,
13 under chapters 7, 11, and 12, to debtors in possession under
14 chapters 11 and 12, and to debtors or trustees under chap-
15 ters 9 and 13 who are authorized to act under section 605.”.

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

19 “(23) ‘foreign proceeding’ means a collective ju-
20 dicial or administrative proceeding in a foreign state,
21 including an interim proceeding, pursuant to a law
22 relating to insolvency in which proceeding the assets
23 and affairs of the debtor are subject to control or su-
24 pervision by a foreign court, for the purpose of reor-
25 ganization or liquidation;

1 “(24) ‘foreign representative’ means a person or
2 body, including 1 appointed on an interim basis, au-
3 thorized in a foreign proceeding to administer the re-
4 organization or the liquidation of the debtor’s assets
5 or affairs or to act as a representative of the foreign
6 proceeding;”.

7 (c) *AMENDMENTS TO TITLE 28, UNITED STATES*
8 *CODE.*—

9 (1) *PROCEDURES.*—Section 157(b)(2) of title 28,
10 *United States Code, is amended—*

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

13 (B) *in subparagraph (O), by striking the*
14 *period at the end and inserting “; and”; and*

15 (C) *by adding at the end the following:*

16 “(P) *recognition of foreign proceedings and*
17 *other matters under chapter 6.*”.

18 (2) *BANKRUPTCY CASES AND PROCEEDINGS.*—
19 *Section 1334(c) of title 28, United States Code, is*
20 *amended by striking “Nothing in” and inserting “Ex-*
21 *cept with respect to a case under chapter 6 of title 11,*
22 *nothing in”.*

23 (3) *DUTIES OF TRUSTEES.*—Section 586(a)(3) of
24 *title 28, United States Code, is amended by inserting*
25 *“6,” after “chapter”.*

1 **TITLE VI—MISCELLANEOUS**

2 **SEC. 601. EXECUTORY CONTRACTS AND UNEXPIRED**
3 **LEASES.**

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

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

13 “(i) the date that is 120 days after the date of
14 the order for relief; or

15 “(ii) the date of the entry of an order confirming
16 a plan.

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

19 **SEC. 602. EXPEDITED APPEALS OF BANKRUPTCY CASES TO**
20 **COURTS OF APPEALS.**

21 (a) *IN GENERAL.*—Section 158 of title 28, United
22 States Code, is amended—

23 (1) by redesignating subsection (d) as subsection

24 (e);

1 (2) *by inserting after subsection (c) the following*
2 *new subsection:*

3 “(d)(1) *Any final judgment, decision, order, or decree*
4 *of a bankruptcy judge entered for a case in accordance with*
5 *section 157 may be appealed by any party in such case*
6 *to the appropriate court of appeals if—*

7 “(A) *an appeal from such judgment, decision,*
8 *order, or decree is first filed with the appropriate dis-*
9 *trict court of the United States; and*

10 “(B) *the decision on the appeal described under*
11 *subparagraph (A) is not filed by a district court*
12 *judge within 30 days after the date such appeal is*
13 *filed with the district court.*

14 “(2) *On the date that an appeal is filed with a court*
15 *of appeals under paragraph (1), the chief judge for such*
16 *court of appeals shall issue an order to the clerk for the*
17 *district court from which the appeal is filed. Such order*
18 *shall direct the clerk to enter the final judgment, decision,*
19 *order, or decree of the bankruptcy judge as the final judg-*
20 *ment, decision, order, or decree of the district court.”; and*

21 (3) *in subsection (e), (as redesignated by para-*
22 *graph (1) of this section) by striking “subsections (a)*
23 *and (b)” and inserting “subsections (a), (b), and (d)”.*

24 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*

1 (1) *Section 305(c) of title 11, United States*
2 *Code, is amended by striking “section 158(d)” and*
3 *inserting “section 158(e)”.*

4 (2) *Section 1334(d) of title 28, United States*
5 *Code, is amended by striking “section 158(d)” and*
6 *inserting “section 158(e)”.*

7 (3) *Section 1452(b) of title 28, United States*
8 *Code, is amended by striking “section 158(d)” and*
9 *inserting “section 158(e)”.*

10 **SEC. 603. CREDITORS AND EQUITY SECURITY HOLDERS**

11 **COMMITTEES.**

12 *Section 1102(a)(2) of title 11, United States Code, is*
13 *amended by inserting before the first sentence the following:*
14 *“On its own motion or on request of a party in interest,*
15 *and after notice and hearing, the court may order a change*
16 *in the membership of a committee appointed under this sub-*
17 *section, if the court determines that the change is necessary*
18 *to ensure adequate representation of creditors or equity se-*
19 *curity holders.”.*

20 **SEC. 604. REPEAL OF SUNSET PROVISION.**

21 *Section 302 of the Bankruptcy Judges, United States*
22 *Trustees, and Family Farmer Bankruptcy Act of 1986 (28*
23 *U.S.C. 581 note) is amended by striking subsection (f).*

1 **SEC. 605. CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

2 *Section 304 of title 11, United States Code, as amend-*
3 *ed by section 410 of this Act, is amended by adding at the*
4 *end the following:*

5 “(e)(1) *In this subsection—*

6 “(A) *the term ‘domestic insurance company’*
7 *means a domestic insurance company, as that term*
8 *is used in section 109(b)(2);*

9 “(B) *the term ‘foreign insurance company’*
10 *means a foreign insurance company, as that term is*
11 *used in section 109(b)(3);*

12 “(C) *the term ‘United States claimant’ means a*
13 *beneficiary of any deposit referred to in paragraph*
14 *(2)(A) or any multibeneficiary trust referred to in*
15 *subparagraph (B) or (C) of paragraph (2);*

16 “(D) *the term ‘United States creditor’ means,*
17 *with respect to a foreign insurance company—*

18 “(i) *a United States claimant; or*

19 “(ii) *any business entity that operates in*
20 *the United States and that is a creditor; and*

21 “(E) *the term ‘United States policyholder’ means*
22 *a holder of an insurance policy issued in the United*
23 *States.*

24 “(2) *Notwithstanding subsections (b) and (c), the court*
25 *may not grant relief under subsection (b) to a foreign insur-*
26 *ance company that is not engaged in the business of insur-*

1 *ance or reinsurance in the United States with respect to*
2 *any claim made by a United States creditor against—*

3 *“(A) a deposit required by an applicable State*
4 *insurance law;*

5 *“(B) a multibeneficiary trust required by an ap-*
6 *plicable State insurance law to protect United States*
7 *policyholders or claimants against a foreign insur-*
8 *ance company; or*

9 *“(C) a multibeneficiary trust authorized under*
10 *an applicable State insurance law to allow a domestic*
11 *insurance company that cedes reinsurance to the debt-*
12 *or to reflect the reinsurance as an asset or deduction*
13 *from liability in the ceding insurer’s financial state-*
14 *ments.”.*

15 **SEC. 606. LIMITATION.**

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

18 **SEC. 607. AMENDMENT TO SECTION 546 OF TITLE 11,**

19 **UNITED STATES CODE.**

20 *Section 546 of title 11, United States Code, is amended*
21 *by inserting at the end thereof:*

22 *“(I) Notwithstanding section 545 (2) and (3) of*
23 *this title, the trustee may not avoid a warehouseman’s*
24 *lien for storage, transportation or other costs inciden-*

1 *tal to the storage and handling of goods, as provided*
 2 *by section 7–209 of the Uniform Commercial Code.”.*

3 **SEC. 608. AMENDMENT TO SECTION 330(a) OF TITLE 11,**
 4 **UNITED STATES CODE.**

5 *Section 330(a) of title 11, United States Code, is*
 6 *amended—*

7 *(1) in subsection (3)(A) after the word “award-*
 8 *ed”, by inserting “to an examiner, chapter 11 trustee,*
 9 *or professional person”; and*

10 *(2) by adding at the end of subsection (3)(A) the*
 11 *following:*

12 *“(3)(B) In determining the amount of reasonable*
 13 *compensation to be awarded a trustee, the court shall*
 14 *treat such compensation as a commission based on the*
 15 *results achieved.”.*

16 **TITLE VII—TECHNICAL**
 17 **CORRECTIONS**

18 **SEC. 701. DEFINITIONS.**

19 *Section 101 of title 11, United States Code, as amend-*
 20 *ed by section 317, is amended—*

21 *(1) by striking “In this title—” and inserting*
 22 *“In this title:”;*

23 *(2) in each paragraph, by inserting “The term”*
 24 *after the paragraph designation;*

1 (3) in paragraph (35)(B), by striking “para-
2 graphs (21B) and (33)(A)” and inserting “para-
3 graphs (23) and (35)”;

4 (4) in each of paragraphs (35A) and (38), by
5 striking “; and” at the end and inserting a period;

6 (5) in paragraph (51B)—

7 (A) by inserting “who is not a family farm-
8 er” after “debtor” the first place it appears; and

9 (B) by striking “thereto having aggregate”
10 and all that follows through the end of the para-
11 graph;

12 (6) by amending paragraph (54) to read as fol-
13 lows:

14 “(54) The term ‘transfer’ means—

15 “(A) the creation of a lien;

16 “(B) the retention of title as a security in-
17 terest;

18 “(C) the foreclosure of a debtor’s equity of
19 redemption; or

20 “(D) each mode, direct or indirect, absolute
21 or conditional, voluntary or involuntary, of dis-
22 posing of or parting with—

23 “(i) property; or

24 “(ii) an interest in property;”;

1 (7) *in each of paragraphs (1) through (35), in*
2 *each of paragraphs (36) and (37), and in each of*
3 *paragraphs (40) through (56A) (including paragraph*
4 *(54), as amended by paragraph (6) of this section),*
5 *by striking the semicolon at the end and inserting a*
6 *period; and*

7 (8) *by redesignating paragraphs (4) through*
8 *(56A) in entirely numerical sequence, so as to result*
9 *in numerical paragraph designations of (4) through*
10 *(77), respectively.*

11 **SEC. 702. ADJUSTMENT OF DOLLAR AMOUNTS.**

12 *Section 104 of title 11, United States Code, is amended*
13 *by inserting “522(f)(3), 707(b)(5),” after “522(d),” each*
14 *place it appears.*

15 **SEC. 703. EXTENSION OF TIME.**

16 *Section 108(c)(2) of title 11, United States Code, is*
17 *amended by striking “922” and all that follows through*
18 *“or”, and inserting “922, 1201, or”.*

19 **SEC. 704. WHO MAY BE A DEBTOR.**

20 *Section 109(b)(2) of title 11, United States Code, is*
21 *amended by striking “subsection (c) or (d) of”.*

1 **SEC. 705. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
2 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
3 **TITIONS.**

4 *Section 110(j)(3) of title 11, United States Code, is*
5 *amended by striking “attorney’s” and inserting*
6 *“attorneys’ ”.*

7 **SEC. 706. LIMITATION ON COMPENSATION OF PROFES-**
8 **SIONAL PERSONS.**

9 *Section 328(a) of title 11, United States Code, is*
10 *amended by inserting “on a fixed or percentage fee basis,”*
11 *after “hourly basis,”.*

12 **SEC. 707. SPECIAL TAX PROVISIONS.**

13 *Section 346(g)(1)(C) of title 11, United States Code,*
14 *is amended by striking “, except” and all that follows*
15 *through “1986”.*

16 **SEC. 708. EFFECT OF CONVERSION.**

17 *Section 348(f)(2) of title 11, United States Code, is*
18 *amended by inserting “of the estate” after “property” the*
19 *first place it appears.*

20 **SEC. 709. AUTOMATIC STAY.**

21 *Section 362(b) of title 11, United States Code, as*
22 *amended by sections 326 and 401 of this Act, is amended—*

23 *(1) in paragraph (21), by striking “or” at the*
24 *end;*

25 *(2) in paragraph (22), by striking the period at*
26 *the end and inserting a semicolon; and*

1 (3) by inserting after paragraph (22) the follow-
2 ing:

3 “(23) under subsection (a) of this section of any
4 transfer that is not avoidable under section 544 and
5 that is not avoidable under section 549;

6 “(24) under subsection (a)(3) of this section, of
7 the continuation of any eviction, unlawful detainer
8 action, or similar proceeding by a lessor against a
9 debtor involving residential real property in which
10 the debtor resides as a tenant under a rental agree-
11 ment and the debtor has not paid rent to the lessor
12 pursuant to the terms of the lease agreement or appli-
13 cable State law after the commencement and during
14 the course of the case;

15 “(25) under subsection (a)(3) of this section, of
16 the commencement or continuation of any eviction,
17 unlawful detainer action, or similar proceeding by a
18 lessor against a debtor involving residential real
19 property in which the debtor resides as a tenant
20 under a rental agreement that has terminated pursu-
21 ant to the lease agreement or applicable State law;

22 “(26) under subsection (a)(3) of this section, of
23 any eviction, unlawful detainer action, or similiar
24 proceeding, if the debtor has previously filed within

1 *the last year and failed to pay post-petition rent dur-*
2 *ing the course of that case; or*

3 *“(27) under subsection (a)(3) of this section, of*
4 *eviction actions based on endangerment to property*
5 *or person or the use of illegal drugs.”.*

6 **SEC. 710. AMENDMENT TO TABLE OF SECTIONS.**

7 *The table of sections for chapter 5 of title 11, United*
8 *States Code, is amended by striking the item relating to*
9 *section 556 and inserting the following:*

“556. Contractual right to liquidate a commodities contract or forward contract.”.

10 **SEC. 711. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

11 *Section 503(b)(4) of title 11, United States Code, is*
12 *amended by inserting “subparagraph (A), (B), (C), (D), or*
13 *(E) of” before “paragraph (3)”.*

14 **SEC. 712. PRIORITIES.**

15 *Section 507(a) of title 11, United States Code, as*
16 *amended by section 323 of this Act, is amended—*

17 *(1) in paragraph (3)(B), by striking the semi-*
18 *colon at the end and inserting a period; and*

19 *(2) in paragraph (7), by inserting “unsecured”*
20 *after “allowed”.*

21 **SEC. 713. EXEMPTIONS.**

22 *Section 522 of title 11, United States Code, as amend-*
23 *ed by section 320 of this Act, is amended—*

24 *(1) in subsection (f)(1)(A)(ii)(II)—*

1 (A) by striking “includes a liability des-
2 ignated as” and inserting “is for a liability that
3 is designated as, and is actually in the nature
4 of;” and

5 (B) by striking “, unless” and all that fol-
6 lows through “support”; and

7 (2) in subsection (g)(2), by striking “subsection
8 (f)(2)” and inserting “subsection (f)(1)(B)”.

9 **SEC. 714. EXCEPTIONS TO DISCHARGE.**

10 Section 523 of title 11, United States Code, is amend-
11 ed—

12 (1) in subsection (a)(3), by striking “or (6)”
13 each place it appears and inserting “(6), or (15)”;

14 (2) as amended by section 304(e) of Public Law
15 103–394 (108 Stat. 4133), in paragraph (15), by
16 transferring such paragraph so as to insert it after
17 paragraph (14) of subsection (a);

18 (3) in subsection (a)(9), by inserting
19 “, watercraft, or aircraft” after “motor vehicle”;

20 (4) in subsection (a)(15), as so redesignated by
21 paragraph (2) of this subsection, by inserting “to a
22 spouse, former spouse, or child of the debtor and”
23 after “(15)”;

24 (5) in subsection (a)(17)—

1 **SEC. 717. PROPERTY OF THE ESTATE.**

2 *Section 541(b)(4)(B)(ii) of title 11, United States*
3 *Code, is amended by inserting “365 or” before “542”.*

4 **SEC. 718. PREFERENCES.**

5 *Section 547 of title 11, United States Code, is amend-*
6 *ed—*

7 *(1) in subsection (b), by striking “subsection (c)”*
8 *and inserting “subsections (c) and (h)”;* and

9 *(2) by adding at the end the following:*

10 *“(h) If the trustee avoids under subsection (b) a secu-*
11 *rity interest given between 90 days and 1 year before the*
12 *date of the filing of the petition, by the debtor to an entity*
13 *that is not an insider for the benefit of a creditor that is*
14 *an insider, such security interest shall be considered to be*
15 *avoided under this section only with respect to the creditor*
16 *that is an insider.”.*

17 **SEC. 719. POSTPETITION TRANSACTIONS.**

18 *Section 549(c) of title 11, United States Code, is*
19 *amended—*

20 *(1) by inserting “an interest in” after “transfer*
21 *of”;*

22 *(2) by striking “such property” and inserting*
23 *“such real property”;* and

24 *(3) by striking “the interest” and inserting*
25 *“such interest”.*

1 **SEC. 720. TECHNICAL AMENDMENT.**

2 *Section 552(b)(1) of title 11, United States Code, is*
3 *amended by striking “product” each place it appears and*
4 *inserting “products”.*

5 **SEC. 721. DISPOSITION OF PROPERTY OF THE ESTATE.**

6 *Section 726(b) of title 11, United States Code, is*
7 *amended by striking “1009.”.*

8 **SEC. 722. GENERAL PROVISIONS.**

9 *Section 901(a) of title 11, United States Code, as*
10 *amended by section 408, is amended by inserting*
11 *“1123(d),” after “1123(b),”.*

12 **SEC. 723. APPOINTMENT OF ELECTED TRUSTEE.**

13 *Section 1104(b) of title 11, United States Code, is*
14 *amended—*

15 *(1) by inserting “(1)” after “(b)”;* and

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

17 *“(2)(A) If an eligible, disinterested trustee is elected*
18 *at a meeting of creditors under paragraph (1), the United*
19 *States trustee shall file a report certifying that election.*
20 *Upon the filing of a report under the preceding sentence—*

21 *“(i) the trustee elected under paragraph (1) shall*
22 *be considered to have been selected and appointed for*
23 *purposes of this section; and*

24 *“(ii) the service of any trustee appointed under*
25 *subsection (d) shall terminate.*

1 “(B) *In the case of any dispute arising out of an elec-*
2 *tion under subparagraph (A), the court shall resolve the dis-*
3 *pute.*”.

4 **SEC. 724. ABANDONMENT OF RAILROAD LINE.**

5 *Section 1170(e)(1) of title 11, United States Code, is*
6 *amended by striking “section 11347” and inserting “section*
7 *11326(a)”.*

8 **SEC. 725. CONTENTS OF PLAN.**

9 *Section 1172(c)(1) of title 11, United States Code, is*
10 *amended by striking “section 11347” and inserting “section*
11 *11326(a)”.*

12 **SEC. 726. DISCHARGE UNDER CHAPTER 12.**

13 *Subsections (a) and (c) of section 1228 of title 11,*
14 *United States Code, are amended by striking “1222(b)(10)”*
15 *each place it appears and inserting “1222(b)(9)”.*

16 **SEC. 727. EXTENSIONS.**

17 *Section 302(d)(3) of the Bankruptcy, Judges, United*
18 *States Trustees, and Family Farmer Bankruptcy Act of*
19 *1986 (28 U.S.C. 581 note) is amended—*

20 *(1) in subparagraph (A), in the matter following*
21 *clause (ii), by striking “or October 1, 2002, whichever*
22 *occurs first”; and*

23 *(2) in subparagraph (F)—*

24 *(A) in clause (i)—*

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

4 (ii) in the matter following subclause
5 (II), by striking “October 1, 2003, or”; and
6 (B) in clause (ii), in the matter following
7 subclause (II)—

8 (i) by striking “before October 1, 2003,
9 or”; and

10 (ii) by striking “, whichever occurs
11 first”.

12 **SEC. 728. BANKRUPTCY CASES AND PROCEEDINGS.**

13 Section 1334(d) of title 28, United States Code, is
14 amended—

15 (1) by striking “made under this subsection” and
16 inserting “made under subsection (c)”; and

17 (2) by striking “This subsection” and inserting
18 “Subsection (c) and this subsection”.

19 **SEC. 729. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
20 **RULE.**

21 Section 156(a) of title 18, United States Code, is
22 amended—

23 (1) in the first undesignated paragraph—

24 (A) by inserting “(1) the term” before
25 “bankruptcy”; and

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

3 (2) in the second undesignated paragraph—

4 (A) by inserting “(2) the term” before “‘doc-
5 ument’”; and

6 (B) by striking “this title” and inserting
7 “title 11”.

8 **SEC. 730. ROLLING STOCK EQUIPMENT.**

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

11 **“§ 1168. Rolling stock equipment.**

12 “(a)(1) *The right of a secured party with a security*
13 *interest in or of a lessor or conditional vendor of equipment*
14 *described in paragraph (2) to take possession of such equip-*
15 *ment in compliance with an equipment security agreement,*
16 *lease, or conditional sale contract, and to enforce any of*
17 *its other rights or remedies under such security agreement,*
18 *lease, or conditional sale contract, to sell, lease, or otherwise*
19 *retain or dispose of such equipment, is not limited or other-*
20 *wise affected by any other provision of this title or by any*
21 *power of the court, except that that right to take possession*
22 *and enforce those other rights and remedies shall be subject*
23 *to section 362, if—*

24 “(A) *before the date that is 60 days after the*
25 *date of commencement of a case under this chapter,*

1 *the trustee, subject to the court’s approval, agrees to*
2 *perform all obligations of the debtor under such secu-*
3 *rity agreement, lease, or conditional sale contract;*
4 *and*

5 *“(B) any default, other than a default of a kind*
6 *described in section 365(b)(2), under such security*
7 *agreement, lease, or conditional sale contract—*

8 *“(i) that occurs before the date of com-*
9 *mencement of the case and is an event of default*
10 *therewith is cured before the expiration of such*
11 *60-day period;*

12 *“(ii) that occurs or becomes an event of de-*
13 *fault after the date of commencement of the case*
14 *and before the expiration of such 60-day period*
15 *is cured before the later of—*

16 *“(I) the date that is 30 days after the*
17 *date of the default or event of the default; or*

18 *“(II) the expiration of such 60-day pe-*
19 *riod; and*

20 *“(iii) that occurs on or after the expiration*
21 *of such 60-day period is cured in accordance*
22 *with the terms of such security agreement, lease,*
23 *or conditional sale contract, if cure is permitted*
24 *under that agreement, lease, or conditional sale*
25 *contract.*

1 “(2) *The equipment described in this paragraph—*

2 “(A) *is rolling stock equipment or accessories*
3 *used on rolling stock equipment, including super-*
4 *structures or racks, that is subject to a security inter-*
5 *est granted by, leased to, or conditionally sold to a*
6 *debtor; and*

7 “(B) *includes all records and documents relating*
8 *to such equipment that are required, under the terms*
9 *of the security agreement, lease, or conditional sale*
10 *contract, that is to be surrendered or returned by the*
11 *debtor in connection with the surrender or return of*
12 *such equipment.*

13 “(3) *Paragraph (1) applies to a secured party, lessor,*
14 *or conditional vendor acting in its own behalf or acting*
15 *as trustee or otherwise in behalf of another party.*

16 “(b) *The trustee and the secured party, lessor, or condi-*
17 *tional vendor whose right to take possession is protected*
18 *under subsection (a) may agree, subject to the court’s ap-*
19 *proval, to extend the 60-day period specified in subsection*
20 *(a)(1).*

21 “(c)(1) *In any case under this chapter, the trustee shall*
22 *immediately surrender and return to a secured party, les-*
23 *sor, or conditional vendor, described in subsection (a)(1),*
24 *equipment described in subsection (a)(2), if at any time*
25 *after the date of commencement of the case under this chap-*

1 *ter such secured party, lessor, or conditional vendor is enti-*
2 *tled pursuant to subsection (a)(1) to take possession of such*
3 *equipment and makes a written demand for such possession*
4 *of the trustee.*

5 “(2) *At such time as the trustee is required under*
6 *paragraph (1) to surrender and return equipment described*
7 *in subsection (a)(2), any lease of such equipment, and any*
8 *security agreement or conditional sale contract relating to*
9 *such equipment, if such security agreement or conditional*
10 *sale contract is an executory contract, shall be deemed re-*
11 *jected.*

12 “(d) *With respect to equipment first placed in service*
13 *on or prior to October 22, 1994, for purposes of this sec-*
14 *tion—*

15 “(1) *the term ‘lease’ includes any written agree-*
16 *ment with respect to which the lessor and the debtor,*
17 *as lessee, have expressed in the agreement or in a sub-*
18 *stantially contemporaneous writing that the agree-*
19 *ment is to be treated as a lease for Federal income*
20 *tax purposes; and*

21 “(2) *the term ‘security interest’ means a pur-*
22 *chase-money equipment security interest.*

23 “(e) *With respect to equipment first placed in service*
24 *after October 22, 1994, for purposes of this section, the term*
25 *‘rolling stock equipment’ includes rolling stock equipment*

1 *that is substantially rebuilt and accessories used on such*
2 *equipment.”.*

3 **(b) AIRCRAFT EQUIPMENT AND VESSELS.**—Section
4 *1110 of title 11, United States Code, is amended to read*
5 *as follows:*

6 **“§ 1110. Aircraft equipment and vessels**

7 “(a)(1) *Except as provided in paragraph (2) and sub-*
8 *ject to subsection (b), the right of a secured party with a*
9 *security interest in equipment described in paragraph (3),*
10 *or of a lessor or conditional vendor of such equipment, to*
11 *take possession of such equipment in compliance with a se-*
12 *curity agreement, lease, or conditional sale contract, and*
13 *to enforce any of its other rights or remedies, under such*
14 *security agreement, lease, or conditional sale contract, to*
15 *sell, lease, or otherwise retain or dispose of such equipment,*
16 *is not limited or otherwise affected by any other provision*
17 *of this title or by any power of the court.*

18 “(2) *The right to take possession and to enforce the*
19 *other rights and remedies described in paragraph (1) shall*
20 *be subject to section 362 if—*

21 “(A) *before the date that is 60 days after the*
22 *date of the order for relief under this chapter, the*
23 *trustee, subject to the approval of the court, agrees to*
24 *perform all obligations of the debtor under such secu-*

1 *urity agreement, lease, or conditional sale contract;*
2 *and*

3 “(B) *any default, other than a default of a kind*
4 *specified in section 365(b)(2), under such security*
5 *agreement, lease, or conditional sale contract—*

6 “(i) *that occurs before the date of the order*
7 *is cured before the expiration of such 60-day pe-*
8 *riod;*

9 “(ii) *that occurs after the date of the order*
10 *and before the expiration of such 60-day period*
11 *is cured before the later of—*

12 “(I) *the date that is 30 days after the*
13 *date of the default; or*

14 “(II) *the expiration of such 60-day pe-*
15 *riod; and*

16 “(iii) *that occurs on or after the expiration*
17 *of such 60-day period is cured in compliance*
18 *with the terms of such security agreement, lease,*
19 *or conditional sale contract, if a cure is per-*
20 *mitted under that agreement, lease, or contract.*

21 “(3) *The equipment described in this paragraph—*

22 “(A) *is—*

23 “(i) *an aircraft, aircraft engine, propeller,*
24 *appliance, or spare part (as defined in section*
25 *40102 of title 49) that is subject to a security in-*

1 *terest granted by, leased to, or conditionally sold*
2 *to a debtor that, at the time such transaction is*
3 *entered into, holds an air carrier operating cer-*
4 *tificate issued pursuant to chapter 447 of title 49*
5 *for aircraft capable of carrying 10 or more indi-*
6 *viduals or 6,000 pounds or more of cargo; or*

7 *“(ii) a documented vessel (as defined in sec-*
8 *tion 30101(1) of title 46) that is subject to a se-*
9 *curity interest granted by, leased to, or condi-*
10 *tionally sold to a debtor that is a water carrier*
11 *that, at the time such transaction is entered into,*
12 *holds a certificate of public convenience and ne-*
13 *cessity or permit issued by the Department of*
14 *Transportation; and*

15 *“(B) includes all records and documents relating*
16 *to such equipment that are required, under the terms*
17 *of the security agreement, lease, or conditional sale*
18 *contract, to be surrendered or returned by the debtor*
19 *in connection with the surrender or return of such*
20 *equipment.*

21 *“(4) Paragraph (1) applies to a secured party, lessor,*
22 *or conditional vendor acting in its own behalf or acting*
23 *as trustee or otherwise in behalf of another party.*

24 *“(b) The trustee and the secured party, lessor, or condi-*
25 *tional vendor whose right to take possession is protected*

1 *under subsection (a) may agree, subject to the approval of*
2 *the court, to extend the 60-day period specified in subsection*
3 *(a)(1).*

4 “(c)(1) *In any case under this chapter, the trustee shall*
5 *immediately surrender and return to a secured party, les-*
6 *sor, or conditional vendor, described in subsection (a)(1),*
7 *equipment described in subsection (a)(3), if at any time*
8 *after the date of the order for relief under this chapter such*
9 *secured party, lessor, or conditional vendor is entitled pur-*
10 *suant to subsection (a)(1) to take possession of such equip-*
11 *ment and makes a written demand for such possession to*
12 *the trustee.*

13 “(2) *At such time as the trustee is required under*
14 *paragraph (1) to surrender and return equipment described*
15 *in subsection (a)(3), any lease of such equipment, and any*
16 *security agreement or conditional sale contract relating to*
17 *such equipment, if such security agreement or conditional*
18 *sale contract is an executory contract, shall be deemed re-*
19 *jected.*

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

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

1 *ment is to be treated as a lease for Federal income*
2 *tax purposes; and*

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

5 **SEC. 731. CURBING ABUSIVE FILINGS.**

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

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

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

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

13 *“(4) with respect to a stay of an act against real*
14 *property under subsection (a), by a creditor whose*
15 *claim is secured by an interest in such real estate, if*
16 *the court finds that the filing of the bankruptcy peti-*
17 *tion was part of a scheme to delay, hinder, and de-*
18 *fraud creditors that involved either—*

19 *“(A) transfer of all or part ownership of, or*
20 *other interest in, the real property without the*
21 *consent of the secured creditor or court approval;*
22 *or*

23 *“(B) multiple bankruptcy filings affecting*
24 *the real property.*

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

9 **(b) AUTOMATIC STAY.**—Section 362(b) of title 11,
10 *United States Code, as amended by section 709, is amend-*
11 *ed—*

12 (1) *in paragraph (24), by striking “or” at the*
13 *end;*

14 (2) *in paragraph (25) by striking the period at*
15 *the end and inserting “; or”;* and

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

17 “(26) *under subsection (a) of this section, of any*
18 *act to enforce any lien against or security interest in*
19 *real property following the entry of an order under*
20 *section 362(d)(4) as to that property in any prior*
21 *bankruptcy case for a period of 2 years after entry of*
22 *such an order. The debtor in a subsequent case, how-*
23 *ever, may move the court for relief from such order*
24 *based upon changed circumstances or for other good*
25 *cause shown, after notice and a hearing; or*

1 “(27) under subsection (a) of this section, of any
2 act to enforce any lien against or security interest in
3 real property—

4 “(A) if the debtor is ineligible under section
5 109(g) to be a debtor in a bankruptcy case; or

6 “(B) if the bankruptcy case was filed in
7 violation of a bankruptcy court order in a prior
8 bankruptcy case prohibiting the debtor from
9 being a debtor in another bankruptcy case.”.

10 **SEC. 732. STUDY OF OPERATION OF TITLE 11 OF THE**
11 **UNITED STATES CODE WITH RESPECT TO**
12 **SMALL BUSINESSES.**

13 *Not later than 2 years after the date of the enactment*
14 *of this Act, the Administrator of the Small Business Admin-*
15 *istration, in consultation with the Attorney General, the*
16 *Director of the Administrative Office of United States*
17 *Trustees, and the Director of the Administrative Office of*
18 *the United States Courts, shall—*

19 (1) *conduct a study to determine—*

20 (A) *the internal and external factors that*
21 *cause small businesses, especially sole proprietor-*
22 *ships, to become debtors in cases under title 11*
23 *of the United States Code and that cause certain*
24 *small businesses to successfully complete cases*
25 *under chapter 11 of such title; and*

1 (B) *how Federal laws relating to bank-*
2 *ruptcy may be made more effective and efficient*
3 *in assisting small businesses to remain viable;*
4 *and*

5 (2) *submit to the President pro tempore of the*
6 *Senate and the Speaker of the House of Representa-*
7 *tives a report summarizing that study.*

8 **SEC. 733. TRANSFERS MADE BY NONPROFIT CHARITABLE**
9 **CORPORATIONS.**

10 (a) *SALE OF PROPERTY OF ESTATE.—Section 363(d)*
11 *of title 11, United States Code, is amended—*

12 (1) *by striking “only” and all that follows*
13 *through the end of the subsection and inserting*
14 *“only—*

15 *“(1) in accordance with applicable nonbank-*
16 *ruptcy law that governs the transfer of property by*
17 *a corporation or trust that is not a moneyed, busi-*
18 *ness, or commercial corporation or trust; and*

19 *“(2) to the extent not inconsistent with any relief*
20 *granted under subsection (c), (d), (e), or (f) of section*
21 *362”.*

22 (b) *CONFIRMATION OF PLAN FOR REORGANIZATION.—*
23 *Section 1129(a) of title 11, United States Code, is amended*
24 *by adding at the end the following:*

1 “(14) All transfers of property of the plan shall
2 be made in accordance with any applicable provisions
3 of nonbankruptcy law that govern the transfer of
4 property by a corporation or trust that is not a
5 moneyed, business, or commercial corporation or
6 trust.”.

7 (c) *TRANSFER OF PROPERTY.*—Section 541 of title 11,
8 United States Code, is amended by adding at the end the
9 following:

10 “(e) Notwithstanding any other provision of this title,
11 property that is held by a debtor that is a corporation de-
12 scribed in section 501(c)(3) of the Internal Revenue Code
13 of 1986 and exempt from tax under section 501(a) of such
14 Code may be transferred to an entity that is not such a
15 corporation, but only under the same conditions as would
16 apply if the debtor had not filed a case under this title.”.

17 (d) *APPLICABILITY.*—The amendments made by this
18 section shall apply to a case pending under title 11, United
19 States Code, on the date of enactment of this Act, except
20 that the court shall not confirm a plan under chapter 11
21 of this title without considering whether this section would
22 substantially affect the rights of a party in interest who
23 first acquired rights with respect to the debtor after the date
24 of the petition. The parties who may appear and be heard
25 in a proceeding under this section include the attorney gen-

1 *eral of the State in which the debtor is incorporated, was*
2 *formed, or does business.*

3 **SEC. 734. EFFECTIVE DATE; APPLICATION OF AMEND-**
4 **MENTS.**

5 (a) *EFFECTIVE DATE.*—*Except as provided in sub-*
6 *section (b), this title and the amendments made by this title*
7 *shall take effect on the date of enactment of this Act.*

8 (b) *APPLICATION OF AMENDMENTS.*—*The amendments*
9 *made by this title shall apply only with respect to cases*
10 *commenced under title 11, United States Code, on or after*
11 *the date of enactment of this Act.*

Attest:

Secretary.

105TH CONGRESS
2^D SESSION

H. R. 3150

AMENDMENT