

106TH CONGRESS
1ST SESSION

S. 945

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

IN THE SENATE OF THE UNITED STATES

MAY 3, 1999

Mr. DURBIN (for himself, Mr. LEAHY, Mr. KENNEDY, Mr. FEINGOLD, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Consumer Bankruptcy Reform Act of 1999”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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 Congress 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. Prohibition of 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. Damage measure.
- Sec. 403. Asset-backed securitizations.
- Sec. 404. Prohibition on certain actions for failure to incur finance charges.
- Sec. 405. Fees arising from certain ownership interests.
- Sec. 406. Bankruptcy fees.
- Sec. 407. Applicability.

TITLE V—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 501. Amendment to add 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. Adjustment of dollar amounts.
- Sec. 702. Extension of time.
- Sec. 703. Who may be a debtor.
- Sec. 704. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 705. Limitation on compensation of professional persons.
- Sec. 706. Special tax provisions.
- Sec. 707. Effect of conversion.
- Sec. 708. Automatic stay.
- Sec. 709. Allowance of administrative expenses.
- Sec. 710. Priorities.
- Sec. 711. Exemptions.
- Sec. 712. Exceptions to discharge.

- Sec. 713. Effect of discharge.
- Sec. 714. Protection against discriminatory treatment.
- Sec. 715. Property of the estate.
- Sec. 716. Preferences.
- Sec. 717. Postpetition transactions.
- Sec. 718. Technical amendment.
- Sec. 719. Disposition of property of the estate.
- Sec. 720. General provisions.
- Sec. 721. Appointment of elected trustee.
- Sec. 722. Abandonment of railroad line.
- Sec. 723. Contents of plan.
- Sec. 724. Discharge under chapter 12.
- Sec. 725. Extensions.
- Sec. 726. Bankruptcy cases and proceedings.
- Sec. 727. Knowing disregard of bankruptcy law or rule.
- Sec. 728. Rolling stock equipment.
- Sec. 729. Curbing abusive filings.
- Sec. 730. Study of operation of title 11 of the United States Code with respect to small businesses.
- Sec. 731. Transfers made by nonprofit charitable corporations.
- Sec. 732. Effective date; application of amendments.

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

3 **SEC. 101. CONVERSION.**

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

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

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

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

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

13 and

14 (2) in subsection (b)—

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

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

3 (i) in the first sentence—

4 (I) by striking “but not” and in-
5 serting “or”;

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

10 (III) by striking “substantial
11 abuse” and inserting “abuse”; and

12 (ii) by striking “There shall be a pre-
13 sumption in favor of granting the relief re-
14 quested by the debtor.”; and

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

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

19 “(A) under section 1325(b)(1), on the basis of
20 the current income of the debtor, the debtor could
21 pay an amount greater than or equal to 30 percent
22 of unsecured claims that are not considered to be
23 priority claims (as determined under subchapter I of
24 chapter 5); or

1 “(B) the debtor filed a petition for the relief in
2 bad faith.

3 “(3)(A) If a panel trustee appointed under section
4 586(a)(1) of title 28 brings a motion for dismissal or con-
5 version under this subsection and the court grants that
6 motion and finds that the action of the counsel for the
7 debtor in filing under this chapter was not substantially
8 justified, the court shall order the counsel for the debtor
9 to reimburse the trustee for all reasonable costs in pros-
10 ecuting the motion, including reasonable attorneys’ fees.

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

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

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

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

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

23 “(ii) determined that the petition—

24 “(I) is well grounded in fact; and

1 “(II) is warranted by existing law or a
2 good faith argument for the extension, modi-
3 fication, or reversal of existing law and does not
4 constitute an abuse under paragraph (1).

5 “(4)(A) Except as provided in subparagraph (B) and
6 paragraph (5), the court may award a debtor all reason-
7 able costs in contesting a motion brought by a party in
8 interest (other than a panel trustee or United States trust-
9 ee) under this subsection (including reasonable attorneys’
10 fees) if—

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

12 “(ii) the court finds that—

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

15 “(II) the party brought the motion solely
16 for the purpose of coercing a debtor into
17 waiving a right guaranteed to the debtor under
18 this title.

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

22 “(5)(A) Only the judge, United States trustee, bank-
23 ruptcy administrator, or panel trustee may bring a motion
24 under this subsection if the debtor and the debtor’s spouse
25 combined, as of the date of the order for relief, have cur-

1 rent monthly total income equal to or less than the na-
 2 tional median household monthly income calculated on a
 3 monthly basis for a household of equal size.

4 “(B) For purposes of subparagraph (A), for a house-
 5 hold of more than 4 individuals, the median monthly in-
 6 come for that household shall be—

7 “(1) the median monthly income of a household
 8 of 4 individuals; plus

9 “(2) \$583 for each additional member of that
 10 household.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
 12 for chapter 7 of title 11, United States Code, is amended
 13 by striking the item relating to section 707 and inserting
 14 the following:

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

15 **TITLE II—ENHANCED PROCE-**
 16 **DURAL PROTECTIONS FOR**
 17 **CONSUMERS**

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

19 Section 502 of title 11, United States Code, is
 20 amended by adding at the end the following:

21 “(k)(1) The court may award the debtor reasonable
 22 attorneys’ fees and costs if, after an objection is filed by
 23 a debtor, the court—

24 “(A)(i) disallows the claim; or

1 “(ii) reduces the claim by an amount greater
2 than 20 percent of the amount of the initial claim
3 filed by a party in interest; and

4 “(B) finds the position of the party filing the
5 claim is not substantially justified.

6 “(2) If the court finds that the position of a claimant
7 under this section is not substantially justified, the court
8 may, in addition to awarding a debtor reasonable attor-
9 neys’ fees and costs under paragraph (1), award such
10 damages as may be required by the equities of the case.”.

11 **SEC. 202. EXCEPTIONS TO DISCHARGE.**

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

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

18 (2) by striking subsection (d) and inserting the
19 following:

20 “(d)(1) Subject to paragraph (3), if a creditor re-
21 quests a determination of dischargeability of a consumer
22 debt under this section and that debt is discharged, the
23 court shall award the debtor reasonable attorneys’ fees
24 and costs.

1 “(2) In addition to making an award to a debtor
2 under paragraph (1), if the court finds that the position
3 of a creditor in a proceeding covered under this section
4 is not substantially justified, the court may award reason-
5 able attorneys’ fees and costs under paragraph (1) and
6 such damages as may be required by the equities of the
7 case.

8 “(3)(A) A creditor may not request a determination
9 of dischargeability of a consumer debt under subsection
10 (a)(2) if—

11 “(i) before the filing of the petition, the debtor
12 made a good faith effort to negotiate a reasonable
13 alternative repayment schedule (including making an
14 offer of a reasonable alternative repayment sched-
15 ule); and

16 “(ii) that creditor refused to negotiate an alter-
17 native payment schedule, and that refusal was not
18 reasonable.

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

21 “(i) an offer made by that debtor under sub-
22 paragraph (A)(i) was reasonable; and

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

1 **SEC. 203. EFFECT OF DISCHARGE.**

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

4 “(i) The willful failure of a creditor to credit pay-
5 ments received under a plan confirmed under this title (in-
6 cluding a plan of reorganization confirmed under chapter
7 11) in the manner required by the plan (including cred-
8 iting the amounts required under the plan) shall constitute
9 a violation of an injunction under subsection (a)(2).

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

15 “(1) the greater of—

16 “(A)(i) the amount of actual damages;
17 multiplied by

18 “(ii) 3; or

19 “(B) \$5,000; and

20 “(2) costs and attorneys’ fees.”

21 **SEC. 204. AUTOMATIC STAY.**

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

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

1 “(A) actual damages; and

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

3 “(2) In addition to recovering actual damages, costs,
4 and attorneys’ fees under paragraph (1), an individual de-
5 scribed in paragraph (1) may recover punitive damages
6 in appropriate circumstances.”.

7 **SEC. 205. DISCHARGE.**

8 Section 727 of title 11, United States Code, is
9 amended—

10 (1) in subsection (c), by adding at the end the
11 following:

12 “(3)(A) A creditor may not request a determination
13 of dischargeability of a consumer debt under subsection
14 (a) if—

15 “(i) before the filing of the petition, the debtor
16 made a good faith effort to negotiate a reasonable
17 alternative repayment schedule (including making an
18 offer of a reasonable alternative repayment sched-
19 ule); and

20 “(ii) that creditor refused to negotiate an alter-
21 native payment schedule, and that refusal was not
22 reasonable.

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

1 “(i) an offer made by that debtor under sub-
2 paragraph (A)(i) was reasonable; and

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

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

6 “(f)(1) The court may award the debtor reasonable
7 attorneys’ fees and costs in any case in which a creditor
8 files a motion to deny relief to a debtor under this section
9 and that motion—

10 “(A) is denied; or

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

12 “(2) If the court finds that the position of a party
13 filing a motion under this section is not substantially justi-
14 fied, the court may assess against the creditor such dam-
15 ages as may be required by the equities of the case.”.

16 **SEC. 206. DISCOURAGING PREDATORY LENDING PRAC-**
17 **TICES.**

18 Section 502(b) of title 11, United States Code, is
19 amended—

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

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

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

1 “(10) the claim is based on a secured debt if
 2 the creditor has failed to comply with the require-
 3 ments of subsection (a), (b), (c), (d), (e), (f), (g),
 4 (h), or (i) of section 129 of the Truth in Lending
 5 Act (15 U.S.C. 1639).”.

6 **SEC. 207. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**
 7 **SIONS SECURED BY DWELLING.**

8 (a) OPEN-END CREDIT EXTENSIONS.—

9 (1) CREDIT APPLICATIONS.—Section
 10 127A(a)(13) of the Truth in Lending Act (15
 11 U.S.C. 1637a(a)(13)) is amended—

12 (A) by striking “CONSULTATION OF TAX
 13 ADVISOR.—A statement that the” and inserting
 14 the following: “TAX DEDUCTIBILITY.—A state-
 15 ment that—

16 “(A) the”; and

17 (B) by striking the period at the end and
 18 inserting the following: “; and

19 “(B) in any case in which the extension of
 20 credit exceeds the fair market value of the
 21 dwelling, the interest on the portion of the cred-
 22 it extension that is greater than the fair market
 23 value of the dwelling is not tax deductible for
 24 Federal income tax purposes.”.

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

4 (A) by striking “If any” and inserting the
5 following:

6 “(1) IN GENERAL.—If any”; and

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

8 “(2) CREDIT IN EXCESS OF FAIR MARKET
9 VALUE.—Each advertisement described in subsection
10 (a) that relates to an extension of credit that may
11 exceed the fair market value of the dwelling shall in-
12 clude a clear and conspicuous statement that—

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

17 “(B) the consumer may want to consult a
18 tax advisor for further information regarding
19 the deductibility of interest and charges.”.

20 (b) NON-OPEN END CREDIT EXTENSIONS.—

21 (1) CREDIT APPLICATIONS.—Section 128 of the
22 Truth in Lending Act (15 U.S.C. 1638) is
23 amended—

24 (A) in subsection (a), by adding at the end
25 the following:

1 “(15) In the case of a consumer credit trans-
2 action that is secured by the principal dwelling of
3 the consumer, in which the extension of credit may
4 exceed the fair market value of the dwelling, a clear
5 and conspicuous statement that—

6 “(A) the interest on the portion of the
7 credit extension that is greater than the fair
8 market value of the dwelling is not tax deduct-
9 ible for Federal income tax purposes; and

10 “(B) the consumer should consult a tax
11 advisor for further information regarding the
12 deductibility of interest and charges.”; and

13 (B) in subsection (b), by adding at the end
14 the following:

15 “(3) In the case of a credit transaction described in
16 paragraph (15) of subsection (a), disclosures required by
17 that paragraph shall be made to the consumer at the time
18 of application for such extension of credit.”.

19 (2) CREDIT ADVERTISEMENTS.—Section 144 of
20 the Truth in Lending Act (15 U.S.C. 1664) is
21 amended by adding at the end the following:

22 “(e) Each advertisement to which this section applies
23 that relates to a consumer credit transaction that is se-
24 cured by the principal dwelling of a consumer in which

1 the extension of credit may exceed the fair market value
 2 of the dwelling shall clearly and conspicuously state that—

3 “(1) the interest on the portion of the credit ex-
 4 tension that is greater than the fair market value of
 5 the dwelling is not tax deductible for Federal income
 6 tax purposes; and

7 “(2) the consumer may want to consult a tax
 8 advisor for further information regarding the de-
 9 ductibility of interest and charges.”.

10 (c) EFFECTIVE DATE.—This section and the amend-
 11 ments made by this section shall take effect 1 year after
 12 the date of enactment of this Act.

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

14 (a) CONSUMER LIABILITY.—

15 (1) IN GENERAL.—Section 909 of the Elec-
 16 tronic Fund Transfer Act (15 U.S.C. 1693g) is
 17 amended—

18 (A) by redesignating subsections (b)
 19 through (e) as subsections (d) through (g), re-
 20 spectively;

21 (B) in subsection (a)—

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

1 (ii) by inserting “CARDS NECESSI-
 2 TATING UNIQUE IDENTIFIER.—

3 “(1) IN GENERAL.—” after “(a)”;

4 (iii) by striking “other means of ac-
 5 cess can be identified as the person author-
 6 ized to use it, such as by signature, photo-
 7 graph,” and inserting “other means of ac-
 8 cess can be identified as the person author-
 9 ized to use it by a unique identifier, such
 10 as a photograph, retina scan,”; and

11 (iv) by striking “Notwithstanding the
 12 foregoing,” and inserting the following:

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

15 (C) by inserting after subsection (a) the
 16 following new subsections:

17 “(b) CARDS NOT NECESSITATING UNIQUE IDENTI-
 18 FIER.—A consumer shall be liable for an unauthorized
 19 electronic fund transfer only if—

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

21 “(2) the unauthorized electronic fund transfer
 22 is initiated by the use of a card that has been prop-
 23 erly issued to a consumer other than the person
 24 making the unauthorized transfer as a means of ac-

1 cess to the account of that consumer for the purpose
2 of initiating an electronic fund transfer;

3 “(3) the unauthorized electronic fund transfer
4 occurs before the card issuer has been notified that
5 an unauthorized use of the card has occurred or may
6 occur as the result of loss, theft, or otherwise; and

7 “(4) such unauthorized electronic fund transfer
8 did not require the use of a code or other unique
9 identifier (other than a signature), such as a photo-
10 graph, fingerprint, or retina scan.

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

20 (2) CONFORMING AMENDMENT.—Section
21 905(a)(1) of the Electronic Fund Transfer Act (15
22 U.S.C. 1693c(a)(1)) is amended to read as follows:

23 “(1) the liability of the consumer for any unau-
24 thorized electronic fund transfer and the require-
25 ment for promptly reporting any loss, theft, or unau-

1 thorized use of a card, code, or other means of ac-
 2 cess in order to limit the liability of the consumer
 3 for any such unauthorized transfer;”.

4 (b) VALIDATION REQUIREMENT FOR DUAL-USE
 5 DEBIT CARDS.—

6 (1) IN GENERAL.—Section 911 of the Elec-
 7 tronic Fund Transfer Act (15 U.S.C. 1693i) is
 8 amended—

9 (A) by redesignating subsection (c) as sub-
 10 section (d); and

11 (B) by inserting after subsection (b) the
 12 following new subsection:

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

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

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

24 (2) TECHNICAL AND CONFORMING AMEND-
 25 MENT.—Section 911(d) of the Electronic Fund

1 Transfer Act (15 U.S.C. 1993i(d)) (as redesignated
2 by subsection (a)(1) of this section) is amended by
3 striking “For the purpose of subsection (b)” and in-
4 serting “For purposes of subsections (b) and (c)”.

5 **SEC. 209. ENHANCED DISCLOSURES UNDER AN OPEN END**
6 **CREDIT PLAN.**

7 (a) AMENDMENTS TO THE TRUTH IN LENDING
8 ACT.—

9 (1) ENHANCED DISCLOSURE OF REPAYMENT
10 TERMS.—

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

14 “(11)(A) In a clear and conspicuous manner,
15 repayment information that would apply to the out-
16 standing balance of the consumer under the credit
17 plan, including—

18 “(i) the required minimum monthly pay-
19 ment on that balance, represented as both a
20 dollar figure and a percentage of that balance;

21 “(ii) the number of months (rounded to
22 the nearest month) that it would take to pay
23 the entire amount of that current balance if the
24 consumer pays only the required minimum

1 monthly payments and if no further advances
2 are made;

3 “(iii) the total cost to the consumer, in-
4 cluding interest and principal payments, of pay-
5 ing that balance in full if the consumer pays
6 only the required minimum monthly payments
7 and if no further advances are made; and

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

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

16 (B) PUBLICATION OF MODEL FORMS.—Not
17 later than 180 days after the date of enactment
18 of this Act, the Board of Governors of the Fed-
19 eral Reserve System shall publish model disclo-
20 sure forms in accordance with section 105 of
21 the Truth in Lending Act for the purpose of
22 compliance with section 127(b)(11) of the
23 Truth in Lending Act, as added by this para-
24 graph.

1 (C) CIVIL LIABILITY.—Section 130(a) of
2 the Truth in Lending Act (15 U.S.C. 1640(a))
3 is amended, in the undesignated paragraph fol-
4 lowing paragraph (4), by striking the second
5 sentence and inserting the following: “In con-
6 nection with the disclosures referred to in sub-
7 sections (a) and (b) of section 127, a creditor
8 shall have a liability determined under para-
9 graph (2) of this subsection only for failing to
10 comply with the requirements of section 125,
11 127(a), or of paragraph (4), (5), (6), (7), (8),
12 (9), (10), or (11) of section 127(b), or for fail-
13 ing to comply with disclosure requirements
14 under State law for any term or item that the
15 Board has determined to be substantially the
16 same in meaning under section 111(a)(2) as
17 any of the terms or items referred to in section
18 127(a), or paragraph (4), (5), (6), (7), (8), (9),
19 (10), or (11) of section 127(b).”.

20 (2) DISCLOSURES IN CONNECTION WITH SO-
21 LICITATIONS.—

22 (A) IN GENERAL.—Section 127(c)(1)(B) of
23 the Truth in Lending Act (15 U.S.C.
24 1637(c)(1)(B)) is amended by adding at the
25 end the following:

1 “(iv) CREDIT WORKSHEET.—An easily
2 understandable credit worksheet designed
3 to aid consumers in determining their abil-
4 ity to assume more debt, including consid-
5 eration of the personal expenses of the con-
6 sumer and a simple formula for the con-
7 sumer to determine whether the assump-
8 tion of additional debt is advisable.

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

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

1 (B) PUBLICATION OF MODEL FORMS.—Not
2 later than 180 days after the date of enactment
3 of this Act, the Board of Governors of the Fed-
4 eral Reserve System shall publish model disclo-
5 sure forms in accordance with section 105 of
6 the Truth in Lending Act for the purpose of
7 compliance with section 127(c)(1)(B) of the
8 Truth in Lending Act, as amended by this
9 paragraph.

10 (b) EFFECTIVE DATE.—This section and the amend-
11 ments made by this section shall take effect on January
12 1, 2001.

13 **SEC. 210. VIOLATIONS OF THE AUTOMATIC STAY.**

14 Section 362(a) of title 11, United States Code, is
15 amended—

16 (1) in paragraph (7), by striking “and” at the
17 end;

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

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

21 “(9) any communication threatening a debtor,
22 at any time after the commencement and before the
23 granting of a discharge in a case under this title, of
24 an intention—

1 “(A) to file a motion to determine the
2 dischargeability of a debt;

3 “(B) to file a motion under section 707(b)
4 to dismiss or convert the case; or

5 “(C) to repossess collateral from the debt-
6 or to which the stay applies.”.

7 **SEC. 211. DISCOURAGING ABUSIVE REAFFIRMATION PRAC-**
8 **TICES.**

9 Section 524 of title 11, United States Code, is
10 amended—

11 (1) in subsection (c)—

12 (A) in paragraph (2)—

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

15 (ii) in subparagraph (B), by adding
16 “and” after the semicolon; and

17 (iii) by adding at the end the fol-
18 lowing:

19 “(C) such agreement contains a clear and con-
20 spicuous statement that advises the debtor which
21 portion of the debt to be reaffirmed is attributable
22 to—

23 “(i) principal;

24 “(ii) interest;

25 “(iii) late fees;

1 “(iv) creditor’s attorneys fees; or

2 “(v) expenses or other costs relating to the
3 collection of the debt;”;

4 (B) in paragraph (5), by striking “and”
5 after the semicolon;

6 (C) in paragraph (6)—

7 (i) in subparagraph (A), by striking
8 the period and inserting “ ; except that”;
9 and

10 (ii) by striking subparagraph (B) and
11 inserting the following:

12 “(B) to the extent that the debt is a consumer
13 debt secured by real property or is a debt described
14 in paragraph (7), subparagraph (A) shall not apply;
15 and”;

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

17 “(7) in a case concerning an individual—

18 “(A)(i) if the consideration for such agree-
19 ment is based in whole or in part—

20 “(I) on an unsecured consumer debt;

21 or

22 “(II) on a debt for an item of person-
23 alty with a value of \$250 or less at the
24 point of purchase; and

1 “(ii) in which the creditor asserts a pur-
2 chase money security interest; and

3 “(B) if the court, approves such agreement
4 as—

5 “(i) in the best interest of the debtor
6 in light of the debtor’s income and ex-
7 penses;

8 “(ii) not imposing an undue hardship
9 on the future ability of the debtor to pay
10 for the needs of children and other depend-
11 ents (including court ordered support);

12 “(iii) not requiring the debtor to pay
13 the creditor’s attorney’s fees, expenses or
14 other costs relating to the collection of the
15 debt;

16 “(iv) not entered into to protect prop-
17 erty that is necessary for the care and
18 maintenance of children or other depend-
19 ents that would have nominal value on re-
20 possession;

21 “(v) not entered into after coercive
22 threats or actions by the creditor in the
23 creditor’s course of dealings with the debt-
24 or; and

1 “(vi) not unfair because excessive in
2 amount based upon the value of the collateral.”;
3 and

4 (2) in subsection (d)(2), by striking “require-
5 ments of subsection (c)(6) of this section if the con-
6 sideration for such agreement is based in whole or
7 in part on a consumer debt that is not secured by
8 real property of the debtor” and inserting “applica-
9 ble requirements of paragraphs (6) and (7) of sub-
10 section (c)”.

11 **SEC. 212. SENSE OF CONGRESS REGARDING THE HOME-**
12 **STEAD EXEMPTION.**

13 (a) FINDINGS.—The Congress finds that—

14 (1) one of the most flagrant abuses of the
15 bankruptcy system involves misuse of the homestead
16 exemption under section 522 of title 11, United
17 States Code, which allows a debtor to exempt the
18 debtor’s home, up to a certain value, as established
19 by State law, from being sold off to satisfy debts;

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

23 (3) in the few States with unlimited homestead
24 exemptions, debtors can shield their assets in luxury

1 homes, while legitimate creditors receive little or
2 nothing;

3 (4) beneficiaries of the homestead exemption in-
4 clude convicted insider traders and savings and loan
5 criminals, while shortchanged creditors include chil-
6 dren, spouses, governments, and banks; and

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

9 (b) SENSE OF THE CONGRESS.—It is the sense of
10 the Congress that—

11 (1) meaningful bankruptcy reform cannot be
12 achieved without capping the homestead exemption;
13 and

14 (2) bankruptcy reform legislation should include
15 a cap of \$100,000 on the homestead exemption
16 under title 11, United States Code.

17 **SEC. 213. ENCOURAGING CREDITWORTHINESS.**

18 (a) SENSE OF THE CONGRESS.—It is the sense of the
19 Congress that—

20 (1) certain lenders may sometimes offer credit
21 to consumers indiscriminately, without taking steps
22 to ensure that consumers are capable of repaying
23 the resulting debt, and in a manner which may en-
24 courage certain consumers to accumulate additional
25 debt; and

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

3 (b) STUDY REQUIRED.—The Board of Governors of
4 the Federal Reserve System (referred to in this section
5 as the “Board”) shall conduct a study of—

6 (1) consumer credit industry practices of solici-
7 iting and extending credit—

8 (A) indiscriminately;

9 (B) without taking steps to ensure that
10 consumers are capable of repaying the resulting
11 debt; and

12 (C) in a manner that encourages con-
13 sumers to accumulate additional debt; and

14 (2) the effects of such practices on consumer
15 debt and insolvency.

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

19 (1) shall make public a report on its findings
20 with respect to the indiscriminate solicitation and
21 extension of credit by the credit industry;

22 (2) may issue regulations that would require
23 additional disclosures to consumers in connection
24 with extensions of credit; and

1 (3) may take any other actions, consistent with
2 its existing statutory authority, that the Board finds
3 necessary to ensure responsible industrywide prac-
4 tices and to prevent resulting consumer debt and in-
5 solveny.

6 **SEC. 214. TREASURY DEPARTMENT STUDY REGARDING SE-**
7 **CURITY INTERESTS UNDER AN OPEN END**
8 **CREDIT PLAN.**

9 (a) **STUDY.**—The Board of Governors of the Federal
10 Reserve System (hereafter in this section referred to as
11 the “Board”), in consultation with the Secretary of the
12 Treasury, the general credit industry, and consumer
13 groups, shall conduct a study of the adequacy of informa-
14 tion received by consumers regarding the creation of secu-
15 rity interests under open end credit plans (as defined in
16 the Truth in Lending Act).

17 (b) **FINDINGS.**—The study required under subsection
18 (a) shall include the findings of the Board regarding—

19 (1) whether consumers understand at the time
20 of purchase of property under an open end credit
21 plan that such property may serve as collateral
22 under that credit plan;

23 (2) whether consumers understand at the time
24 of purchase the legal consequences of disposing of
25 property that is purchased under an open end credit

1 plan and is subject to a security interest under that
2 plan; and

3 (3) whether creditors holding security interests
4 in property purchased under an open end credit plan
5 use such security interests to coerce reaffirmations
6 of existing debts under section 524 of title 11,
7 United States Code.

8 (c) CONSIDERATIONS.—In formulating the findings
9 under subsection (b), the Board shall consider, among
10 other factors the Board determines relevant, prevailing in-
11 dustry practices in this area.

12 (d) DISCLOSURE RECOMMENDATIONS.—The study
13 required under subsection (a) shall include the rec-
14 ommendations of the Board regarding the utility and prac-
15 ticality of additional disclosures by credit card issuers at
16 the time of purchase regarding security interests under
17 open end credit plans, including—

18 (1) disclosures of the specific property in which
19 the creditor will receive a security interest;

20 (2) disclosures of the consequences of non-
21 payment of the credit card balance, including how
22 the security interest may be enforced; and

23 (3) disclosures of the process by which pay-
24 ments made under the plan will be credited with re-

1 spect to the lien created by the security contract and
2 other debts under the plan.

3 (e) SUBMISSION OF REPORT.—Not later than 180
4 days after the date of enactment of this Act, the Board
5 shall submit a report of its findings under the study re-
6 quired by this section to the Committee on the Judiciary
7 of the Senate, the Committee on Banking, Housing, and
8 Urban Affairs of the Senate, the Committee on the Judici-
9 ary of the House of Representatives, and the Committee
10 on Banking and Financial Services of the House of Rep-
11 resentatives.

12 **TITLE III—IMPROVED PROCES-**
13 **DURES FOR EFFICIENT AD-**
14 **MINISTRATION OF THE BANK-**
15 **RUPTCY SYSTEM**

16 **SEC. 301. NOTICE OF ALTERNATIVES.**

17 (a) IN GENERAL.—Section 342 of title 11, United
18 States Code, is amended by striking subsection (b) and
19 inserting the following:

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

1 which the petition is filed under section 586 of title 28.

2 The notice shall contain the following:

3 “(1) A brief description of chapters 7, 11, 12,
4 and 13 and the general purpose, benefits, and costs
5 of 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 liabil-
20 ities;

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

23 “(iii) a statement of the debtor’s fi-
24 nancial affairs and, if applicable, a
25 certificate—

1 “(I) of an attorney whose name
2 is on the petition as the attorney for
3 the debtor or any bankruptcy petition
4 preparer signing the petition under
5 section 110(b)(1) indicating that such
6 attorney or bankruptcy petition pre-
7 parer delivered to the debtor any no-
8 tice required by section 342(b); or

9 “(II) if no attorney for the debt-
10 or is indicated and no bankruptcy pe-
11 tition preparer signed the petition, of
12 the debtor that such notice was ob-
13 tained and read by the debtor;

14 “(iv) copies of any Federal tax re-
15 turns, including any schedules or attach-
16 ments, filed by the debtor for the 3-year
17 period preceding 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
22 filing of the petition;

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

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

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

6 “(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 no-
8 tice that the creditor requests the petition, schedules, and
9 a statement of affairs filed by the debtor in the case and
10 the court shall make those documents available to the
11 creditor who requests those documents.

12 “(2) At any time, a creditor, in a case under chapter
13 13, may file with the court notice that the creditor re-
14 quests the plan filed by the debtor in the case and the
15 court shall make that plan available to the creditor who
16 requests that 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 com-
22 mencement of the case until such time as the case
23 is closed;

24 “(2) at the time filed with the taxing authority,
25 all tax returns, including any schedules or attach-

1 ments, that were not filed with the taxing authority
2 when the schedules under subsection (a)(1) were
3 filed with respect to the period that is 3 years before
4 the order for relief;

5 “(3) any amendments to any of the tax returns,
6 including schedules or attachments, described in
7 paragraph (1) or (2); and

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

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

17 “(B) thereafter, on or before the date that
18 is 45 days before each anniversary of the con-
19 firmation of the plan until the case is closed.

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

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

1 “(B) the identity of any persons responsible
2 with the debtor for the support of any dependents of
3 the debtor; and

4 “(C) the identity of any persons who contrib-
5 uted, and the amount contributed, to the household
6 in which the debtor resides.

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

13 “(e)(1) Not later than 30 days after the date of en-
14 actment of the Consumer Bankruptcy Reform Act of
15 1999, the Director of the Administrative Office of the
16 United States Courts shall establish procedures for safe-
17 guarding the confidentiality of any tax information re-
18 quired to be provided under this section.

19 “(2) The procedures under paragraph (1) shall in-
20 clude restrictions on creditor access to tax information
21 that is required to be provided under this section.

22 “(3) Not later than 1 year after the date of enact-
23 ment of the Consumer Bankruptcy Reform Act of 1999,
24 the Director of the Administrative Office of the United

1 States Courts shall prepare, and submit to Congress a re-
2 port that—

3 “(A) assesses the effectiveness of the proce-
4 dures under paragraph (1); and

5 “(B) if appropriate, includes proposed
6 legislation—

7 “(i) to further protect the confidentiality of
8 tax information; and

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

12 “(f) If requested by the United States trustee or a
13 trustee serving in the case, the debtor provides a document
14 that establishes the identity of the debtor, including a
15 driver’s license, passport, or other document that contains
16 a photograph of the debtor and such other personal identi-
17 fying information relating to the debtor that establishes
18 the identity of the debtor.”.

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

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

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

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

1 “(7) on or before January 1 of each calendar
2 year, and also not later than 30 days after any
3 change in the nonprofit debt counseling services reg-
4 istered with the bankruptcy court, prescribe and
5 make available on request the notice described in
6 section 342(b)(3) of title 11 for each district in-
7 cluded in the region.”.

8 **SEC. 302. FAIR TREATMENT OF SECURED CREDITORS**
9 **UNDER CHAPTER 13.**

10 (a) RESTORING THE FOUNDATION FOR SECURED
11 CREDIT.—Section 1325(a) of title 11, United States Code,
12 is amended—

13 (1) in paragraph (5), by striking the matter
14 preceding subparagraph (A) and inserting the fol-
15 lowing:

16 “(5) with respect to an allowed claim provided
17 for by the plan that is secured under applicable non-
18 bankruptcy law by reason of a lien on property in
19 which the estate has an interest or is subject to a
20 setoff under section 553—”; and

21 (2) by adding at the end of the subsection the
22 following flush sentence:

23 “For purposes of paragraph (5), section 506 shall not
24 apply to a claim described in that paragraph.”.

1 (b) PAYMENT OF HOLDERS OF CLAIMS SECURED BY
 2 LIENS.—Section 1325(a)(5)(B)(i) of title 11, United
 3 States Code, is amended to read as follows:

4 “(B)(i) the plan provides that the holder of
 5 such claim retain the lien securing such claim
 6 until the debt that is the subject of the claim
 7 is fully paid for, as provided under the plan;
 8 and”.

9 (c) DETERMINATION OF SECURED STATUS.—Section
 10 506 of title 11, United States Code, is amended by adding
 11 at the end the following:

12 “(e) Subsection (a) shall not apply to an allowed
 13 claim to the extent attributable in whole or in part to the
 14 purchase price of personal property acquired by the debtor
 15 during the 90-day period preceding the date of filing of
 16 the petition.”.

17 **SEC. 303. DISCOURAGEMENT OF BAD FAITH REPEAT FIL-**
 18 **INGS.**

19 Section 362(e) of title 11, United States Code, is
 20 amended—

21 (1) by inserting “(1)” before “Except as”;

22 (2) by striking “(1) the stay” and inserting
 23 “(A) the stay”;

24 (3) by striking “(2) the stay” and inserting
 25 “(B) the stay”;

1 (4) by striking “(A) the time” and inserting
2 “(i) the time”;

3 (5) by striking “(B) the time” and inserting
4 “(ii) the time”; and

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

6 “(2) Except as provided in subsections (d) through
7 (f), the stay under subsection (a) with respect to any ac-
8 tion taken with respect to a debt or property securing such
9 debt or with respect to any lease shall terminate with re-
10 spect to the debtor on the 30th day after the filing of the
11 later case if—

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

14 “(B) a single or joint case of that debtor (other
15 than a case refiled under a chapter other than chap-
16 ter 7 after dismissal under section 707(b)) was
17 pending during the preceding year but was dis-
18 missed.

19 “(3) If a party in interest so requests, the court may
20 extend the stay in a particular case with respect to 1 or
21 more creditors (subject to such conditions or limitations
22 as the court may impose) after providing notice and a
23 hearing completed before the expiration of the 30-day pe-
24 riod described in paragraph (2) only if the party in inter-

1 est demonstrates that the filing of the later case is in good
2 faith with respect to the creditors to be stayed.

3 “(4) A case shall be presumed to have not been filed
4 in good faith (except that such presumption may be rebut-
5 ted by clear and convincing evidence to the contrary)—

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

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

11 “(ii) a previous case under any of chapters
12 7, 11, or 13 in which the individual was a debt-
13 or was dismissed within the period specified in
14 paragraph (2) after—

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

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

22 “(iii)(I) during the period commencing
23 with the dismissal of the next most previous
24 case under chapter 7, 11, or 13 there has not

1 been a substantial change in the financial or
2 personal affairs of the debtor;

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

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

9 “(B) with respect to any creditor that com-
10 menced an action under subsection (d) in a previous
11 case in which the individual was a debtor, if, as of
12 the date of dismissal of that case, that action was
13 still pending or had been resolved by terminating,
14 conditioning, or limiting the stay with respect to ac-
15 tions of that creditor.

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

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

24 “(ii) indefinitely.

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

5 “(ii) If an in rem order issued under subparagraph
6 (A) so provides, the stay shall, in addition to being inappli-
7 cable to the debtor involved, not apply with respect to an
8 entity under this title if—

9 “(I) the entity had reason to know of the order
10 at the time that the entity obtained an interest in
11 the property affected; or

12 “(II) the entity was notified of the commence-
13 ment of the proceeding for relief from the stay, and
14 at the time of the notification, no case in which the
15 entity was a debtor was pending.

16 “(6) For purposes of this section, a case is pending
17 during the period beginning with the issuance of the order
18 for relief and ending at such time as the case involved
19 is closed.”.

20 **SEC. 304. TIMELY FILING AND CONFIRMATION OF PLANS**
21 **UNDER CHAPTER 13.**

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

1 **“§ 1321. Filing of plan**

2 “The debtor shall file a plan not later than 90 days
3 after the order for relief under this chapter, except that
4 the court may extend such period if the need for an exten-
5 sion is attributable to circumstances for which the debtor
6 should not justly be held accountable.”.

7 (b) CONFIRMATION OF HEARING.—Section 1324 of
8 title 11, United States Code, is amended by adding at the
9 end the following: “That hearing shall be held not later
10 than 45 days after the filing of the plan, unless the court,
11 after providing notice and a hearing, orders otherwise.”.

12 **SEC. 305. APPLICATION OF THE CODEBTOR STAY ONLY**
13 **WHEN THE STAY PROTECTS THE DEBTOR.**

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

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

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

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

25 “(i) the individual that received that consider-
26 ation; or

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

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

10 “(i) an individual described in subparagraph
11 (A)(i); or

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

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

21 **SEC. 306. IMPROVED BANKRUPTCY STATISTICS.**

22 (a) AMENDMENT.—Chapter 6 of part I of title 28,
23 United States Code, is amended by adding at the end the
24 following:

1 **“§ 159. Bankruptcy statistics**

2 “(a) The clerk of each district shall compile statistics
3 regarding individual debtors with primarily consumer
4 debts seeking relief under chapters 7, 11, and 13 of title
5 11. Those statistics shall be in a form prescribed by the
6 Director of the Administrative Office of the United States
7 Courts (referred to in this section as the ‘Office’).

8 “(b) The Director shall—

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

11 “(2) make the statistics available to the public;
12 and

13 “(3) not later than October 31, 1999, and an-
14 nually thereafter, prepare, and submit to Congress a
15 report concerning the information collected under
16 subsection (a) that contains an analysis of the infor-
17 mation.

18 “(c) The compilation required under subsection (b)
19 shall—

20 “(1) be itemized, by chapter, with respect to
21 title 11;

22 “(2) be presented in the aggregate and for each
23 district; and

24 “(3) include information concerning—

25 “(A) the total assets and total liabilities of
26 the debtors described in subsection (a), and in

1 each category of assets and liabilities, as re-
2 ported in the schedules prescribed under section
3 2075 of this title and filed by those debtors;

4 “(B) the current total monthly income,
5 projected monthly net income, and average in-
6 come and average expenses of those debtors as
7 reported on the schedules and statements that
8 each such debtor files under sections 111, 521,
9 and 1322 of title 11;

10 “(C) the aggregate amount of debt dis-
11 charged in the reporting period, determined as
12 the difference between the total amount of debt
13 and obligations of a debtor reported on the
14 schedules and the amount of such debt reported
15 in categories which are predominantly non-
16 dischargeable;

17 “(D) the average period of time between
18 the filing of the petition and the closing of the
19 case;

20 “(E) for the reporting period—

21 “(i) the number of cases in which a
22 reaffirmation was filed; and

23 “(ii)(I) the total number of reaffirma-
24 tions filed;

1 “(II) of those cases in which a reaffir-
2 mation was filed, the number in which the
3 debtor was not represented by an attorney;
4 and

5 “(III) of those cases, the number of
6 cases in which the reaffirmation was ap-
7 proved by the court;

8 “(F) with respect to cases filed under
9 chapter 13 of title 11, for the reporting
10 period—

11 “(i)(I) the number of cases in which a
12 final order was entered determining the
13 value of property securing a claim in an
14 amount less than the amount of the claim;
15 and

16 “(II) the number of final orders deter-
17 mining the value of property securing a
18 claim issued;

19 “(ii) the number of cases dismissed
20 for failure to make payments under the
21 plan; and

22 “(iii) the number of cases in which
23 the debtor filed another case within the 6
24 years previous to the filing; and

1 “(G) the extent of creditor misconduct and
2 any amount of punitive damages awarded by
3 the court for creditor misconduct.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 6 of title 28, United States Code, is amended
6 by adding at the end the following:

“159. Bankruptcy statistics.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 18 months after the date of
9 enactment of this Act.

10 **SEC. 307. AUDIT PROCEDURES.**

11 (a) AMENDMENTS.—Section 586 of title 28, United
12 States Code, is amended—

13 (1) in subsection (a), as amended by section
14 301 of this Act, by striking paragraph (6) and in-
15 serting the following:

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

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

20 “(f)(1)(A) The Attorney General shall establish pro-
21 cedures to determine the accuracy and completeness of pe-
22 titions, schedules, and other information which the debtor
23 is required to provide under sections 521 and 1322 of title
24 11, and, if applicable, section 111 of title 11, in individual
25 cases filed under chapter 7 or 13 of such title.

1 “(B) Those procedures shall—

2 “(i) establish a method of selecting appropriate
3 qualified persons to contract to perform those au-
4 dits;

5 “(ii) establish a method of randomly selecting
6 cases to be audited, except that not less than 1 out
7 of every 500 cases in each Federal judicial district
8 shall be selected for audit;

9 “(iii) require audits for schedules of income and
10 expenses which reflect greater than average
11 variances from the statistical norm of the district in
12 which the schedules were filed; and

13 “(iv) establish procedures for providing, not less
14 frequently than annually, public information con-
15 cerning the aggregate results of such audits includ-
16 ing the percentage of cases, by district, in which a
17 material misstatement of income or expenditures is
18 reported.

19 “(2) The United States trustee for each district is
20 authorized to contract with auditors to perform audits in
21 cases designated by the United States trustee according
22 to the procedures established under paragraph (1).

23 “(3)(A) The report of each audit conducted under
24 this subsection shall be filed with the court and trans-
25 mitted to the United States trustee. Each report shall

1 clearly and conspicuously specify any material
2 misstatement of income or expenditures or of assets iden-
3 tified by the person performing the audit. In any case
4 where a material misstatement of income or expenditures
5 or of assets has been reported, the clerk of the bankruptcy
6 court shall give notice of the misstatement to the creditors
7 in the case.

8 “(B) If a material misstatement of income or expend-
9 itures or of assets is reported the United States trustee
10 shall—

11 “(i) report the material misstatement, if appro-
12 priate, to the United States Attorney under section
13 3057 of title 18; and

14 “(ii) if advisable, take appropriate action, in-
15 cluding but not limited to commencing an adversary
16 proceeding to revoke the debtor’s discharge under
17 section 727(d) of title 11.”

18 (b) AMENDMENTS TO SECTION 521 OF TITLE 11,
19 UNITED STATES CODE.—Section 521(a) of title 11,
20 United States Code, as amended by section 301(b) of this
21 Act, is amended in paragraphs (3) and (4) by inserting
22 “or an auditor appointed under section 586 of title 28”
23 after “serving in the case” each place it appears.

1 (c) AMENDMENTS TO SECTION 727 OF TITLE 11,
2 UNITED STATES CODE.—Section 727(d) of title 11,
3 United States Code, is amended—

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

6 (2) in paragraph (3), by striking the period and
7 inserting “; or”; and

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

9 “(4) the debtor has failed to explain
10 satisfactorily—

11 “(A) a material misstatement in an audit
12 performed under section 586(f) of title 28; or

13 “(B) a failure to make available for inspec-
14 tion all necessary accounts, papers, documents,
15 financial records, files and all other papers,
16 things, or property belonging to the debtor that
17 are requested for an audit conducted under sec-
18 tion 586(f) of title 28.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect 18 months after the date of
21 enactment of this Act.

22 **SEC. 308. CREDITOR REPRESENTATION AT FIRST MEETING**
23 **OF CREDITORS.**

24 Section 341(c) of title 11, United States Code, is
25 amended—

1 (1) by inserting “(1)” after “(c)”; and

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

3 “(2) Notwithstanding any local court rule, pro-
4 vision of a State constitution, any other Federal or
5 State law that is not a bankruptcy law, or other re-
6 quirement that representation at the meeting of
7 creditors under subsection (a) be by an attorney, a
8 creditor holding a consumer debt or any representa-
9 tive of the creditor (which may include an entity or
10 an employee of an entity and may be a representa-
11 tive for more than 1 creditor) shall be permitted to
12 appear at and participate in the meeting of creditors
13 in a case under chapter 7 or 13, either alone or in
14 conjunction with an attorney for the creditor.

15 “(3) Nothing in this subsection shall be con-
16 strued to require any creditor to be represented by
17 an attorney at any meeting of creditors.”.

18 **SEC. 309. FAIR NOTICE FOR CREDITORS IN CHAPTER 7 AND**

19 **13 CASES.**

20 Section 342 of title 11, United States Code, is
21 amended—

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

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

1 “(d)(1) If the credit agreement between the debtor
2 and the creditor or the last communication before the fil-
3 ing of the petition in a voluntary case from the creditor
4 to a debtor who is an individual states an account number
5 of the debtor that is the current account number of the
6 debtor with respect to any debt held by the creditor
7 against the debtor, the debtor shall include that account
8 number in any notice to the creditor required to be given
9 under this title.

10 “(2) If the creditor has specified to the debtor, in
11 the last communication before the filing of the petition,
12 an address at which the creditor wishes to receive cor-
13 respondence regarding the debtor’s account, any notice to
14 the creditor required to be given by the debtor under this
15 title shall be given at such address.

16 “(3) For purposes of this section, the term ‘notice’
17 includes—

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

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

22 “(C) notice of the commencement of any pro-
23 ceeding in the case to which the creditor is a party;
24 and

1 “(D) any notice of a hearing under section
2 1324.

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

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

11 “(f) An entity may file with the court a notice stating
12 its address for notice in cases under chapter 7 or 13. After
13 the date that is 30 days following the filing of that notice,
14 any notice in any case filed under chapter 7 or 13 given
15 by the court shall be to that address unless specific notice
16 is given under subsection (e) with respect to a particular
17 case.

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

21 “(2) If the creditor has designated a person or de-
22 partment to be responsible for receiving notices concerning
23 bankruptcy cases and has established reasonable proce-
24 dures so that bankruptcy notices received by the creditor
25 will be delivered to that department or person, notice shall

1 not be brought to the attention of the creditor until that
2 notice is received by that person or department.”.

3 **SEC. 310. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**
4 **TER 13.**

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

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

9 (2) in subparagraph (B)—

10 (A) by striking “in the converted case,
11 with allowed secured claims” and inserting
12 “only in a case converted to chapter 11 or 12
13 but not in a case converted to chapter 7, with
14 allowed secured claims in cases under chapters
15 11 and 12”; and

16 (B) by striking the period and inserting “;
17 and”; and

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

19 “(C) with respect to cases converted from chap-
20 ter 13, the claim of any creditor holding security as
21 of the date of the petition shall continue to be se-
22 cured by that security unless the full amount of that
23 claim determined under applicable nonbankruptcy
24 law has been paid in full as of the date of conver-
25 sion, notwithstanding any valuation or determination

1 of the amount of an allowed secured claim made for
2 the purposes of the chapter 13 proceeding.”.

3 **SEC. 311. PROMPT RELIEF FROM STAY IN INDIVIDUAL**
4 **CASES.**

5 Section 362(e) of title 11, United States Code, is
6 amended—

7 (1) by inserting “(1)” after “(e)”; and

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

9 “(2) Notwithstanding paragraph (1), in the case of
10 an individual filing under chapter 7, 11, or 13, the stay
11 under subsection (a) shall terminate on the date that is
12 60 days after a request is made by a party in interest
13 under subsection (d), unless—

14 “(A) a final decision is rendered by the court
15 during the 60-day period beginning on the date of
16 the request; or

17 “(B) that 60-day period is extended—

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

19 or

20 “(ii) by the court for such specific period
21 of time as the court finds is required for good
22 cause.”.

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

3 Section 707 of title 11, United States Code, as
4 amended by section 102 of this Act, is amended by adding
5 at the end the following:

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

13 “(2) With respect to a case described in paragraph
14 (1), any party in interest may request the court to enter
15 an order dismissing the case. The court shall, if so re-
16 quested, enter an order of dismissal not later than 5 days
17 after that request.

18 “(3) Upon request of the debtor made within 45 days
19 after the filing of the petition commencing a case de-
20 scribed in paragraph (1), the court may allow the debtor
21 an additional period of not to exceed 50 days to file the
22 information required under section 521(a)(1) if the court
23 finds justification for extending the period for the filing.”.

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

3 Section 1324 of title 11, United States Code, as
4 amended by section 304 of this Act, is amended—

5 (1) by striking “After” and inserting the fol-
6 lowing:

7 “(a) Except as provided in subsection (b) and after”;
8 and

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

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

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

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

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

20 “(2) of the kind specified in paragraph (2), (4),
21 (5), (8), or (9) of section 523(a);

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

25 “(4) for restitution, or damages, awarded in a
26 civil action against the debtor as a result of willful

1 or malicious injury by the debtor that caused per-
2 sonal injury to an individual or the death of an indi-
3 vidual.”.

4 **SEC. 315. NONDISCHARGEABLE DEBTS.**

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

7 “(14A) incurred to pay a debt that is non-
8 dischargeable by reason of section 727, 1141, 1228
9 (a) or (b), or 1328(b), or any other provision of this
10 subsection, if the debtor incurred the debt to pay
11 such a nondischargeable debt with the intent to dis-
12 charge in bankruptcy the newly created debt.”.

13 **SEC. 316. CREDIT EXTENSIONS ON THE EVE OF BANK-**
14 **RUPTCY PRESUMED NONDISCHARGEABLE.**

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

17 (1) in subparagraph (A), by striking the semi-
18 colon at the end and inserting the following: “(and,
19 for purposes of this subparagraph, consumer debts
20 owed in an aggregate amount greater than or equal
21 to \$400 incurred for goods or services not reason-
22 ably necessary for the maintenance or support of the
23 debtor or a dependent child of the debtor to a single
24 creditor that are incurred during the 90-day period
25 preceding the date of the order for relief shall be

1 presumed to be nondischargeable under this sub-
2 paragraph); or”;

3 (2) in subparagraph (B), by striking “or” at
4 the end; and

5 (3) by striking subparagraph (C).

6 **SEC. 317. DEFINITION OF HOUSEHOLD GOODS AND AN-**
7 **TIQUES.**

8 (a) **IN GENERAL.**—Not later than 180 days after the
9 date of enactment of this Act, the Federal Trade Commis-
10 sion shall promulgate regulations defining the term
11 “household goods”, to be applied to section 522(d)(3) of
12 title 11, United States Code, in a manner suitable and
13 appropriate for cases under that title.

14 (b) **ABSENCE OF FINAL REGULATIONS.**—If final reg-
15 ulations are not promulgated under subsection (a) and in
16 effect by the date that is 180 days after the date enact-
17 ment of this Act, then, for purposes of section 522(d)(3)
18 of title 11, United States Code, the term “household
19 goods” shall have the meaning given that term in section
20 444.1(i) of title 16, Code of Federal Regulations, except
21 that the term shall also include any tangible personal
22 property reasonably necessary for the maintenance or sup-
23 port of a dependent 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,
5 United States Code, as amended by section 303 of this
6 Act, is amended—

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

10 (2) by redesignating subsection (h) as sub-
11 section (i); and

12 (3) by inserting after subsection (g) the fol-
13 lowing:

14 “(h) In an individual case under chapter 7, 11, or
15 13 the stay provided by subsection (a) is terminated with
16 respect to property of the estate securing in whole or in
17 part a claim that is in an amount greater than \$3,000,
18 or subject to an unexpired lease with a remaining term
19 of at least 1 year (in any case in which the debtor owes
20 at least \$3,000 for a 1-year period), if within 30 days after
21 the expiration of the applicable period under section
22 521(a)(2)—

23 “(1)(A) the debtor fails to timely file a state-
24 ment of intention to surrender or retain the prop-
25 erty; or

1 “(B) if the debtor indicates in the filing that
2 the debtor will retain the property, the debtor fails
3 to meet an applicable requirement to—

4 “(i) either—

5 “(I) redeem the property pursuant to
6 section 722; or

7 “(II) reaffirm the debt the property
8 secures pursuant to section 524(c); or

9 “(ii) assume the unexpired lease pursuant
10 to section 365(d) if the trustee does not do so;

11 or

12 “(2) the debtor fails to timely take the action
13 specified in a statement of intention referred to in
14 paragraph (1)(A) (as amended, if that statement is
15 amended before expiration of the period for taking
16 action), unless—

17 “(A) the statement of intention specifies
18 reaffirmation; and

19 “(B) the creditor refuses to reaffirm the
20 debt on the original contract terms for the
21 debt.”.

22 (b) DEBTOR’S DUTIES.—Section 521(a)(2) of title
23 11, United States Code, as redesignated by section 301(b)
24 of this Act, is amended—

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

3 (2) in subparagraph (B)—

4 (A) by striking “forty-five days after the
 5 filing of a notice of intent under this section”
 6 and inserting “30 days after the first meeting
 7 of creditors under section 341(a)”; and

8 (B) by striking “forty-five-day period” and
 9 inserting “30-day period”; and

10 (3) in subparagraph (C), by inserting “, except
 11 as provided in section 362(h)” before the semicolon.

12 **SEC. 319. ADEQUATE PROTECTION OF LESSORS AND PUR-**
 13 **CHASE MONEY SECURED CREDITORS.**

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

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

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

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

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

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

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

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

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

10 “(I) the lessor or creditor; or

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

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

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

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

21 “(B) The amount of a payment referred to in para-
22 graph (1) shall not be less than the reasonable deprecia-
23 tion of the personal property described in subsection
24 (a)(1), determined on a month-to-month basis.

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

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

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

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

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for chapter 13 of title 11, United States Code, is amended
19 by inserting after the item relating to section 1307 the
20 following:

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

21 **SEC. 320. LIMITATION.**

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

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

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

3 “(n)(1) Except as provided in paragraph (2), as a
4 result of electing under subsection (b)(2)(A) to exempt
5 property under State or local law, a debtor may not ex-
6 empt any amount of interest that exceeds in the aggregate
7 \$100,000 in value in—

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

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

13 “(C) a burial plot for the debtor or a dependent
14 of the debtor.

15 “(2) The limitation under paragraph (1) shall not
16 apply to an exemption claimed under subsection (b)(2)(A)
17 by a family farmer for the principal residence of that
18 farmer.”.

19 **SEC. 321. MISCELLANEOUS IMPROVEMENTS.**

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

23 “(h)(1) Subject to paragraphs (2) and (3) and not-
24 withstanding any other provision of this section, an indi-
25 vidual may not be a debtor under this title unless that

1 individual has, during the 90-day period preceding the
2 date of filing of the petition of that individual, received
3 credit counseling, including, at a minimum, participation
4 in an individual or group briefing that outlined the oppor-
5 tunities for available credit counseling and assisted that
6 individual in performing an initial budget analysis,
7 through a credit counseling program (offered through an
8 approved credit counseling service described in section
9 111(a)) that has been approved by—

10 “(A) the United States trustee; or

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

13 “(2)(A) Paragraph (1) shall not apply with respect
14 to a debtor who resides in a district for which the United
15 States trustee or bankruptcy administrator of the bank-
16 ruptcy court of that district determines that the approved
17 credit counseling services for that district are not reason-
18 ably able to provide adequate services to the additional
19 individuals who would otherwise seek credit counseling
20 from those programs by reason of the requirements of
21 paragraph (1).

22 “(B) Each United States trustee or bankruptcy ad-
23 ministrator that makes a determination under subpara-
24 graph (A) shall review that determination not later than

1 1 year after the date of that determination, and not less
2 frequently than annually thereafter.

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

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

8 “(ii) states that the debtor requested credit
9 counseling services from an approved credit coun-
10 seling service, but was unable to obtain the services
11 referred to in paragraph (1) during the 5-day period
12 beginning on the date on which the debtor made
13 that request; and

14 “(iii) is satisfactory to the court.

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

21 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
22 11, United States Code, is amended—

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

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

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

4 “(11) after the filing of the petition, the debtor
5 failed to complete an instructional course concerning
6 personal financial management described in section
7 111 that was administered or approved by—

8 “(A) the United States trustee; or

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

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

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

19 “(1) the United States trustee; or

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

22 (d) DEBTOR’S DUTIES.—Section 521 of title 11,
23 United States Code, as amended by section 318(b) of this
24 Act, is amended by adding at the end the following:

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

3 “(1) a certificate from the credit counseling
4 service that provided the debtor services under sec-
5 tion 109(h); and

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

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

13 “(i) within the applicable period of time pre-
14 scribed under section 109(h), the debtor received
15 credit counseling through a credit counseling pro-
16 gram in accordance with section 109(h); and”.

17 (f) GENERAL PROVISIONS.—

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

21 **“§ 111. Credit counseling services; financial manage-
22 ment instructional courses**

23 “(a) The clerk of each district shall maintain a list
24 of credit counseling services that provide one or more pro-

1 grams described in section 109(h) and that have been ap-
2 proved by—

3 “(1) the United States trustee; or

4 “(2) the bankruptcy administrator for the dis-
5 trict.

6 “(b) The United States trustee or each bankruptcy
7 administrator referred to in subsection (a)(1) shall—

8 “(1) make available to debtors who are individ-
9 uals an instructional course concerning personal fi-
10 nancial management, under the direction of the
11 bankruptcy court; and

12 “(2) maintain a list of instructional courses
13 concerning personal financial management that are
14 operated by a private entity and that have been ap-
15 proved by the United States trustee or that bank-
16 ruptcy administrator.”.

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

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

20 (g) DEFINITIONS.—Section 101 of title 11, United
21 States Code, is amended—

22 (1) by inserting after paragraph (13) the fol-
23 lowing:

24 “(13A) ‘debtor’s principal residence’—

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

5 “(B) includes an individual condominium
6 or co-operative unit;” and

7 (2) by inserting after paragraph (27), the fol-
8 lowing:

9 “(27A) ‘incidental property’ means, with re-
10 spect to a debtor’s principal residence—

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

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

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

19 **SEC. 322. BANKRUPTCY JUDGESHIPS.**

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

22 (b) **TEMPORARY JUDGESHIPS.**—

23 (1) **APPOINTMENTS.**—The following judgeship
24 positions shall be filled in the manner prescribed in
25 section 152(a)(1) of title 28, United States Code, for

1 the appointment of bankruptcy judges provided for
2 in section 152(a)(2) of such title:

3 (A) One additional bankruptcy judgeship
4 for the eastern district of California.

5 (B) Four additional bankruptcy judgeships
6 for the central district of California.

7 (C) One additional bankruptcy judgeship
8 for the southern district of Florida.

9 (D) Two additional bankruptcy judgeships
10 for the district of Maryland.

11 (E) One additional bankruptcy judgeship
12 for the eastern district of Michigan.

13 (F) One additional bankruptcy judgeship
14 for the southern district of Mississippi.

15 (G) One additional bankruptcy judgeship
16 for the district of New Jersey.

17 (H) One additional bankruptcy judgeship
18 for the eastern district of New York.

19 (I) One additional bankruptcy judgeship
20 for the northern district of New York.

21 (J) One additional bankruptcy judgeship
22 for the southern district of New York.

23 (K) One additional bankruptcy judgeship
24 for the eastern district of Pennsylvania.

1 (L) One additional bankruptcy judgeship
2 for the middle district of Pennsylvania.

3 (M) One additional bankruptcy judgeship
4 for the western district of Tennessee.

5 (N) One additional bankruptcy judgeship
6 for the eastern district of Virginia.

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

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

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

15 shall not be filled.

16 (c) EXTENSIONS.—

17 (1) IN GENERAL.—The temporary bankruptcy
18 judgeship positions authorized for the northern dis-
19 trict of Alabama, the district of Delaware, the dis-
20 trict of Puerto Rico, the district of South Carolina,
21 and the eastern district of Tennessee under section
22 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy
23 Judgeship Act of 1992 (28 U.S.C. 152 note) are ex-
24 tended until the first vacancy occurring in the office
25 of a bankruptcy judge in the applicable district re-

1 sulting from the death, retirement, resignation, or
2 removal of a bankruptcy judge and occurring—

3 (A) 8 years or more after November 8,
4 1993, with respect to the northern district of
5 Alabama;

6 (B) 10 years or more after October 28,
7 1993, with respect to the district of Delaware;

8 (C) 8 years or more after August 29,
9 1994, with respect to the district of Puerto
10 Rico;

11 (D) 8 years or more after June 27, 1994,
12 with respect to the district of South Carolina;
13 and

14 (E) 8 years or more after November 23,
15 1993, with respect to the eastern district of
16 Tennessee.

17 (2) APPLICABILITY OF OTHER PROVISIONS.—

18 All other provisions of section 3 of the Bankruptcy
19 Judgeship Act of 1992 remain applicable to such
20 temporary judgeship position.

21 (d) TECHNICAL AMENDMENT.—The first sentence of
22 section 152(a)(1) of title 28, United States Code, is
23 amended to read as follows: “Each bankruptcy judge to
24 be appointed for a judicial district as provided in para-
25 graph (2) shall be appointed by the United States court

1 of appeals for the circuit in which such district is lo-
2 cated.”.

3 (e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—

4 Section 156 of title 28, United States Code, is amended
5 by adding at the end the following new subsection:

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

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

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

13 “(i) the payment for the travel expenses is
14 paid by such bankruptcy judge from the per-
15 sonal funds of such bankruptcy judge; and

16 “(ii) such bankruptcy judge does not re-
17 ceive funds (including reimbursement) from the
18 United States or any other person or entity for
19 the payment of such travel expenses.

20 “(2) Each bankruptcy judge shall annually submit
21 the information required under paragraph (3) to the chief
22 bankruptcy judge for the district in which the bankruptcy
23 judge is assigned.

24 “(3)(A) Each chief bankruptcy judge shall submit an
25 annual report to the Director of the Administrative Office

1 of the United States Courts on the travel expenses of each
2 bankruptcy judge assigned to the applicable district (in-
3 cluding the travel expenses of the chief bankruptcy judge
4 of such district).

5 “(B) The annual report under this paragraph shall
6 include—

7 “(i) the travel expenses of each bankruptcy
8 judge, with the name of the bankruptcy judge to
9 whom the travel expenses apply;

10 “(ii) a description of the subject matter and
11 purpose of the travel relating to each travel expense
12 identified under clause (i), with the name of the
13 bankruptcy judge to whom the travel applies; and

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

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

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

21 “(ii) annually submit such consolidated report
22 to Congress.

23 “(B) The consolidated report submitted under this
24 paragraph shall include the specific information required
25 under paragraph (3)(B), including the name of each bank-

1 ruptcy judge with respect to clauses (i), (ii), and (iii) of
 2 paragraph (3)(B).”.

3 **SEC. 323. DEFINITION OF DOMESTIC SUPPORT OBLIGA-**
 4 **TION.**

5 Section 101 of title 11, United States Code, as
 6 amended by section 321(g) of this Act, is amended—

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

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

10 “(14A) ‘domestic support obligation’ means a
 11 debt that accrues before or after the entry of an
 12 order for relief under this title that is—

13 “(A) owed to or recoverable by—

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

16 or

17 “(ii) a governmental unit;

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

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

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

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

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

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

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

14 **SEC. 324. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**
15 **PORT OBLIGATIONS.**

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

18 (1) by striking paragraph (7);

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

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 325. REQUIREMENTS TO OBTAIN CONFIRMATION AND**
4 **DISCHARGE IN CASES INVOLVING DOMESTIC**
5 **SUPPORT OBLIGATIONS.**

6 Title 11, United States Code, is amended—

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

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

15 (2) in section 1325(a)—

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

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

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

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

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

3 (3) in section 1328(a), as amended by section
4 314 of this Act, in the matter preceding paragraph
5 (1), by inserting “, and with respect to a debtor who
6 is required by a judicial or administrative order to
7 pay a domestic support obligation, certifies that all
8 amounts payable under such order or statute that
9 are due on or before the date of the certification (in-
10 cluding amounts due before or after the petition was
11 filed) have been paid” after “completion by the debt-
12 or of all payments under the plan”.

13 **SEC. 326. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**
14 **SUPPORT OBLIGATION PROCEEDINGS.**

15 Section 362(b) of title 11, United States Code, is
16 amended—

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

19 “(2) under subsection (a)—

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

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

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

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

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

9 “(5) under subsection (a) with respect to the
10 withholding of income pursuant to an order as speci-
11 fied in section 466(b) of the Social Security Act (42
12 U.S.C. 666(b));

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

15 (4) in paragraph (18), by striking the period
16 and inserting “; or”; and

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

19 “(19) under subsection (a) with respect to—

20 “(A) the withholding, suspension, or re-
21 striction of drivers’ licenses, professional and
22 occupational licenses, and recreational licenses
23 pursuant to State law, as specified in section
24 466(a)(16) of the Social Security Act (42
25 U.S.C. 666(a)(16)) or with respect to the re-

1 porting of overdue support owed by an absent
2 parent to any consumer reporting agency as
3 specified in section 466(a)(7) of the Social Se-
4 curity Act (42 U.S.C. 666(a)(7));

5 “(B) the interception of tax refunds, as
6 specified in sections 464 and 466(a)(3) of the
7 Social Security Act (42 U.S.C. 664 and
8 666(a)(3)); or

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

12 **SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**
13 **ALIMONY, MAINTENANCE, AND SUPPORT.**

14 Section 523 of title 11, United States Code, as
15 amended by section 202 of this Act, is amended—

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

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

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

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

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

2 Section 522 of title 11, United States Code, as
3 amended by section 320 of this Act, is amended—

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

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

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

16 **SEC. 329. PROTECTION OF DOMESTIC SUPPORT CLAIMS**
17 **AGAINST PREFERENTIAL TRANSFER MO-**
18 **TIONS.**

19 Section 547(e) of title 11, United States Code, is
20 amended by striking paragraph (7) and inserting the fol-
21 lowing:

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

1 **SEC. 330. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
2 **RUPTCY.**

3 (a) IN GENERAL.—Section 522 of title 11, United
4 States Code, as amended by section 328 of this Act, is
5 amended—

6 (1) in subsection (b)—

7 (A) in paragraph (2)—

8 (i) by striking “(2)(A) subject to sub-
9 section (n), any property” and inserting:

10 “(3) Subject to subsection (n), property listed in this
11 paragraph is—

12 “(A) any property”;

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

15 (iii) in subparagraph (B), by striking
16 the period at the end and inserting “;
17 and”; and

18 (iv) by adding at the end the fol-
19 lowing:

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,
23 457, or 501(a) of the Internal Revenue Code of
24 1986 and which has not been pledged or promised
25 to any person in connection with any extension of
26 credit.”;

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

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

8 (C) in the matter preceding paragraph
9 (2)—

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

12 (ii) by striking “paragraph (2)” both
13 places it appears and inserting “paragraph
14 (3)”;

15 (iii) by striking “paragraph (1)” each
16 place it appears and inserting “paragraph
17 (2)”;

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

19 and

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

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

24 “(A) If the retirement funds are in a retirement
25 fund that has received a favorable determination

1 pursuant to section 7805 of the Internal Revenue
2 Code of 1986, and that determination is in effect as
3 of the date of the commencement of the case under
4 section 301, 302, or 303, those funds shall be pre-
5 sumed to be exempt from the estate.

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

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

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

17 “(II) the retirement fund fails to be in
18 substantial compliance with such applicable re-
19 quirements, the debtor is not materially respon-
20 sible for that failure.

21 “(C) A direct transfer of retirement funds from
22 1 fund or account that is exempt from taxation
23 under section 401, 403, 408, 408A, 414, 457, or
24 501(a) of the Internal Revenue Code of 1986, pur-
25 suant to section 401(a)(31) of the Internal Revenue

1 Code of 1986, or otherwise, shall not cease to qualify
2 for exemption under paragraph (3)(C) by reason of
3 that direct transfer.

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

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

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

16 “(II) to the extent allowed by law, is de-
17 posited in such a fund or account not later than
18 60 days after the distribution of that amount.”;
19 and

20 (2) in subsection (d)—

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

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

1 “(12) Retirement funds to the extent that those
2 funds are in a fund or account that is exempt from tax-
3 ation under section 401, 403, 408, 408A, 414, 457, or
4 501(a) of the Internal Revenue Code of 1986.”.

5 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
6 United States Code, as amended by section 326 of this
7 Act, is amended—

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

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

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

14 “(20) under subsection (a), of withholding of
15 income from a debtor’s wages and collection of
16 amounts withheld, pursuant to the debtor’s agree-
17 ment authorizing that withholding and collection for
18 the benefit of a pension, profit-sharing, stock bonus,
19 or other plan established under section 401, 403,
20 408, 408A, 414, 457, or 501(a) of the Internal Rev-
21 enue Code of 1986 that is sponsored by the em-
22 ployer of the debtor, or an affiliate, successor, or
23 predecessor of such employer—

24 “(A) to the extent that the amounts with-
25 held and collected are used solely for payments

1 relating to a loan from a plan that satisfies the
2 requirements of section 408(b)(1) of the Em-
3 ployee Retirement Income Security Act of 1974
4 (29 U.S.C. 1108(b)(1)); or

5 “(B) in the case of a loan from a thrift
6 savings plan described in subchapter III of title
7 5, that satisfies the requirements of section
8 8433(g) of that title.”; and

9 (4) by adding at the end of the flush material
10 following paragraph (20) the following: “Paragraph
11 (20) does not apply to any amount owed to a plan
12 referred to in that paragraph that is incurred under
13 a loan made during the 1-year period preceding the
14 filing of a petition. Nothing in paragraph (20) may
15 be construed to provide that any loan made under
16 a governmental plan under section 414(d) of the In-
17 ternal Revenue Code of 1986 constitutes a claim or
18 a debt under this title.”.

19 (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of
20 title 11, United States Code, as amended by section 202
21 of this Act, is amended—

22 (1) by striking “or” at the end of paragraph
23 (17);

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

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

2 “(19) owed to a pension, profit-sharing, stock
3 bonus, or other plan established under section 401,
4 403, 408, 408A, 414, 457, or 501(c) of the Internal
5 Revenue Code of 1986, pursuant to—

6 “(A) a loan permitted under section
7 408(b)(1) of the Employee Retirement Income
8 Security Act of 1974 (29 U.S.C. 1108(b)(1));
9 or

10 “(B) a loan from the thrift savings plan
11 described in subchapter III of title 5, that satis-
12 fies the requirements of section 8433(g) of that
13 title.

14 Paragraph (19) does not apply to any amount owed to
15 a plan referred to in that paragraph that is incurred under
16 a loan made during the 1-year period preceding the filing
17 of a petition. Nothing in paragraph (19) may be construed
18 to provide that any loan made under a governmental plan
19 under section 414(d) of the Internal Revenue Code of
20 1986 constitutes a claim or a debt under this title.”.

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

24 “(f) A plan may not materially alter the terms of a
25 loan described in section 362(b)(20).”.

1 **SEC. 331. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**
2 **STATES CODE.**

3 (a) Section 507(a) of title 11, United States Code,
4 is amended by inserting after paragraph (7) the following:

5 “(8) Eighth, allowed claims for death or per-
6 sonal injuries resulting from the operation of a
7 motor vehicle or vessel if such operation was unlaw-
8 ful because the debtor was intoxicated from using al-
9 cohol, a drug or another substance.”.

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

12 **SEC. 332. DEBT LIMIT INCREASE.**

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

15 “(4) The dollar amount in section 101(18) shall be
16 adjusted at the same times and in the same manner as
17 the dollar amounts in paragraph (1) of this subsection,
18 beginning with the adjustment to be made on April 1,
19 2001.”.

20 **SEC. 333. ELIMINATION OF REQUIREMENT THAT FAMILY**
21 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**
22 **CENT OF INCOME FROM FARMING OPER-**
23 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

24 Section 101(18)(A) of title 11, United States Code,
25 is amended by striking “the taxable year preceding the

1 taxable year” and inserting “at least 1 of the 3 calendar
2 years preceding the year”.

3 **SEC. 334. PROHIBITION OF RETROACTIVE ASSESSMENT OF**
4 **DISPOSABLE INCOME.**

5 (a) IN GENERAL.—Section 1225(b) of title 11,
6 United States Code, is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3) and by inserting after paragraph (1) the
9 following:

10 “(2) The plan shall be confirmed if—

11 “(A) the plan provides for specific amounts of
12 property to be distributed on account of allowed un-
13 secured claims as required by paragraph (1)(B);

14 “(B) the amounts under subparagraph (A)
15 equal or exceed the debtor’s projected disposable in-
16 come for the applicable period; and

17 “(C) the plan meets the requirements for con-
18 firmation other than those of this subsection, the
19 plan shall be confirmed.”.

20 (b) MODIFICATION OF PLAN.—Section 1229 of title
21 11, United States Code, is amended by adding at the end
22 the following:

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

1 “(2) A modification of the plan under this section to
 2 increase payments based on an increase in the debtor’s
 3 disposable income may not require payments to unsecured
 4 creditors in any particular month greater than the debt-
 5 or’s disposable income for that month unless the debtor
 6 proposes such a modification.

7 “(3) A modification of the plan in the last year of
 8 the plan shall not require payments that would leave the
 9 debtor with insufficient funds to carry on the farming op-
 10 eration after the plan is completed unless the debtor pro-
 11 poses such a modification.”.

12 **SEC. 335. AMENDMENT TO SECTION 1325 OF TITLE 11,**
 13 **UNITED STATES CODE.**

14 Section 1325(b)(2) of title 11, United States Code,
 15 is amended by inserting “(other than child support pay-
 16 ments, foster care payments, or disability payments for
 17 a dependent child made in accordance with applicable non-
 18 bankruptcy law and which is reasonably necessary to be
 19 expended)” after “received by the debtor”.

20 **SEC. 336. PROTECTION OF SAVINGS EARMARKED FOR THE**
 21 **POSTSECONDARY EDUCATION OF CHILDREN.**

22 Section 541(b) of title 11, United States Code, is
 23 amended—

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

1 (2) by redesignating paragraph (5) as para-
2 graph (7); and

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

5 “(5) except as otherwise provided under appli-
6 cable State law, any funds placed in a qualified
7 State tuition program (as described in section
8 529(b) of the Internal Revenue Code of 1986) at
9 least 180 days before the date of entry of the order
10 for relief;

11 “(6) any funds placed in an education indi-
12 vidual retirement account (as defined in section
13 530(b)(1) of the Internal Revenue Code of 1986) at
14 least 180 days before the date of entry of the order
15 for relief; or”.

16 **TITLE IV—FINANCIAL**
17 **INSTRUMENTS**

18 **SEC. 401. BANKRUPTCY CODE AMENDMENTS.**

19 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-
20 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,
21 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-
22 RITIES CONTRACT.—Title 11, United States Code, is
23 amended—

24 (1) in section 101—

25 (A) in paragraph (25)—

1 (i) by striking “means a contract”

2 and inserting “means—

3 “(A) a contract”;

4 (ii) by striking “, or any combination
5 thereof or option thereon;” and inserting

6 “, or any other similar agreement;”; and

7 (iii) by adding at the end the fol-
8 lowing:

9 “(B) a combination of agreements or
10 transactions referred to in subparagraphs (A)
11 and (C);

12 “(C) an option to enter into an agreement
13 or transaction referred to in subparagraph (A)
14 or (B);

15 “(D) a master netting agreement that pro-
16 vides for an agreement or transaction referred
17 to in subparagraph (A), (B), or (C), together
18 with all supplements to such master netting
19 agreement, without regard to whether such
20 master netting agreement provides for an
21 agreement or transaction that is not a forward
22 contract under this paragraph, except that such
23 master netting agreement shall be considered to
24 be a forward contract under this paragraph
25 only with respect to each agreement or trans-

1 action under such master netting agreement
2 that is referred to in subparagraph (A), (B), or
3 (C); or

4 “(E) a security agreement or arrangement,
5 or other credit enhancement, related to any
6 agreement, a contract, option, or transaction re-
7 ferred to in subparagraph (A), (B), (C), or
8 (D);”;

9 (B) by striking paragraph (47) and insert-
10 ing the following:

11 “(47) ‘repurchase agreement’ and ‘reverse re-
12 purchase agreement’—

13 “(A) mean—

14 “(i) an agreement, including related
15 terms, that provides for the transfer of—

16 “(I) a certificate of deposit,
17 mortgage related security (as defined
18 in section 3 of the Securities Ex-
19 change Act of 1934), mortgage loan,
20 interest in a mortgage related security
21 or mortgage loan, eligible bankers’ ac-
22 ceptance, or qualified foreign govern-
23 ment security (defined for purposes of
24 this paragraph to mean a security
25 that is a direct obligation of, or that

1 is fully guaranteed by, the central
2 government of a member of the Orga-
3 nization for Economic Cooperation
4 and Development); or

5 “(II) a security that is a direct
6 obligation of, or that is fully guaran-
7 teed by, the United States or an agen-
8 cy of the United States against the
9 transfer of funds by the transferee of
10 such certificate of deposit, eligible
11 bankers’ acceptance, security, loan, or
12 interest;

13 with a simultaneous agreement by such
14 transferee to transfer to the transferor
15 thereof a certificate of deposit, eligible
16 bankers’ acceptance, security, loan, or in-
17 terest of the kind described in subclause
18 (I) or (II), at a date certain that is not
19 later than 1 year after the date of the
20 transferor’s transfer or on demand, against
21 the transfer of funds;

22 “(ii) a combination of agreements or
23 transactions referred to in clauses (i) and
24 (iii);

1 “(iii) an option to enter into an agree-
2 ment or transaction referred to in clause
3 (i) or (ii);

4 “(iv) a master netting agreement that
5 provides for an agreement or transaction
6 referred to in clause (i), (ii), or (iii), to-
7 gether with all supplements to such master
8 netting agreement, without regard to
9 whether such master netting agreement
10 provides for an agreement or transaction
11 that is not a repurchase agreement under
12 this subparagraph, except that such master
13 netting agreement shall be considered to be
14 a repurchase agreement under this sub-
15 paragraph only with respect to each agree-
16 ment or transaction under such master
17 netting agreement that is referred to in
18 clause (i), (ii), or (iii); or

19 “(v) a security agreement or arrange-
20 ment, or other credit enhancement, directly
21 pertaining to a contract referred to in
22 clause (i), (ii), (iii), or (iv); and

23 “(B) do not include a repurchase obliga-
24 tion under a participation in a commercial
25 mortgage loan;” and

1 (C) by striking paragraph (53B) and in-
2 serting the following:

3 “(53B) ‘swap agreement’—

4 “(A) means—

5 “(i) an agreement, including the
6 terms and conditions incorporated by ref-
7 erence in such agreement, that is—

8 “(I) an interest rate swap, op-
9 tion, future, or forward agreement, in-
10 cluding a rate floor, rate cap, rate col-
11 lar, cross-currency rate swap, and
12 basis swap;

13 “(II) a spot, same day-tomorrow,
14 tomorrow-next, forward, or other for-
15 eign exchange or precious metals
16 agreement;

17 “(III) a currency swap, option,
18 future, or forward agreement;

19 “(IV) an equity index or an eq-
20 uity swap, option, future, or forward
21 agreement;

22 “(V) a debt index or a debt swap,
23 option, future, or forward agreement;

1 “(VI) a credit spread or a credit
2 swap, option, future, or forward
3 agreement; or

4 “(VII) a commodity index or a
5 commodity swap, option, future, or
6 forward agreement;

7 “(ii) an agreement or transaction that
8 is similar to an agreement or transaction
9 referred to in clause (i) that—

10 “(I) is currently, or in the future
11 becomes, regularly entered into in the
12 swap market (including terms and
13 conditions incorporated by reference
14 therein); and

15 “(II) is a forward, swap, future,
16 or option on a rate, currency, com-
17 modity, equity security, or other eq-
18 uity instrument, on a debt security or
19 other debt instrument, or on an eco-
20 nomic index or measure of economic
21 risk or value;

22 “(iii) a combination of agreements or
23 transactions referred to in clauses (i) and
24 (ii);

1 “(iv) an option to enter into an agree-
2 ment or transaction referred to in this sub-
3 paragraph; or

4 “(v) a master netting agreement that
5 provides for an agreement or transaction
6 referred to in clause (i), (ii), (iii), or (iv),
7 together with all supplements to such mas-
8 ter netting agreement and without regard
9 to whether such master netting agreement
10 contains an agreement or transaction de-
11 scribed in any such clause, but only with
12 respect to each agreement or transaction
13 referred to in any such clause that is under
14 such master netting agreement; except that

15 “(B) the definition under subparagraph
16 (A) is applicable for purposes of this title only,
17 and shall not be construed or applied so as to
18 challenge or affect the characterization, defini-
19 tion, or treatment of any swap agreement under
20 any other statute, regulation, or rule, including
21 the Securities Act of 1933, the Securities Ex-
22 change Act of 1934, the Public Utility Holding
23 Company Act of 1935, the Trust Indenture Act
24 of 1939, the Investment Company Act of 1940,
25 the Investment Advisers Act of 1940, the Secu-

1 securities Investor Protection Act of 1970, the Com-
2 modity Exchange Act, and the regulations pre-
3 scribed by the Securities and Exchange Com-
4 mission or the Commodity Futures Trading
5 Commission.”;

6 (2) in section 741, by striking paragraph (7)
7 and inserting the following:

8 “(7) ‘securities contract’—

9 “(A) means—

10 “(i) a contract for the purchase, sale,
11 or loan of a security, a certificate of de-
12 posit, a mortgage loan or an interest in a
13 mortgage loan, a group or index of securi-
14 ties, certificates of deposit, or mortgage
15 loans or interests therein (including an in-
16 terest therein or based on the value there-
17 of), or option on any of the foregoing, in-
18 cluding an option to purchase or sell any
19 of the foregoing;

20 “(ii) an option entered into on a na-
21 tional securities exchange relating to for-
22 eign currencies;

23 “(iii) the guarantee by or to a securi-
24 ties clearing agency of a settlement of
25 cash, securities, certificates of deposit,

1 mortgage loans or interests therein, group
2 or index of securities, or mortgage loans or
3 interests therein (including any interest
4 therein or based on the value thereof), or
5 option on any of the foregoing, including
6 an option to purchase or sell any of the
7 foregoing;

8 “(iv) a margin loan;

9 “(v) any other agreement or trans-
10 action that is similar to an agreement or
11 transaction referred to in this subpara-
12 graph;

13 “(vi) a combination of the agreements
14 or transactions referred to in this subpara-
15 graph;

16 “(vii) an option to enter into an
17 agreement or transaction referred to in
18 this subparagraph;

19 “(viii) a master netting agreement
20 that provides for an agreement or trans-
21 action referred to in clause (i), (ii), (iii),
22 (iv), (v), (vi), or (vii), together with all
23 supplements to such master netting agree-
24 ment, without regard to whether such mas-
25 ter netting agreement provides for an

1 agreement or transaction that is not a se-
2 curities contract under this subparagraph,
3 except that such master netting agreement
4 shall be considered to be a securities con-
5 tract under this subparagraph only with
6 respect to each agreement or transaction
7 under such master netting agreement that
8 is referred to in clause (i), (ii), (iii), (iv),
9 (v), (vi), or (vii); or

10 “(ix) a security agreement or arrange-
11 ment, or other credit enhancement, related
12 to any agreement or transaction referred
13 to in this subparagraph; and

14 “(B) does not include a purchase, sale, or
15 repurchase obligation under a participation in,
16 or servicing agreement for, a commercial mort-
17 gage loan;” and

18 (3) in section 761(4)—

19 (A) by striking “or” at the end of subpara-
20 graph (D); and

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

22 “(F) any other agreement or transaction
23 that is similar to an agreement or transaction
24 referred to in this paragraph;

1 “(G) a combination of the agreements or
2 transactions referred to in this paragraph;

3 “(H) an option to enter into an agreement
4 or transaction referred to in this paragraph;

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

19 “(J) a security agreement or arrangement,
20 or other credit enhancement, related to any
21 agreement or transaction referred to in this
22 paragraph.”.

23 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-
24 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-

1 CHANT.—Section 101 of title 11, United States Code, is
2 amended—

3 (1) by striking paragraph (22) and inserting
4 the following:

5 “(22) ‘financial institution’ means—

6 “(A) a Federal reserve bank, or an entity
7 that is a commercial or savings bank, industrial
8 savings bank, savings and loan association,
9 trust company, or receiver or conservator for
10 such entity; and

11 “(B) if such Federal reserve bank, re-
12 ceiver, or conservator or entity is acting as
13 agent or custodian for a customer in connection
14 with a securities contract, as defined in section
15 741, such customer;”;

16 (2) by inserting after paragraph (22) the fol-
17 lowing:

18 “(22A) ‘financial participant’ means an entity
19 that—

20 “(A) is a party to a securities contract,
21 commodity contract or forward contract;

22 “(B) on the date of the filing of the peti-
23 tion, has 1 or more agreements or transactions
24 under section 561(a)(2) with the debtor or any
25 other entity (other than an affiliate) of a total

1 gross dollar value of not less than
2 \$1,000,000,000 in notional or actual principal
3 amount outstanding on any date during the
4 previous 15-month period; or

5 “(C) has gross mark-to-market positions of
6 not less than \$100,000,000 (aggregated across
7 counterparties) in an agreement or transaction
8 under subparagraph (A) with the debtor or any
9 other entity (other than an affiliate) on any
10 date during the previous 15-month period;”;
11 and

12 (3) by striking paragraph (26) and inserting
13 the following:

14 “(26) ‘forward contract merchant’ means a
15 Federal reserve bank, or an entity, the business of
16 which consists in whole or in part of entering into
17 forward contracts as or with merchants or in a com-
18 modity, as defined or in section 761, or any similar
19 good, article, service, right, or interest that is pres-
20 ently or in the future becomes the subject of dealing
21 or in the forward contract trade;”.

22 (c) DEFINITION OF MASTER NETTING AGREEMENT
23 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
24 tion 101 of title 11, United States Code, is amended by

1 inserting after paragraph (38) the following new para-
2 graphs:

3 “(38A) the term ‘master netting agreement’—

4 “(A) means an agreement providing for
5 the exercise of rights, including rights of net-
6 ting, setoff, liquidation, termination, accelera-
7 tion, or closeout, under or in connection with 1
8 or more contracts that are described in any 1
9 or more of paragraphs (1) through (5) of sec-
10 tion 561(a), or any security agreement or ar-
11 rangement or other credit enhancement related
12 to 1 or more of the foregoing; except that

13 “(B) if a master netting agreement con-
14 tains provisions relating to agreements or trans-
15 actions that are not contracts described in para-
16 graphs (1) through (5) of section 561(a), the
17 master netting agreement shall be deemed to be
18 a master netting agreement only with respect to
19 those agreements or transactions that are de-
20 scribed in any 1 or more of paragraphs (1)
21 through (5) of section 561(a); and

22 “(38B) the term ‘master netting agreement
23 participant’ means an entity that, at any time before
24 the filing of the petition, is a party to an out-

1 standing master netting agreement with the debt-
2 or;”.

3 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
4 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
5 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
6 MENTS UNDER THE AUTOMATIC STAY.—

7 (1) IN GENERAL.—Section 362(b) of title 11,
8 United States Code, as amended by section 330 of
9 this Act, is amended—

10 (A) in paragraph (6), by inserting “,
11 pledged to, and under the control of,” after
12 “held by”;

13 (B) in paragraph (7), by inserting “,
14 pledged to, and under the control of,” after
15 “held by”;

16 (C) by striking paragraph (17) and insert-
17 ing the following:

18 “(17) under subsection (a), of the setoff by a
19 swap participant of a mutual debt and claim under
20 or in connection with a swap agreement that con-
21 stitutes the setoff of a claim against the debtor for
22 a payment or transfer due from the debtor under or
23 in connection with a swap agreement against a pay-
24 ment due to the debtor from the swap participant
25 under or in connection with a swap agreement or

1 against cash, securities, or other property held by,
2 pledged to, and under the control of, or due from
3 such swap participant to guarantee, secure, or settle
4 a swap agreement;”;

5 (D) in paragraph (19), by striking “or” at
6 the end;

7 (E) in paragraph (20), by striking the pe-
8 riod at the end and inserting “; or”; and

9 (F) by inserting after paragraph (20) the
10 following:

11 “(21) under subsection (a), of the setoff by a
12 master netting agreement participant of a mutual
13 debt and claim, to the extent such participant is eli-
14 gible to exercise such offset rights under paragraph
15 (6), (7), or (17) for each individual contract covered
16 by the master netting agreement in issue.”.

17 (2) LIMITATION.—Section 362 of title 11,
18 United States Code, as amended by section 432(2)
19 of this Act, is amended by adding at the end the fol-
20 lowing:

21 “(i) The exercise of rights not subject to the stay
22 arising under subsection (a) pursuant to paragraph (6),
23 (7), or (17) of subsection (b) shall not be stayed by an
24 order of a court or administrative agency in any pro-
25 ceeding under this title.”.

1 (e) LIMITATION OF AVOIDANCE POWERS UNDER
2 MASTER NETTING AGREEMENT.—Section 546 of title 11,
3 United States Code, is amended—

4 (1) in subsection (g), (as added by section 103
5 of Public Law 101–311 (104 Stat. 267 et seq.))—

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

7 and

8 (B) by striking “in connection with a swap
9 agreement” and inserting “under or in connec-
10 tion with any swap agreement”; and

11 (2) by inserting before subsection (i) (as reded-
12 icated by section 407 of this Act) the following new
13 subsection:

14 “(h) Notwithstanding sections 544, 545, 547,
15 548(a)(2)(B), and 548(b), the trustee may not avoid a
16 transfer made by or to a master netting agreement partici-
17 pant under or in connection with any master netting
18 agreement or any individual contract covered thereby that
19 is made before the commencement of the case, and except
20 to the extent that the trustee could otherwise avoid such
21 a transfer made under an individual contract covered by
22 such master netting agreement (except under section
23 548(a)(1)(A)).”.

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

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

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

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(E) a master netting agreement partici-
10 pant that receives a transfer in connection with
11 a master netting agreement or any individual
12 contract covered thereby takes for value to the
13 extent of such transfer, except, with respect to
14 a transfer under any individual contract covered
15 thereby, to the extent that such master netting
16 agreement participant otherwise did not take
17 (or is otherwise not deemed to have taken) such
18 transfer for value.”.

19 (g) TERMINATION OR ACCELERATION OF SECURITIES
20 CONTRACTS.—Section 555 of title 11, United States Code,
21 is amended—

22 (1) by striking the section heading and insert-
23 ing the following:

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

3 and

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

7 (h) TERMINATION OR ACCELERATION OF COMMOD-
8 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
9 United States Code, is amended—

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

12 **“§ 556. Contractual right to liquidate, terminate, or**
13 **accelerate a commodities contract or for-**
14 **ward contract”;**

15 and

16 (2) in the first sentence, by striking “liquida-
17 tion” and inserting “liquidation, termination, or ac-
18 celeration”.

19 (i) TERMINATION OR ACCELERATION OF REPUR-
20 CHASE AGREEMENTS.—Section 559 of title 11, United
21 States Code, is amended—

22 (1) by striking the section heading and insert-
23 ing the following:

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

26 and

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

4 (j) LIQUIDATION, TERMINATION, OR ACCELERATION
5 OF SWAP AGREEMENTS.—Section 560 of title 11, United
6 States Code, is amended—

7 (1) by striking the section heading and insert-
8 ing the following:

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

11 (2) in the first sentence, by striking “termi-
12 nation of a swap agreement” and inserting “liquida-
13 tion, termination, or acceleration of a swap agree-
14 ment”; and

15 (3) by striking “in connection with any swap
16 agreement” and inserting “in connection with the
17 termination, liquidation, or acceleration of a swap
18 agreement”.

19 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
20 OFFSET UNDER A MASTER NETTING AGREEMENT AND
21 ACROSS CONTRACTS.—Title 11, United States Code, is
22 amended by inserting after section 560 the following new
23 section:

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

4 “(a) Subject to subsection (b), the exercise of any
5 contractual right, because of a condition of the kind speci-
6 fied in section 365(e)(1), to cause the termination, liquida-
7 tion, or acceleration of or to offset or net termination val-
8 ues, payment amounts or other transfer obligations arising
9 under or in connection with 1 or more (or the termination,
10 liquidation, or acceleration of 1 or more)—

11 “(1) securities contracts, as defined in section
12 741(7);

13 “(2) commodity contracts, as defined in section
14 761(4);

15 “(3) forward contracts;

16 “(4) repurchase agreements;

17 “(5) swap agreements; or

18 “(6) master netting agreements,

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

23 “(b)(1) A party may exercise a contractual right de-
24 scribed in subsection (a) to terminate, liquidate, or accel-
25 erate only to the extent that such party could exercise such
26 a right under section 555, 556, 559, or 560 for each indi-

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

3 “(2)(A) A party may not exercise a contractual right
4 described in subsection (a) to offset or to net obligations
5 arising under, or in connection with, a commodity contract
6 against obligations arising under, or in connection with,
7 any instrument listed in subsection (a), if the obligations
8 are not mutual.

9 “(B) If a debtor is a commodity broker subject to
10 subchapter IV of chapter 7, a party may not net or offset
11 an obligation to the debtor arising under, or in connection
12 with, a commodity contract against any claim arising
13 under, or in connection with, other instruments if that
14 party has no positive net equity in the commodity account
15 of the debtor, as calculated under subchapter IV.

16 “(c) As used in this section, the term ‘contractual
17 right’ includes a right set forth in a rule or bylaw of a
18 national securities exchange, a national securities associa-
19 tion, or a securities clearing agency, a right set forth in
20 a bylaw of a clearing organization or contract market or
21 in a resolution of the governing board thereof, and a right,
22 whether or not evidenced in writing, arising under com-
23 mon law, under law merchant, or by reason of normal
24 business practice.”.

1 (l) MUNICIPAL BANKRUPTCIES.—Section 901 of title
2 11, United States Code, is amended—

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

4 (2) by inserting “, 559, 560, 561, 562,” after
5 “557”.

6 (m) ANCILLARY PROCEEDINGS.—Section 304 of title
7 11, United States Code, is amended by adding at the end
8 the following:

9 “(d) Any provisions of this title relating to securities
10 contracts, commodity contracts, forward contracts, repur-
11 chase agreements, swap agreements, or master netting
12 agreements shall apply in a case ancillary to a foreign pro-
13 ceeding under this section or any other section of this title,
14 so that enforcement of contractual provisions of such con-
15 tracts and agreements in accordance with their terms—

16 “(1) shall not be stayed or otherwise limited
17 by—

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

20 “(B) order of a court in any case under
21 this title;

22 “(2) shall limit avoidance powers to the same
23 extent as in a proceeding under chapter 7 or 11; and

1 “(3) shall not be limited based on the presence
2 or absence of assets of the debtor in the United
3 States.”.

4 (n) COMMODITY BROKER LIQUIDATIONS.—Title 11,
5 United States Code, is amended by inserting after section
6 766 the following:

7 **“§ 767. Commodity broker liquidation and forward**
8 **contract merchants, commodity brokers,**
9 **stockbrokers, financial institutions, secu-**
10 **rities clearing agencies, swap partici-**
11 **pants, repo participants, and master net-**
12 **ting agreement participants**

13 “Notwithstanding any other provision of this title,
14 the exercise of rights by a forward contract merchant,
15 commodity broker, stockbroker, financial institution, secu-
16 rities clearing agency, swap participant, repo participant,
17 or master netting agreement participant under this title
18 shall not affect the priority of any unsecured claim it may
19 have after the exercise of such rights or affect any provi-
20 sion of this subchapter relating to customer property or
21 distributions.”.

22 (o) STOCKBROKER LIQUIDATIONS.—Title 11, United
23 States Code, is amended by inserting after section 752 the
24 following:

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

7 “Notwithstanding any other provision of this title,
8 the exercise of rights by a forward contract merchant,
9 commodity broker, stockbroker, financial institution, secu-
10 rities clearing agency, swap participant, repo participant,
11 or master netting agreement participant under this title
12 shall not affect the priority of any unsecured claim it may
13 have after the exercise of rights or affect any provision
14 of this subchapter relating to customer property or dis-
15 tributions.”.

16 (p) SETOFF.—Section 553 of title 11, United States
17 Code, is amended—

18 (1) in subsection (a)(3)(C), by inserting “(ex-
19 cept for a setoff of a kind described in section
20 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(21), 555,
21 556, 559, 560, or 561)” before the period; and

22 (2) in subsection (b)(1), by striking
23 “362(b)(14),” and inserting “362(b)(17),
24 362(b)(21), 555, 556, 559, 560,”.

1 (q) SECURITIES CONTRACTS, COMMODITY CON-
2 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
3 States Code, is amended—

4 (1) in section 362(b)(6), by striking “financial
5 institutions,” each place such term appears and in-
6 serting “financial institution, financial participant”;

7 (2) in section 546(e), by inserting “financial
8 participant” after “financial institution,”;

9 (3) in section 548(d)(2)(B), by inserting “fi-
10 nancial participant” after “financial institution,”;

11 (4) in section 555—

12 (A) by inserting “financial participant”
13 after “financial institution,”; and

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

21 (5) in section 556, by inserting “, financial par-
22 ticipant” after “commodity broker”.

23 (r) TECHNICAL AND CONFORMING AMENDMENT.—
24 Section 104 of title 11, United States Code, is amended
25 by adding at the end the following:

1 “(c) EXCEPTION FOR CERTAIN DEFINED TERMS.—
 2 No adjustments shall be made under this section to the
 3 dollar amounts set forth in the definition of the term ‘fi-
 4 nancial participant’ in section 101 (22A).”.

5 (s) CONFORMING AMENDMENTS.—Title 11 of the
 6 United States Code is amended—

7 (1) in the table of sections for chapter 5—

8 (A) by striking the items relating to sec-
 9 tions 555 and 556 and inserting the following:

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

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

10 (B) by striking the items relating to sec-
 11 tions 559 and 560 and inserting the following:

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

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
 ment.”;

12 and

13 (C) by adding after the item relating to
 14 section 560 the following:

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

15 and

16 (2) in the table of sections for chapter 7—

17 (A) by inserting after the item relating to
 18 section 766 the following:

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

1 and

2 (B) by inserting after the item relating to
3 section 752 the following:

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

4 **SEC. 402. DAMAGE MEASURE.**

5 (a) IN GENERAL.—Title 11, United States Code, is
6 amended by inserting after section 561 (as added by sec-
7 tion 401(b)) the following:

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

13 “If the trustee rejects a swap agreement, securities
14 contract as defined in section 741, forward contract, re-
15 purchase agreement, or master netting agreement pursu-
16 ant to section 365(a), or if a forward contract merchant,
17 stockbroker, financial institution, securities clearing agen-
18 cy, repo participant, master netting agreement partici-
19 pant, or swap participant liquidates, terminates, or accel-
20 erates any such contract or agreement, damages shall be
21 measured as of the earlier of—

1 “(1) the date of such rejection; or

2 “(2) the date of such liquidation, termination,
3 or acceleration.”.

4 (b) CLAIMS ARISING FROM REJECTION.—Section
5 502(g) of title 11, United States Code, is amended—

6 (1) by designating the existing text as para-
7 graph (1); and

8 (2) by adding at the end the following new
9 paragraph:

10 “(2) A claim for damages calculated in accord-
11 ance with section 562 shall be allowed under sub-
12 section (a), (b), or (c) of this section or disallowed
13 under subsection (d) or (e) of this section as if such
14 claim had arisen before the date of the filing of the
15 petition.”.

16 **SEC. 403. ASSET-BACKED SECURITIZATIONS.**

17 Section 541 of title 11, United States Code, as
18 amended by section 336 of this Act, is amended—

19 (1) in subsection (b)—

20 (A) by striking “or” at the end of para-
21 graph (6); and

22 (B) by redesignating paragraph (7) as
23 paragraph (8);

24 (2) by inserting after paragraph (6) the fol-
25 lowing:

1 “(7) any eligible asset (or proceeds thereof), to
2 the extent that such eligible asset was transferred by
3 the debtor, before the date of commencement of the
4 case, to an eligible entity in connection with an
5 asset-backed securitization, except to the extent such
6 asset (or proceeds or value thereof) may be recov-
7 ered by the trustee under section 550 by reason of
8 avoidance under section 548(a); or”;

9 (3) by adding at the end the following new sub-
10 section:

11 “(e) In this section:

12 “(1) The term ‘asset-backed securitization’
13 means a transaction in which eligible assets trans-
14 ferred to an eligible entity are used as the source of
15 payment on securities, the most senior of which are
16 rated investment grade by 1 or more nationally rec-
17 ognized securities rating organizations, issued by an
18 issuer.

19 “(2) The term ‘eligible asset’ 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) The term ‘eligible entity’ means—

7 “(A) an issuer; or

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

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

18 “(5) The term ‘transferred’ means, with respect
19 to a debtor, that the debtor, under a written agree-
20 ment, represented and warranted that eligible assets
21 were sold, contributed, or otherwise conveyed with
22 the intention of removing them from the estate of
23 the debtor pursuant to subsection (b)(5), without re-
24 gard to—

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
6 servicing of all or any portion of such eligible
7 assets; 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. 404. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**
12 **URE 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 FAIL-**
16 **URE TO INCUR FINANCE CHARGES.**—A creditor may not,
17 solely because a consumer has not incurred finance
18 charges in 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. 405. FEES ARISING FROM CERTAIN OWNERSHIP IN-**
2 **TERESTS.**

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

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

7 (2) by striking “ownership or” and inserting
8 “ownership,”;

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

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

17 **SEC. 406. BANKRUPTCY FEES.**

18 Section 1930 of title 28, United States Code, is
19 amended—

20 (1) in subsection (a), by striking “Notwith-
21 standing section 1915, the parties” and inserting
22 “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
2 (1), the district court or the bankruptcy court may waive
3 a filing fee described in paragraph (3) for a case com-
4 menced under chapter 7 of title 11 if the court determines
5 that an individual debtor is unable to pay that fee in in-
6 stallments.

7 “(3) A filing fee referred to in paragraph (2) is—

8 “(A) a filing fee under subsection (a)(1); or

9 “(B) any other fee prescribed by the Judicial
10 Conference of the United States under subsection
11 (b) that is payable to the clerk of the district court
12 or the clerk of the bankruptcy court upon the com-
13 mencement of a case under chapter 7 of title 11.

14 “(4) In addition to waiving a fee described in para-
15 graph (3) under paragraph (2), the district court or the
16 bankruptcy court may waive any other fee prescribed
17 under subsection (b) or (c) if the court determines that
18 the individual is unable to pay that fee in installments.”.

19 **SEC. 407. APPLICABILITY.**

20 The amendments made by this title shall apply with
21 respect to cases commenced or appointments made under
22 any Federal or State law after the date of enactment of
23 this Act.

1 **TITLE V—ANCILLARY AND**
 2 **OTHER CROSS-BORDER CASES**

3 **SEC. 501. AMENDMENT TO ADD 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 case under section 301 or 303.

“612. Participation of a foreign representative in a case under this title.

“613. Access of foreign creditors to a case under this title.

“614. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING
 AND RELIEF

“615. Application for recognition of a foreign proceeding.

“616. Presumptions concerning recognition.

“617. Order recognizing a foreign proceeding.

“618. Subsequent information.

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

“620. Effects of recognition of a foreign main proceeding.

“621. Relief that may be granted upon recognition of a foreign proceeding.

“622. Protection of creditors and other interested persons.

“623. Actions to avoid acts detrimental to creditors.

“624. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND
FOREIGN REPRESENTATIVES

“625. Cooperation and direct communication between the court and foreign courts or foreign representatives.

“626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.

“627. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“628. Commencement of a case under this title after recognition of a foreign main proceeding.

“629. Coordination of a case under this title and a foreign proceeding.

“630. Coordination of more than 1 foreign proceeding.

“631. Presumption of insolvency based on recognition of a foreign main proceeding.

“632. Rule of payment in concurrent proceedings.

1 “§ 601. Purpose and scope of application

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

6 “(1) cooperation between—

7 “(A) United States courts, United States
8 trustees, trustees, examiners, debtors, and debtors
9 in possession; and

10 “(B) the courts and other competent au-
11 thorities of foreign countries involved in cross-
12 border insolvency cases;

13 “(2) greater legal certainty for trade and in-
14 vestment;

15 “(3) fair and efficient administration of cross-
16 border insolvencies that protects the interests of all

1 creditors, and other interested entities, including the
2 debtor;

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

5 “(5) facilitation of the rescue of financially
6 troubled businesses, thereby protecting investment
7 and preserving employment.

8 “(b) This chapter applies if—

9 “(1) assistance is sought in the United States
10 by a foreign court or a foreign representative in con-
11 nection 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 identi-
23 fied by exclusion in subsection 109(b); or

24 “(2) an individual, or to an individual and such
25 individual’s spouse, who have debts within the limits

1 specified in section 109(e) and who are citizens of
2 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 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
13 authority 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
17 debtor has the center of its main interests;

18 “(5) ‘foreign nonmain proceeding’ means a for-
19 eign proceeding, other than a foreign main pro-
20 ceeding, taking place in a country where the debtor
21 has an establishment;

22 “(6) ‘trustee’ includes a trustee, a debtor in
23 possession in a case under any chapter of this title,
24 or a debtor under chapter 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
8 court in the United States.

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

10 “To the extent that this chapter conflicts with an ob-
11 ligation 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 re-
3 fusing to take an action governed by this chapter if the
4 action would be manifestly contrary to the public policy
5 of the 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
14 assistance, consistent with the principles of comity, will
15 reasonably 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
22 dispositions of property of the debtor;

23 “(4) distribution of proceeds of the debtor’s
24 property substantially in accordance with the order
25 prescribed 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 applica-
8 tion 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 recogni-
15 tion under section 615, and upon recognition, to apply di-
16 rectly to other Federal and State courts for appropriate
17 relief in those courts.

18 “(b) Upon recognition, and subject to section 610,
19 a foreign representative shall have the capacity to sue and
20 be sued.

21 “(c) Recognition under this chapter is prerequisite to
22 the granting of comity or cooperation to a foreign rep-
23 resentative in any Federal or State court in the United
24 States. Any request for comity or cooperation by a foreign
25 representative in any court shall be accompanied by a

1 sworn statement setting forth whether recognition under
2 section 615 has been sought and the status of any such
3 petition.

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

8 **“§ 610. Limited jurisdiction**

9 “The sole fact that a foreign representative files a
10 petition under sections 604 and 615 does not subject the
11 foreign representative to the jurisdiction of any court in
12 the United States for any other purpose.

13 **“§ 611. Commencement of case under section 301 or**
14 **303**

15 “(a) Upon filing a petition for recognition, a foreign
16 representative may commence—

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

18 “(2) a voluntary case under section 301 or 302,
19 if the foreign proceeding is a foreign main pro-
20 ceeding.

21 “(b) The petition commencing a case under sub-
22 section (a) must be accompanied by a statement describ-
23 ing the petition for recognition and its current status. The
24 court where the petition for recognition has been filed
25 must be advised of the foreign representative’s intent to

1 commence a case under subsection (a) prior to such com-
2 mencement.

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

5 **“§ 612. Participation of a foreign representative in a**
6 **case under this title**

7 “Upon recognition of a foreign proceeding, the for-
8 eign representative in that proceeding is entitled to par-
9 ticipate as a party in interest in a case regarding the debt-
10 or under this title.

11 **“§ 613. Access of foreign creditors to a case under**
12 **this title**

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

16 “(b)(1) Subsection (a) does not change or codify law
17 in effect on the date of enactment of this chapter as to
18 the priority of claims under section 507 or 726, except
19 that the claim of a foreign creditor under section 507 or
20 726 shall not be given a lower priority than that of general
21 unsecured claims without priority solely because the holder
22 of such claim is a foreign creditor.

23 “(2)(A) Subsection (a) and paragraph (1) do not
24 change or codify law in effect on the date of enactment
25 of this chapter as to the allowability of foreign revenue

1 claims or other foreign public law claims in a proceeding
2 under this title.

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

7 **“§ 614. Notification to foreign creditors concerning a**
8 **case under this title**

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

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

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

1 “(2) a certificate from the foreign court affirm-
2 ing the existence of the foreign proceeding and of
3 the appointment of the foreign representative; or

4 “(3) in the absence of evidence referred to in
5 paragraphs (1) and (2), any other evidence accept-
6 able to the court of the existence of the foreign pro-
7 ceeding and of the appointment of the foreign rep-
8 resentative.

9 “(c) A petition for recognition shall also be accom-
10 panied by a statement identifying all foreign proceedings
11 with respect to the debtor that are known to the foreign
12 representative.

13 “(d) The documents referred to in paragraphs (1)
14 and (2) of subsection (b) must be translated into English.
15 The court may require a translation into English of addi-
16 tional documents.

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

18 “(a) If the decision or certificate referred to in section
19 615(b) indicates that the foreign proceeding is a foreign
20 proceeding, within the meaning of section 101(23) and
21 that the person or body is a foreign representative, within
22 the meaning of section 101(24), the court is entitled to
23 so presume.

24 “(b) The court is entitled to presume that documents
25 submitted in support of the petition for recognition are

1 authentic, whether or not the documents have been sub-
2 jected to legal processing under applicable law.

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

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

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

10 “(1) the foreign proceeding is a foreign main
11 proceeding or foreign nonmain proceeding within the
12 meaning of section 602 and is a foreign proceeding
13 within the meaning of section 101(23);

14 “(2) the person or body applying for recognition
15 is a foreign representative within the meaning of
16 section 101(24); and

17 “(3) the petition meets the requirements of sec-
18 tion 615.

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

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

23 “(2) as a foreign nonmain proceeding if the
24 debtor has an establishment within the meaning of

1 section 602 in the foreign country where the pro-
2 ceeding is pending.

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

7 “(d) The provisions of this subchapter do not prevent
8 modification or termination of recognition if it is shown
9 that the grounds for granting it were fully or partially
10 lacking or have ceased to exist, but in considering such
11 action the court shall give due weight to possible prejudice
12 to parties that have relied upon the granting of recogni-
13 tion. The case under this chapter may be closed in the
14 manner prescribed for a case under section 350.

15 **“§ 618. Subsequent information**

16 “After the petition for recognition of the foreign pro-
17 ceeding is filed, the foreign representative shall file with
18 the court promptly a notice of change of status
19 concerning—

20 “(1) any substantial change in the status of the
21 foreign proceeding or the status of the foreign rep-
22 resentative’s appointment; and

23 “(2) any other foreign proceeding regarding the
24 debtor that becomes known to the foreign represent-
25 ative.

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

3 “(a) Beginning on the date on which a petition for
4 recognition is filed and ending on the date on which the
5 petition is decided upon, the court may, at the request of
6 the foreign representative, if relief is urgently needed to
7 protect the assets of the debtor or the interests of the
8 creditors, grant relief of a provisional nature, including—

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

11 “(2) entrusting the administration or realiza-
12 tion of all or part of the debtor’s assets located in
13 the United States to the foreign representative or
14 another person, including an examiner, designated
15 by the court, including an examiner, in order to pro-
16 tect and preserve the value of assets that, by their
17 nature or because of other circumstances, are perish-
18 able, susceptible to devaluation, or otherwise in jeop-
19 ardy; and

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

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

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

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

7 “(e) The standards, procedures, and limitations ap-
8 plicable to an injunction shall apply to relief under this
9 section.

10 **“§ 620. Effects of recognition of a foreign main pro-**
11 **ceeding**

12 “(a)(1) Upon recognition of a foreign proceeding that
13 is a foreign main proceeding—

14 “(A) section 362 applies with respect to the
15 debtor and that property of the debtor that is within
16 the territorial jurisdiction of the United States; and

17 “(B) a transfer, an encumbrance, or any other
18 disposition of an interest of the debtor in property
19 within the territorial jurisdiction of the United
20 States is restrained as and to the extent that is pro-
21 vided for property of an estate under sections 363,
22 549, and 552.

23 “(2) Unless the court orders otherwise, the foreign
24 representative may operate the debtor’s business and may

1 exercise the powers of a trustee under section 549, subject
2 to sections 363 and 552.

3 “(b) The scope, and the modification or termination,
4 of the stay and restraints referred to in subsection (a) are
5 subject to the exceptions and limitations provided in sub-
6 sections (b), (c), and (d) of section 362, subsections (b)
7 and (c) of section 363, and sections 552, 555 through 557,
8 559, and 560.

9 “(c) Subsection (a) does not affect the right to com-
10 mence individual actions or proceedings in a foreign coun-
11 try to the extent necessary to preserve a claim against the
12 debtor.

13 “(d) Subsection (a) does not affect the right of a for-
14 eign representative or an entity to file a petition com-
15 mencing a case under this title or the right of any party
16 to file claims or take other proper actions in such a case.

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

19 “(a) Upon recognition of a foreign proceeding, wheth-
20 er main or nonmain, if necessary to effectuate the purpose
21 of this chapter and to protect the assets of the debtor or
22 the interests of the creditors, the court may, at the request
23 of the foreign representative, grant any appropriate relief,
24 including—

1 “(1) staying the commencement or continuation
2 of individual actions or individual proceedings con-
3 cerning the debtor’s assets, rights, obligations, or li-
4 abilities to the extent the actions or proceedings
5 have not been stayed under section 620(a);

6 “(2) staying execution against the debtor’s as-
7 sets to the extent the execution has not been stayed
8 under section 620(a);

9 “(3) suspending the right to transfer, encum-
10 ber, or otherwise dispose of any assets of the debtor
11 to the extent that right has not been suspended
12 under section 620(a);

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

17 “(5) entrusting the administration or realiza-
18 tion of all or part of the debtor’s assets within the
19 territorial jurisdiction of the United States to the
20 foreign representative or another person, including
21 an examiner, designated by the court;

22 “(6) extending relief granted under section
23 619(a); and

24 “(7) granting any additional relief that may be
25 available to a trustee, except for relief available

1 under sections 522, 544, 545, 547, 548, 550, and
2 724(a).

3 “(b) Upon recognition of a foreign proceeding, wheth-
4 er main or nonmain, the court may, at the request of the
5 foreign representative, entrust the distribution of all or
6 part of the debtor’s assets located in the United States
7 to the foreign representative or another person, including
8 an examiner, designated by the court, if the court is satis-
9 fied that the interests of creditors in the United States
10 are sufficiently protected.

11 “(c) In granting relief under this section to a rep-
12 resentative of a foreign nonmain proceeding, the court
13 must be satisfied that the relief relates to assets that,
14 under the laws of the United States, should be adminis-
15 tered in the foreign nonmain proceeding or concerns infor-
16 mation required in that proceeding.

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

20 **“§ 622. Protection of creditors and other interested**
21 **persons**

22 “(a) The court may grant relief under section 619
23 or 621, or may modify or terminate relief under subsection
24 (c), only if the court finds that the interests of the credi-

1 tors and other interested entities, including the debtor, are
2 sufficiently protected.

3 “(b) The court may subject relief granted under sec-
4 tion 619 or 621 to conditions that the court considers to
5 be appropriate.

6 “(c) The court may, at the request of the foreign rep-
7 resentative or an entity affected by relief granted under
8 section 619 or 621, or at its own motion, modify or termi-
9 nate the relief.

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

11 “(a) Upon recognition of a foreign proceeding, the
12 foreign representative has standing in a case concerning
13 the debtor pending under another chapter of this title to
14 initiate actions under sections 522, 544, 545, 547, 548,
15 550, and 724(a).

16 “(b) In any case in which the foreign proceeding is
17 a foreign nonmain proceeding, the court must be satisfied
18 that an action under subsection (a) relates to assets that,
19 under United States law, should be administered in the
20 foreign nonmain proceeding.

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

22 “Upon recognition of a foreign proceeding, the for-
23 eign representative may intervene in any proceedings in
24 a Federal or State court in the United States in which
25 the debtor is a party.

1 “SUBCHAPTER IV—COOPERATION WITH FOR-
2 EIGN COURTS AND FOREIGN REPRESENTA-
3 TIVES

4 **“§ 625. Cooperation and direct communication be-
5 tween the court and foreign courts or for-
6 eign representatives**

7 “(a) In all matters included within section 601, the
8 court shall cooperate to the maximum extent possible with
9 foreign courts or foreign representatives, either directly or
10 through the trustee.

11 “(b) The court is entitled to communicate directly
12 with, or to request information or assistance directly from,
13 foreign courts or foreign representatives, subject to the
14 rights of parties in interest to notice and participation.

15 **“§ 626. Cooperation and direct communication be-
16 tween the trustee and foreign courts or
17 foreign representatives**

18 “(a) In all matters included within section 601, the
19 trustee or other person, including an examiner, designated
20 by the court, shall, subject to the supervision of the court,
21 cooperate to the maximum extent possible with foreign
22 courts or foreign representatives.

23 “(b) The trustee or other person, including an exam-
24 iner, designated by the court is entitled, subject to the su-

1 pervision of the court, to communicate directly with for-
 2 eign courts or foreign representatives.

3 “(c) Section 1104(d) shall apply to the appointment
 4 of an examiner under this chapter. Any such examiner
 5 shall comply with the qualifications requirements imposed
 6 on a trustee under section 322(a).

7 **“§ 627. Forms of cooperation**

8 “Cooperation referred to in sections 625 and 626
 9 may be implemented by any appropriate means,
 10 including—

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

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

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

17 “(4) approval or implementation of agreements
 18 concerning the coordination of proceedings; and

19 “(5) coordination of concurrent proceedings re-
 20 garding the same debtor.

21 **“SUBCHAPTER V—CONCURRENT PROCEEDINGS**

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

24 “After recognition of a foreign main proceeding, a
 25 case under another chapter of this title may be commenced

1 only if the debtor has assets in the United States. The
2 effects of such case shall be restricted to the assets of the
3 debtor that are within the territorial jurisdiction of the
4 United States and, to the extent necessary to implement
5 cooperation and coordination under sections 625, 626, and
6 627, to other assets of the debtor that are within the juris-
7 diction of the court under sections 541(a) and 1334(e) of
8 title 28, to the extent that such other assets are not sub-
9 ject to the jurisdiction and control of a foreign proceeding
10 that has been recognized under this chapter.

11 **“§ 629. Coordination of a case under this title and a**
12 **foreign proceeding**

13 “In any case in which a foreign proceeding and a case
14 under another chapter of this title are taking place concur-
15 rently regarding the same debtor, the court shall seek co-
16 operation and coordination under sections 625, 626, and
17 627, and the following shall apply:

18 “(1) If the case in the United States is taking
19 place at the time the petition for recognition of the
20 foreign proceeding is filed—

21 “(A) any relief granted under section 619
22 or 621 shall be consistent with the relief grant-
23 ed in the case in the United States; and

1 “(B) even if the foreign proceeding is rec-
2 ognized as a foreign main proceeding, section
3 620 does not apply.

4 “(2) If a case in the United States under this
5 title commences after recognition, or after the filing
6 of the petition for recognition, of the foreign
7 proceeding—

8 “(A) any relief in effect under section 619
9 or 621 shall be reviewed by the court and shall
10 be modified or terminated if inconsistent with
11 the case in the United States; and

12 “(B) if the foreign proceeding is a foreign
13 main proceeding, the stay and suspension re-
14 ferred to in section 620(a) shall be modified or
15 terminated if inconsistent with the relief grant-
16 ed in the case in the United States.

17 “(3) In granting, extending, or modifying relief
18 granted to a representative of a foreign nonmain
19 proceeding, the court shall be satisfied that the relief
20 relates to assets that, under the law of the United
21 States, should be administered in the foreign
22 nonmain proceeding or concerns information re-
23 quired in that proceeding.

1 “(4) In achieving cooperation and coordination
2 under sections 628 and 629, the court may grant
3 any of the relief authorized under section 305.

4 **“§ 630. Coordination of more than 1 foreign pro-**
5 **ceeding**

6 “‘In matters referred to in section 601, with respect
7 to more than 1 foreign proceeding regarding the debtor,
8 the court shall seek cooperation and coordination under
9 sections 625, 626, and 627, and the following shall apply:

10 “(1) Any relief granted under section 619 or
11 621 to a representative of a foreign nonmain pro-
12 ceeding after recognition of a foreign main pro-
13 ceeding shall be consistent with the foreign main
14 proceeding.

15 “(2) If a foreign main proceeding is recognized
16 after recognition, or after the filing of a petition for
17 recognition, of a foreign nonmain proceeding, any
18 relief in effect under section 619 or 621 shall be re-
19 viewed by the court and shall be modified or termi-
20 nated if inconsistent with the foreign main pro-
21 ceeding.

22 “(3) If, after recognition of a foreign nonmain
23 proceeding, another foreign nonmain proceeding is
24 recognized, the court shall grant, modify, or termi-

1 (1) in subsection (a), by inserting before the pe-
2 riod the following: “, and this chapter, sections 307,
3 304, 555 through 557, 559, and 560 apply in a case
4 under chapter 6”; and

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

6 “(j) Chapter 6 applies only in a case under such
7 chapter, except that section 605 applies to trustees and
8 to any other entity, including an examiner, designated by
9 the court under chapter 7, 11, or 12, to debtors in posses-
10 sion under chapter 11 or 12, and to debtors under chap-
11 ters 9 and 13 who are authorized to act under section
12 605.”.

13 (b) DEFINITIONS.—Paragraphs (23) and (24) of sec-
14 tion 101 of title 11, United States Code, are amended to
15 read as follows:

16 “(23) ‘foreign proceeding’ means a collective ju-
17 dicial or administrative proceeding in a foreign state,
18 including an interim proceeding, pursuant to a law
19 relating to insolvency in which proceeding the assets
20 and affairs of the debtor are subject to control or
21 supervision by a foreign court, for the purpose of re-
22 organization or liquidation;

23 “(24) ‘foreign representative’ means a person
24 or body, including a person or body appointed on an
25 interim basis, authorized in a foreign proceeding to

1 administer the reorganization or the liquidation of
2 the debtor's assets or affairs or to act as a rep-
3 resentative of the foreign proceeding;”.

4 (c) AMENDMENTS TO TITLE 28, UNITED STATES
5 CODE.—

6 (1) PROCEDURES.—Section 157(b)(2) of title
7 28, United States Code, is amended—

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

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

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

13 “(P) recognition of foreign proceedings and
14 other matters under chapter 6 of title 11.”.

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

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

1 **TITLE VI—MISCELLANEOUS**

2 **SEC. 601. EXECUTORY CONTRACTS AND UNEXPIRED**
3 **LEASES.**

4 Section 365(d) of title 11, United States Code, is
5 amended by striking paragraph (4) and inserting the fol-
6 lowing:

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

14 “(i) the date that is 120 days after the date of
15 the order for relief; or

16 “(ii) the date of the entry of an order con-
17 firming a plan.

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

21 **SEC. 602. EXPEDITED APPEALS OF BANKRUPTCY CASES TO**
22 **COURTS OF APPEALS.**

23 (a) IN GENERAL.—Section 158 of title 28, United
24 States Code, is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e);

3 (2) by inserting after subsection (c) the fol-
4 lowing:

5 “(d)(1) Any final judgment, decision, order, or decree
6 of a bankruptcy judge entered for a case in accordance
7 with section 157 may be appealed by any party in such
8 case to the appropriate court of appeals if—

9 “(A) an appeal from such judgment, decision,
10 order, or decree is first filed with the appropriate
11 district court of the United States; and

12 “(B) the decision on the appeal described under
13 subparagraph (A) is not filed by a district court
14 judge within 30 days after the date such appeal is
15 filed with the district court.

16 “(2) On the date that an appeal is filed with a court
17 of appeals under paragraph (1), the chief judge for such
18 court of appeals shall issue an order to the clerk for the
19 district court from which the appeal is filed. Such order
20 shall direct the clerk to enter the final judgment, decision,
21 order, or decree of the bankruptcy judge as the final judg-
22 ment, decision, order, or decree of the district court.”; and

23 (3) in subsection (e), (as redesignated by para-
24 graph (1) of this section) by striking “subsections

1 (a) and (b)” and inserting “subsections (a), (b), and
2 (d)”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) Section 305(e) of title 11, United States
5 Code, is amended by striking “section 158(d)” and
6 inserting “section 158(e)”.

7 (2) Section 1334(d) of title 28, United States
8 Code, is amended by striking “section 158(d)” and
9 inserting “section 158(e)”.

10 (3) Section 1452(b) of title 28, United States
11 Code, is amended by striking “section 158(d)” and
12 inserting “section 158(e)”.

13 **SEC. 603. CREDITORS AND EQUITY SECURITY HOLDERS**
14 **COMMITTEES.**

15 Section 1102(a)(2) of title 11, United States Code,
16 is amended by inserting before the first sentence the fol-
17 lowing: “On its own motion or on request of a party in
18 interest, and after notice and hearing, the court may order
19 a change in the membership of a committee appointed
20 under this subsection, if the court determines that the
21 change is necessary to ensure adequate representation of
22 creditors or equity security holders.”.

23 **SEC. 604. REPEAL OF SUNSET PROVISION.**

24 Section 302 of the Bankruptcy Judges, United States
25 Trustees, and Family Farmer Bankruptcy Act of 1986

1 (28 U.S.C. 581 note) is amended by striking subsection
2 (f).

3 **SEC. 605. CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

4 Section 304 of title 11, United States Code, as
5 amended by section 410 of this Act, is amended by adding
6 at the end the following:

7 “(e)(1) In this subsection—

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

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

14 “(C) the term ‘United States claimant’ means
15 a beneficiary of any deposit referred to in paragraph
16 (2)(A) or any multibeneficiary trust referred to in
17 subparagraph (B) or (C) of paragraph (2);

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

20 “(i) a United States claimant; or

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

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

1 “(2) Notwithstanding subsections (b) and (c), the
2 court may not grant relief under subsection (b) to a for-
3 eign insurance company that is not engaged in the busi-
4 ness of insurance or reinsurance in the United States with
5 respect to any claim made by a United States creditor
6 against—

7 “(A) a deposit required by an applicable State
8 insurance law;

9 “(B) a multibeneficiary trust required by an ap-
10 plicable State insurance law to protect United States
11 policyholders or claimants against a foreign insur-
12 ance company; or

13 “(C) a multibeneficiary trust authorized under
14 an applicable State insurance law to allow a domes-
15 tic insurance company that cedes reinsurance to the
16 debtor to reflect the reinsurance as an asset or de-
17 duction from liability in the ceding insurer’s finan-
18 cial statements.”.

19 **SEC. 606. LIMITATION.**

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

1 **SEC. 607. AMENDMENT TO SECTION 546 OF TITLE 11,**
2 **UNITED STATES CODE.**

3 Section 546 of title 11, United States Code, as
4 amended by section 401 of this Act, is amended by adding
5 at the end the following:

6 “(i) Notwithstanding paragraphs (2) and (3) of
7 section 545, the trustee may not avoid a
8 warehouseman’s lien for storage, transportation, or
9 other costs incidental to the storage and handling of
10 goods, as provided by an applicable State law that
11 is similar to section 7–209 of the Uniform Commer-
12 cial Code.”.

13 **SEC. 608. AMENDMENT TO SECTION 330(a) OF TITLE 11,**
14 **UNITED STATES CODE.**

15 Section 330(a)(3)(A) of title 11, United States Code,
16 is amended—

17 (1) by inserting “In determining the amount of
18 reasonable compensation to be awarded a trustee,
19 the court shall treat such compensation as a com-
20 mission based on the results achieved.” after
21 “(3)(A)”; and

22 (2) by inserting “to an examiner, chapter 11
23 trustee, or professional person” after “awarded”.

1 **TITLE VII—TECHNICAL**
2 **CORRECTIONS**

3 **SEC. 701. ADJUSTMENT OF DOLLAR AMOUNTS.**

4 Section 104 of title 11, United States Code, is
5 amended by inserting “522(f)(3), 707(b)(5),” after
6 “522(d),” each place it appears.

7 **SEC. 702. EXTENSION OF TIME.**

8 Section 108(c)(2) of title 11, United States Code, is
9 amended by striking “922” and all that follows through
10 “or”, and inserting “922, 1201, or”.

11 **SEC. 703. WHO MAY BE A DEBTOR.**

12 Section 109(b)(2) of title 11, United States Code, is
13 amended by striking “subsection (c) or (d) of”.

14 **SEC. 704. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
15 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
16 **TITIONS.**

17 Section 110(j)(3) of title 11, United States Code, is
18 amended by striking “attorney’s” and inserting “attor-
19 neys’”.

20 **SEC. 705. LIMITATION ON COMPENSATION OF PROFES-**
21 **SIONAL PERSONS.**

22 Section 328(a) of title 11, United States Code, is
23 amended by inserting “on a fixed or percentage fee basis,”
24 after “hourly basis,”.

1 **SEC. 706. SPECIAL TAX PROVISIONS.**

2 Section 346(g)(1)(C) of title 11, United States Code,
3 is amended by striking “, except” and all that follows
4 through “1986”.

5 **SEC. 707. EFFECT OF CONVERSION.**

6 Section 348(f)(2) of title 11, United States Code, is
7 amended by inserting “of the estate” after “property” the
8 first place it appears.

9 **SEC. 708. AUTOMATIC STAY.**

10 Section 362(b) of title 11, United States Code, as
11 amended by section 401 of this Act, is amended—

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

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

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

18 “(22) under subsection (a) of this section of
19 any transfer that is not avoidable under section 544
20 and that is not avoidable under section 549;

21 “(23) under subsection (a)(3) of this section, of
22 the continuation of any eviction, unlawful detainer
23 action, or similar proceeding by a lessor against a
24 debtor involving residential real property in which
25 the debtor resides as a tenant under a rental agree-
26 ment and the debtor has not paid rent to the lessor

1 under the terms of the lease agreement or applicable
2 State law after the commencement and during the
3 course of the case;

4 “(24) under subsection (a)(3) of this section, of
5 the commencement or continuation of any eviction,
6 unlawful detainer action, or similar proceeding by a
7 lessor against a debtor involving residential real
8 property in which the debtor resides as a tenant
9 under a rental agreement that has terminated pur-
10 suant to the lease agreement or applicable State law;

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

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

19 **SEC. 709. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

20 Section 503(b)(4) of title 11, United States Code, is
21 amended by inserting “subparagraph (A), (B), (C), (D),
22 or (E) of” before “paragraph (3)”.

23 **SEC. 710. PRIORITIES.**

24 Section 507(a) of title 11, United States Code, as
25 amended by section 323 of this Act, is amended—

1 (1) in paragraph (3)(B), by striking the semi-
2 colon at the end and inserting a period; and

3 (2) in paragraph (7), by inserting “unsecured”
4 after “allowed”.

5 **SEC. 711. EXEMPTIONS.**

6 Section 522 of title 11, United States Code, as
7 amended by section 320 of this Act, is amended—

8 (1) in subsection (f)(1)(A)(ii)(II)—

9 (A) by striking “includes a liability des-
10 ignated as” and inserting “is for a liability that
11 is designated as, and is actually in the nature
12 of,”; and

13 (B) by striking “, unless” and all that fol-
14 lows through “support”; and

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

17 **SEC. 712. EXCEPTIONS TO DISCHARGE.**

18 Section 523 of title 11, United States Code, as
19 amended by section 315 of this Act, is amended—

20 (1) in subsection (a)(3), by striking “or (6)”
21 each place it appears and inserting “(6), or (15)”;

22 (2) as amended by section 304(e) of Public Law
23 103–394 (108 Stat. 4133), in paragraph (15), by
24 transferring such paragraph so as to insert it after
25 paragraph (14A) of subsection (a);

1 (3) in subsection (a)(9), by inserting
2 “, watercraft, or aircraft” after “motor vehicle”;

3 (4) in subsection (a)(15), as so redesignated by
4 paragraph (2) of this subsection, by inserting “to a
5 spouse, former spouse, or child of the debtor and”
6 after “(15)”;

7 (5) in subsection (a)(17)—

8 (A) by striking “by a court” and inserting
9 “on a prisoner by any court”;

10 (B) by striking “section 1915 (b) or (f)”
11 and inserting “subsection (b) or (f)(2) of sec-
12 tion 1915”; and

13 (C) by inserting “(or a similar non-Federal
14 law)” after “title 28” each place it appears; and

15 (6) in subsection (e), by striking “a insured”
16 and inserting “an insured”.

17 **SEC. 713. EFFECT OF DISCHARGE.**

18 Section 524(a)(3) of title 11, United States Code, is
19 amended by striking “section 523” and all that follows
20 through “or that” and inserting “section 523, 1228(a)(1),
21 or 1328(a)(1) of this title, or that”.

22 **SEC. 714. PROTECTION AGAINST DISCRIMINATORY TREAT-**
23 **MENT.**

24 Section 525(c) of title 11, United States Code, is
25 amended—

1 (1) in paragraph (1), by inserting “student” be-
2 fore “grant” the second place it appears; and

3 (2) in paragraph (2), by striking “the program
4 operated under part B, D, or E of” and inserting
5 “any program operated under”.

6 **SEC. 715. PROPERTY OF THE ESTATE.**

7 Section 541(b)(4)(B)(ii) of title 11, United States
8 Code, is amended by inserting “365 or” before “542”.

9 **SEC. 716. PREFERENCES.**

10 Section 547 of title 11, United States Code, is
11 amended—

12 (1) in subsection (b), by striking “subsection
13 (c)” and inserting “subsections (c) and (h)”; and

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

15 “(h) If the trustee avoids under subsection (b) a secu-
16 rity interest given between 90 days and 1 year before the
17 date of the filing of the petition, by the debtor to an entity
18 that is not an insider for the benefit of a creditor that
19 is an insider, such security interest shall be considered to
20 be avoided under this section only with respect to the cred-
21 itor that is an insider.”.

22 **SEC. 717. POSTPETITION TRANSACTIONS.**

23 Section 549(e) of title 11, United States Code, is
24 amended—

1 (1) by inserting “an interest in” after “transfer
2 of”;

3 (2) by striking “such property” and inserting
4 “such real property”; and

5 (3) by striking “the interest” and inserting
6 “such interest”.

7 **SEC. 718. TECHNICAL AMENDMENT.**

8 Section 552(b)(1) of title 11, United States Code, is
9 amended by striking “product” each place it appears and
10 inserting “products”.

11 **SEC. 719. DISPOSITION OF PROPERTY OF THE ESTATE.**

12 Section 726(b) of title 11, United States Code, is
13 amended by striking “1009,”.

14 **SEC. 720. GENERAL PROVISIONS.**

15 Section 901(a) of title 11, United States Code, as
16 amended by section 401 of this Act, is amended by insert-
17 ing “1123(d),” after “1123(b),”.

18 **SEC. 721. APPOINTMENT OF ELECTED TRUSTEE.**

19 Section 1104(b) of title 11, United States Code, is
20 amended—

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

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

23 “(2)(A) If an eligible, disinterested trustee is elected
24 at a meeting of creditors under paragraph (1), the United

1 States trustee shall file a report certifying that election.

2 Upon the filing of a report under the preceding sentence—

3 “(i) the trustee elected under paragraph (1)

4 shall be considered to have been selected and ap-

5 pointed for purposes of this section; and

6 “(ii) the service of any trustee appointed under

7 subsection (d) shall terminate.

8 “(B) In the case of any dispute arising out of an elec-

9 tion under subparagraph (A), the court shall resolve the

10 dispute.”.

11 **SEC. 722. ABANDONMENT OF RAILROAD LINE.**

12 Section 1170(e)(1) of title 11, United States Code,

13 is amended by striking “section 11347” and inserting

14 “section 11326(a)”.

15 **SEC. 723. CONTENTS OF PLAN.**

16 Section 1172(c)(1) of title 11, United States Code,

17 is amended by striking “section 11347” and inserting

18 “section 11326(a)”.

19 **SEC. 724. DISCHARGE UNDER CHAPTER 12.**

20 Subsections (a) and (c) of section 1228 of title 11,

21 United States Code, are amended by striking

22 “1222(b)(10)” each place it appears and inserting

23 “1222(b)(9)”.

1 **SEC. 725. EXTENSIONS.**

2 Section 302(d)(3) of the Bankruptcy, Judges, United
3 States Trustees, and Family Farmer Bankruptcy Act of
4 1986 (28 U.S.C. 581 note) is amended—

5 (1) in subparagraph (A), in the matter fol-
6 lowing clause (ii), by striking “or October 1, 2002,
7 whichever occurs first”; and

8 (2) in subparagraph (F)—

9 (A) in clause (i)—

10 (i) in subclause (II), by striking “or
11 October 1, 2002, whichever occurs first”;
12 and

13 (ii) in the matter following subclause
14 (II), by striking “October 1, 2003, or”;
15 and

16 (B) in clause (ii), in the matter following
17 subclause (II)—

18 (i) by striking “before October 1,
19 2003, or”; and

20 (ii) by striking “, whichever occurs
21 first”.

22 **SEC. 726. BANKRUPTCY CASES AND PROCEEDINGS.**

23 Section 1334(d) of title 28, United States Code, is
24 amended—

25 (1) by striking “made under this subsection”
26 and inserting “made under subsection (c)”; and

1 (2) by striking “This subsection” and inserting
2 “Subsection (c) and this subsection”.

3 **SEC. 727. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
4 **RULE.**

5 Section 156(a) of title 18, United States Code, is
6 amended—

7 (1) in the first undesignated paragraph—

8 (A) by inserting “(1) the term” before
9 “‘bankruptcy’; and

10 (B) by striking the period at the end and
11 inserting “; and”; and

12 (2) in the second undesignated paragraph—

13 (A) by inserting “(2) the term” before
14 “‘document’; and

15 (B) by striking “this title” and inserting
16 “title 11”.

17 **SEC. 728. ROLLING STOCK EQUIPMENT.**

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

20 **“§ 1168. Rolling stock equipment**

21 “(a)(1) The right of a secured party with a security
22 interest in or of a lessor or conditional vendor of equip-
23 ment described in paragraph (2) to take possession of such
24 equipment in compliance with an equipment security
25 agreement, lease, or conditional sale contract, and to en-

1 force any of its other rights or remedies under such secu-
2 rity agreement, lease, or conditional sale contract, to sell,
3 lease, or otherwise retain or dispose of such equipment,
4 is not limited or otherwise affected by any other provision
5 of this title or by any power of the court, except that the
6 right to take possession and enforce those other rights and
7 remedies shall be subject to section 362, if—

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

14 “(B) any default, other than a default of a kind
15 described in section 365(b)(2), under such security
16 agreement, lease, or conditional sale contract that—

17 “(i) occurs before the date of commence-
18 ment of the case and is an event of default
19 therewith is cured before the expiration of such
20 60-day period;

21 “(ii) occurs or becomes an event of default
22 after the date of commencement of the case and
23 before the expiration of such 60-day period is
24 cured before the later of—

1 “(I) the date that is 30 days after the
2 date of the default or event of the default;

3 or

4 “(II) the expiration of such 60-day
5 period; and

6 “(iii) occurs on or after the expiration of
7 such 60-day period is cured in accordance with
8 the terms of such security agreement, lease, or
9 conditional sale contract, if cure is permitted
10 under that agreement, lease, or conditional sale
11 contract.

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

13 “(A) is rolling stock equipment or accessories
14 used on rolling stock equipment, including super-
15 structures or racks, that is subject to a security in-
16 terest granted by, leased to, or conditionally sold to
17 a debtor; and

18 “(B) includes all records and documents relat-
19 ing to such equipment that are required, under the
20 terms of the security agreement, lease, or conditional
21 sale contract, to be surrendered or returned by the
22 debtor in connection with the surrender or return of
23 such equipment.

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

4 “(b) The trustee and the secured party, lessor, or
5 conditional vendor whose right to take possession is pro-
6 tected under subsection (a) may agree, subject to the
7 court’s approval, to extend the 60-day period specified in
8 subsection (a)(1).

9 “(c)(1) In any case under this chapter, the trustee
10 shall immediately surrender and return to a secured party,
11 lessor, or conditional vendor, described in subsection
12 (a)(1), equipment described in subsection (a)(2), if at any
13 time after the date of commencement of the case under
14 this chapter such secured party, lessor, or conditional ven-
15 dor is entitled under subsection (a)(1) to take possession
16 of such equipment and makes a written demand for such
17 possession of the trustee.

18 “(2) At such time as the trustee is required under
19 paragraph (1) to surrender and return equipment de-
20 scribed in subsection (a)(2), any lease of such equipment,
21 and any security agreement or conditional sale contract
22 relating to such equipment, if such security agreement or
23 conditional sale contract is an executory contract, shall be
24 deemed rejected.

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

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

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

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

17 (b) AIRCRAFT EQUIPMENT AND VESSELS.—Section
18 1110 of title 11, United States Code, is amended to read
19 as follows:

20 **“§ 1110. Aircraft equipment and vessels**

21 “(a)(1) Except as provided in paragraph (2) and sub-
22 ject to subsection (b), the right of a secured party with
23 a security interest in equipment described in paragraph
24 (3), or of a lessor or conditional vendor of such equipment,
25 to take possession of such equipment in compliance with

1 a security agreement, lease, or conditional sale contract,
2 and to enforce any of its other rights or remedies, under
3 such security agreement, lease, or conditional sale con-
4 tract, to sell, lease, or otherwise retain or dispose of such
5 equipment, is not limited or otherwise affected by any
6 other provision of this title or by any power of the court.

7 “(2) The right to take possession and to enforce the
8 other rights and remedies described in paragraph (1) shall
9 be subject to section 362 if—

10 “(A) before the date that is 60 days after the
11 date of the order for relief under this chapter, the
12 trustee, subject to the approval of the court, agrees
13 to perform all obligations of the debtor under such
14 security agreement, lease, or conditional sale con-
15 tract; and

16 “(B) any default, other than a default of a kind
17 specified in section 365(b)(2), under such security
18 agreement, lease, or conditional sale contract that
19 occurs—

20 “(i) before the date of the order is cured
21 before the expiration of such 60-day period;

22 “(ii) after the date of the order and before
23 the expiration of such 60-day period is cured
24 before the later of—

1 “(I) the date that is 30 days after the
2 date of the default; or

3 “(II) the expiration of such 60-day
4 period; and

5 “(iii) on or after the expiration of such 60-
6 day period is cured in compliance with the
7 terms of such security agreement, lease, or con-
8 ditional sale contract, if a cure is permitted
9 under that agreement, lease, or contract.

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

11 “(A) is—

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

22 “(ii) a documented vessel (as defined in
23 section 30101(1) of title 46) that is subject to
24 a security interest granted by, leased to, or con-
25 ditionally sold to a debtor that is a water car-

1 rier that, at the time such transaction is en-
2 tered into, holds a certificate of public conven-
3 ience and necessity or permit issued by the De-
4 partment of Transportation; and

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

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

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

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

1 equipment and makes a written demand for such posses-
2 sion to the trustee.

3 “(2) At such time as the trustee is required under
4 paragraph (1) to surrender and return equipment de-
5 scribed in subsection (a)(3), any lease of such equipment,
6 and any security agreement or conditional sale contract
7 relating to such equipment, if such security agreement or
8 conditional sale contract is an executory contract, shall be
9 deemed rejected.

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

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

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

21 **SEC. 729. CURBING ABUSIVE FILINGS.**

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

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

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

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

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

10 “(A) transfer of all or part ownership of,
11 or other interest in, the real property without
12 the consent of the secured creditor or court ap-
13 proval; or

14 “(B) multiple bankruptcy filings affecting
15 the real property.

16 If recorded in compliance with applicable State laws gov-
17 erning notices of interests or liens in real property, an
18 order entered pursuant to this subsection shall be binding
19 in any other case under this title purporting to affect the
20 real property filed not later than 2 years after that record-
21 ing, except that a debtor in a subsequent case may move
22 for relief from such order based upon changed cir-
23 cumstances or for good cause shown, after notice and a
24 hearing.”.

1 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
2 United States Code, as amended by section 708 of this
3 Act, is amended—

4 (1) in paragraph (25), by striking “or” at the
5 end;

6 (2) in paragraph (26), by striking the period at
7 the end and inserting a semicolon; and

8 (3) by inserting after paragraph (26) the fol-
9 lowing:

10 “(27) under subsection (a) of this section, of
11 any act to enforce any lien against or security inter-
12 est in real property following the entry of an order
13 under section 362(d)(4) as to that property in any
14 prior bankruptcy case for a period of 2 years after
15 entry of such an order, except that, the debtor in a
16 subsequent case of the debtor, may move the court
17 for relief from such order based upon changed cir-
18 cumstances or for other good cause shown, after no-
19 tice and a hearing; or

20 “(28) under subsection (a) of this section, of
21 any act to enforce any lien against or security inter-
22 est in real property—

23 “(A) if the debtor is ineligible under sec-
24 tion 109(g) to be a debtor in a bankruptcy case;
25 or

1 “(B) if the bankruptcy case was filed in
2 violation of a bankruptcy court order in a prior
3 bankruptcy case prohibiting the debtor from
4 being a debtor in another bankruptcy case.”.

5 **SEC. 730. STUDY OF OPERATION OF TITLE 11 OF THE**
6 **UNITED STATES CODE WITH RESPECT TO**
7 **SMALL BUSINESSES.**

8 Not later than 2 years after the date of enactment
9 of this Act, the Administrator of the Small Business Ad-
10 ministration, in consultation with the Attorney General,
11 the Director of the Administrative Office of United States
12 Trustees, and the Director of the Administrative Office
13 of the United States Courts, shall—

14 (1) conduct a study to determine—

15 (A) the internal and external factors that
16 cause small businesses, especially sole propri-
17 etorships, to become debtors in cases under title
18 11 of the United States Code and that cause
19 certain small businesses to successfully com-
20 plete cases under chapter 11 of such title; and

21 (B) how Federal laws relating to bank-
22 ruptcy may be made more effective and efficient
23 in assisting small businesses to remain viable;
24 and

1 (2) submit to the President pro tempore of the
2 Senate and the Speaker of the House of Representa-
3 tives a report summarizing that study.

4 **SEC. 731. TRANSFERS MADE BY NONPROFIT CHARITABLE**
5 **CORPORATIONS.**

6 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)
7 of title 11, United States Code, is amended—

8 (1) by striking “only” and all that follows
9 through the end of the subsection and inserting
10 “only—

11 “(1) in accordance with applicable nonbank-
12 ruptcy law that governs the transfer of property by
13 a corporation or trust that is not a moneyed, busi-
14 ness, or commercial corporation or trust; and

15 “(2) to the extent not inconsistent with any re-
16 lief granted under subsection (c), (d), (e), or (f) of
17 section 362.”.

18 (b) CONFIRMATION OF PLAN FOR REORGANIZA-
19 TION.—Section 1129(a) of title 11, United States Code,
20 is amended by adding at the end the following:

21 “(14) All transfers of property of the plan shall
22 be made in accordance with any applicable provi-
23 sions of nonbankruptcy law that govern the transfer
24 of property by a corporation or trust that is not a

1 moneyed, business, or commercial corporation or
2 trust.”.

3 (c) TRANSFER OF PROPERTY.—Section 541 of title
4 11, United States Code, as amended by section 403 of this
5 Act, is amended by adding at the end the following:

6 “(e) Notwithstanding any other provision of this title,
7 property that is held by a debtor that is a corporation de-
8 scribed in section 501(c)(3) of the Internal Revenue Code
9 of 1986 and exempt from tax under section 501(a) of such
10 Code may be transferred to an entity that is not such a
11 corporation, but only under the same conditions as would
12 apply if the debtor had not filed a case under this title.”.

13 (d) APPLICABILITY.—The amendments made by this
14 section shall apply to a case pending under title 11, United
15 States Code, on the date of enactment of this Act, except
16 that the court shall not confirm a plan under chapter 11
17 of this title without considering whether this section would
18 substantially affect the rights of a party in interest who
19 first acquired rights with respect to the debtor after the
20 date of the petition. The parties who may appear and be
21 heard in a proceeding under this section include the attor-
22 ney general of the State in which the debtor is incor-
23 porated, was formed, or does business.

1 **SEC. 732. EFFECTIVE DATE; APPLICATION OF AMEND-**
2 **MENTS.**

3 (a) **EFFECTIVE DATE.**—Except as provided in sub-
4 section (b), this title and the amendments made by this
5 title shall take effect on the date of enactment of this Act.

6 (b) **APPLICATION OF AMENDMENTS.**—The amend-
7 ments made by this title shall apply only with respect to
8 cases commenced under title 11, United States Code, on
9 or after the date of enactment of this Act.

○