

Calendar No. 17

107TH CONGRESS
1ST SESSION

H. R. 333

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2001

Received; read twice and placed on the calendar

AN ACT

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,*

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

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Bankruptcy Abuse Prevention and Consumer Protection
 5 Act of 2001”.

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

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

TITLE I—NEEDS-BASED BANKRUPTCY

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

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

- Sec. 201. Promotion of alternative dispute resolution.
- Sec. 202. Effect of discharge.
- Sec. 203. Discouraging abuse of reaffirmation practices.

Subtitle B—Priority Child Support

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

Subtitle C—Other Consumer Protections

- Sec. 221. Amendments to discourage abusive bankruptcy filings.
- Sec. 222. Sense of Congress.
- Sec. 223. Additional amendments to title 11, United States Code.

- Sec. 224. Protection of retirement savings in bankruptcy.
- Sec. 225. Protection of education savings in bankruptcy.
- Sec. 226. Definitions.
- Sec. 227. Restrictions on debt relief agencies.
- Sec. 228. Disclosures.
- Sec. 229. Requirements for debt relief agencies.
- Sec. 230. GAO study.
- Sec. 231. Prohibition on disclosure of identity of minor children.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 301. Reinforcement of the fresh start.
- Sec. 302. Discouraging bad faith repeat filings.
- Sec. 303. Curbing abusive filings.
- Sec. 304. Debtor retention of personal property security.
- Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec. 306. Giving secured creditors fair treatment in chapter 13.
- Sec. 307. Domiciliary requirements for exemptions.
- Sec. 308. Residency requirement for homestead exemption.
- Sec. 309. Protecting secured creditors in chapter 13 cases.
- Sec. 310. Limitation on luxury goods.
- Sec. 311. Automatic stay.
- Sec. 312. Extension of period between bankruptcy discharges.
- Sec. 313. Definition of household goods and antiques.
- Sec. 314. Debt incurred to pay nondischargeable debts.
- Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
- Sec. 316. Dismissal for failure to timely file schedules or provide required information.
- Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 320. Prompt relief from stay in individual cases.
- Sec. 321. Chapter 11 cases filed by individuals.
- Sec. 322. Limitation.
- Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
- Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
- Sec. 325. United States trustee program filing fee increase.
- Sec. 326. Sharing of compensation.
- Sec. 327. Fair valuation of collateral.
- Sec. 328. Defaults based on nonmonetary obligations.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

- Sec. 401. Adequate protection for investors.
- Sec. 402. Meetings of creditors and equity security holders.
- Sec. 403. Protection of refinance of security interest.
- Sec. 404. Executory contracts and unexpired leases.
- Sec. 405. Creditors and equity security holders committees.
- Sec. 406. Amendment to section 546 of title 11, United States Code.
- Sec. 407. Amendments to section 330(a) of title 11, United States Code.

- Sec. 408. Postpetition disclosure and solicitation.
- Sec. 409. Preferences.
- Sec. 410. Venue of certain proceedings.
- Sec. 411. Period for filing plan under chapter 11.
- Sec. 412. Fees arising from certain ownership interests.
- Sec. 413. Creditor representation at first meeting of creditors.
- Sec. 414. Definition of disinterested person.
- Sec. 415. Factors for compensation of professional persons.
- Sec. 416. Appointment of elected trustee.
- Sec. 417. Utility service.
- Sec. 418. Bankruptcy fees.
- Sec. 419. More complete information regarding assets of the estate.

Subtitle B—Small Business Bankruptcy Provisions

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

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

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

TITLE VI—BANKRUPTCY DATA

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

TITLE VII—BANKRUPTCY TAX PROVISIONS

- Sec. 701. Treatment of certain liens.
- Sec. 702. Treatment of fuel tax claims.
- Sec. 703. Notice of request for a determination of taxes.
- Sec. 704. Rate of interest on tax claims.
- Sec. 705. Priority of tax claims.
- Sec. 706. Priority property taxes incurred.
- Sec. 707. No discharge of fraudulent taxes in chapter 13.
- Sec. 708. No discharge of fraudulent taxes in chapter 11.
- Sec. 709. Stay of tax proceedings limited to prepetition taxes.
- Sec. 710. Periodic payment of taxes in chapter 11 cases.

- Sec. 711. Avoidance of statutory tax liens prohibited.
- Sec. 712. Payment of taxes in the conduct of business.
- Sec. 713. Tardily filed priority tax claims.
- Sec. 714. Income tax returns prepared by tax authorities.
- Sec. 715. Discharge of the estate's liability for unpaid taxes.
- Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
- Sec. 717. Standards for tax disclosure.
- Sec. 718. Setoff of tax refunds.
- Sec. 719. Special provisions related to the treatment of State and local taxes.
- Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

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

TITLE IX—FINANCIAL CONTRACT PROVISIONS

- Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 902. Authority of the corporation with respect to failed and failing institutions.
- Sec. 903. Amendments relating to transfers of qualified financial contracts.
- Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 905. Clarifying amendment relating to master agreements.
- Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 907. Bankruptcy Code amendments.
- Sec. 907A. Securities broker and commodity broker liquidation.
- Sec. 908. Recordkeeping requirements.
- Sec. 909. Exemptions from contemporaneous execution requirement.
- Sec. 910. Damage measure.
- Sec. 911. SIPC stay.
- Sec. 912. Asset-backed securitizations.

TITLE X—PROTECTION OF FAMILY FARMERS

- Sec. 1001. Permanent reenactment of chapter 12.
- Sec. 1002. Debt limit increase.
- Sec. 1003. Certain claims owed to governmental units.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

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

TITLE XII—TECHNICAL AMENDMENTS

- Sec. 1201. Definitions.
- Sec. 1202. Adjustment of dollar amounts.
- Sec. 1203. Extension of time.
- Sec. 1204. Technical amendments.

- Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 1206. Limitation on compensation of professional persons.
- Sec. 1207. Effect of conversion.
- Sec. 1208. Allowance of administrative expenses.
- Sec. 1209. Exceptions to discharge.
- Sec. 1210. Effect of discharge.
- Sec. 1211. Protection against discriminatory treatment.
- Sec. 1212. Property of the estate.
- Sec. 1213. Preferences.
- Sec. 1214. Postpetition transactions.
- Sec. 1215. Disposition of property of the estate.
- Sec. 1216. General provisions.
- Sec. 1217. Abandonment of railroad line.
- Sec. 1218. Contents of plan.
- Sec. 1219. Discharge under chapter 12.
- Sec. 1220. Bankruptcy cases and proceedings.
- Sec. 1221. Knowing disregard of bankruptcy law or rule.
- Sec. 1222. Transfers made by nonprofit charitable corporations.
- Sec. 1223. Protection of valid purchase money security interests.
- Sec. 1224. Bankruptcy judgeships.
- Sec. 1225. Compensating trustees.
- Sec. 1226. Amendment to section 362 of title 11, United States Code.
- Sec. 1227. Judicial education.
- Sec. 1228. Reclamation.
- Sec. 1229. Providing requested tax documents to the court.
- Sec. 1230. Encouraging creditworthiness.
- Sec. 1231. Property no longer subject to redemption.
- Sec. 1232. Trustees.
- Sec. 1233. Bankruptcy forms.
- Sec. 1234. Expedited appeals of bankruptcy cases to courts of appeals.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

- Sec. 1301. Enhanced disclosures under an open end credit plan.
- Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
- Sec. 1303. Disclosures related to “introductory rates”.
- Sec. 1304. Internet-based credit card solicitations.
- Sec. 1305. Disclosures related to late payment deadlines and penalties.
- Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
- Sec. 1307. Dual use debit card.
- Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 1309. Clarification of clear and conspicuous.
- Sec. 1310. Enforcement of certain foreign judgments barred.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

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

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

3 **SEC. 101. CONVERSION.**

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

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

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

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

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

13 and

14 (2) in subsection (b)—

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

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

18 (i) in the first sentence—

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

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

1 this title,” after “consumer debts”;

2 and

3 (III) by striking “a substantial

4 abuse” and inserting “an abuse”; and

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

6 tence; and

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

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

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

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

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

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

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

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

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

16 greater; or

17 “(II) \$10,000.

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

19 debtor’s applicable monthly expense amounts specified

20 under the National Standards and Local Standards, and

21 the debtor’s actual monthly expenses for the categories

22 specified as Other Necessary Expenses issued by the In-

23 ternal Revenue Service for the area in which the debtor

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

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

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

18 “(II) In addition, the debtor's monthly expenses may
19 include, if applicable, the continuation of actual expenses
20 paid by the debtor that are reasonable and necessary for
21 care and support of an elderly, chronically ill, or disabled
22 household member or member of the debtor's immediate
23 family (including parents, grandparents, and siblings of
24 the debtor, the dependents of the debtor, and the spouse
25 of the debtor in a joint case who is not a dependent) and

1 who is unable to pay for such reasonable and necessary
2 expenses.

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

10 “(IV) In addition, the debtor’s monthly expenses may
11 include the actual expenses for each dependent child under
12 the age of 18 years up to \$1,500 per year per child to
13 attend a private or public elementary or secondary school,
14 if the debtor provides documentation of such expenses and
15 a detailed explanation of why such expenses are reasonable
16 and necessary.

17 “(iii) The debtor’s average monthly payments on ac-
18 count of secured debts shall be calculated as—

19 “(I) the sum of—

20 “(aa) the total of all amounts scheduled as
21 contractually due to secured creditors in each
22 month of the 60 months following the date of
23 the petition; and

24 “(bb) any additional payments to secured
25 creditors necessary for the debtor, in filing a

1 plan under chapter 13 of this title, to maintain
2 possession of the debtor's primary residence,
3 motor vehicle, or other property necessary for
4 the support of the debtor and the debtor's de-
5 pendants, that serves as collateral for secured
6 debts; divided by

7 “(II) 60.

8 “(iv) The debtor's expenses for payment of all pri-
9 ority claims (including priority child support and alimony
10 claims) shall be calculated as—

11 “(I) the total amount of debts entitled to pri-
12 ority; divided by

13 “(II) 60.

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

19 “(ii) In order to establish special circumstances, the
20 debtor shall be required to—

21 “(I) itemize each additional expense or adjust-
22 ment of income; and

23 “(II) provide—

24 “(aa) documentation for such expense or
25 adjustment to income; and

1 “(bb) a detailed explanation of the special
2 circumstances that make such expenses or ad-
3 justment to income necessary and reasonable.

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

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

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

15 “(II) \$10,000.

16 “(C) As part of the schedule of current income and
17 expenditures required under section 521, the debtor shall
18 include a statement of the debtor’s current monthly in-
19 come, and the calculations that determine whether a pre-
20 sumption arises under subparagraph (A)(i), that shows
21 how each such amount is calculated.

22 “(3) In considering under paragraph (1) whether the
23 granting of relief would be an abuse of the provisions of
24 this chapter in a case in which the presumption in sub-

1 paragraph (A)(i) of such paragraph does not apply or has
2 been rebutted, the court shall consider—

3 “(A) whether the debtor filed the petition in
4 bad faith; or

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

10 “(4)(A) The court shall order the counsel for the
11 debtor to reimburse the trustee for all reasonable costs
12 in prosecuting a motion brought under section 707(b), in-
13 cluding reasonable attorneys’ fees, if—

14 “(i) a trustee appointed under section 586(a)(1)
15 of title 28 or from a panel of private trustees main-
16 tained by the bankruptcy administrator brings a mo-
17 tion for dismissal or conversion under this sub-
18 section; and

19 “(ii) the court—

20 “(I) grants that motion; and

21 “(II) finds that the action of the counsel
22 for the debtor in filing under this chapter vio-
23 lated rule 9011 of the Federal Rules of Bank-
24 ruptcy Procedure.

1 “(B) If the court finds that the attorney for the debt-
2 or violated rule 9011 of the Federal Rules of Bankruptcy
3 Procedure, at a minimum, the court shall order—

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

6 “(ii) the payment of the civil penalty to the
7 trustee, the United States trustee, or the bankruptcy
8 administrator.

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

12 “(i) performed a reasonable investigation into
13 the circumstances that gave rise to the petition,
14 pleading, or written motion; and

15 “(ii) determined that the petition, pleading, or
16 written motion—

17 “(I) is well grounded in fact; and

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

22 “(D) The signature of an attorney on the petition
23 shall constitute a certification that the attorney has no
24 knowledge after an inquiry that the information in the
25 schedules filed with such petition is incorrect.

1 “(5)(A) Except as provided in subparagraph (B) and
2 subject to paragraph (6), the court may award a debtor
3 all reasonable costs (including reasonable attorneys’ fees)
4 in contesting a motion brought by a party in interest
5 (other than a trustee, United States trustee, or bank-
6 ruptcy administrator) under this subsection if—

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

8 “(ii) the court finds that—

9 “(I) the position of the party that brought
10 the motion violated rule 9011 of the Federal
11 Rules of Bankruptcy Procedure; or

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

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

19 “(C) For purposes of this paragraph—

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

23 “(I) has less than 25 full-time employees
24 as determined on the date the motion is filed;
25 and

1 “(II) is engaged in commercial or business
2 activity; and

3 “(ii) the number of employees of a wholly
4 owned subsidiary of a corporation includes the em-
5 ployees of—

6 “(I) a parent corporation; and

7 “(II) any other subsidiary corporation of
8 the parent corporation.

9 “(6) Only the judge, United States trustee, or bank-
10 ruptcy administrator may bring a motion under section
11 707(b), if the current monthly income of the debtor, or
12 in a joint case, the debtor and the debtor’s spouse, as of
13 the date of the order for relief, when multiplied by 12,
14 is equal to or less than—

15 “(A) in the case of a debtor in a household of
16 1 person, the median family income of the applicable
17 State for 1 earner last reported by the Bureau of
18 the Census;

19 “(B) in the case of a debtor in a household of
20 2, 3, or 4 individuals, the highest median family in-
21 come of the applicable State for a family of the same
22 number or fewer individuals last reported by the Bu-
23 reau of the Census; or

24 “(C) in the case of a debtor in a household ex-
25 ceeding 4 individuals, the highest median family in-

1 come of the applicable State for a family of 4 or
2 fewer individuals last reported by the Bureau of the
3 Census, plus \$525 per month for each individual in
4 excess of 4.

5 “(7) No judge, United States trustee, panel trustee,
6 bankruptcy administrator or other party in interest may
7 bring a motion under paragraph (2), if the current month-
8 ly income of the debtor and the debtor’s spouse combined,
9 as of the date of the order for relief when multiplied by
10 12, is equal to or less than—

11 “(A) in the case of a debtor in a household of
12 1 person, the median family income of the applicable
13 State for 1 earner last reported by the Bureau of
14 the Census;

15 “(B) in the case of a debtor in a household of
16 2, 3, or 4 individuals, the highest median family in-
17 come of the applicable State for a family of the same
18 number or fewer individuals last reported by the Bu-
19 reau of the Census; or

20 “(C) in the case of a debtor in a household ex-
21 ceeding 4 individuals, the highest median family in-
22 come of the applicable State for a family of 4 or
23 fewer individuals last reported by the Bureau of the
24 Census, plus \$525 per month for each individual in
25 excess of 4.”.

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

4 “(10A) ‘current monthly income’—

5 “(A) means the average monthly income
6 from all sources which the debtor, or in a joint
7 case, the debtor and the debtor’s spouse, receive
8 without regard to whether the income is taxable
9 income, derived during the 6-month period pre-
10 ceeding the date of determination; and

11 “(B) includes any amount paid by any en-
12 tity other than the debtor (or, in a joint case,
13 the debtor and the debtor’s spouse), on a reg-
14 ular basis to the household expenses of the
15 debtor or the debtor’s dependents (and, in a
16 joint case, the debtor’s spouse if not otherwise
17 a dependent), but excludes benefits received
18 under the Social Security Act and payments to
19 victims of war crimes or crimes against human-
20 ity on account of their status as victims of such
21 crimes;”.

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

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

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

4 “(b)(1) With respect to an individual debtor under
5 this chapter—

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

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

15 “(2) The United States trustee or bankruptcy admin-
16 istrator shall, not later than 30 days after the date of fil-
17 ing a statement under paragraph (1), either file a motion
18 to dismiss or convert under section 707(b) or file a state-
19 ment setting forth the reasons the United States trustee
20 or bankruptcy administrator does not believe that such a
21 motion would be appropriate, if the United States trustee
22 or bankruptcy administrator determines that the debtor’s
23 case should be presumed to be an abuse under section
24 707(b) and the product of the debtor’s current monthly
25 income, multiplied by 12 is not less than—

1 “(A) in the case of a debtor in a household of
2 1 person, the median family income of the applicable
3 State for 1 earner last reported by the Bureau of
4 the Census; or

5 “(B) in the case of a debtor in a household of
6 2 or more individuals, the highest median family in-
7 come of the applicable State for a family of the same
8 number or fewer individuals last reported by the Bu-
9 reau of the Census.

10 “(3) In any case in which a motion to dismiss or con-
11 vert, or a statement is required to be filed by this sub-
12 section, the United States trustee or bankruptcy adminis-
13 trator may decline to file a motion to dismiss or convert
14 pursuant to section 704(b)(2) if the product of the debt-
15 or’s current monthly income multiplied by 12 exceeds 100
16 percent, but does not exceed 150 percent of—

17 “(A)(i) in the case of a debtor in a household
18 of 1 person, the median family income of the appli-
19 cable State for 1 earner last reported by the Bureau
20 of the Census; or

21 “(ii) in the case of a debtor in a household of
22 2 or more individuals, the highest median family in-
23 come of the applicable State for a family of the same
24 number or fewer individuals last reported by the Bu-
25 reau of the Census; and

1 “(B) the product of the debtor’s current month-
2 ly income, reduced by the amounts determined under
3 section 707(b)(2)(A)(ii) (except for the amount cal-
4 culated under the other necessary expenses standard
5 issued by the Internal Revenue Service) and clauses
6 (iii) and (iv) of section 707(b)(2)(A), multiplied by
7 60 is less than the lesser of—

8 “(i) 25 percent of the debtor’s nonpriority
9 unsecured claims in the case or \$6,000, which-
10 ever is greater; or

11 “(ii) \$10,000.”.

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

14 “(d) In a case under chapter 7 of this title in which
15 the debtor is an individual and in which the presumption
16 of abuse is triggered under section 707(b), the clerk shall
17 give written notice to all creditors not later than 10 days
18 after the date of the filing of the petition that the pre-
19 sumption of abuse has been triggered.”.

20 (e) NONLIMITATION OF INFORMATION.—Nothing in
21 this title shall limit the ability of a creditor to provide in-
22 formation to a judge (except for information commu-
23 nicated ex parte, unless otherwise permitted by applicable
24 law), United States trustee, bankruptcy administrator or
25 trustee.

1 (f) DISMISSAL FOR CERTAIN CRIMES.—Section 707
2 of title 11, United States Code, as amended by this sec-
3 tion, is amended by adding at the end the following:

4 “(c)(1) In this subsection—

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

7 “(B) the term ‘drug trafficking crime’ has the
8 meaning given that term in section 924(c)(2) of title
9 18.

10 “(2) Except as provided in paragraph (3), after no-
11 tice and a hearing, the court, on a motion by the victim
12 of a crime of violence or a drug trafficking crime, may
13 when it is in the best interest of the victims dismiss a
14 voluntary case filed by an individual debtor under this
15 chapter if that individual was convicted of that crime.

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

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

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

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

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

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

6 (h) **APPLICABILITY OF MEANS TEST TO CHAPTER**
7 **13.**—Section 1325(b) of title 11, United States Code, is
8 amended—

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

11 (2) by striking paragraph (2) and inserting the
12 following:

13 “(2) For purposes of this subsection, the term
14 ‘disposable income’ means current monthly income
15 received by the debtor (other than child support pay-
16 ments, foster care payments, or disability payments
17 for a dependent child made in accordance with appli-
18 cable nonbankruptcy law to the extent reasonably
19 necessary to be expended for such child) less
20 amounts reasonably necessary to be expended—

21 “(A) for the maintenance or support of the
22 debtor or a dependent of the debtor or for a do-
23 mestic support obligation that first becomes
24 payable after the date the petition is filed and
25 for charitable contributions (that meet the defi-

1 nition of ‘charitable contribution’ under section
2 548(d)(3) to a qualified religious or charitable
3 entity or organization (as that term is defined
4 in section 548(d)(4)) in an amount not to ex-
5 ceed 15 percent of gross income of the debtor
6 for the year in which the contributions are
7 made; and

8 “(B) if the debtor is engaged in business,
9 for the payment of expenditures necessary for
10 the continuation, preservation, and operation of
11 such business.

12 “(3) Amounts reasonably necessary to be ex-
13 pended under paragraph (2) shall be determined in
14 accordance with subparagraphs (A) and (B) of sec-
15 tion 707(b)(2), if the debtor has current monthly in-
16 come, when multiplied by 12, greater than—

17 “(A) in the case of a debtor in a household
18 of 1 person, the median family income of the
19 applicable State for 1 earner last reported by
20 the Bureau of the Census;

21 “(B) in the case of a debtor in a household
22 of 2, 3, or 4 individuals, the highest median
23 family income of the applicable State for a fam-
24 ily of the same number or fewer individuals last
25 reported by the Bureau of the Census; or

1 “(C) in the case of a debtor in a household
2 exceeding 4 individuals, the highest median
3 family income of the applicable State for a fam-
4 ily of 4 or fewer individuals last reported by the
5 Bureau of the Census, plus \$525 per month for
6 each individual in excess of 4.”.

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

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

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

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

18 (b) STUDY.—

19 (1) IN GENERAL.—Not later than 2 years after
20 the date of enactment of this Act, the Director of
21 the Executive Office for United States Trustees shall
22 submit a report to the Committee on the Judiciary
23 of the Senate and the Committee on the Judiciary
24 of the House of Representatives containing the find-

1 ings of the Director regarding the utilization of In-
2 ternal Revenue Service standards for determining—

3 (A) the current monthly expenses of a
4 debtor under section 707(b) of title 11, United
5 States Code; and

6 (B) the impact that the application of such
7 standards has had on debtors and on the bank-
8 ruptcy courts.

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

14 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

17 “(b) Before the commencement of a case under this
18 title by an individual whose debts are primarily consumer
19 debts, the clerk shall give to such individual written notice
20 containing—

21 “(1) a brief description of—

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

1 “(B) the types of services available from
2 credit counseling agencies; and

3 “(2) statements specifying that—

4 “(A) a person who knowingly and fraudu-
5 lently conceals assets or makes a false oath or
6 statement under penalty of perjury in connec-
7 tion with a bankruptcy case shall be subject to
8 fine, imprisonment, or both; and

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

12 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**
13 **TEST PROGRAM.**

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

1 (b) TEST.—

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

7 (2) USE.—For an 18-month period beginning
8 not later than 270 days after the date of enactment
9 of this Act, such curriculum and materials shall be,
10 for the 6 judicial districts selected under paragraph
11 (1), used as the instructional course concerning per-
12 sonal financial management for purposes of section
13 111 of title 11, United States Code.

14 (c) EVALUATION.—

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

18 (A) the financial management training cur-
19 riculum and materials developed under sub-
20 section (a); and

21 (B) a sample of existing consumer edu-
22 cation programs such as those described in the
23 Report of the National Bankruptcy Review
24 Commission (October 20, 1997) that are rep-
25 resentative of consumer education programs

1 carried out by the credit industry, by trustees
2 serving under chapter 13 of title 11, United
3 States Code, and by consumer counseling
4 groups.

5 (2) REPORT.—Not later than 3 months after
6 concluding such evaluation, the Director shall sub-
7 mit a report to the Speaker of the House of Rep-
8 resentatives and the President pro tempore of the
9 Senate, for referral to the appropriate committees of
10 the Congress, containing the findings of the Director
11 regarding the effectiveness of such curriculum, such
12 materials, and such programs and their costs.

13 **SEC. 106. CREDIT COUNSELING.**

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

17 “(h)(1) Subject to paragraphs (2) and (3), and not-
18 withstanding any other provision of this section, an indi-
19 vidual may not be a debtor under this title unless that
20 individual has, during the 180-day period preceding the
21 date of filing of the petition of that individual, received
22 from an approved nonprofit budget and credit counseling
23 agency described in section 111(a) an individual or group
24 briefing (including a briefing conducted by telephone or
25 on the Internet) that outlined the opportunities for avail-

1 able credit counseling and assisted that individual in per-
2 forming a related budget analysis.

3 “(2)(A) Paragraph (1) shall not apply with respect
4 to a debtor who resides in a district for which the United
5 States trustee or bankruptcy administrator of the bank-
6 ruptcy court of that district determines that the approved
7 nonprofit budget and credit counseling agencies for that
8 district are not reasonably able to provide adequate serv-
9 ices to the additional individuals who would otherwise seek
10 credit counseling from that agency by reason of the re-
11 quirements of paragraph (1).

12 “(B) Each United States trustee or bankruptcy ad-
13 ministrator that makes a determination described in sub-
14 paragraph (A) shall review that determination not later
15 than 1 year after the date of that determination, and not
16 less frequently than every year thereafter. Notwith-
17 standing the preceding sentence, a nonprofit budget and
18 credit counseling agency may be disapproved by the
19 United States trustee or bankruptcy administrator at any
20 time.

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

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

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

7 “(iii) is satisfactory to the court.

8 “(B) With respect to a debtor, an exemption under
9 subparagraph (A) shall cease to apply to that debtor on
10 the date on which the debtor meets the requirements of
11 paragraph (1), but in no case may the exemption apply
12 to that debtor after the date that is 30 days after the debt-
13 or files a petition, except that the court, for cause, may
14 order an additional 15 days.”.

15 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
16 11, United States Code, is amended—

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

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

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

22 “(11) after the filing of the petition, the debtor
23 failed to complete an instructional course concerning
24 personal financial management described in section
25 111.

1 “(12)(A) Paragraph (11) shall not apply with
2 respect to a debtor who resides in a district for
3 which the United States trustee or bankruptcy ad-
4 ministrator of that district determines that the ap-
5 proved instructional courses are not adequate to
6 service the additional individuals required to com-
7 plete such instructional courses under this section.

8 “(B) Each United States trustee or bankruptcy
9 administrator that makes a determination described
10 in subparagraph (A) shall review that determination
11 not later than 1 year after the date of that deter-
12 mination, and not less frequently than every year
13 thereafter.”.

14 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title
15 11, United States Code, is amended by adding at the end
16 the following:

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

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

1 tional individuals who would be required to complete the
2 instructional course by reason of the requirements of this
3 section.

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

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

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

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

14 “(b) In addition to the requirements under subsection
15 (a), an individual debtor shall file with the court—

16 “(1) a certificate from the approved nonprofit
17 budget and credit counseling agency that provided
18 the debtor services under section 109(h) describing
19 the services provided to the debtor; and

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

24 (e) GENERAL PROVISIONS.—

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

4 **“§ 111. Credit counseling agencies; financial manage-**
5 **ment instructional courses**

6 “(a) The clerk of each district shall maintain a pub-
7 licly available list of—

8 “(1) credit counseling agencies that provide 1
9 or more programs described in section 109(h) cur-
10 rently approved by the United States trustee or the
11 bankruptcy administrator for the district, as applica-
12 ble; and

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

17 “(b) The United States trustee or bankruptcy admin-
18 istrator shall only approve a credit counseling agency or
19 instructional course concerning personal financial manage-
20 ment as follows:

21 “(1) The United States trustee or bankruptcy
22 administrator shall have thoroughly reviewed the
23 qualifications of the credit counseling agency or of
24 the provider of the instructional course under the
25 standards set forth in this section, and the programs

1 or instructional courses which will be offered by such
2 agency or provider, and may require an agency or
3 provider of an instructional course which has sought
4 approval to provide information with respect to such
5 review.

6 “(2) The United States trustee or bankruptcy
7 administrator shall have determined that the credit
8 counseling agency or course of instruction fully sat-
9 isfies the applicable standards set forth in this sec-
10 tion.

11 “(3) When an agency or course of instruction
12 is initially approved, such approval shall be for a
13 probationary period not to exceed 6 months. An
14 agency or course of instruction is initially approved
15 if it did not appear on the approved list for the dis-
16 trict under subsection (a) immediately prior to ap-
17 proval.

18 “(4) At the conclusion of the probationary pe-
19 riod under paragraph (3), the United States trustee
20 or bankruptcy administrator may only approve for
21 an additional 1-year period, and for successive 1-
22 year periods thereafter, any agency or course of in-
23 struction which has demonstrated during the proba-
24 tionary or subsequent period that such agency or
25 course of instruction—

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

3 “(B) can satisfy such standards in the fu-
4 ture.

5 “(5) Not later than 30 days after any final de-
6 cision under paragraph (4), that occurs either after
7 the expiration of the initial probationary period, or
8 after any 2-year period thereafter, an interested per-
9 son may seek judicial review of such decision in the
10 appropriate United States District Court.

11 “(c)(1) The United States trustee or bankruptcy ad-
12 ministrators shall only approve a credit counseling agency
13 that demonstrates that it will provide qualified counselors,
14 maintain adequate provision for safekeeping and payment
15 of client funds, provide adequate counseling with respect
16 to client credit problems, and deal responsibly and effec-
17 tively with other matters as relate to the quality, effective-
18 ness, and financial security of such programs.

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

22 “(A) be a nonprofit budget and credit coun-
23 seling agency, the majority of the board of directors
24 of which—

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

1 “(ii) will not directly or indirectly benefit
2 financially from the outcome of a credit coun-
3 seling session;

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

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

10 “(D) provide full disclosures to clients, includ-
11 ing funding sources, counselor qualifications, pos-
12 sible impact on credit reports, and any costs of such
13 program that will be paid by the debtor and how
14 such costs will be paid;

15 “(E) provide adequate counseling with respect
16 to client credit problems that includes an analysis of
17 their current situation, what brought them to that
18 financial status, and how they can develop a plan to
19 handle the problem without incurring negative amor-
20 tization of their debts;

21 “(F) provide trained counselors who receive no
22 commissions or bonuses based on the counseling ses-
23 sion outcome, and who have adequate experience,
24 and have been adequately trained to provide coun-
25 seling services to individuals in financial difficulty,

1 including the matters described in subparagraph
2 (E);

3 “(G) demonstrate adequate experience and
4 background in providing credit counseling; and

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

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

11 “(1) for an initial probationary period under
12 subsection (b)(3) if the course will provide at a
13 minimum—

14 “(A) trained personnel with adequate expe-
15 rience and training in providing effective in-
16 struction and services;

17 “(B) learning materials and teaching
18 methodologies designed to assist debtors in un-
19 derstanding personal financial management and
20 that are consistent with stated objectives di-
21 rectly related to the goals of such course of in-
22 struction;

23 “(C) adequate facilities situated in reason-
24 ably convenient locations at which such course
25 of instruction is offered, except that such facili-

1 ties may include the provision of such course of
2 instruction or program by telephone or through
3 the Internet, if the course of instruction or pro-
4 gram is effective; and

5 “(D) the preparation and retention of rea-
6 sonable records (which shall include the debt-
7 or’s bankruptcy case number) to permit evalua-
8 tion of the effectiveness of such course of in-
9 struction or program, including any evaluation
10 of satisfaction of course of instruction or pro-
11 gram requirements for each debtor attending
12 such course of instruction or program, which
13 shall be available for inspection and evaluation
14 by the Executive Office for United States
15 Trustees, the United States trustee, bankruptcy
16 administrator, or chief bankruptcy judge for the
17 district in which such course of instruction or
18 program is offered; and

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

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

1 “(B) is otherwise likely to increase sub-
2 stantially debtor understanding of personal fi-
3 nancial management.

4 “(e) The District Court may, at any time, investigate
5 the qualifications of a credit counseling agency referred
6 to in subsection (a), and request production of documents
7 to ensure the integrity and effectiveness of such credit
8 counseling agencies. The District Court may, at any time,
9 remove from the approved list under subsection (a) a cred-
10 it counseling agency upon finding such agency does not
11 meet the qualifications of subsection (b).

12 “(f) The United States trustee or bankruptcy admin-
13 istrator shall notify the clerk that a credit counseling
14 agency or an instructional course is no longer approved,
15 in which case the clerk shall remove it from the list main-
16 tained under subsection (a).

17 “(g)(1) No credit counseling agency may provide to
18 a credit reporting agency information concerning whether
19 an individual debtor has received or sought instruction
20 concerning personal financial management from the credit
21 counseling agency.

22 “(2) A credit counseling service that willfully or neg-
23 ligently fails to comply with any requirement under this
24 title with respect to a debtor shall be liable for damages
25 in an amount equal to the sum of—

1 Act, issue schedules of reasonable and necessary adminis-
2 trative expenses of administering a chapter 13 plan for
3 each judicial district of the United States.

4 **TITLE II—ENHANCED**
5 **CONSUMER PROTECTION**
6 **Subtitle A—Penalties for Abusive**
7 **Creditor Practices**

8 **SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**
9 **TION.**

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

13 “(k)(1) The court, on the motion of the debtor and
14 after a hearing, may reduce a claim filed under this sec-
15 tion based in whole on unsecured consumer debts by not
16 more than 20 percent of the claim, if—

17 “(A) the claim was filed by a creditor who un-
18 reasonably refused to negotiate a reasonable alter-
19 native repayment schedule proposed by an approved
20 credit counseling agency described in section 111
21 acting on behalf of the debtor;

22 “(B) the offer of the debtor under subpara-
23 graph (A)—

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

1 “(ii) provided for payment of at least 60
2 percent of the amount of the debt over a period
3 not to exceed the repayment period of the loan,
4 or a reasonable extension thereof; and

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

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

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

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

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

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

21 **SEC. 202. EFFECT OF DISCHARGE.**

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

24 “(i) The willful failure of a creditor to credit pay-
25 ments received under a plan confirmed under this title (in-

1 cluding a plan of reorganization confirmed under chapter
 2 11 of this title), unless the plan is dismissed, in default,
 3 or the creditor has not received payments required to be
 4 made under the plan in the manner required by the plan
 5 (including crediting the amounts required under the plan),
 6 shall constitute a violation of an injunction under sub-
 7 section (a)(2) if the act of the creditor to collect and fail-
 8 ure to credit payments in the manner required by the plan
 9 caused material injury to the debtor.

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

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

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

18 “(3) such act is limited to seeking or obtaining
 19 periodic payments associated with a valid security
 20 interest in lieu of pursuit of in rem relief to enforce
 21 the lien.”.

22 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**
 23 **PRACTICES.**

24 (a) IN GENERAL.—Section 524 of title 11, United
 25 States Code, as amended by this Act, is amended—

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

3 “(2) the debtor received the disclosures de-
4 scribed in subsection (k) at or before the time at
5 which the debtor signed the agreement;”;

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

7 “(k)(1) The disclosures required under subsection
8 (c)(2) shall consist of the disclosure statement described
9 in paragraph (3), completed as required in that para-
10 graph, together with the agreement, statement, declara-
11 tion, motion and order described, respectively, in para-
12 graphs (4) through (8), and shall be the only disclosures
13 required in connection with the reaffirmation.

14 “(2) Disclosures made under paragraph (1) shall be
15 made clearly and conspicuously and in writing. The terms
16 ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall
17 be disclosed more conspicuously than other terms, data or
18 information provided in connection with this disclosure,
19 except that the phrases ‘Before agreeing to reaffirm a
20 debt, review these important disclosures’ and ‘Summary
21 of Reaffirmation Agreement’ may be equally conspicuous.
22 Disclosures may be made in a different order and may
23 use terminology different from that set forth in para-
24 graphs (2) through (8), except that the terms ‘Amount

1 Reaffirmed’ and ‘Annual Percentage Rate’ must be used
2 where indicated.

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

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

8 “(B) Under the heading ‘Summary of Reaffir-
9 mation Agreement’, the statement: ‘This Summary
10 is made pursuant to the requirements of the Bank-
11 ruptcy Code’;

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

14 “(i) the total amount which the debtor
15 agrees to reaffirm, and

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

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

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

22 “(ii) ‘Your credit agreement may obligate
23 you to pay additional amounts which may come
24 due after the date of this disclosure. Consult
25 your credit agreement.’.

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

3 “(i) if, at the time the petition is filed, the
4 debt is open end credit as defined under the
5 Truth in Lending Act, then—

6 “(I) the annual percentage rate deter-
7 mined under paragraphs (5) and (6) of
8 section 127(b) of the Truth in Lending
9 Act, as applicable, as disclosed to the debt-
10 or in the most recent periodic statement
11 prior to the agreement or, if no such peri-
12 odic statement has been provided the debt-
13 or during the prior 6 months, the annual
14 percentage rate as it would have been so
15 disclosed at the time the disclosure state-
16 ment is given the debtor, or to the extent
17 this annual percentage rate is not readily
18 available or not applicable, then

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

1 identifying the amount of each such bal-
2 ance included in the amount reaffirmed, or

3 “(III) if the entity making the disclo-
4 sure elects, to disclose the annual percent-
5 age rate under subclause (I) and the sim-
6 ple interest rate under subclause (II);

7 “(ii) if, at the time the petition is filed, the
8 debt is closed end credit as defined under the
9 Truth in Lending Act, then—

10 “(I) the annual percentage rate under
11 section 128(a)(4) of the Truth in Lending
12 Act, as disclosed to the debtor in the most
13 recent disclosure statement given the debt-
14 or prior to the reaffirmation agreement
15 with respect to the debt, or, if no such dis-
16 closure statement was provided the debtor,
17 the annual percentage rate as it would
18 have been so disclosed at the time the dis-
19 closure statement is given the debtor, or to
20 the extent this annual percentage rate is
21 not readily available or not applicable, then

22 “(II) the simple interest rate applica-
23 ble to the amount reaffirmed as of the date
24 the disclosure statement is given the debt-
25 or, or if different simple interest rates

1 apply to different balances, the simple in-
2 terest rate applicable to each such balance,
3 identifying the amount of such balance in-
4 cluded in the amount reaffirmed, or

5 “(III) if the entity making the disclo-
6 sure elects, to disclose the annual percent-
7 age rate under (I) and the simple interest
8 rate under (II).

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

16 “(G) If the debt is secured by a security inter-
17 est which has not been waived in whole or in part
18 or determined to be void by a final order of the
19 court at the time of the disclosure, by disclosing that
20 a security interest or lien in goods or property is as-
21 serted over some or all of the obligations you are re-
22 affirming and listing the items and their original
23 purchase price that are subject to the asserted secu-
24 rity interest, or if not a purchase-money security in-

1 terest then listing by items or types and the original
2 amount of the loan.

3 “(H) At the election of the creditor, a state-
4 ment of the repayment schedule using 1 or a com-
5 bination of the following—

6 “(i) by making the statement: ‘Your first
7 payment in the amount of \$_____ is due on
8 _____ but the future payment amount may be
9 different. Consult your reaffirmation or credit
10 agreement, as applicable.’, and stating the
11 amount of the first payment and the due date
12 of that payment in the places provided;

13 “(ii) by making the statement: ‘Your pay-
14 ment schedule will be:’, and describing the re-
15 payment schedule with the number, amount and
16 due dates or period of payments scheduled to
17 repay the obligations reaffirmed to the extent
18 then known by the disclosing party; or

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

22 “(I) The following statement: ‘Note: When this
23 disclosure refers to what a creditor “may” do, it
24 does not use the word “may” to give the creditor
25 specific permission. The word “may” is used to tell

1 you what might occur if the law permits the creditor
2 to take the action. If you have questions about your
3 reaffirmation or what the law requires, talk to the
4 attorney who helped you negotiate this agreement. If
5 you don't have an attorney helping you, the judge
6 will explain the effect of your reaffirmation when the
7 reaffirmation hearing is held.'.

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

9 “‘Reaffirming a debt is a serious financial decision.
10 The law requires you to take certain steps to make sure
11 the decision is in your best interest. If these steps are not
12 completed, the reaffirmation agreement is not effective,
13 even though you have signed it.

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

19 “‘2. Complete and sign Part D and be sure you
20 can afford to make the payments you are agreeing
21 to make and have received a copy of the disclosure
22 statement and a completed and signed reaffirmation
23 agreement.

24 “‘3. If you were represented by an attorney
25 during the negotiation of the reaffirmation agree-

1 ment, the attorney must have signed the certification
2 in Part C.

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

6 “5. The original of this disclosure must be
7 filed with the court by you or your creditor. If a sep-
8 arate reaffirmation agreement (other than the one in
9 Part B) has been signed, it must be attached.

10 “6. If you were represented by an attorney
11 during the negotiation of the reaffirmation agree-
12 ment, your reaffirmation agreement becomes effec-
13 tive upon filing with the court unless the reaffirma-
14 tion is presumed to be an undue hardship as ex-
15 plained in Part D.

16 “7. If you were not represented by an attorney
17 during the negotiation of the reaffirmation agree-
18 ment, it will not be effective unless the court ap-
19 proves it. The court will notify you of the hearing on
20 your reaffirmation agreement. You must attend this
21 hearing in bankruptcy court where the judge will re-
22 view your agreement. The bankruptcy court must
23 approve the agreement as consistent with your best
24 interests, except that no court approval is required
25 if the agreement is for a consumer debt secured by

1 a mortgage, deed of trust, security deed or other lien
2 on your real property, like your home.

3 “Your right to rescind a reaffirmation. You may re-
4 scind (cancel) your reaffirmation at any time before the
5 bankruptcy court enters a discharge order or within 60
6 days after the agreement is filed with the court, whichever
7 is longer. To rescind or cancel, you must notify the cred-
8 itor that the agreement is canceled.

9 “What are your obligations if you reaffirm the debt?
10 A reaffirmed debt remains your personal legal obligation.
11 It is not discharged in your bankruptcy. That means that
12 if you default on your reaffirmed debt after your bank-
13 ruptcy is over, your creditor may be able to take your
14 property or your wages. Otherwise, your obligations will
15 be determined by the reaffirmation agreement which may
16 have changed the terms of the original agreement. For ex-
17 ample, if you are reaffirming an open end credit agree-
18 ment, the creditor may be permitted by that agreement
19 or applicable law to change the terms of the agreement
20 in the future under certain conditions.

21 “Are you required to enter into a reaffirmation
22 agreement by any law? No, you are not required to reaf-
23 firm a debt by any law. Only agree to reaffirm a debt if
24 it is in your best interest. Be sure you can afford the pay-
25 ments you agree to make.

1 “‘What if your creditor has a security interest or
2 lien? Your bankruptcy discharge does not eliminate any
3 lien on your property. A “lien” is often referred to as a
4 security interest, deed of trust, mortgage or security deed.
5 Even if you do not reaffirm and your personal liability
6 on the debt is discharged, because of the lien your creditor
7 may still have the right to take the security property if
8 you do not pay the debt or default on it. If the lien is
9 on an item of personal property that is exempt under your
10 State’s law or that the trustee has abandoned, you may
11 be able to redeem the item rather than reaffirm the debt.
12 To redeem, you make a single payment to the creditor
13 equal to the current value of the security property, as
14 agreed by the parties or determined by the court.’.

15 “(ii) In the case of a reaffirmation under sub-
16 section (m)(2), numbered paragraph 6 in the disclo-
17 sures required by clause (i) of this subparagraph
18 shall read as follows:

19 “‘6. If you were represented by an attorney
20 during the negotiation of the reaffirmation agree-
21 ment, your reaffirmation agreement becomes effec-
22 tive upon filing with the court.’.

23 “(4) The form of reaffirmation agreement required
24 under this paragraph shall consist of the following:

1 tification shall state that in the opinion of the attorney,
2 the debtor is able to make the payment.

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

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

8 “‘Part D: Debtor’s Statement in Support of Reaffir-
9 mation Agreement.

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

1 “‘2. I received a copy of the Reaffirmation Disclosure
2 Statement in Part A and a completed and signed reaffir-
3 mation agreement.’.

4 “(B) Where the debtor is represented by counsel and
5 is reaffirming a debt owed to a creditor defined in section
6 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement
7 of support of the reaffirmation agreement, which the debt-
8 or shall sign and date prior to filing with the court, shall
9 consist of the following:

10 “‘I believe this agreement is in my financial interest.
11 I can afford to make the payments on the reaffirmed debt.
12 I received a copy of the Reaffirmation Disclosure State-
13 ment in Part A and a completed and signed reaffirmation
14 agreement.’

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

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

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

1 “I believe this agreement is in my best interest
2 based on the income and expenses I have disclosed in my
3 Statement in Support of this reaffirmation agreement
4 above, and because (provide any additional relevant rea-
5 sons the court should consider):

6 “Therefore, I ask the court for an order approving
7 this reaffirmation agreement.’.

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

10 “Court Order: The court grants the debtor’s motion
11 and approves the reaffirmation agreement described
12 above.’.

13 “(9) Subsection (a)(2) does not operate as an injunc-
14 tion against an act by a creditor that is the holder of a
15 secured claim, if—

16 “(A) such creditor retains a security interest in
17 real property that is the debtor’s principal residence;

18 “(B) such act is in the ordinary course of busi-
19 ness between the creditor and the debtor; and

20 “(C) such act is limited to seeking or obtaining
21 periodic payments associated with a valid security
22 interest in lieu of pursuit of in rem relief to enforce
23 the lien.

24 “(l) Notwithstanding any other provision of this title:

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

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

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

10 “(m)(1) Until 60 days after a reaffirmation agree-
11 ment is filed with the court (or such additional period as
12 the court, after notice and hearing and for cause, orders
13 before the expiration of such period), it shall be presumed
14 that the reaffirmation agreement is an undue hardship on
15 the debtor if the debtor’s monthly income less the debtor’s
16 monthly expenses as shown on the debtor’s completed and
17 signed statement in support of the reaffirmation agree-
18 ment required under subsection (k)(6)(A) is less than the
19 scheduled payments on the reaffirmed debt. This pre-
20 sumption shall be reviewed by the court. The presumption
21 may be rebutted in writing by the debtor if the statement
22 includes an explanation which identifies additional sources
23 of funds to make the payments as agreed upon under the
24 terms of the reaffirmation agreement. If the presumption
25 is not rebutted to the satisfaction of the court, the court

1 may disapprove the agreement. No agreement shall be dis-
2 approved without notice and hearing to the debtor and
3 creditor and such hearing shall be concluded before the
4 entry of the debtor’s discharge.

5 “(2) This subsection does not apply to reaffirmation
6 agreements where the creditor is a credit union, as defined
7 in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12
8 U.S.C. 461(b)(1)(A)(iv)).”.

9 (b) LAW ENFORCEMENT.—

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

13 **“§ 158. Designation of United States attorneys and**
14 **agents of the Federal Bureau of Inves-**
15 **tigation to address abusive reaffirma-**
16 **tions of debt and materially fraudulent**
17 **statements in bankruptcy schedules**

18 “(a) IN GENERAL.—The Attorney General of the
19 United States shall designate the individuals described in
20 subsection (b) to have primary responsibility in carrying
21 out enforcement activities in addressing violations of sec-
22 tion 152 or 157 relating to abusive reaffirmations of debt.
23 In addition to addressing the violations referred to in the
24 preceding sentence, the individuals described under sub-
25 section (b) shall address violations of section 152 or 157

1 relating to materially fraudulent statements in bankruptcy
2 schedules that are intentionally false or intentionally mis-
3 leading.

4 “(b) UNITED STATES DISTRICT ATTORNEYS AND
5 AGENTS OF THE FEDERAL BUREAU OF INVESTIGA-
6 TION.—The individuals referred to in subsection (a) are—

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

9 “(2) an agent of the Federal Bureau of Inves-
10 tigation (within the meaning of section 3107) for
11 each field office of the Federal Bureau of Investiga-
12 tion.

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

18 “(d) BANKRUPTCY PROCEDURES.—The bankruptcy
19 courts shall establish procedures for referring any case
20 which may contain a materially fraudulent statement in
21 a bankruptcy schedule to the individuals designated under
22 this section.”.

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

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

1 **Subtitle B—Priority Child Support**

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

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

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

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

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

15 “(A) owed to or recoverable by—

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

19 “(ii) a governmental unit;

20 “(B) in the nature of alimony, mainte-
21 nance, or support (including assistance provided
22 by a governmental unit) of such spouse, former
23 spouse, or child of the debtor or such child’s

1 parent, without regard to whether such debt is
2 expressly so designated;

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

7 “(i) a separation agreement, divorce
8 decree, or property settlement agreement;

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

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

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

19 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**
20 **PORT OBLIGATIONS.**

21 Section 507(a) of title 11, United States Code, is
22 amended—

23 (1) by striking paragraph (7);

24 (2) by redesignating paragraphs (1) through

25 (6) as paragraphs (2) through (7), respectively;

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

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

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

6 (A) by striking “Third” and inserting
7 “Fourth”; and

8 (B) by striking the semicolon at the end
9 and inserting a period;

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

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

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

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

18 “(1) First:

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

1 filed by a governmental unit on behalf of that
2 person, on the condition that funds received
3 under this paragraph by a governmental unit
4 under this title after the date of filing of the pe-
5 tition shall be applied and distributed in accord-
6 ance with applicable nonbankruptcy law.

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

1 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**
2 **DISCHARGE IN CASES INVOLVING DOMESTIC**
3 **SUPPORT OBLIGATIONS.**

4 Title 11, United States Code, is amended—

5 (1) in section 1129(a), by adding at the end the
6 following:

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

13 (2) in section 1208(c)—

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

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

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

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

22 (3) in section 1222(a)—

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

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

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

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

10 (4) in section 1222(b)—

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

13 (B) by inserting after paragraph (10) the
14 following:

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

22 (5) in section 1225(a)—

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

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

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

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

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

21 (7) in section 1307(c)—

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

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

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

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

5 (8) in section 1322(a)—

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

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

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

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

19 (9) in section 1322(b)—

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

22 (B) by redesignating paragraph (10) as
23 paragraph (11); and

24 (C) inserting after paragraph (9) the fol-
25 lowing:

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

9 (10) in section 1325(a) (as amended by this
10 Act), by adding at the end the following:

11 “(8) the debtor is required by a judicial or ad-
12 ministrative order or statute to pay a domestic sup-
13 port obligation, the debtor has paid all amounts pay-
14 able under such order or statute for such obligation
15 that first becomes payable after the date on which
16 the petition is filed; and”;

17 (11) in section 1328(a), in the matter preceding
18 paragraph (1), by inserting “, and in the case of a
19 debtor who is required by a judicial or administra-
20 tive order to pay a domestic support obligation, after
21 such debtor certifies that all amounts payable under
22 such order or statute that are due on or before the
23 date of the certification (including amounts due be-
24 fore the petition was filed, but only to the extent
25 provided for in the plan) have been paid” after

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

3 **SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**
4 **SUPPORT OBLIGATION PROCEEDINGS.**

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

8 “(2) under subsection (a)—

9 “(A) of the commencement or continuation
10 of a civil action or proceeding—

11 “(i) for the establishment of paternity;

12 “(ii) for the establishment or modi-
13 fication of an order for domestic support
14 obligations;

15 “(iii) concerning child custody or visi-
16 tation;

17 “(iv) for the dissolution of a marriage,
18 except to the extent that such proceeding
19 seeks to determine the division of property
20 that is property of the estate; or

21 “(v) regarding domestic violence;

22 “(B) the collection of a domestic support
23 obligation from property that is not property of
24 the estate;

1 “(C) with respect to the withholding of in-
2 come that is property of the estate or property
3 of the debtor for payment of a domestic support
4 obligation under a judicial or administrative
5 order;

6 “(D) the withholding, suspension, or re-
7 striction of drivers’ licenses, professional and
8 occupational licenses, and recreational licenses
9 under State law, as specified in section
10 466(a)(16) of the Social Security Act;

11 “(E) the reporting of overdue support
12 owed by a parent to any consumer reporting
13 agency as specified in section 466(a)(7) of the
14 Social Security Act;

15 “(F) the interception of tax refunds, as
16 specified in sections 464 and 466(a)(3) of the
17 Social Security Act or under an analogous State
18 law; or

19 “(G) the enforcement of medical obliga-
20 tions as specified under title IV of the Social
21 Security Act;”.

22 **SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**
23 **ALIMONY, MAINTENANCE, AND SUPPORT.**

24 Section 523 of title 11, United States Code, is
25 amended—

1 (1) in subsection (a)—

2 (A) by striking paragraph (5) and insert-
3 ing the following:

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

5 (B) by striking paragraph (18);

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

8 (3) in paragraph (15), as added by Public Law
9 103–394 (108 Stat. 4133)—

10 (A) by inserting “to a spouse, former
11 spouse, or child of the debtor and” before “not
12 of the kind”;

13 (B) by inserting “or” after “court of
14 record,”; and

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

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

19 Section 522 of title 11, United States Code, is
20 amended—

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

23 “(1) a debt of a kind specified in paragraph (1)
24 or (5) of section 523(a) (in which case, notwith-
25 standing any provision of applicable nonbankruptcy

1 law to the contrary, such property shall be liable for
2 a debt of a kind specified in section 523(a)(5));”;

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

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

9 **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**
10 **AGAINST PREFERENTIAL TRANSFER MO-**
11 **TIONS.**

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

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

17 **SEC. 218. DISPOSABLE INCOME DEFINED.**

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

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

2 (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-
3 tion 704 of title 11, United States Code, as amended by
4 this Act, is amended—

5 (1) in subsection (a)—

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

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

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

11 “(10) if, with respect to an individual debtor,
12 there is a claim for a domestic support obligation,
13 provide the applicable notification specified in sub-
14 section (c); and”;

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

16 “(c)(1) In any case described in subsection (a)(10),
17 the trustee shall—

18 “(A)(i) notify in writing the holder of the claim
19 of the right of that holder to use the services of a
20 State child support enforcement agency established
21 under sections 464 and 466 of the Social Security
22 Act for the State in which the holder resides for as-
23 sistance in collecting child support during and after
24 the bankruptcy procedures;

1 “(ii) include in the notice under this paragraph
2 the address and telephone number of the child sup-
3 port enforcement agency; and

4 “(iii) include in the notice an explanation of the
5 rights of the holder of the claim to payment of the
6 claim under this chapter; and

7 “(B)(i) notify in writing the State child support
8 agency of the State in which the holder of the claim
9 resides of the claim;

10 “(ii) include in the notice under this paragraph
11 the name, address, and telephone number of the
12 holder of the claim; and

13 “(iii) at such time as the debtor is granted a
14 discharge under section 727, notify the holder of
15 that claim and the State child support agency of the
16 State in which that holder resides of—

17 “(I) the granting of the discharge;

18 “(II) the last recent known address of the
19 debtor;

20 “(III) the last recent known name and ad-
21 dress of the debtor’s employer; and

22 “(IV) with respect to the debtor’s case, the
23 name of each creditor that holds a claim that—

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

3 or

4 “(bb) was reaffirmed by the debtor
5 under section 524(c).

6 “(2)(A) A holder of a claim or a State child support
7 agency may request from a creditor described in para-
8 graph (1)(B)(iii)(IV) the last known address of the debtor.

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

14 (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—
15 Section 1106 of title 11, United States Code, is
16 amended—

17 (1) in subsection (a)—

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

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

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

23 “(8) if, with respect to an individual debtor,
24 there is a claim for a domestic support obligation,

1 provide the applicable notification specified in sub-
2 section (c).”; and

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

4 “(c)(1) In any case described in subsection (a)(7), the
5 trustee shall—

6 “(A)(i) notify in writing the holder of the claim
7 of the right of that holder to use the services of a
8 State child support enforcement agency established
9 under sections 464 and 466 of the Social Security
10 Act for the State in which the holder resides; and

11 “(ii) include in the notice under this paragraph
12 the address and telephone number of the child sup-
13 port enforcement agency; and

14 “(B)(i) notify, in writing, the State child sup-
15 port agency (of the State in which the holder of the
16 claim resides) of the claim;

17 “(ii) include in the notice under this paragraph
18 the name, address, and telephone number of the
19 holder of the claim; and

20 “(iii) at such time as the debtor is granted a
21 discharge under section 1141, notify the holder of
22 the claim and the State child support agency of the
23 State in which that holder resides of—

24 “(I) the granting of the discharge;

1 “(II) the last recent known address of the
2 debtor;

3 “(III) the last recent known name and ad-
4 dress of the debtor’s employer; and

5 “(IV) with respect to the debtor’s case, the
6 name of each creditor that holds a claim that—

7 “(aa) is not discharged under para-
8 graph (2), (3), or (14) of section 523(a);
9 or

10 “(bb) was reaffirmed by the debtor
11 under section 524(c).

12 “(2)(A) A holder of a claim or a State child support
13 agency may request from a creditor described in para-
14 graph (1)(B)(iii)(IV) the last known address of the debtor.

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

20 (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—
21 Section 1202 of title 11, United States Code, is
22 amended—

23 (1) in subsection (b)—

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

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

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

4 “(6) if, with respect to an individual debtor,
5 there is a claim for a domestic support obligation,
6 provide the applicable notification specified in sub-
7 section (c).”; and

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

9 “(c)(1) In any case described in subsection (b)(6), the
10 trustee shall—

11 “(A)(i) notify in writing the holder of the claim
12 of the right of that holder to use the services of a
13 State child support enforcement agency established
14 under sections 464 and 466 of the Social Security
15 Act for the State in which the holder resides; and

16 “(ii) include in the notice under this paragraph
17 the address and telephone number of the child sup-
18 port enforcement agency; and

19 “(B)(i) notify, in writing, the State child sup-
20 port agency (of the State in which the holder of the
21 claim resides) of the claim;

22 “(ii) include in the notice under this paragraph
23 the name, address, and telephone number of the
24 holder of the claim; and

1 “(iii) at such time as the debtor is granted a
2 discharge under section 1228, notify the holder of
3 the claim and the State child support agency of the
4 State in which that holder resides of—

5 “(I) the granting of the discharge;

6 “(II) the last recent known address of the
7 debtor;

8 “(III) the last recent known name and ad-
9 dress of the debtor’s employer; and

10 “(IV) with respect to the debtor’s case, the
11 name of each creditor that holds a claim that—

12 “(aa) is not discharged under para-
13 graph (2), (4), or (14) of section 523(a);

14 or

15 “(bb) was reaffirmed by the debtor
16 under section 524(c).

17 “(2)(A) A holder of a claim or a State child support
18 agency may request from a creditor described in para-
19 graph (1)(B)(iii)(IV) the last known address of the debtor.

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

1 (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—
2 Section 1302 of title 11, United States Code, is
3 amended—

4 (1) in subsection (b)—

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

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

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

10 “(6) if, with respect to an individual debtor,
11 there is a claim for a domestic support obligation,
12 provide the applicable notification specified in sub-
13 section (d).”; and

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

15 “(d)(1) In any case described in subsection (b)(6),
16 the trustee shall—

17 “(A)(i) notify in writing the holder of the claim
18 of the right of that holder to use the services of a
19 State child support enforcement agency established
20 under sections 464 and 466 of the Social Security
21 Act (42 U.S.C. 664, 666) for the State in which the
22 holder resides; and

23 “(ii) include in the notice under this paragraph
24 the address and telephone number of the child sup-
25 port enforcement agency; and

1 “(B)(i) notify in writing the State child support
2 agency of the State in which the holder of the claim
3 resides of the claim;

4 “(ii) include in the notice under this paragraph
5 the name, address, and telephone number of the
6 holder of the claim; and

7 “(iii) at such time as the debtor is granted a
8 discharge under section 1328, notify the holder of
9 the claim and the State child support agency of the
10 State in which that holder resides of—

11 “(I) the granting of the discharge;

12 “(II) the last recent known address of the
13 debtor;

14 “(III) the last recent known name and ad-
15 dress of the debtor’s employer; and

16 “(IV) with respect to the debtor’s case, the
17 name of each creditor that holds a claim that—

18 “(aa) is not discharged under para-
19 graph (2), (4), or (14) of section 523(a);

20 or

21 “(bb) was reaffirmed by the debtor
22 under section 524(c).

23 “(2)(A) A holder of a claim or a State child support
24 agency may request from a creditor described in para-
25 graph (1)(B)(iii)(IV) the last known address of the debtor.

1 “(B) Notwithstanding any other provision of law, a
2 creditor that makes a disclosure of a last known address
3 of a debtor in connection with a request made under sub-
4 paragraph (A) shall not be liable to the debtor or any
5 other person by reason of making that disclosure.”.

6 **SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDU-**
7 **CATIONAL BENEFITS AND LOANS.**

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

11 “(8) unless excepting such debt from discharge
12 under this paragraph would impose an undue hard-
13 ship on the debtor and the debtor’s dependents,
14 for—

15 “(A)(i) an educational benefit overpayment
16 or loan made, insured, or guaranteed by a gov-
17 ernmental unit, or made under any program
18 funded in whole or in part by a governmental
19 unit or nonprofit institution; or

20 “(ii) an obligation to repay funds received
21 as an educational benefit, scholarship, or sti-
22 pend; or

23 “(B) any other educational loan that is a
24 qualified education loan, as that term is defined
25 in section 221(e)(1) of the Internal Revenue

1 Code of 1986, incurred by an individual debt-
2 or;”.

3 **Subtitle C—Other Consumer** 4 **Protections**

5 **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-** 6 **RUPTCY FILINGS.**

7 Section 110 of title 11, United States Code, is
8 amended—

9 (1) in subsection (a)(1), by striking “a person,
10 other than an attorney or an employee of an attor-
11 ney” and inserting “a person other than the attor-
12 ney for the debtor or an employee of such attorney
13 under the direct supervision of such attorney”;

14 (2) in subsection (b)—

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

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

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

24 (B) by striking paragraph (2) and insert-
25 ing the following:

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

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

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

11 “(ii) may contain a description of examples of
12 legal advice that a bankruptcy petition preparer is
13 not authorized to give, in addition to any advice that
14 the preparer may not give by reason of subsection
15 (e)(2); and

16 “(iii) shall—

17 “(I) be signed by—

18 “(aa) the debtor; and

19 “(bb) the bankruptcy petition pre-
20 parer, under penalty of perjury; and

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

23 (3) in subsection (c)—

24 (A) in paragraph (2)—

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

4 (ii) by adding at the end the fol-
5 lowing:

6 “(B) If a bankruptcy petition preparer is not an indi-
7 vidual, the identifying number of the bankruptcy petition
8 preparer shall be the Social Security account number of
9 the officer, principal, responsible person, or partner of the
10 preparer.”; and

11 (B) by striking paragraph (3);

12 (4) in subsection (d)—

13 (A) by striking “(d)(1)” and inserting
14 “(d)”; and

15 (B) by striking paragraph (2);

16 (5) in subsection (e)—

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

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

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

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

24 “(i) whether—

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

1 “(II) commencing a case under chapter 7,
2 11, 12, or 13 is appropriate;

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

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

8 “(iv) concerning—

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

11 “(II) the dischargeability of tax claims;

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

15 “(vi) concerning how to characterize the nature
16 of the debtor’s interests in property or the debtor’s
17 debts; or

18 “(vii) concerning bankruptcy procedures and
19 rights.”;

20 (6) in subsection (f)—

21 (A) by striking “(f)(1)” and inserting
22 “(f)”; and

23 (B) by striking paragraph (2);

24 (7) in subsection (g)—

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

3 (B) by striking paragraph (2);
4 (8) in subsection (h)—

5 (A) by redesignating paragraphs (1)
6 through (4) as paragraphs (2) through (5), re-
7 spectively;

8 (B) by inserting before paragraph (2), as
9 redesignated, the following:

10 “(1) The Supreme Court may promulgate rules under
11 section 2075 of title 28, or the Judicial Conference of the
12 United States may prescribe guidelines, for setting a max-
13 imum allowable fee chargeable by a bankruptcy petition
14 preparer. A bankruptcy petition preparer shall notify the
15 debtor of any such maximum amount before preparing any
16 document for filing for a debtor or accepting any fee from
17 the debtor.”;

18 (C) in paragraph (2), as redesignated—

19 (i) by striking “Within 10 days after
20 the date of filing a petition, a bankruptcy
21 petition preparer shall file a” and inserting
22 “A”;

23 (ii) by inserting “by the bankruptcy
24 petition preparer shall be filed together
25 with the petition,” after “perjury”; and

1 (iii) by adding at the end the fol-
2 lowing: “If rules or guidelines setting a
3 maximum fee for services have been pro-
4 mulgated or prescribed under paragraph
5 (1), the declaration under this paragraph
6 shall include a certification that the bank-
7 ruptcy petition preparer complied with the
8 notification requirement under paragraph
9 (1).”;

10 (D) by striking paragraph (3), as redesign-
11 nated, and inserting the following:

12 “(3)(A) The court shall disallow and order the
13 immediate turnover to the bankruptcy trustee any
14 fee referred to in paragraph (2) found to be in ex-
15 cess of the value of any services—

16 “(i) rendered by the preparer during the
17 12-month period immediately preceding the
18 date of filing of the petition; or

19 “(ii) found to be in violation of any rule or
20 guideline promulgated or prescribed under
21 paragraph (1).

22 “(B) All fees charged by a bankruptcy petition
23 preparer may be forfeited in any case in which the
24 bankruptcy petition preparer fails to comply with

1 this subsection or subsection (b), (c), (d), (e), (f), or
2 (g).

3 “(C) An individual may exempt any funds re-
4 covered under this paragraph under section
5 522(b).”; and

6 (E) in paragraph (4), as redesignated, by
7 striking “or the United States trustee” and in-
8 sserting “the United States trustee, the bank-
9 ruptcy administrator, or the court, on the ini-
10 tiative of the court,”;

11 (9) in subsection (i)(1), by striking the matter
12 preceding subparagraph (A) and inserting the fol-
13 lowing:

14 “(i)(1) If a bankruptcy petition preparer violates this
15 section or commits any act that the court finds to be
16 fraudulent, unfair, or deceptive, on motion of the debtor,
17 trustee, United States trustee, or bankruptcy adminis-
18 trator, and after the court holds a hearing with respect
19 to that violation or act, the court shall order the bank-
20 ruptcy petition preparer to pay to the debtor—”;

21 (10) in subsection (j)—

22 (A) in paragraph (2)—

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

1 (ii) in subparagraph (B)—

2 (I) by striking “or has not paid
3 a penalty” and inserting “has not
4 paid a penalty”; and

5 (II) by inserting “or failed to dis-
6 gorge all fees ordered by the court”
7 after “a penalty imposed under this
8 section,”;

9 (B) by redesignating paragraph (3) as
10 paragraph (4); and

11 (C) by inserting after paragraph (2) the
12 following:

13 “(3) The court, as part of its contempt power, may
14 enjoin a bankruptcy petition preparer that has failed to
15 comply with a previous order issued under this section.
16 The injunction under this paragraph may be issued upon
17 motion of the court, the trustee, the United States trustee,
18 or the bankruptcy administrator.”; and

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

20 “(1)(1) A bankruptcy petition preparer who fails to
21 comply with any provision of subsection (b), (c), (d), (e),
22 (f), (g), or (h) may be fined not more than \$500 for each
23 such failure.

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

4 “(A) advised the debtor to exclude assets or in-
5 come that should have been included on applicable
6 schedules;

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

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

11 “(D) prepared a document for filing in a man-
12 ner that failed to disclose the identity of the pre-
13 parer.

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

18 “(4)(A) Fines imposed under this subsection in judi-
19 cial districts served by United States trustees shall be paid
20 to the United States trustee, who shall deposit an amount
21 equal to such fines in a special account of the United
22 States Trustee System Fund referred to in section
23 586(e)(2) of title 28. Amounts deposited under this sub-
24 paragraph shall be available to fund the enforcement of
25 this section on a national basis.

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

9 **SEC. 222. SENSE OF CONGRESS.**

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

13 **SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**
14 **STATES CODE.**

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

17 “(10) Tenth, allowed claims for death or per-
18 sonal injuries resulting from the operation of a
19 motor vehicle or vessel if such operation was unlaw-
20 ful because the debtor was intoxicated from using al-
21 cohol, a drug, or another substance.”.

22 **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
23 **RUPTCY.**

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

1 (1) in subsection (b)—

2 (A) in paragraph (2)—

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

5 (ii) in subparagraph (B), by striking
6 the period at the end and inserting “;
7 and”;

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

10 “(C) retirement funds to the extent that those
11 funds are in a fund or account that is exempt from
12 taxation under section 401, 403, 408, 408A, 414,
13 457, or 501(a) of the Internal Revenue Code of
14 1986.”; and

15 (iv) by striking “(2)(A) any property”
16 and inserting:

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

18 “(A) any property”;

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

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

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

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

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

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

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

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

11 “(A) If the retirement funds are in a retirement
12 fund that has received a favorable determination
13 under section 7805 of the Internal Revenue Code of
14 1986, and that determination is in effect as of the
15 date of the commencement of the case under section
16 301, 302, or 303 of this title, those funds shall be
17 presumed to be exempt from the estate.

18 “(B) If the retirement funds are in a retirement
19 fund that has not received a favorable determination
20 under such section 7805, those funds are exempt
21 from the estate if the debtor demonstrates that—

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

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

4 “(II) the retirement fund fails to be in
5 substantial compliance with the applicable re-
6 quirements of the Internal Revenue Code of
7 1986 and the debtor is not materially respon-
8 sible for that failure.

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

17 “(D)(i) Any distribution that qualifies as an eli-
18 gible rollover distribution within the meaning of sec-
19 tion 402(c) of the Internal Revenue Code of 1986 or
20 that is described in clause (ii) shall not cease to
21 qualify for exemption under paragraph (3)(C) or
22 subsection (d)(12) by reason of that distribution.

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

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

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

9 (2) in subsection (d)—

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

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

14 “(12) Retirement funds to the extent that those
15 funds are in a fund or account that is exempt from
16 taxation under section 401, 403, 408, 408A, 414,
17 457, or 501(a) of the Internal Revenue Code of
18 1986.”.

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

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

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

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

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

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

20 “(B) in the case of a loan from a thrift
21 savings plan described in subchapter III of
22 chapter 84 of title 5, that satisfies the require-
23 ments of section 8433(g) of such title;”;

24 (4) by adding at the end of the flush material
25 at the end of the subsection, the following: “Nothing

1 in paragraph (19) may be construed to provide that
2 any loan made under a governmental plan under
3 section 414(d), or a contract or account under sec-
4 tion 403(b) of the Internal Revenue Code of 1986
5 constitutes a claim or a debt under this title.”.

6 (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of
7 title 11, United States Code, as amended by this Act, is
8 amended by adding at the end the following:

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

13 “(A) a loan permitted under section
14 408(b)(1) of the Employee Retirement Income
15 Security Act of 1974, or subject to section
16 72(p) of the Internal Revenue Code of 1986; or

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

21 but nothing in this paragraph may be construed to
22 provide that any loan made under a governmental
23 plan under section 414(d), or a contract or account
24 under section 403(b), of the Internal Revenue Code

1 of 1986 constitutes a claim or a debt under this
2 title.”.

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

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

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

13 “(n) For assets in individual retirement accounts de-
14 scribed in section 408 or 408A of the Internal Revenue
15 Code of 1986, other than a simplified employee pension
16 under section 408(k) of that Code or a simple retirement
17 account under section 408(p) of that Code, the aggregate
18 value of such assets exempted under this section, without
19 regard to amounts attributable to rollover contributions
20 under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and
21 403(b)(8) of the Internal Revenue Code of 1986, and
22 earnings thereon, shall not exceed \$1,000,000 (which
23 amount shall be adjusted as provided in section 104 of
24 this title) in a case filed by an individual debtor, except

1 that such amount may be increased if the interests of jus-
2 tice so require.”.

3 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**
4 **RUPTCY.**

5 (a) **EXCLUSIONS.**—Section 541 of title 11, United
6 States Code, is amended—

7 (1) in subsection (b)—

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

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

12 (C) by inserting after paragraph (4) the
13 following:

14 “(5) funds placed in an education individual re-
15 tirement account (as defined in section 530(b)(1) of
16 the Internal Revenue Code of 1986) not later than
17 365 days before the date of filing of the petition,
18 but—

19 “(A) only if the designated beneficiary of
20 such account was a son, daughter, stepson,
21 stepdaughter, grandchild, or step-grandchild of
22 the debtor for the taxable year for which funds
23 were placed in such account;

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

1 “(i) are not pledged or promised to
2 any entity in connection with any extension
3 of credit; and

4 “(ii) are not excess contributions (as
5 described in section 4973(e) of the Internal
6 Revenue Code of 1986); and

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

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

19 “(A) only if the designated beneficiary of
20 the amounts paid or contributed to such tuition
21 program was a son, daughter, stepson, step-
22 daughter, grandchild, or step-grandchild of the
23 debtor for the taxable year for which funds
24 were paid or contributed;

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

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

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

20 “(e) In determining whether any of the relationships
21 specified in paragraph (5)(A) or (6)(A) of subsection (b)
22 exists, a legally adopted child of an individual (and a child
23 who is a member of an individual’s household, if placed
24 with such individual by an authorized placement agency
25 for legal adoption by such individual), or a foster child

1 of an individual (if such child has as the child's principal
2 place of abode the home of the debtor and is a member
3 of the debtor's household) shall be treated as a child of
4 such individual by blood.”.

5 (b) DEBTOR'S DUTIES.—Section 521 of title 11,
6 United States Code, as amended by this Act, is amended
7 by adding at the end the following:

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

15 **SEC. 226. DEFINITIONS.**

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

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

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

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

1 “(4A) ‘bankruptcy assistance’ means any goods
2 or services sold or otherwise provided to an assisted
3 person with the express or implied purpose of pro-
4 viding information, advice, counsel, document prepa-
5 ration, or filing, or attendance at a creditors’ meet-
6 ing or appearing in a proceeding on behalf of an-
7 other or providing legal representation with respect
8 to a case or proceeding under this title;” and

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

11 “(12A) ‘debt relief agency’ means any person
12 who provides any bankruptcy assistance to an as-
13 sisted person in return for the payment of money or
14 other valuable consideration, or who is a bankruptcy
15 petition preparer under section 110, but does not
16 include—

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

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

23 “(C) a creditor of such assisted person, to
24 the extent that the creditor is assisting such as-

1 sisted person to restructure any debt owed by
2 such assisted person to the creditor;

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

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

13 (b) CONFORMING AMENDMENT.—Section 104(b)(1)
14 of title 11, United States Code, is amended by inserting
15 “101(3),” after “sections”.

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

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

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

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

22 “(1) fail to perform any service that such agen-
23 cy informed an assisted person or prospective as-
24 sisted person it would provide in connection with a
25 case or proceeding under this title;

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

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

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

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

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

24 “(b) Any waiver by any assisted person of any protec-
25 tion or right provided under this section shall not be en-

1 forceable against the debtor by any Federal or State court
2 or any other person, but may be enforced against a debt
3 relief agency.

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

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

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

20 “(B) provided bankruptcy assistance to an as-
21 sisted person in a case or proceeding under this title
22 that is dismissed or converted to a case under an-
23 other chapter of this title because of such agency’s
24 intentional or negligent failure to file any required
25 document including those specified in section 521; or

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

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

10 “(A) may bring an action to enjoin such viola-
11 tion;

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

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

20 “(4) The United States District Court for any district
21 located in the State shall have concurrent jurisdiction of
22 any action under subparagraph (A) or (B) of paragraph
23 (3).

24 “(5) Notwithstanding any other provision of Federal
25 law and in addition to any other remedy provided under

1 Federal or State law, if the court, on its own motion or
2 on motion of the United States trustee or the debtor, finds
3 that a person intentionally violated this section, or en-
4 gaged in a clear and consistent pattern or practice of vio-
5 lating this section, the court may—

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

7 “(B) impose an appropriate civil penalty
8 against such person.”.

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

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

16 “(2) be deemed to limit or curtail the authority
17 or ability—

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

22 “(B) of a Federal court to determine and
23 enforce the qualifications for the practice of law
24 before that court.”.

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

“526. Restrictions on debt relief agencies.”.

5 **SEC. 228. DISCLOSURES.**

6 (a) DISCLOSURES.—Subchapter II of chapter 5 of
7 title 11, United States Code, as amended by this Act, is
8 amended by adding at the end the following:

9 **“§ 527. Disclosures**

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

12 “(1) the written notice required under section
13 342(b)(1) of this title; and

14 “(2) to the extent not covered in the written no-
15 tice described in paragraph (1), and not later than
16 3 business days after the first date on which a debt
17 relief agency first offers to provide any bankruptcy
18 assistance services to an assisted person, a clear and
19 conspicuous written notice advising assisted persons
20 that—

21 “(A) all information that the assisted per-
22 son is required to provide with a petition and
23 thereafter during a case under this title is re-
24 quired to be complete, accurate, and truthful;

1 “(B) all assets and all liabilities are re-
2 quired to be completely and accurately disclosed
3 in the documents filed to commence the case,
4 and the replacement value of each asset as de-
5 fined in section 506 of this title must be stated
6 in those documents where requested after rea-
7 sonable inquiry to establish such value;

8 “(C) current monthly income, the amounts
9 specified in section 707(b)(2), and, in a case
10 under chapter 13, disposable income (deter-
11 mined in accordance with section 707(b)(2)),
12 are required to be stated after reasonable in-
13 quiry; and

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

20 “(b) A debt relief agency providing bankruptcy assist-
21 ance to an assisted person shall provide each assisted per-
22 son at the same time as the notices required under sub-
23 section (a)(1) with the following statement, to the extent
24 applicable, or one substantially similar. The statement
25 shall be clear and conspicuous and shall be in a single

1 document separate from other documents or notices pro-
2 vided to the assisted person:

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

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

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

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

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

10 “‘If you choose to file a chapter 7 case, you may
11 be asked by a creditor to reaffirm a debt. You may want
12 help deciding whether to do so and a creditor is not per-
13 mitted to coerce you into reaffirming your debts.

14 “‘If you choose to file a chapter 13 case in which
15 you repay your creditors what you can afford over 3 to
16 5 years, you may also want help with preparing your chap-
17 ter 13 plan and with the confirmation hearing on your
18 plan which will be before a bankruptcy judge.

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

23 “‘Your bankruptcy case may also involve litigation.
24 You are generally permitted to represent yourself in litiga-

1 tion in bankruptcy court, but only attorneys, not bank-
2 ruptcy petition preparers, can give you legal advice.’.

3 “(c) Except to the extent the debt relief agency pro-
4 vides the required information itself after reasonably dili-
5 gent inquiry of the assisted person or others so as to ob-
6 tain such information reasonably accurately for inclusion
7 on the petition, schedules or statement of financial affairs,
8 a debt relief agency providing bankruptcy assistance to an
9 assisted person, to the extent permitted by nonbankruptcy
10 law, shall provide each assisted person at the time re-
11 quired for the notice required under subsection (a)(1) rea-
12 sonably sufficient information (which shall be provided in
13 a clear and conspicuous writing) to the assisted person
14 on how to provide all the information the assisted person
15 is required to provide under this title pursuant to section
16 521, including—

17 “(1) how to value assets at replacement value,
18 determine current monthly income, the amounts
19 specified in section 707(b)(2)) and, in a chapter 13
20 case, how to determine disposable income in accord-
21 ance with section 707(b)(2) and related calculations;

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

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

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

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

“527. Disclosures.”.

12 **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

13 (a) ENFORCEMENT.—Subchapter II of chapter 5 of
14 title 11, United States Code, as amended by this Act, is
15 amended by adding at the end the following:

16 **“§ 528. Requirements for debt relief agencies**

17 “(a) A debt relief agency shall—

18 “(1) not later than 5 business days after the
19 first date such agency provides any bankruptcy as-
20 sistance services to an assisted person, but prior to
21 such assisted person’s petition under this title being
22 filed, execute a written contract with such assisted
23 person that explains clearly and conspicuously—

24 “(A) the services such agency will provide
25 to such assisted person; and

1 “(B) the fees or charges for such services,
2 and the terms of payment;

3 “(2) provide the assisted person with a copy of
4 the fully executed and completed contract;

5 “(3) clearly and conspicuously disclose in any
6 advertisement of bankruptcy assistance services or of
7 the benefits of bankruptcy directed to the general
8 public (whether in general media, seminars or spe-
9 cific mailings, telephonic or electronic messages, or
10 otherwise) that the services or benefits are with re-
11 spect to bankruptcy relief under this title; and

12 “(4) clearly and conspicuously using the fol-
13 lowing statement: ‘We are a debt relief agency. We
14 help people file for bankruptcy relief under the
15 Bankruptcy Code.’ or a substantially similar state-
16 ment.

17 “(b)(1) An advertisement of bankruptcy assistance
18 services or of the benefits of bankruptcy directed to the
19 general public includes—

20 “(A) descriptions of bankruptcy assistance in
21 connection with a chapter 13 plan whether or not
22 chapter 13 is specifically mentioned in such adver-
23 tisement; and

24 “(B) statements such as ‘federally supervised
25 repayment plan’ or ‘Federal debt restructuring help’

1 or other similar statements that could lead a reason-
2 able consumer to believe that debt counseling was
3 being offered when in fact the services were directed
4 to providing bankruptcy assistance with a chapter
5 13 plan or other form of bankruptcy relief under
6 this title.

7 “(2) An advertisement, directed to the general public,
8 indicating that the debt relief agency provides assistance
9 with respect to credit defaults, mortgage foreclosures, evic-
10 tion proceedings, excessive debt, debt collection pressure,
11 or inability to pay any consumer debt shall—

12 “(A) disclose clearly and conspicuously in such
13 advertisement that the assistance may involve bank-
14 ruptcy relief under this title; and

15 “(B) include the following statement: ‘We are a
16 debt relief agency. We help people file for bank-
17 ruptcy relief under the Bankruptcy Code,’ or a sub-
18 stantially similar statement.”.

19 (b) CONFORMING AMENDMENT.—The table of sec-
20 tions for chapter 5 of title 11, United States Code, as
21 amended by this Act, is amended by inserting after the
22 item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

23 **SEC. 230. GAO STUDY.**

24 (a) STUDY.—Not later than 270 days after the date
25 of enactment of this Act, the Comptroller General of the

1 United States shall conduct a study of the feasibility, ef-
2 fectiveness, and cost of requiring trustees appointed under
3 title 11, United States Code, or the bankruptcy courts,
4 to provide to the Office of Child Support Enforcement
5 promptly after the commencement of cases by individual
6 debtors under such title, the names and social security
7 numbers of such debtors for the purposes of allowing such
8 Office to determine whether such debtors have out-
9 standing obligations for child support (as determined on
10 the basis of information in the Federal Case Registry or
11 other national database).

12 (b) REPORT.—Not later than 300 days after the date
13 of enactment of this Act, the Comptroller General shall
14 submit to the President pro tempore of the Senate and
15 the Speaker of the House of Representatives a report con-
16 taining the results of the study required by subsection (a).

17 **SEC. 231. PROHIBITION ON DISCLOSURE OF IDENTITY OF**
18 **MINOR CHILDREN.**

19 (a) PROHIBITION.—Title 11 of the United States
20 Code, as amended by section 106, is amended by inserting
21 after section 111 the following:

22 **“§ 112. Prohibition on disclosure of identity of minor**
23 **child**

24 “In a case under this title, the debtor may be re-
25 quired to provide information regarding a minor child in-

1 volved in matters under this title, but may not be required
2 to disclose in the public records in the case the name of
3 such minor child.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 1 of title 11, United States Code, is amended
6 by adding at the end the following:

“112. Prohibition on disclosure of name of minor child.”.

7 **TITLE III—DISCOURAGING**
8 **BANKRUPTCY ABUSE**

9 **SEC. 301. REINFORCEMENT OF THE FRESH START.**

10 Section 523(a)(17) of title 11, United States Code,
11 is amended—

12 (1) by striking “by a court” and inserting “on
13 a prisoner by any court”;

14 (2) by striking “section 1915(b) or (f)” and in-
15 serting “subsection (b) or (f)(2) of section 1915”;
16 and

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

19 **SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

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

24 (2) in paragraph (2), by striking the period at
25 the end and inserting a semicolon; and

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

2 “(3) if a single or joint case is filed by or
3 against an individual debtor under chapter 7, 11, or
4 13, and if a single or joint case of the debtor was
5 pending within the preceding 1-year period but was
6 dismissed, other than a case refiled under a chapter
7 other than chapter 7 after dismissal under section
8 707(b)—

9 “(A) the stay under subsection (a) with re-
10 spect to any action taken with respect to a debt
11 or property securing such debt or with respect
12 to any lease shall terminate with respect to the
13 debtor on the 30th day after the filing of the
14 later case;

15 “(B) upon motion by a party in interest
16 for continuation of the automatic stay and upon
17 notice and a hearing, the court may extend the
18 stay in particular cases as to any or all credi-
19 tors (subject to such conditions or limitations
20 as the court may then impose) after notice and
21 a hearing completed before the expiration of the
22 30-day period only if the party in interest dem-
23 onstrates that the filing of the later case is in
24 good faith as to the creditors to be stayed; and

1 “(C) for purposes of subparagraph (B), a
2 case is presumptively filed not in good faith
3 (but such presumption may be rebutted by clear
4 and convincing evidence to the contrary)—

5 “(i) as to all creditors, if—

6 “(I) more than 1 previous case
7 under any of chapters 7, 11, and 13
8 in which the individual was a debtor
9 was pending within the preceding 1-
10 year period;

11 “(II) a previous case under any
12 of chapters 7, 11, and 13 in which the
13 individual was a debtor was dismissed
14 within such 1-year period, after the
15 debtor failed to—

16 “(aa) file or amend the peti-
17 tion or other documents as re-
18 quired by this title or the court
19 without substantial excuse (but
20 mere inadvertence or negligence
21 shall not be a substantial excuse
22 unless the dismissal was caused
23 by the negligence of the debtor’s
24 attorney);

1 “(bb) provide adequate pro-
2 tection as ordered by the court;
3 or

4 “(cc) perform the terms of a
5 plan confirmed by the court; or

6 “(III) there has not been a sub-
7 stantial change in the financial or per-
8 sonal affairs of the debtor since the
9 dismissal of the next most previous
10 case under chapter 7, 11, or 13 or
11 any other reason to conclude that the
12 later case will be concluded—

13 “(aa) if a case under chap-
14 ter 7, with a discharge; or

15 “(bb) if a case under chap-
16 ter 11 or 13, with a confirmed
17 plan which will be fully per-
18 formed; and

19 “(ii) as to any creditor that com-
20 menced an action under subsection (d) in
21 a previous case in which the individual was
22 a debtor if, as of the date of dismissal of
23 such case, that action was still pending or
24 had been resolved by terminating, condi-

1 tioning, or limiting the stay as to actions
2 of such creditor; and

3 “(4)(A)(i) if a single or joint case is filed by or
4 against an individual debtor under this title, and if
5 2 or more single or joint cases of the debtor were
6 pending within the previous year but were dismissed,
7 other than a case refiled under section 707(b), the
8 stay under subsection (a) shall not go into effect
9 upon the filing of the later case; and

10 “(ii) on request of a party in interest, the court
11 shall promptly enter an order confirming that no
12 stay is in effect;

13 “(B) if, within 30 days after the filing of the
14 later case, a party in interest requests the court may
15 order the stay to take effect in the case as to any
16 or all creditors (subject to such conditions or limita-
17 tions as the court may impose), after notice and
18 hearing, only if the party in interest demonstrates
19 that the filing of the later case is in good faith as
20 to the creditors to be stayed;

21 “(C) a stay imposed under subparagraph (B)
22 shall be effective on the date of entry of the order
23 allowing the stay to go into effect; and

24 “(D) for purposes of subparagraph (B), a case
25 is presumptively not filed in good faith (but such

1 presumption may be rebutted by clear and con-
2 vincing evidence to the contrary)—

3 “(i) as to all creditors if—

4 “(I) 2 or more previous cases under
5 this title in which the individual was a
6 debtor were pending within the 1-year pe-
7 riod;

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

22 “(III) there has not been a substan-
23 tial change in the financial or personal af-
24 fairs of the debtor since the dismissal of
25 the next most previous case under this

1 title, or any other reason to conclude that
2 the later case will not be concluded, if a
3 case under chapter 7, with a discharge,
4 and if a case under chapter 11 or 13, with
5 a confirmed plan that will be fully per-
6 formed; or

7 “(ii) as to any creditor that commenced an
8 action under subsection (d) in a previous case
9 in which the individual was a debtor if, as of
10 the date of dismissal of such case, such action
11 was still pending or had been resolved by termi-
12 nating, conditioning, or limiting the stay as to
13 action of such creditor.”.

14 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

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

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

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

22 “(4) with respect to a stay of an act against
23 real property under subsection (a), by a creditor
24 whose claim is secured by an interest in such real
25 estate, if the court finds that the filing of the bank-

1 ruptcy petition was part of a scheme to delay,
2 hinder, and defraud creditors that involved either—

3 “(A) transfer of all or part ownership of,
4 or other interest in, the real property without
5 the consent of the secured creditor or court ap-
6 proval; or

7 “(B) multiple bankruptcy filings affecting
8 the real property.

9 If recorded in compliance with applicable State laws gov-
10 erning notices of interests or liens in real property, an
11 order entered under this subsection shall be binding in any
12 other case under this title purporting to affect the real
13 property filed not later than 2 years after the date of entry
14 of such order by the court, except that a debtor in a subse-
15 quent case may move for relief from such order based
16 upon changed circumstances or for good cause shown,
17 after notice and a hearing. Any Federal, State, or local
18 governmental unit that accepts notices of interests or liens
19 in real property shall accept any certified copy of an order
20 described in this subsection for indexing and recording.”.

21 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
22 United States Code, is amended by inserting after para-
23 graph (19), as added by this Act, the following:

24 “(20) under subsection (a), of any act to en-
25 force any lien against or security interest in real

1 property following the entry of an order under sec-
2 tion 362(d)(4) as to that property in any prior bank-
3 ruptcy case for a period of 2 years after entry of
4 such an order, except that the debtor, in a subse-
5 quent case, may move the court for relief from such
6 order based upon changed circumstances or for
7 other good cause shown, after notice and a hearing;

8 “(21) under subsection (a), of any act to en-
9 force any lien against or security interest in real
10 property—

11 “(A) if the debtor is ineligible under sec-
12 tion 109(g) to be a debtor in a bankruptcy case;
13 or

14 “(B) if the bankruptcy case was filed in
15 violation of a bankruptcy court order in a prior
16 bankruptcy case prohibiting the debtor from
17 being a debtor in another bankruptcy case;”.

18 **SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY**

19 **SECURITY.**

20 Title 11, United States Code, is amended—

21 (1) in section 521(a) (as so designated by this
22 Act)—

23 (A) in paragraph (4), by striking “, and”
24 at the end and inserting a semicolon;

1 (B) in paragraph (5), by striking the pe-
2 riod at the end and inserting “; and”; and

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

4 “(6) in a case under chapter 7 of this title in
5 which the debtor is an individual, not retain posses-
6 sion of personal property as to which a creditor has
7 an allowed claim for the purchase price secured in
8 whole or in part by an interest in that personal
9 property unless, in the case of an individual debtor,
10 the debtor, not later than 45 days after the first
11 meeting of creditors under section 341(a), either—

12 “(A) enters into an agreement with the
13 creditor pursuant to section 524(c) of this title
14 with respect to the claim secured by such prop-
15 erty; or

16 “(B) redeems such property from the secu-
17 rity interest pursuant to section 722 of this
18 title.

19 If the debtor fails to so act within the 45-day period re-
20 ferred to in paragraph (6), the stay under section 362(a)
21 of this title is terminated with respect to the personal
22 property of the estate or of the debtor which is affected,
23 such property shall no longer be property of the estate,
24 and the creditor may take whatever action as to such prop-
25 erty as is permitted by applicable nonbankruptcy law, un-

1 less the court determines on the motion of the trustee
2 brought before the expiration of such 45-day period, and
3 after notice and a hearing, that such property is of con-
4 sequential value or benefit to the estate, orders appro-
5 priate adequate protection of the creditor's interest, and
6 orders the debtor to deliver any collateral in the debtor's
7 possession to the trustee.”; and

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

10 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**
11 **DEBTOR DOES NOT COMPLETE INTENDED**
12 **SURRENDER OF CONSUMER DEBT COLLAT-**
13 **ERAL.**

14 Title 11, United States Code, is amended—

15 (1) in section 362—

16 (A) in subsection (e), by striking “(e), and
17 (f)” inserting “(e), (f), and (h)”;

18 (B) by redesignating subsection (h) as sub-
19 section (k); and

20 (C) by inserting after subsection (g) the
21 following:

22 “(h)(1) In which the debtor is an individual, the stay
23 provided by subsection (a) is terminated with respect to
24 personal property of the estate or of the debtor securing
25 in whole or in part a claim, or subject to an unexpired

1 lease, and such personal property shall no longer be prop-
2 erty of the estate if the debtor fails within the applicable
3 time set by section 521(a)(2) of this title—

4 “(A) to file timely any statement of intention
5 required under section 521(a)(2) of this title with
6 respect to that property or to indicate in that state-
7 ment that the debtor will either surrender the prop-
8 erty or retain it and, if retaining it, either redeem
9 the property pursuant to section 722 of this title, re-
10 affirm the debt it secures pursuant to section 524(c)
11 of this title, or assume the unexpired lease pursuant
12 to section 365(p) of this title if the trustee does not
13 do so, as applicable; and

14 “(B) to take timely the action specified in that
15 statement of intention, as it may be amended before
16 expiration of the period for taking action, unless the
17 statement of intention specifies reaffirmation and
18 the creditor refuses to reaffirm on the original con-
19 tract terms.

20 “(2) Paragraph (1) does not apply if the court deter-
21 mines, on the motion of the trustee filed before the expira-
22 tion of the applicable time set by section 521(a)(2), after
23 notice and a hearing, that such property is of consequen-
24 tial value or benefit to the estate, and orders appropriate
25 adequate protection of the creditor’s interest, and orders

1 the debtor to deliver any collateral in the debtor’s posses-
2 sion to the trustee. If the court does not so determine,
3 the stay provided by subsection (a) shall terminate upon
4 the conclusion of the proceeding on the motion.”; and

5 (2) in section 521—

6 (A) in subsection (a)(2), as so designated
7 by this Act, by striking “consumer”;

8 (B) in subsection (a)(2)(B), as so des-
9 ignated by this Act—

10 (i) by striking “forty-five days after
11 the filing of a notice of intent under this
12 section” and inserting “30 days after the
13 first date set for the meeting of creditors
14 under section 341(a) of this title”; and

15 (ii) by striking “forty-five day” and
16 inserting “30-day”;

17 (C) in subsection (a)(2)(C), as so des-
18 ignated by this Act, by inserting “, except as
19 provided in section 362(h) of this title” before
20 the semicolon; and

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

22 “(d) If the debtor fails timely to take the action speci-
23 fied in subsection (a)(6) of this section, or in paragraphs
24 (1) and (2) of section 362(h) of this title, with respect
25 to property which a lessor or bailor owns and has leased,

1 rented, or bailed to the debtor or as to which a creditor
 2 holds a security interest not otherwise voidable under sec-
 3 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-
 4 ing in this title shall prevent or limit the operation of a
 5 provision in the underlying lease or agreement which has
 6 the effect of placing the debtor in default under such lease
 7 or agreement by reason of the occurrence, pendency, or
 8 existence of a proceeding under this title or the insolvency
 9 of the debtor. Nothing in this subsection shall be deemed
 10 to justify limiting such a provision in any other cir-
 11 cumstance.”.

12 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

13 **IN CHAPTER 13.**

14 (a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title
 15 11, United States Code, is amended to read as follows:

16 “(i) the plan provides that—

17 “(I) the holder of such claim retain
 18 the lien securing such claim until the ear-
 19 lier of—

20 “(aa) the payment of the under-
 21 lying debt determined under nonbank-
 22 ruptcy law; or

23 “(bb) discharge under section
 24 1328; and

1 “(II) if the case under this chapter is
2 dismissed or converted without completion
3 of the plan, such lien shall also be retained
4 by such holder to the extent recognized by
5 applicable nonbankruptcy law; and”.

6 (b) RESTORING THE FOUNDATION FOR SECURED
7 CREDIT.—Section 1325(a) of title 11, United States Code,
8 is amended by adding at the end the following flush sen-
9 tence:

10 “For purposes of paragraph (5), section 506 shall not
11 apply to a claim described in that paragraph if the creditor
12 has a purchase money security interest securing the debt
13 that is the subject of the claim, the debt was incurred
14 within the 5-year period preceding the filing of the peti-
15 tion, and the collateral for that debt consists of a motor
16 vehicle (as defined in section 30102 of title 49) acquired
17 for the personal use of the debtor, or if collateral for that
18 debt consists of any other thing of value, if the debt was
19 incurred during the 1-year period preceding that filing.”.

20 (c) DEFINITIONS.—Section 101 of title 11, United
21 States Code, as amended by this Act, 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 cooperative unit, a mobile or manufactured
7 home, or trailer;” and

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

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

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

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

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

20 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

21 Section 522(b)(3)(A) of title 11, United States Code,
22 as so designated by this Act, is amended—

23 (1) by striking “180 days” and inserting “730
24 days”; and

1 (2) by striking “, or for a longer portion of
2 such 180-day period than in any other place” and
3 inserting “or if the debtor’s domicile has not been
4 located at a single State for such 730-day period,
5 the place in which the debtor’s domicile was located
6 for 180 days immediately preceding the 730-day pe-
7 riod or for a longer portion of such 180-day period
8 than in any other place”.

9 **SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EX-**
10 **EMPTION.**

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

13 (1) in subsection (b)(3)(A), as so designated by
14 this Act, by inserting “subject to subsections (o) and
15 (p),” before “any property”; and

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

17 “(o) For purposes of subsection (b)(3)(A), and not-
18 withstanding subsection (a), the value of an interest in—

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

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

24 “(3) a burial plot for the debtor or a dependent
25 of the debtor,

1 shall be reduced to the extent that such value is attrib-
2 utable to any portion of any property that the debtor dis-
3 posed of in the 7-year period ending on the date of the
4 filing of the petition with the intent to hinder, delay, or
5 defraud a creditor and that the debtor could not exempt,
6 or that portion that the debtor could not exempt, under
7 subsection (b), if on such date the debtor had held the
8 property so disposed of.”.

9 **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**
10 **13 CASES.**

11 (a) STOPPING ABUSIVE CONVERSIONS FROM CHAP-
12 TER 13.—Section 348(f)(1) of title 11, United States
13 Code, is amended—

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

16 (2) in subparagraph (B)—

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

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

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

1 “(C) with respect to cases converted from chap-
2 ter 13—

3 “(i) the claim of any creditor holding secu-
4 rity as of the date of the petition shall continue
5 to be secured by that security unless the full
6 amount of such claim determined under appli-
7 cable nonbankruptcy law has been paid in full
8 as of the date of conversion, notwithstanding
9 any valuation or determination of the amount
10 of an allowed secured claim made for the pur-
11 poses of the case under chapter 13; and

12 “(ii) unless a prebankruptcy default has
13 been fully cured under the plan at the time of
14 conversion, in any proceeding under this title or
15 otherwise, the default shall have the effect given
16 under applicable nonbankruptcy law.”.

17 (b) GIVING DEBTORS THE ABILITY TO KEEP
18 LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section
19 365 of title 11, United States Code, is amended by adding
20 at the end the following:

21 “(p)(1) If a lease of personal property is rejected or
22 not timely assumed by the trustee under subsection (d),
23 the leased property is no longer property of the estate and
24 the stay under section 362(a) is automatically terminated.

1 “(2)(A) In the case of an individual under chapter
2 7, the debtor may notify the creditor in writing that the
3 debtor desires to assume the lease. Upon being so notified,
4 the creditor may, at its option, notify the debtor that it
5 is willing to have the lease assumed by the debtor and
6 may condition such assumption on cure of any outstanding
7 default on terms set by the contract.

8 “(B) If, not later than 30 days after notice is pro-
9 vided under subparagraph (A), the debtor notifies the les-
10 sor in writing that the lease is assumed, the liability under
11 the lease will be assumed by the debtor and not by the
12 estate.

13 “(C) The stay under section 362 and the injunction
14 under section 524(a)(2) shall not be violated by notifica-
15 tion of the debtor and negotiation of cure under this sub-
16 section.

17 “(3) In a case under chapter 11 in which the debtor
18 is an individual and in a case under chapter 13, if the
19 debtor is the lessee with respect to personal property and
20 the lease is not assumed in the plan confirmed by the
21 court, the lease is deemed rejected as of the conclusion
22 of the hearing on confirmation. If the lease is rejected,
23 the stay under section 362 and any stay under section
24 1301 is automatically terminated with respect to the prop-
25 erty subject to the lease.”.

1 (c) ADEQUATE PROTECTION OF LESSORS AND PUR-
2 CHASE MONEY SECURED CREDITORS.—

3 (1) CONFIRMATION OF PLAN.—Section
4 1325(a)(5)(B) of title 11, United States Code, is
5 amended—

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

8 (B) in clause (ii), by striking “or” at the
9 end and inserting “and”; and

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

11 “(iii) if—

12 “(I) property to be distributed pursu-
13 ant to this subsection is in the form of
14 periodic payments, such payments shall be
15 in equal monthly amounts; and

16 “(II) the holder of the claim is se-
17 cured by personal property, the amount of
18 such payments shall not be less than an
19 amount sufficient to provide to the holder
20 of such claim adequate protection during
21 the period of the plan; or”.

22 (2) PAYMENTS.—Section 1326(a) of title 11,
23 United States Code, is amended to read as follows:

24 “(a)(1) Unless the court orders otherwise, the debtor
25 shall commence making payments not later than 30 days

1 after the date of the filing of the plan or the order for
2 relief, whichever is earlier, in the amount—

3 “(A) proposed by the plan to the trustee;

4 “(B) scheduled in a lease of personal property
5 directly to the lessor for that portion of the obliga-
6 tion that becomes due after the order for relief, re-
7 ducing the payments under subparagraph (A) by the
8 amount so paid and providing the trustee with evi-
9 dence of such payment, including the amount and
10 date of payment; and

11 “(C) that provides adequate protection directly
12 to a creditor holding an allowed claim secured by
13 personal property to the extent the claim is attrib-
14 utable to the purchase of such property by the debt-
15 or for that portion of the obligation that becomes
16 due after the order for relief, reducing the payments
17 under subparagraph (A) by the amount so paid and
18 providing the trustee with evidence of such payment,
19 including the amount and date of payment.

20 “(2) A payment made under paragraph (1)(A) shall
21 be retained by the trustee until confirmation or denial of
22 confirmation. If a plan is confirmed, the trustee shall dis-
23 tribute any such payment in accordance with the plan as
24 soon as is practicable. If a plan is not confirmed, the trust-
25 ee shall return any such payments not previously paid and

1 not yet due and owing to creditors pursuant to paragraph
2 (3) to the debtor, after deducting any unpaid claim al-
3 lowed under section 503(b).

4 “(3) Subject to section 363, the court may, upon no-
5 tice and a hearing, modify, increase, or reduce the pay-
6 ments required under this subsection pending confirma-
7 tion of a plan.

8 “(4) Not later than 60 days after the date of filing
9 of a case under this chapter, a debtor retaining possession
10 of personal property subject to a lease or securing a claim
11 attributable in whole or in part to the purchase price of
12 such property shall provide the lessor or secured creditor
13 reasonable evidence of the maintenance of any required
14 insurance coverage with respect to the use or ownership
15 of such property and continue to do so for so long as the
16 debtor retains possession of such property.”.

17 **SEC. 310. LIMITATION ON LUXURY GOODS.**

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

20 “(C)(i) for purposes of subparagraph

21 (A)—

22 “(I) consumer debts owed to a single
23 creditor and aggregating more than \$250
24 for luxury goods or services incurred by an
25 individual debtor on or within 90 days be-

1 fore the order for relief under this title are
2 presumed to be nondischargeable; and

3 “(II) cash advances aggregating more
4 than \$750 that are extensions of consumer
5 credit under an open end credit plan ob-
6 tained by an individual debtor on or within
7 70 days before the order for relief under
8 this title, are presumed to be non-
9 dischargeable; and

10 “(ii) for purposes of this subparagraph—

11 “(I) the term ‘extension of credit
12 under an open end credit plan’ means an
13 extension of credit under an open end
14 credit plan, within the meaning of the Con-
15 sumer Credit Protection Act (15 U.S.C.
16 1601 et seq.);

17 “(II) the term ‘open end credit plan’
18 has the meaning given that term under
19 section 103 of Consumer Credit Protection
20 Act (15 U.S.C. 1602); and

21 “(III) the term ‘luxury goods or serv-
22 ices’ does not include goods or services rea-
23 sonably necessary for the support or main-
24 tenance of the debtor or a dependent of the
25 debtor.”.

1 **SEC. 311. AUTOMATIC STAY.**

2 Section 362(b) of title 11, United States Code, is
3 amended by inserting after paragraph (21), as added by
4 this Act, the following:

5 “(22) under subsection (a)(3), of the continu-
6 ation of any eviction, unlawful detainer action, or
7 similar proceeding by a lessor against a debtor in-
8 volving residential real property in which the debtor
9 resides as a tenant under a rental agreement;

10 “(23) under subsection (a)(3), of the com-
11 mencement of any eviction, unlawful detainer action,
12 or similar proceeding by a lessor against a debtor in-
13 volving residential real property in which the debtor
14 resides as a tenant under a rental agreement that
15 has terminated under the lease agreement or appli-
16 cable State law;

17 “(24) under subsection (a)(3), of eviction ac-
18 tions based on endangerment to property or person
19 or the use of illegal drugs;

20 “(25) under subsection (a) of any transfer that
21 is not avoidable under section 544 and that is not
22 avoidable under section 549;”.

23 **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**
24 **DISCHARGES.**

25 Title 11, United States Code, is amended—

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

3 (2) in section 1328, by inserting after sub-
4 section (e) the following:

5 “(f) Notwithstanding subsections (a) and (b), the
6 court shall not grant a discharge of all debts provided for
7 by the plan or disallowed under section 502 if the debtor
8 has received a discharge in any case filed under this title
9 within 5 years before the order for relief under this chap-
10 ter.”.

11 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**
12 **TIQUES.**

13 (a) DEFINITION.—Section 522(f) of title 11, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

16 “(4)(A) Subject to subparagraph (B), for purposes
17 of paragraph (1)(B), the term ‘household goods’ means—

18 “(i) clothing;

19 “(ii) furniture;

20 “(iii) appliances;

21 “(iv) 1 radio;

22 “(v) 1 television;

23 “(vi) 1 VCR;

24 “(vii) linens;

25 “(viii) china;

1 “(ix) crockery;

2 “(x) kitchenware;

3 “(xi) educational materials and educational
4 equipment primarily for the use of minor dependent
5 children of the debtor, but only 1 personal computer
6 only if used primarily for the education or entertain-
7 ment of such minor children;

8 “(xii) medical equipment and supplies;

9 “(xiii) furniture exclusively for the use of minor
10 children, or elderly or disabled dependents of the
11 debtor; and

12 “(xiv) personal effects (including the toys and
13 hobby equipment of minor dependent children and
14 wedding rings) of the debtor and the dependents of
15 the debtor.

16 “(B) The term ‘household goods’ does not include—

17 “(i) works of art (unless by or of the debtor or
18 the dependents of the debtor);

19 “(ii) electronic entertainment equipment (except
20 1 television, 1 radio, and 1 VCR);

21 “(iii) items acquired as antiques;

22 “(iv) jewelry (except wedding rings); and

23 “(v) a computer (except as otherwise provided
24 for in this section), motor vehicle (including a trac-
25 tor or lawn tractor), boat, or a motorized rec-

1 reational device, conveyance, vehicle, watercraft, or
2 aircraft.”.

3 (b) STUDY.—Not later than 2 years after the date
4 of enactment of this Act, the Director of the Executive
5 Office for United States Trustees shall submit a report
6 to the Committee on the Judiciary of the Senate and the
7 Committee on the Judiciary of the House of Representa-
8 tives containing its findings regarding utilization of the
9 definition of household goods, as defined in section
10 522(f)(4) of title 11, United States Code, as added by this
11 section, with respect to the avoidance of nonpossessory,
12 nonpurchase money security interests in household goods
13 under section 522(f)(1)(B) of title 11, United States Code,
14 and the impact that section 522(f)(4) of that title, as
15 added by this section, has had on debtors and on the bank-
16 ruptcy courts. Such report may include recommendations
17 for amendments to section 522(f)(4) of title 11, United
18 States Code, consistent with the Director’s findings.

19 **SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE**
20 **DEBTS.**

21 (a) IN GENERAL.—Section 523(a) of title 11, United
22 States Code, is amended by inserting after paragraph (14)
23 the following:

1 “(14A) incurred to pay a tax to a governmental
2 unit, other than the United States, that would be
3 nondischargeable under paragraph (1);”.

4 (b) DISCHARGE UNDER CHAPTER 13.—Section
5 1328(a) of title 11, United States Code, is amended by
6 striking paragraphs (1) through (3) and inserting the fol-
7 lowing:

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

9 “(2) of the kind specified in paragraph (2), (3),
10 (4), (5), (8), or (9) of section 523(a);

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

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

19 **SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7**
20 **AND 13 CASES.**

21 (a) NOTICE.—Section 342 of title 11, United States
22 Code, as amended by this Act, is amended—

23 (1) in subsection (c)—

24 (A) by inserting “(1)” after “(c)”;

1 (B) by striking “, but the failure of such
2 notice to contain such information shall not in-
3 validate the legal effect of such notice”; and

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

5 “(2) If, within the 90 days prior to the date of
6 the filing of a petition in a voluntary case, the cred-
7 itor supplied the debtor in at least 2 communications
8 sent to the debtor with the current account number
9 of the debtor and the address at which the creditor
10 wishes to receive correspondence, then the debtor
11 shall send any notice required under this title to the
12 address provided by the creditor and such notice
13 shall include the account number. In the event the
14 creditor would be in violation of applicable nonbank-
15 ruptcy law by sending any such communication with-
16 in such 90-day period and if the creditor supplied
17 the debtor in the last 2 communications with the
18 current account number of the debtor and the ad-
19 dress at which the creditor wishes to receive cor-
20 respondence, then the debtor shall send any notice
21 required under this title to the address provided by
22 the creditor and such notice shall include the ac-
23 count number.”; and

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

1 “(e) At any time, a creditor, in a case of an individual
2 debtor under chapter 7 or 13, may file with the court and
3 serve on the debtor a notice of the address to be used to
4 notify the creditor in that case. Five days after receipt
5 of such notice, if the court or the debtor is required to
6 give the creditor notice, such notice shall be given at that
7 address.

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

14 “(g)(1) Notice given to a creditor other than as pro-
15 vided in this section shall not be effective notice until that
16 notice has been brought to the attention of the creditor.
17 If the creditor designates a person or department to be
18 responsible for receiving notices concerning bankruptcy
19 cases and establishes reasonable procedures so that bank-
20 ruptcy notices received by the creditor are to be delivered
21 to such department or person, notice shall not be consid-
22 ered to have been brought to the attention of the creditor
23 until received by such person or department.

24 “(2) No sanction under section 362(k) or any other
25 sanction that a court may impose on account of violations

1 of the stay under section 362(a) or failure to comply with
2 section 542 or 543 may be imposed on any action of the
3 creditor unless the action takes place after the creditor
4 has received notice of the commencement of the case effective
5 under this section.”.

6 (b) DEBTOR’S DUTIES.—Section 521 of title 11,
7 United States Code, as amended by this Act, is
8 amended—

9 (1) in subsection (a), as so designated by this
10 Act, by striking paragraph (1) and inserting the following:
11

12 “(1) file—

13 “(A) a list of creditors; and

14 “(B) unless the court orders otherwise—

15 “(i) a schedule of assets and liabilities;
16

17 “(ii) a schedule of current income and
18 current expenditures;

19 “(iii) a statement of the debtor’s financial affairs and, if applicable, a
20 certificate—
21

22 “(I) of an attorney whose name
23 is on the petition as the attorney for
24 the debtor or any bankruptcy petition
25 preparer signing the petition under

1 section 110(b)(1) indicating that such
2 attorney or bankruptcy petition pre-
3 parer delivered to the debtor any no-
4 tice required by section 342(b); or

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

10 “(iv) copies of all payment advices or
11 other evidence of payment, if any, received
12 by the debtor from any employer of the
13 debtor in the period 60 days before the fil-
14 ing of the petition;

15 “(v) a statement of the amount of
16 monthly net income, itemized to show how
17 the amount is calculated; and

18 “(vi) a statement disclosing any rea-
19 sonably anticipated increase in income or
20 expenditures over the 12-month period fol-
21 lowing the date of filing;” and

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

23 “(e)(1) At any time, a creditor, in the case of an indi-
24 vidual under chapter 7 or 13, may file with the court no-
25 tice that the creditor requests the petition, schedules, and

1 a statement of affairs filed by the debtor in the case, and
2 the court shall make those documents available to the
3 creditor who requests those documents.

4 “(2)(A) The debtor shall provide either a tax return
5 or transcript at the election of the debtor, for the latest
6 taxable period prior to filing for which a tax return has
7 been or should have been filed, to the trustee, not later
8 than 7 days before the date first set for the first meeting
9 of creditors, or the case shall be dismissed, unless the
10 debtor demonstrates that the failure to file a return as
11 required is due to circumstances beyond the control of the
12 debtor.

13 “(B) If a creditor has requested a tax return or tran-
14 script referred to in subparagraph (A), the debtor shall
15 provide such tax return or transcript to the requesting
16 creditor at the time the debtor provides the tax return or
17 transcript to the trustee, or the case shall be dismissed,
18 unless the debtor demonstrates that the debtor is unable
19 to provide such information due to circumstances beyond
20 the control of the debtor.

21 “(3)(A) At any time, a creditor in a case under chap-
22 ter 13 may file with the court notice that the creditor re-
23 quests the plan filed by the debtor in the case.

24 “(B) The court shall make such plan available to the
25 creditor who request such plan—

1 “(i) at a reasonable cost; and

2 “(ii) not later than 5 days after such request.

3 “(f) An individual debtor in a case under chapter 7,
4 11, or 13 shall file with the court at the request of any
5 party in interest—

6 “(1) at the time filed with the taxing authority,
7 all tax returns required under applicable law, includ-
8 ing any schedules or attachments, with respect to
9 the period from the commencement of the case until
10 such time as the case is closed;

11 “(2) at the time filed with the taxing authority,
12 all tax returns required under applicable law, includ-
13 ing any schedules or attachments, that were not
14 filed with the taxing authority when the schedules
15 under subsection (a)(1) were filed with respect to
16 the period that is 3 years before the order of relief;

17 “(3) any amendments to any of the tax returns,
18 including schedules or attachments, described in
19 paragraph (1) or (2); and

20 “(4) in a case under chapter 13, a statement
21 subject to the penalties of perjury by the debtor of
22 the debtor’s income and expenditures in the pre-
23 ceding tax year and monthly income, that shows how
24 the amounts are calculated—

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

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

8 “(g)(1) A statement referred to in subsection (f)(4)
9 shall disclose—

10 “(A) the amount and sources of income of the
11 debtor;

12 “(B) the identity of any person responsible with
13 the debtor for the support of any dependent of the
14 debtor; and

15 “(C) the identity of any person who contrib-
16 uted, and the amount contributed, to the household
17 in which the debtor resides.

18 “(2) The tax returns, amendments, and statement of
19 income and expenditures described in subsection (e)(2)(A)
20 and subsection (f) shall be available to the United States
21 trustee, any bankruptcy administrator, any trustee, and
22 any party in interest for inspection and copying, subject
23 to the requirements of subsection (h).

24 “(h)(1) Not later than 180 days after the date of en-
25 actment of the Bankruptcy Abuse Prevention and Con-

1 sumer Protection Act of 2001, the Director of the Admin-
2 istrative Office of the United States Courts shall establish
3 procedures for safeguarding the confidentiality of any tax
4 information required to be provided under this section.

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

8 “(3) Not later than 1 year and 180 days after the
9 date of enactment of the Bankruptcy Abuse Prevention
10 and Consumer Protection Act of 2001, the Director of the
11 Administrative Office of the United States Courts shall
12 prepare and submit to Congress a report that—

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

15 “(B) if appropriate, includes proposed legisla-
16 tion to—

17 “(i) further protect the confidentiality of
18 tax information; and

19 “(ii) provide penalties for the improper use
20 by any person of the tax information required
21 to be provided under this section.

22 “(i) If requested by the United States trustee or a
23 trustee serving in the case, the debtor shall provide—

24 “(1) a document that establishes the identity of
25 the debtor, including a driver’s license, passport, or

1 other document that contains a photograph of the
2 debtor; and

3 “(2) such other personal identifying information
4 relating to the debtor that establishes the identity of
5 the debtor.”.

6 **SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**
7 **ULES OR PROVIDE REQUIRED INFORMATION.**

8 Section 521 of title 11, United States Code, as
9 amended by this Act, is amended by adding at the end
10 the following:

11 “(j)(1) Notwithstanding section 707(a), and subject
12 to paragraph (2), if an individual debtor in a voluntary
13 case under chapter 7 or 13 fails to file all of the informa-
14 tion required under subsection (a)(1) within 45 days after
15 the filing of the petition commencing the case, the case
16 shall be automatically dismissed effective on the 46th day
17 after the filing of the petition.

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

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

1 an additional period of not to exceed 45 days to file the
2 information required under subsection (a)(1) if the court
3 finds justification for extending the period for the filing.”.

4 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**
5 **CONFIRMATION OF THE PLAN.**

6 Section 1324 of title 11, United States Code, is
7 amended—

8 (1) by striking “After” and inserting the fol-
9 lowing:

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

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

13 “(b) The hearing on confirmation of the plan may
14 be held not earlier than 20 days and not later than 45
15 days after the date of the meeting of creditors under sec-
16 tion 341(a).”.

17 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**
18 **IN CERTAIN CASES.**

19 Title 11, United States Code, is amended—

20 (1) by amending section 1322(d) to read as fol-
21 lows:

22 “(d)(1) If the current monthly income of the debtor
23 and the debtor’s spouse combined, when multiplied by 12,
24 is not less than—

1 “(A) in the case of a debtor in a household of
2 1 person, the median family income of the applicable
3 State for 1 earner last reported by the Bureau of
4 the Census;

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

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

16 the plan may not provide for payments over a period that
17 is longer than 5 years.

18 “(2) If the current monthly income of the debtor and
19 the debtor’s spouse combined, when multiplied by 12, is
20 less than—

21 “(A) in the case of a debtor in a household of
22 1 person, the median family income of the applicable
23 State for 1 earner last reported by the Bureau of
24 the Census;

1 “(B) in the case of a debtor in a household of
2 2, 3, or 4 individuals, the highest median family in-
3 come of the applicable State for a family of the same
4 number or fewer individuals last reported by the Bu-
5 reau of the Census; or

6 “(C) in the case of a debtor in a household ex-
7 ceeding 4 individuals, the highest median family in-
8 come of the applicable State for a family of 4 or
9 fewer individuals last reported by the Bureau of the
10 Census, plus \$525 per month for each individual in
11 excess of 4,

12 the plan may not provide for payments over a period that
13 is longer than 3 years, unless the court, for cause, ap-
14 proves a longer period, but the court may not approve a
15 period that is longer than 5 years.”;

16 (2) in section 1325(b)(1)(B), by striking
17 “three-year period” and inserting “applicable com-
18 mitment period”; and

19 (3) in section 1325(b), as amended by this Act,
20 by adding at the end the following:

21 “(4) For purposes of this subsection, the ‘applicable
22 commitment period’—

23 “(A) subject to subparagraph (B), shall be—

24 “(i) 3 years; or

1 “(ii) not less than 5 years, if the current
2 monthly income of the debtor and the debtor’s
3 spouse combined, when multiplied by 12, is not
4 less than—

5 “(I) in the case of a debtor in a
6 household of 1 person, the median family
7 income of the applicable State for 1 earner
8 last reported by the Bureau of the Census;

9 “(II) in the case of a debtor in a
10 household of 2, 3, or 4 individuals, the
11 highest median family income of the appli-
12 cable State for a family of the same num-
13 ber or fewer individuals last reported by
14 the Bureau of the Census; or

15 “(III) in the case of a debtor in a
16 household exceeding 4 individuals, the
17 highest median family income of the appli-
18 cable State for a family of 4 or fewer indi-
19 viduals last reported by the Bureau of the
20 Census, plus \$525 per month for each in-
21 dividual in excess of 4; and

22 “(B) may be less than 3 or 5 years, whichever
23 is applicable under subparagraph (A), but only if the
24 plan provides for payment in full of all allowed unse-
25 cured claims over a shorter period.”; and

1 (4) in section 1329(c), by striking “three
2 years” and inserting “the applicable commitment pe-
3 riod under section 1325(b)(1)(B)”.

4 **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**
5 **RULE 9011 OF THE FEDERAL RULES OF BANK-**
6 **RUPTCY PROCEDURE.**

7 It is the sense of Congress that rule 9011 of the Fed-
8 eral Rules of Bankruptcy Procedure (11 U.S.C. App.)
9 should be modified to include a requirement that all docu-
10 ments (including schedules), signed and unsigned, sub-
11 mitted to the court or to a trustee by debtors who rep-
12 resent themselves and debtors who are represented by an
13 attorney be submitted only after the debtor or the debtor’s
14 attorney has made reasonable inquiry to verify that the
15 information contained in such documents is—

16 (1) well grounded in fact; and

17 (2) warranted by existing law or a good-faith
18 argument for the extension, modification, or reversal
19 of existing law.

20 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**
21 **CASES.**

22 Section 362(e) of title 11, United States Code, is
23 amended—

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

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

1 “(2) Notwithstanding paragraph (1), in a case under
2 chapter 7, 11, or 13 in which the debtor is an individual,
3 the stay under subsection (a) shall terminate on the date
4 that is 60 days after a request is made by a party in inter-
5 est under subsection (d), unless—

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

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

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

11 or

12 “(ii) by the court for such specific period
13 of time as the court finds is required for good
14 cause, as described in findings made by the
15 court.”.

16 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

17 (a) PROPERTY OF THE ESTATE.—

18 (1) IN GENERAL.—Subchapter I of chapter 11
19 of title 11, United States Code, is amended by add-
20 ing at the end the following:

21 **“§ 1115. Property of the estate**

22 “(a) In a case in which the debtor is an individual,
23 property of the estate includes, in addition to the property
24 specified in section 541—

1 “(1) all property of the kind specified in section
2 541 that the debtor acquires after the commence-
3 ment of the case but before the case is closed, dis-
4 missed, or converted to a case under chapter 7, 12,
5 or 13, whichever occurs first; and

6 “(2) earnings from services performed by the
7 debtor after the commencement of the case but be-
8 fore the case is closed, dismissed, or converted to a
9 case under chapter 7, 12, or 13, whichever occurs
10 first.”.

11 “(b) Except as provided in section 1104 or a con-
12 firmed plan or order confirming a plan, the debtor shall
13 remain in possession of all property of the estate.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions for chapter 11 of title 11, United States Code,
16 is amended by adding at the end of the matter relat-
17 ing to subchapter I the following:

“1115. Property of the estate.”.

18 (b) CONTENTS OF PLAN.—Section 1123(a) of title
19 11, United States Code, is amended—

20 (1) in paragraph (6), by striking “and” at the
21 end;

22 (2) in paragraph (7), by striking the period and
23 inserting “; and”; and

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

1 “(8) in a case concerning an individual, provide
2 for the payment to creditors through the plan of all
3 or such portion of earnings from personal services
4 performed by the debtor after the commencement of
5 the case or other future income of the debtor as is
6 necessary for the execution of the plan.”.

7 (c) CONFIRMATION OF PLAN.—

8 (1) REQUIREMENTS RELATING TO VALUE OF
9 PROPERTY.—Section 1129(a) of title 11, United
10 States Code, is amended by adding at the end the
11 following:

12 “(15) In a case concerning an individual in
13 which the holder of an allowed unsecured claim ob-
14 jects to the confirmation of the plan—

15 “(A) the value of the property to be dis-
16 tributed under the plan on account of such
17 claim is, as of the effective date of the plan, not
18 less than the amount of such claim; or

19 “(B) the value of the property to be dis-
20 tributed under the plan is not less than the
21 debtor’s projected disposable income (as that
22 term is defined in section 1325(b)(2)) to be re-
23 ceived during the 5-year period beginning on
24 the date that the first payment is due under the

1 plan, or during the term of the plan, whichever
2 is longer.”.

3 (2) REQUIREMENT RELATING TO INTERESTS IN
4 PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,
5 United States Code, is amended by inserting before
6 the period at the end the following: “, except that
7 in a case concerning an individual, the debtor may
8 retain property included in the estate under section
9 1115, subject to the requirements of subsection
10 (a)(14)”.

11 (d) EFFECT OF CONFIRMATION—Section 1141(d) of
12 title 11, United States Code, is amended—

13 (1) in paragraph (2), by striking “The con-
14 firmation of a plan does not discharge an individual
15 debtor” and inserting “A discharge under this chap-
16 ter does not discharge a debtor”; and

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

18 “(5) In a case concerning an individual—

19 “(A) except as otherwise ordered for cause
20 shown, the discharge is not effective until completion
21 of all payments under the plan; and

22 “(B) at any time after the confirmation of the
23 plan and after notice and a hearing, the court may
24 grant a discharge to a debtor that has not completed
25 payments under the plan only if—

1 “(i) for each allowed unsecured claim, the
2 value, as of the effective date of the plan, of
3 property actually distributed under the plan on
4 account of that claim is not less than the
5 amount that would have been paid on such
6 claim if the estate of the debtor had been liq-
7 uidated under chapter 7 of this title on such
8 date; and

9 “(ii) modification of the plan under 1127
10 of this title is not practicable.”.

11 (e) MODIFICATION OF PLAN.—Section 1127 of title
12 11, United States Code, is amended by adding at the end
13 the following:

14 “(e) In a case concerning an individual, the plan may
15 be modified at any time after confirmation of the plan but
16 before the completion of payments under the plan, whether
17 or not the plan has been substantially consummated, upon
18 request of the debtor, the trustee, the United States trust-
19 ee, or the holder of an allowed unsecured claim, to—

20 “(1) increase or reduce the amount of payments
21 on claims of a particular class provided for by the
22 plan;

23 “(2) extend or reduce the time period for such
24 payments; or

1 “(3) alter the amount of the distribution to a
2 creditor whose claim is provided for by the plan to
3 the extent necessary to take account of any payment
4 of such claim made other than under the plan.

5 “(f)(1) Sections 1121 through 1128 of this title and
6 the requirements of section 1129 of this title apply to any
7 modification under subsection (a).

8 “(2) The plan, as modified, shall become the plan
9 only after there has been disclosure under section 1125,
10 as the court may direct, notice and a hearing, and such
11 modification is approved.”.

12 **SEC. 322. LIMITATION.**

13 (a) EXEMPTIONS.—Section 522 of title 11, United
14 States Code, as amended by this Act, is amended by add-
15 ing at the end the following:

16 “(p)(1) Except as provided in paragraph (2) of this
17 subsection and sections 544 and 548 of this title, as a
18 result of electing under subsection (b)(3)(A) to exempt
19 property under State or local law, a debtor may not ex-
20 empt any amount of interest that was acquired by the
21 debtor during the 2-year period preceding the filing of the
22 petition which exceeds in the aggregate \$100,000 in value
23 in—

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

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

4 “(C) a burial plot for the debtor or a dependent
5 of the debtor.

6 “(2)(A) The limitation under paragraph (1) shall not
7 apply to an exemption claimed under subsection (b)(3)(A)
8 by a family farmer for the principal residence of that
9 farmer.

10 “(B) For purposes of paragraph (1), any amount of
11 such interest does not include any interest transferred
12 from a debtor’s previous principal residence (which was
13 acquired prior to the beginning of the 2-year period) into
14 the debtor’s current principal residence, where the debt-
15 or’s previous and current residences are located in the
16 same State.”.

17 (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section
18 104(b) of title 11, United States Code, is amended—

19 (1) in paragraph (1), by striking “522(d),” and
20 inserting “522(d), 522(n), 522(p),”; and

21 (2) in paragraph (2), by striking “522(d),” and
22 inserting “522(d), 522(n), 522(p),”.

1 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**
2 **PANT CONTRIBUTIONS AND OTHER PROP-**
3 **ERTY FROM THE ESTATE.**

4 (a) IN GENERAL.—Section 541(b) of title 11, United
5 States Code, is amended by inserting after paragraph (6),
6 as added by this Act, the following:

7 “(7) any amount—

8 “(A) withheld by an employer from the
9 wages of employees for payment as contribu-
10 tions to—

11 “(i) an employee benefit plan subject
12 to title I of the Employee Retirement In-
13 come Security Act of 1974 or under an
14 employee benefit plan which is a govern-
15 mental plan under section 414(d) of the
16 Internal Revenue Code of 1986, a deferred
17 compensation plan under section 457 of
18 the Internal Revenue Code of 1986, or a
19 tax-deferred annuity under section 403(b)
20 of the Internal Revenue Code of 1986, ex-
21 cept that such amount under this clause
22 shall not constitute disposable income, as
23 defined in section 1325(b)(2) of this title;
24 or

1 “(ii) a health insurance plan regulated
2 by State law whether or not subject to
3 such title; or

4 “(B) received by the employer from em-
5 ployees for payment as contributions to—

6 “(i) an employee benefit plan subject
7 to title I of the Employee Retirement In-
8 come Security Act of 1974 or under an
9 employee benefit plan which is a govern-
10 mental plan under section 414(d) of the
11 Internal Revenue Code of 1986, a deferred
12 compensation plan under section 457 of
13 the Internal Revenue Code of 1986, or a
14 tax-deferred annuity under section 403(b)
15 of the Internal Revenue Code of 1986, ex-
16 cept that such amount under this clause
17 shall not constitute disposable income, as
18 defined in section 1325(b)(2) of this title;
19 or

20 “(ii) a health insurance plan regulated
21 by State law whether or not subject to
22 such title;”.

23 (b) APPLICATION OF AMENDMENT.—The amend-
24 ments made by this section shall not apply to cases com-
25 menced under title 11, United States Code, before the ex-

1 piration of the 180-day period beginning on the date of
2 enactment of this Act.

3 **SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLV-**
4 **ING BANKRUPTCY PROFESSIONALS.**

5 (a) IN GENERAL.—Section 1334 of title 28, United
6 States Code, is amended—

7 (1) in subsection (b), by striking “Notwith-
8 standing” and inserting “Except as provided in sub-
9 section (e)(2), and notwithstanding”; and

10 (2) by striking subsection (e) and inserting the
11 following:

12 “(e) The district court in which a case under title
13 11 is commenced or is pending shall have exclusive
14 jurisdiction—

15 “(1) of all the property, wherever located, of the
16 debtor as of the date of commencement of such case,
17 and of property of the estate; and

18 “(2) over all claims or causes of action that in-
19 volve construction of section 327 of title 11, United
20 States Code, or rules relating to disclosure require-
21 ments under section 327.”.

22 (b) APPLICABILITY.—This section shall only apply to
23 cases filed after the date of enactment of this Act.

1 **SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE**
2 **INCREASE.**

3 (a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE
4 11, UNITED STATES CODE.—Section 1930(a) of title 28,
5 United States Code, is amended by striking paragraph (1)
6 and inserting the following:

7 “(1) For a case commenced—

8 “(A) under chapter 7 of title 11, \$160; or

9 “(B) under chapter 13 of title 11, \$150.”.

10 (b) UNITED STATES TRUSTEE SYSTEM FUND.—Sec-
11 tion 589a(b) of title 28, United States Code, is amended—

12 (1) by striking paragraph (1) and inserting the
13 following:

14 “(1)(A) 40.63 percent of the fees collected
15 under section 1930(a)(1)(A) of this title in cases
16 commenced under chapter 7 of title 11; and

17 “(B) 70.00 percent of the fees collected under
18 section 1930(a)(1)(B) of this title in cases com-
19 menced under chapter 13 of title 11;”;

20 (2) in paragraph (2), by striking “one-half”
21 and inserting “three-fourths”; and

22 (3) in paragraph (4), by striking “one-half”
23 and inserting “100 percent”.

24 (c) COLLECTION AND DEPOSIT OF MISCELLANEOUS
25 BANKRUPTCY FEES.—Section 406(b) of the Judiciary Ap-
26 propriations Act, 1990 (28 U.S.C. 1931 note) is amended

1 by striking “pursuant to 28 U.S.C. section 1930(b) and
2 33.87 per centum of the fees hereafter collected under 28
3 U.S.C. section 1930(a)(1) and 25 percent of the fees here-
4 after collected under 28 U.S.C. section 1930(a)(3) shall
5 be deposited as offsetting receipts to the fund established
6 under 28 U.S.C. section 1931” and inserting “under sec-
7 tion 1930(b) of title 28, United States Code, and 31.25
8 percent of the fees collected under section 1930(a)(1)(A)
9 of that title, 30.00 percent of the fees collected under sec-
10 tion 1930(a)(1)(B) of that title, and 25 percent of the fees
11 collected under section 1930(a)(3) of that title shall be
12 deposited as offsetting receipts to the fund established
13 under section 1931 of that title”.

14 **SEC. 326. SHARING OF COMPENSATION.**

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

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

23 **SEC. 327. FAIR VALUATION OF COLLATERAL.**

24 Section 506(a) of title 11, United States Code, is
25 amended by—

1 (1) inserting “(1)” after “(a)”; and

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

3 “(2) In the case of an individual debtor under chap-
4 ters 7 and 13, such value with respect to personal property
5 securing an allowed claim shall be determined based on
6 the replacement value of such property as of the date of
7 filing the petition without deduction for costs of sale or
8 marketing. With respect to property acquired for personal,
9 family, or household purpose, replacement value shall
10 mean the price a retail merchant would charge for prop-
11 erty of that kind considering the age and condition of the
12 property at the time value is determined.”.

13 **SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGA-**
14 **TIONS.**

15 (a) EXECUTORY CONTRACTS AND UNEXPIRED
16 LEASES.—Section 365 of title 11, United States Code, is
17 amended—

18 (1) in subsection (b)—

19 (A) in paragraph (1)(A), by striking the
20 semicolon at the end and inserting the fol-
21 lowing: “other than a default that is a breach
22 of a provision relating to the satisfaction of any
23 provision (other than a penalty rate or penalty
24 provision) relating to a default arising from any
25 failure to perform nonmonetary obligations

1 under an unexpired lease of real property, if it
2 is impossible for the trustee to cure such de-
3 fault by performing nonmonetary acts at and
4 after the time of assumption, except that if
5 such default arises from a failure to operate in
6 accordance with a nonresidential real property
7 lease, then such default shall be cured by per-
8 formance at and after the time of assumption
9 in accordance with such lease, and pecuniary
10 losses resulting from such default shall be com-
11 pensated in accordance with the provisions of
12 paragraph (b)(1);” and

13 (B) in paragraph (2)(D), by striking “pen-
14 alty rate or provision” and inserting “penalty
15 rate or penalty provision”;

16 (2) in subsection (c)—

17 (A) in paragraph (2), by inserting “or” at
18 the end;

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

21 (C) by striking paragraph (4);

22 (3) in subsection (d)—

23 (A) by striking paragraphs (5) through
24 (9); and

1 (B) by redesignating paragraph (10) as
2 paragraph (5); and

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

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

9 (1) in subparagraph (A), by inserting “or of a
10 kind that section 365(b)(2) of this title expressly
11 does not require to be cured” before the semicolon
12 at the end;

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

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

17 (4) by inserting after subparagraph (C) the fol-
18 lowing:

19 “(D) if such claim or such interest arises
20 from any failure to perform a nonmonetary ob-
21 ligation, other than a default arising from fail-
22 ure to operate a non-residential real property
23 lease subject to section 365(b)(1)(A), com-
24 pensates the holder of such claim or such inter-
25 est (other than the debtor or an insider) for any

1 actual pecuniary loss incurred by such holder as
2 a result of such failure; and”.

3 **TITLE IV—GENERAL AND SMALL**
4 **BUSINESS BANKRUPTCY PRO-**
5 **VISIONS**

6 **Subtitle A—General Business**
7 **Bankruptcy Provisions**

8 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

9 (a) DEFINITION.—Section 101 of title 11, United
10 States Code, as amended by this Act, is amended by in-
11 serting after paragraph (48) the following:

12 “(48A) ‘securities self regulatory organization’
13 means either a securities association registered with
14 the Securities and Exchange Commission under sec-
15 tion 15A of the Securities Exchange Act of 1934 or
16 a national securities exchange registered with the
17 Securities and Exchange Commission under section
18 6 of the Securities Exchange Act of 1934;”.

19 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
20 United States Code, is amended by inserting after para-
21 graph (25), as added by this Act, the following:

22 “(26) under subsection (a), of—

23 “(A) the commencement or continuation of
24 an investigation or action by a securities self

1 regulatory organization to enforce such organi-
2 zation's regulatory power;

3 “(B) the enforcement of an order or deci-
4 sion, other than for monetary sanctions, ob-
5 tained in an action by the securities self regu-
6 latory organization to enforce such organiza-
7 tion's regulatory power; or

8 “(C) any act taken by the securities self
9 regulatory organization to delist, delete, or
10 refuse to permit quotation of any stock that
11 does not meet applicable regulatory require-
12 ments;”.

13 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**
14 **HOLDERS.**

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

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

1 **SEC. 403. PROTECTION OF REFINANCE OF SECURITY IN-**
2 **TEREST.**

3 Subparagraphs (A), (B), and (C) of section 547(e)(2)
4 of title 11, United States Code, are each amended by strik-
5 ing “10” each place it appears and inserting “30”.

6 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**
7 **LEASES.**

8 (a) IN GENERAL.—Section 365(d)(4) of title 11,
9 United States Code, is amended to read as follows:

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

17 “(i) the date that is 120 days after the date of
18 the order for relief; or

19 “(ii) the date of the entry of an order con-
20 firming a plan.

21 “(B)(i) The court may extend the period determined
22 under subparagraph (A), prior to the expiration of the
23 120-day period, for 90 days upon motion of the trustee
24 or lessor for cause.

1 of which, in comparison to the annual gross revenue of
2 that creditor, is disproportionately large.”.

3 (b) INFORMATION.—Section 1102(b) of title 11,
4 United States Code, is amended by adding at the end the
5 following:

6 “(3) A committee appointed under subsection (a)
7 shall—

8 “(A) provide access to information for creditors
9 who—

10 “(i) hold claims of the kind represented by
11 that committee; and

12 “(ii) are not appointed to the committee;

13 “(B) solicit and receive comments from the
14 creditors described in subparagraph (A); and

15 “(C) be subject to a court order that compels
16 any additional report or disclosure to be made to the
17 creditors described in subparagraph (A).”.

18 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**

19 **UNITED STATES CODE.**

20 Section 546 of title 11, United States Code, is
21 amended—

22 (1) by redesignating the second subsection des-
23 igned as subsection (g) (as added by section
24 222(a) of Public Law 103–394) as subsection (h);
25 and

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

2 “(i)(1) Notwithstanding paragraphs (2) and (3) of
3 section 545, the trustee may not avoid a warehouseman’s
4 lien for storage, transportation, or other costs incidental
5 to the storage and handling of goods.

6 “(2) The prohibition under paragraph (1) shall be ap-
7 plied in a manner consistent with any applicable State
8 statute that is similar to section 7–209 of the Uniform
9 Commercial Code, as in effect on the date of enactment
10 of the Bankruptcy Abuse Prevention and Consumer Pro-
11 tection Act of 2001, or any successor thereto.”.

12 **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**
13 **UNITED STATES CODE.**

14 Section 330(a) of title 11, United States Code, is
15 amended—

16 (1) in paragraph (3)—

17 (A) by striking “(A) In” and inserting
18 “In”; and

19 (B) by inserting “to an examiner, trustee
20 under chapter 11, or professional person” after
21 “awarded”; and

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

23 “(7) In determining the amount of reasonable com-
24 pensation to be awarded to a trustee, the court shall treat

1 such compensation as a commission, based on section 326
2 of this title.”.

3 **SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.**

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

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

12 **SEC. 409. PREFERENCES.**

13 Section 547(e) of title 11, United States Code, is
14 amended—

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

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

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

24 “(B) made according to ordinary business
25 terms;”;

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

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

4 “(9) if, in a case filed by a debtor whose debts
5 are not primarily consumer debts, the aggregate
6 value of all property that constitutes or is affected
7 by such transfer is less than \$5,000.”.

8 **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

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

12 **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

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

15 (1) by striking “On” and inserting “(1) Subject
16 to paragraph (2), on”; and

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

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

21 “(B) The 180-day period specified in paragraph (1)
22 may not be extended beyond a date that is 20 months after
23 the date of the order for relief under this chapter.”.

1 **SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP IN-**
2 **TERESTS.**

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

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

7 (2) by striking “ownership or” and inserting
8 “ownership,”;

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

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

17 **SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING**
18 **OF CREDITORS.**

19 Section 341(e) of title 11, United States Code, is
20 amended by inserting at the end the following: “Notwith-
21 standing any local court rule, provision of a State constitu-
22 tion, any other Federal or State law that is not a bank-
23 ruptcy law, or other requirement that representation at
24 the meeting of creditors under subsection (a) be by an at-
25 torney, a creditor holding a consumer debt or any rep-
26 resentative of the creditor (which may include an entity

1 or an employee of an entity and may be a representative
2 for more than 1 creditor) shall be permitted to appear at
3 and participate in the meeting of creditors in a case under
4 chapter 7 or 13, either alone or in conjunction with an
5 attorney for the creditor. Nothing in this subsection shall
6 be construed to require any creditor to be represented by
7 an attorney at any meeting of creditors.”.

8 **SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

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

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

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

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

18 “(C) does not have an interest materially
19 adverse to the interest of the estate or of any
20 class of creditors or equity security holders, by
21 reason of any direct or indirect relationship to,
22 connection with, or interest in, the debtor, or
23 for any other reason;”.

1 **SEC. 415. FACTORS FOR COMPENSATION OF PROFES-**
2 **SIONAL PERSONS.**

3 Section 330(a)(3) of title 11, United States Code, as
4 amended by this Act, is amended—

5 (1) in subparagraph (D), by striking “and” at
6 the end;

7 (2) by redesignating subparagraph (E) as sub-
8 paragraph (F); and

9 (3) by inserting after subparagraph (D) the fol-
10 lowing:

11 “(E) with respect to a professional person,
12 whether the person is board certified or otherwise
13 has demonstrated skill and experience in the bank-
14 ruptcy field; and”.

15 **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

16 Section 1104(b) of title 11, United States Code, is
17 amended—

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

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

20 “(2)(A) If an eligible, disinterested trustee is elected
21 at a meeting of creditors under paragraph (1), the United
22 States trustee shall file a report certifying that election.

23 “(B) Upon the filing of a report under subparagraph
24 (A)—

1 “(i) the trustee elected under paragraph (1)
2 shall be considered to have been selected and ap-
3 pointed for purposes of this section; and

4 “(ii) the service of any trustee appointed under
5 subsection (d) shall terminate.

6 “(C) In the case of any dispute arising out of an elec-
7 tion described in subparagraph (A), the court shall resolve
8 the dispute.”.

9 **SEC. 417. UTILITY SERVICE.**

10 Section 366 of title 11, United States Code, is
11 amended—

12 (1) in subsection (a), by striking “subsection
13 (b)” and inserting “subsections (b) and (c)”; and

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

15 “(c)(1)(A) For purposes of this subsection, the term
16 ‘assurance of payment’ means—

17 “(i) a cash deposit;

18 “(ii) a letter of credit;

19 “(iii) a certificate of deposit;

20 “(iv) a surety bond;

21 “(v) a prepayment of utility consumption; or

22 “(vi) another form of security that is mutually
23 agreed on between the utility and the debtor or the
24 trustee.

1 “(B) For purposes of this subsection an administra-
2 tive expense priority shall not constitute an assurance of
3 payment.

4 “(2) Subject to paragraphs (3) through (5), with re-
5 spect to a case filed under chapter 11, a utility referred
6 to in subsection (a) may alter, refuse, or discontinue util-
7 ity service, if during the 30-day period beginning on the
8 date of filing of the petition, the utility does not receive
9 from the debtor or the trustee adequate assurance of pay-
10 ment for utility service that is satisfactory to the utility.

11 “(3)(A) On request of a party in interest and after
12 notice and a hearing, the court may order modification
13 of the amount of an assurance of payment under para-
14 graph (2).

15 “(B) In making a determination under this para-
16 graph whether an assurance of payment is adequate, the
17 court may not consider—

18 “(i) the absence of security before the date of
19 filing of the petition;

20 “(ii) the payment by the debtor of charges for
21 utility service in a timely manner before the date of
22 filing of the petition; or

23 “(iii) the availability of an administrative ex-
24 pense priority.

1 “(4) Notwithstanding any other provision of law, with
2 respect to a case subject to this subsection, a utility may
3 recover or set off against a security deposit provided to
4 the utility by the debtor before the date of filing of the
5 petition without notice or order of the court.”.

6 **SEC. 418. BANKRUPTCY FEES.**

7 Section 1930 of title 28, United States Code, is
8 amended—

9 (1) in subsection (a), by striking “Notwith-
10 standing section 1915 of this title, the” and insert-
11 ing “The”; and

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

13 “(f)(1) Under the procedures prescribed by the Judi-
14 cial Conference of the United States, the district court or
15 the bankruptcy court may waive the filing fee in a case
16 under chapter 7 of title 11 for an individual if the court
17 determines that such debtor has income less than 150 per-
18 cent of the income official poverty line (as defined by the
19 Office of Management and Budget, and revised annually
20 in accordance with section 673(2) of the Omnibus Budget
21 Reconciliation Act of 1981) applicable to a family of the
22 size involved and is unable to pay that fee in installments.
23 For purposes of this paragraph, the term ‘filing fee’ means
24 the filing required by subsection (a), or any other fee pre-
25 scribed by the Judicial Conference under subsections (b)

1 and (c) that is payable to the clerk upon the commence-
2 ment of a case under chapter 7.

3 “(2) The district court or the bankruptcy court may
4 waive for such debtors other fees prescribed under sub-
5 sections (b) and (c).

6 “(3) This subsection does not restrict the district
7 court or the bankruptcy court from waiving, in accordance
8 with Judicial Conference policy, fees prescribed under this
9 section for other debtors and creditors.”.

10 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**
11 **SETS OF THE ESTATE.**

12 (a) IN GENERAL.—

13 (1) DISCLOSURE.—The Advisory Committee on
14 Bankruptcy Rules of the Judicial Conference of the
15 United States, after consideration of the views of the
16 Director of the Executive Office for United States
17 Trustees, shall propose for adoption amended Fed-
18 eral Rules of Bankruptcy Procedure and Official
19 Bankruptcy Forms directing debtors under chapter
20 11 of title 11, United States Code, to disclose the
21 information described in paragraph (2) by filing and
22 serving periodic financial and other reports designed
23 to provide such information.

24 (2) INFORMATION.—The information referred
25 to in paragraph (1) is the value, operations, and

1 profitability of any closely held corporation, partner-
2 ship, or of any other entity in which the debtor holds
3 a substantial or controlling interest.

4 (b) PURPOSE.—The purpose of the rules and reports
5 under subsection (a) shall be to assist parties in interest
6 taking steps to ensure that the debtor’s interest in any
7 entity referred to in subsection (a)(2) is used for the pay-
8 ment of allowed claims against debtor.

9 **Subtitle B—Small Business**
10 **Bankruptcy Provisions**

11 **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**
12 **AND PLAN.**

13 Section 1125 of title 11, United States Code, is
14 amended—

15 (1) in subsection (a)(1), by inserting before the
16 semicolon “and in determining whether a disclosure
17 statement provides adequate information, the court
18 shall consider the complexity of the case, the benefit
19 of additional information to creditors and other par-
20 ties in interest, and the cost of providing additional
21 information”; and

22 (2) by striking subsection (f), and inserting the
23 following:

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

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

4 “(2) the court may approve a disclosure state-
5 ment submitted on standard forms approved by the
6 court or adopted under section 2075 of title 28; and

7 “(3)(A) the court may conditionally approve a
8 disclosure statement subject to final approval after
9 notice and a hearing;

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

18 “(C) the hearing on the disclosure statement
19 may be combined with the hearing on confirmation
20 of a plan.”.

21 **SEC. 432. DEFINITIONS.**

22 (a) DEFINITIONS.—Section 101 of title 11, United
23 States Code, as amended by this Act, is amended by strik-
24 ing paragraph (51C) and inserting the following:

1 “(51C) ‘small business case’ means a case filed
2 under chapter 11 of this title in which the debtor is
3 a small business debtor;

4 “(51D) ‘small business debtor’—

5 “(A) subject to subparagraph (B), means a
6 person engaged in commercial or business ac-
7 tivities (including any affiliate of such person
8 that is also a debtor under this title and exclud-
9 ing a person whose primary activity is the busi-
10 ness of owning or operating real property or ac-
11 tivities incidental thereto) that has aggregate
12 noncontingent, liquidated secured and unse-
13 cured debts as of the date of the petition or the
14 order for relief in an amount not more than
15 \$3,000,000 (excluding debts owed to 1 or more
16 affiliates or insiders) for a case in which the
17 United States trustee has not appointed under
18 section 1102(a)(1) a committee of unsecured
19 creditors or where the court has determined
20 that the committee of unsecured creditors is not
21 sufficiently active and representative to provide
22 effective oversight of the debtor; and

23 “(B) does not include any member of a
24 group of affiliated debtors that has aggregate
25 noncontingent liquidated secured and unsecured

1 debts in an amount greater than \$3,000,000
2 (excluding debt owed to 1 or more affiliates or
3 insiders);”.

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

7 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**
8 **PLAN.**

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

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

20 (2) economy and simplicity for debtors.

21 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**
22 **MENTS.**

23 (a) REPORTING REQUIRED.—

1 (1) IN GENERAL.—Chapter 3 of title 11, United
2 States Code, is amended by inserting after section
3 307 the following:

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

5 “(a) For purposes of this section, the term ‘profit-
6 ability’ means, with respect to a debtor, the amount of
7 money that the debtor has earned or lost during current
8 and recent fiscal periods.

9 “(b) A small business debtor shall file periodic finan-
10 cial and other reports containing information including—

11 “(1) the debtor’s profitability;

12 “(2) reasonable approximations of the debtor’s
13 projected cash receipts and cash disbursements over
14 a reasonable period;

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

17 “(4)(A) whether the debtor is—

18 “(i) in compliance in all material respects
19 with postpetition requirements imposed by this
20 title and the Federal Rules of Bankruptcy Pro-
21 cedure; and

22 “(ii) timely filing tax returns and other re-
23 quired government filings and paying taxes and
24 other administrative expenses when due;

1 “(B) if the debtor is not in compliance with the
2 requirements referred to in subparagraph (A)(i) or
3 filing tax returns and other required government fil-
4 ings and making the payments referred to in sub-
5 paragraph (A)(ii), what the failures are and how, at
6 what cost, and when the debtor intends to remedy
7 such failures; and

8 “(C) such other matters as are in the best in-
9 terests of the debtor and creditors, and in the public
10 interest in fair and efficient procedures under chap-
11 ter 11 of this title.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for chapter 3 of title 11, United States Code,
14 is amended by inserting after the item relating to
15 section 307 the following:

“308. Debtor reporting requirements.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect 60 days after the date on
18 which rules are prescribed under section 2075 of title 28,
19 United States Code, to establish forms to be used to com-
20 ply with section 308 of title 11, United States Code, as
21 added by subsection (a).

22 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**
23 **SMALL BUSINESS CASES.**

24 (a) PROPOSAL OF RULES AND FORMS.—The Advi-
25 sory Committee on Bankruptcy Rules of the Judicial Con-

1 ference of the United States shall propose for adoption
2 amended Federal Rules of Bankruptcy Procedure and Of-
3 ficial Bankruptcy Forms to be used by small business
4 debtors to file periodic financial and other reports con-
5 taining information, including information relating to—

6 (1) the debtor's profitability;

7 (2) the debtor's cash receipts and disburse-
8 ments; and

9 (3) whether the debtor is timely filing tax re-
10 turns and paying taxes and other administrative ex-
11 penses when due.

12 (b) PURPOSE.—The rules and forms proposed under
13 subsection (a) shall be designed to achieve a practical bal-
14 ance among—

15 (1) the reasonable needs of the bankruptcy
16 court, the United States trustee, creditors, and other
17 parties in interest for reasonably complete informa-
18 tion;

19 (2) the small business debtor's interest that re-
20 quired reports be easy and inexpensive to complete;
21 and

22 (3) the interest of all parties that the required
23 reports help the small business debtor to understand
24 the small business debtor's financial condition and
25 plan the small business debtor's future.

1 **SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

2 (a) DUTIES IN CHAPTER 11 CASES.—Subchapter I
3 of chapter 11 of title 11, United States Code, as amended
4 by this Act, is amended by adding at the end the following:

5 **“§ 1116. Duties of trustee or debtor in possession in**
6 **small business cases**

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

10 “(1) append to the voluntary petition or, in an
11 involuntary case, file not later than 7 days after the
12 date of the order for relief—

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

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

20 “(2) attend, through its senior management
21 personnel and counsel, meetings scheduled by the
22 court or the United States trustee, including initial
23 debtor interviews, scheduling conferences, and meet-
24 ings of creditors convened under section 341 unless
25 the court waives that requirement after notice and

1 hearing, upon a finding of extraordinary and com-
2 pelling circumstances;

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

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

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

14 “(6)(A) timely file tax returns and other re-
15 quired government filings; and

16 “(B) subject to section 363(c)(2), timely pay all
17 administrative expense tax claims, except those
18 being contested by appropriate proceedings being
19 diligently prosecuted; and

20 “(7) allow the United States trustee, or a des-
21 ignated representative of the United States trustee,
22 to inspect the debtor’s business premises, books, and
23 records at reasonable times, after reasonable prior
24 written notice, unless notice is waived by the debt-
25 or.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 11 of title 11, United States Code, is amended
3 by adding at the end of the matter relating to subchapter
4 I the following:

“1116. Duties of trustee or debtor in possession in small business cases.”.

5 **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

6 Section 1121 of title 11, United States Code, is
7 amended by striking subsection (e) and inserting the fol-
8 lowing:

9 “(e) In a small business case—

10 “(1) only the debtor may file a plan until after
11 180 days after the date of the order for relief, unless
12 that period is—

13 “(A) extended as provided by this sub-
14 section, after notice and hearing; or

15 “(B) the court, for cause, orders otherwise;

16 “(2) the plan, and any necessary disclosure
17 statement, shall be filed not later than 300 days
18 after the date of the order for relief; and

19 “(3) the time periods specified in paragraphs
20 (1) and (2), and the time fixed in section 1129(e),
21 within which the plan shall be confirmed, may be ex-
22 tended only if—

23 “(A) the debtor, after providing notice to
24 parties in interest (including the United States
25 trustee), demonstrates by a preponderance of

1 the evidence that it is more likely than not that
2 the court will confirm a plan within a reason-
3 able period of time;

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

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

8 **SEC. 438. PLAN CONFIRMATION DEADLINE.**

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

11 “(e) In a small business case, the plan shall be con-
12 firmed not later than 175 days after the date of the order
13 for relief, unless such 175-day period is extended as pro-
14 vided in section 1121(e)(3).”.

15 **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

16 Section 586(a) of title 28, United States Code, is
17 amended—

18 (1) in paragraph (3)—

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

21 (B) by redesignating subparagraph (H) as
22 subparagraph (I); and

23 (C) by inserting after subparagraph (G)
24 the following:

1 “(H) in small business cases (as defined in
2 section 101 of title 11), performing the addi-
3 tional duties specified in title 11 pertaining to
4 such cases; and”;

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

7 (3) in paragraph (6), by striking the period at
8 the end and inserting a semicolon; and

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

10 “(7) in each of such small business cases—

11 “(A) conduct an initial debtor interview as
12 soon as practicable after the entry of order for
13 relief but before the first meeting scheduled
14 under section 341(a) of title 11, at which time
15 the United States trustee shall—

16 “(i) begin to investigate the debtor’s
17 viability;

18 “(ii) inquire about the debtor’s busi-
19 ness plan;

20 “(iii) explain the debtor’s obligations
21 to file monthly operating reports and other
22 required reports;

23 “(iv) attempt to develop an agreed
24 scheduling order; and

1 “(v) inform the debtor of other obliga-
2 tions;

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

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

12 “(8) in any case in which the United States
13 trustee finds material grounds for any relief under
14 section 1112 of title 11, the United States trustee
15 shall apply promptly after making that finding to
16 the court for relief.”.

17 **SEC. 440. SCHEDULING CONFERENCES.**

18 Section 105(d) of title 11, United States Code, is
19 amended—

20 (1) in the matter preceding paragraph (1), by
21 striking “, may”; and

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

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

4 **SEC. 441. SERIAL FILER PROVISIONS.**

5 Section 362 of title 11, United States Code, as
6 amended by this Act is amended—

7 (1) in subsection (k), as redesignated by this
8 Act—

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

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

12 “(2) If such violation is based on an action taken by
13 an entity in the good faith belief that subsection (h) ap-
14 plies to the debtor, the recovery under paragraph (1) of
15 this subsection against such entity shall be limited to ac-
16 tual damages.”; and

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

18 “(1)(1) Except as provided in paragraph (2) of this
19 subsection, the provisions of subsection (a) do not apply
20 in a case in which the debtor—

21 “(A) is a debtor in a small business case pend-
22 ing at the time the petition is filed;

23 “(B) was a debtor in a small business case that
24 was dismissed for any reason by an order that be-
25 came final in the 2-year period ending on the date

1 of the order for relief entered with respect to the pe-
2 tition;

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

7 “(D) is an entity that has succeeded to sub-
8 stantially all of the assets or business of a small
9 business debtor described in subparagraph (A), (B),
10 or (C).

11 “(2) This subsection does not apply—

12 “(A) to an involuntary case involving no collu-
13 sion by the debtor with creditors; or

14 “(B) to the filing of a petition if—

15 “(i) the debtor proves by a preponderance
16 of the evidence that the filing of that petition
17 resulted from circumstances beyond the control
18 of the debtor not foreseeable at the time the
19 case then pending was filed; and

20 “(ii) it is more likely than not that the
21 court will confirm a feasible plan, but not a liq-
22 uidating plan, within a reasonable period of
23 time.”.

1 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**
2 **VERSION AND APPOINTMENT OF TRUSTEE.**

3 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-
4 VERSION.—Section 1112 of title 11, United States Code,
5 is amended by striking subsection (b) and inserting the
6 following:

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

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

18 “(A) a plan with a reasonable possibility of
19 being confirmed will be filed within a reasonable pe-
20 riod of time; and

21 “(B) the grounds include an act or omission of
22 the debtor—

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

25 “(ii) that will be cured within a reasonable
26 period of time fixed by the court.

1 “(3) The court shall commence the hearing on any
2 motion under this subsection not later than 30 days after
3 filing of the motion, and shall decide the motion not later
4 than 15 days after commencement of the hearing, unless
5 the movant expressly consents to a continuance for a spe-
6 cific period of time or compelling circumstances prevent
7 the court from meeting the time limits established by this
8 paragraph.

9 “(4) For purposes of this subsection, the term ‘cause’
10 includes—

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

13 “(B) gross mismanagement of the estate;

14 “(C) failure to maintain appropriate insurance
15 that poses a risk to the estate or to the public;

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

18 “(E) failure to comply with an order of the
19 court;

20 “(F) repeated failure timely to satisfy any filing
21 or reporting requirement established by this title or
22 by any rule applicable to a case under this chapter;

23 “(G) failure to attend the meeting of creditors
24 convened under section 341(a) or an examination or-

1 dered under rule 2004 of the Federal Rules of
2 Bankruptcy Procedure;

3 “(H) failure timely to provide information or
4 attend meetings reasonably requested by the United
5 States trustee or the bankruptcy administrator;

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

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

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

14 “(L) revocation of an order of confirmation
15 under section 1144;

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

18 “(N) material default by the debtor with re-
19 spect to a confirmed plan;

20 “(O) termination of a confirmed plan by reason
21 of the occurrence of a condition specified in the plan;
22 and

23 “(P) failure of the debtor to pay any domestic
24 support obligation that first becomes payable after
25 the date on which the petition is filed.

1 “(5) The court shall commence the hearing on any
2 motion under this subsection not later than 30 days after
3 filing of the motion, and shall decide the motion not later
4 than 15 days after commencement of the hearing, unless
5 the movant expressly consents to a continuance for a spe-
6 cific period of time or compelling circumstances prevent
7 the court from meeting the time limits established by this
8 paragraph.”.

9 (b) **ADDITIONAL GROUNDS FOR APPOINTMENT OF**
10 **TRUSTEE.**—Section 1104(a) of title 11, United States
11 Code, is amended—

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

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

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

17 “(3) if grounds exist to convert or dismiss the
18 case under section 1112, but the court determines
19 that the appointment of a trustee or an examiner is
20 in the best interests of creditors and the estate.”.

21 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**
22 **STATES CODE, WITH RESPECT TO SMALL**
23 **BUSINESSES.**

24 Not later than 2 years after the date of enactment
25 of this Act, the Administrator of the Small Business Ad-

1 ministration, in consultation with the Attorney General,
2 the Director of the Administrative Office of United States
3 Trustees, and the Director of the Administrative Office
4 of the United States Courts, shall—

5 (1) conduct a study to determine—

6 (A) the internal and external factors that
7 cause small businesses, especially sole propri-
8 etorships, to become debtors in cases under title
9 11, United States Code, and that cause certain
10 small businesses to successfully complete cases
11 under chapter 11 of such title; and

12 (B) how Federal laws relating to bank-
13 ruptcy may be made more effective and efficient
14 in assisting small businesses to remain viable;
15 and

16 (2) submit to the President pro tempore of the
17 Senate and the Speaker of the House of Representa-
18 tives a report summarizing that study.

19 **SEC. 444. PAYMENT OF INTEREST.**

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

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

1 (2) by striking subparagraph (B) and inserting
2 the following:

3 “(B) the debtor has commenced monthly
4 payments that—

5 “(i) may, in the debtor’s sole discre-
6 tion, notwithstanding section 363(c)(2), be
7 made from rents or other income generated
8 before or after the commencement of the
9 case by or from the property to each cred-
10 itor whose claim is secured by such real es-
11 tate (other than a claim secured by a judg-
12 ment lien or by an unmatured statutory
13 lien); and

14 “(ii) are in an amount equal to inter-
15 est at the then applicable nondefault con-
16 tract rate of interest on the value of the
17 creditor’s interest in the real estate; or”.

18 **SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

19 Section 503(b) of title 11, United States Code, is
20 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 a semicolon; and

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

1 “(7) with respect to a nonresidential real prop-
2 erty lease previously assumed under section 365,
3 and subsequently rejected, a sum equal to all mone-
4 etary obligations due, excluding those arising from or
5 relating to a failure to operate or penalty provisions,
6 for the period of 2 years following the later of the
7 rejection date or the date of actual turnover of the
8 premises, without reduction or setoff for any reason
9 whatsoever except for sums actually received or to be
10 received from a nondebtor, and the claim for remain-
11 ing sums due for the balance of the term of the lease
12 shall be a claim under section 502(b)(6);”.

13 **TITLE V—MUNICIPAL**
14 **BANKRUPTCY PROVISIONS**

15 **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**
16 **TION.**

17 (a) **TECHNICAL AMENDMENT RELATING TO MUNICI-**
18 **PALITIES.**—Section 921(d) of title 11, United States
19 Code, is amended by inserting “notwithstanding section
20 301(b)” before the period at the end.

21 (b) **CONFORMING AMENDMENT.**—Section 301 of title
22 11, United States Code, is amended—

23 (1) by inserting “(a)” before “A voluntary”;
24 and

1 (2) by striking the last sentence and inserting
2 the following:

3 “(b) The commencement of a voluntary case under
4 a chapter of this title constitutes an order for relief under
5 such chapter.”.

6 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**
7 **TER 9.**

8 Section 901(a) of title 11, United States Code, is
9 amended—

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

11 (2) by inserting “559, 560, 561, 562” after
12 “557,”.

13 **TITLE VI—BANKRUPTCY DATA**

14 **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

15 (a) IN GENERAL.—Chapter 6 of title 28, United
16 States Code, is amended by adding at the end the fol-
17 lowing:

18 **“§ 159. Bankruptcy statistics**

19 “(a) The clerk of the district court, or the clerk of
20 the bankruptcy court if one has been certified pursuant
21 to section 156(b) of this title, shall collect statistics re-
22 garding individual debtors with primarily consumer debts
23 seeking relief under chapters 7, 11, and 13 of title 11.
24 Those statistics shall be in a standardized format pre-
25 scribed by the Director of the Administrative Office of the

1 United States Courts (referred to in this section as the
2 ‘Director’).

3 “(b) The Director shall—

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

6 “(2) make the statistics available to the public;
7 and

8 “(3) not later than October 31, 2002, and an-
9 nually thereafter, prepare, and submit to Congress a
10 report concerning the information collected under
11 subsection (a) that contains an analysis of the infor-
12 mation.

13 “(c) The compilation required under subsection (b)
14 shall—

15 “(1) be itemized, by chapter, with respect to
16 title 11;

17 “(2) be presented in the aggregate and for each
18 district; and

19 “(3) include information concerning—

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

1 “(B) the current monthly income, average
2 income, and average expenses of those debtors
3 as reported on the schedules and statements
4 that each such debtor files under sections 521
5 and 1322 of title 11;

6 “(C) the aggregate amount of debt dis-
7 charged in cases filed during the reporting pe-
8 riod, determined as the difference between the
9 total amount of debt and obligations of a debtor
10 reported on the schedules and the amount of
11 such debt reported in categories which are pre-
12 dominantly nondischargeable;

13 “(D) the average period of time between
14 the filing of the petition and the closing of the
15 case for cases closed during the reporting pe-
16 riod;

17 “(E) for cases closed during the reporting
18 period—

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

21 “(ii)(I) the total number of reaffirma-
22 tions filed;

23 “(II) of those cases in which a reaffir-
24 mation was filed, the number of cases in

1 which the debtor was not represented by
2 an attorney; and

3 “(III) of those cases in which a reaf-
4 firmation was filed, the number of cases in
5 which the reaffirmation was approved by
6 the court;

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

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

15 “(II) the number of final orders en-
16 tered determining the value of property se-
17 curing a claim;

18 “(ii) the number of cases dismissed,
19 the number of cases dismissed for failure
20 to make payments under the plan, the
21 number of cases refiled after dismissal,
22 and the number of cases in which the plan
23 was completed, separately itemized with re-
24 spect to the number of modifications made
25 before completion of the plan, if any; and

1 “(iii) the number of cases in which
2 the debtor filed another case during the 6-
3 year period preceding the filing;

4 “(G) the number of cases in which credi-
5 tors were fined for misconduct and any amount
6 of punitive damages awarded by the court for
7 creditor misconduct; and

8 “(H) the number of cases in which sanc-
9 tions under rule 9011 of the Federal Rules of
10 Bankruptcy Procedure were imposed against
11 debtor’s counsel or damages awarded under
12 such Rule.”.

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

“159. Bankruptcy statistics.”.

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

19 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**
20 **RUPTCY DATA.**

21 (a) AMENDMENT.—Chapter 39 of title 28, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

1 **“§ 589b. Bankruptcy data**

2 “(a) RULES.—The Attorney General shall, within a
3 reasonable time after the effective date of this section,
4 issue rules requiring uniform forms for (and from time
5 to time thereafter to appropriately modify and approve)—

6 “(1) final reports by trustees in cases under
7 chapters 7, 12, and 13 of title 11; and

8 “(2) periodic reports by debtors in possession or
9 trustees, as the case may be, in cases under chapter
10 11 of title 11.

11 “(b) REPORTS.—Each report referred to in sub-
12 section (a) shall be designed (and the requirements as to
13 place and manner of filing shall be established) so as to
14 facilitate compilation of data and maximum possible ac-
15 cess of the public, both by physical inspection at one or
16 more central filing locations, and by electronic access
17 through the Internet or other appropriate media.

18 “(c) REQUIRED INFORMATION.—The information re-
19 quired to be filed in the reports referred to in subsection
20 (b) shall be that which is in the best interests of debtors
21 and creditors, and in the public interest in reasonable and
22 adequate information to evaluate the efficiency and practi-
23 cality of the Federal bankruptcy system. In issuing rules
24 proposing the forms referred to in subsection (a), the At-
25 torney General shall strike the best achievable practical
26 balance between—

1 “(1) the reasonable needs of the public for in-
2 formation about the operational results of the Fed-
3 eral bankruptcy system;

4 “(2) economy, simplicity, and lack of undue
5 burden on persons with a duty to file reports; and

6 “(3) appropriate privacy concerns and safe-
7 guards.

8 “(d) FINAL REPORTS.—Final reports proposed for
9 adoption by trustees under chapters 7, 12, and 13 of title
10 11 shall, in addition to such other matters as are required
11 by law or as the Attorney General in the discretion of the
12 Attorney General, shall propose, include with respect to
13 a case under such title—

14 “(1) information about the length of time the
15 case was pending;

16 “(2) assets abandoned;

17 “(3) assets exempted;

18 “(4) receipts and disbursements of the estate;

19 “(5) expenses of administration, including for
20 use under section 707(b), actual costs of admin-
21 istering cases under chapter 13 of title 11;

22 “(6) claims asserted;

23 “(7) claims allowed; and

24 “(8) distributions to claimants and claims dis-
25 charged without payment,

1 in each case by appropriate category and, in cases under
2 chapters 12 and 13 of title 11, date of confirmation of
3 the plan, each modification thereto, and defaults by the
4 debtor in performance under the plan.

5 “(e) PERIODIC REPORTS.—Periodic reports proposed
6 for adoption by trustees or debtors in possession under
7 chapter 11 of title 11 shall, in addition to such other mat-
8 ters as are required by law or as the Attorney General,
9 in the discretion of the Attorney General, shall propose,
10 include—

11 “(1) information about the standard industry
12 classification, published by the Department of Com-
13 merce, for the businesses conducted by the debtor;

14 “(2) length of time the case has been pending;

15 “(3) number of full-time employees as of the
16 date of the order for relief and at the end of each
17 reporting period since the case was filed;

18 “(4) cash receipts, cash disbursements and
19 profitability of the debtor for the most recent period
20 and cumulatively since the date of the order for re-
21 lief;

22 “(5) compliance with title 11, whether or not
23 tax returns and tax payments since the date of the
24 order for relief have been timely filed and made;

1 “(6) all professional fees approved by the court
2 in the case for the most recent period and cumula-
3 tively since the date of the order for relief (sepa-
4 rately reported, for the professional fees incurred by
5 or on behalf of the debtor, between those that would
6 have been incurred absent a bankruptcy case and
7 those not); and

8 “(7) plans of reorganization filed and confirmed
9 and, with respect thereto, by class, the recoveries of
10 the holders, expressed in aggregate dollar values
11 and, in the case of claims, as a percentage of total
12 claims of the class allowed.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 39 of title 28, United States
15 Code, is amended by adding at the end the following:

“589b. Bankruptcy data.”.

16 **SEC. 603. AUDIT PROCEDURES.**

17 (a) IN GENERAL.—

18 (1) ESTABLISHMENT OF PROCEDURES.—The
19 Attorney General (in judicial districts served by
20 United States trustees) and the Judicial Conference
21 of the United States (in judicial districts served by
22 bankruptcy administrators) shall establish proce-
23 dures to determine the accuracy, veracity, and com-
24 pleteness of petitions, schedules, and other informa-
25 tion which the debtor is required to provide under

1 sections 521 and 1322 of title 11, and, if applicable,
2 section 111 of title 11, in cases filed under chapter
3 7 or 13 in which the debtor is an individual. Such
4 audits shall be in accordance with generally accepted
5 auditing standards and performed by independent
6 certified public accountants or independent licensed
7 public accountants, provided that the Attorney Gen-
8 eral and the Judicial Conference, as appropriate,
9 may develop alternative auditing standards not later
10 than 2 years after the date of enactment of this Act.

11 (2) PROCEDURES.—Those procedures required
12 by paragraph (1) shall—

13 (A) establish a method of selecting appro-
14 priate qualified persons to contract to perform
15 those audits;

16 (B) establish a method of randomly select-
17 ing cases to be audited, except that not less
18 than 1 out of every 250 cases in each Federal
19 judicial district shall be selected for audit;

20 (C) require audits for schedules of income
21 and expenses which reflect greater than average
22 variances from the statistical norm of the dis-
23 trict in which the schedules were filed if those
24 variances occur by reason of higher income or

1 higher expenses than the statistical norm of the
2 district in which the schedules were filed; and

3 (D) establish procedures for providing, not
4 less frequently than annually, public informa-
5 tion concerning the aggregate results of such
6 audits including the percentage of cases, by dis-
7 trict, in which a material misstatement of in-
8 come or expenditures is reported.

9 (b) AMENDMENTS.—Section 586 of title 28, United
10 States Code, is amended—

11 (1) in subsection (a), by striking paragraph (6)
12 and inserting the following:

13 “(6) make such reports as the Attorney General
14 directs, including the results of audits performed
15 under section 603(a) of the Bankruptcy Abuse Pre-
16 vention and Consumer Protection Act of 2001; and”;
17 and

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

19 “(f)(1) 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, in accord-
22 ance with the procedures established under section 603(a)
23 of the Bankruptcy Abuse Prevention and Consumer Pro-
24 tection Act of 2001.

1 “(2)(A) The report of each audit referred to in para-
2 graph (1) shall be filed with the court and transmitted
3 to the United States trustee. Each report shall clearly and
4 conspicuously specify any material misstatement of income
5 or expenditures or of assets identified by the person per-
6 forming the audit. In any case in which a material
7 misstatement of income or expenditures or of assets has
8 been reported, the clerk of the bankruptcy court shall give
9 notice of the misstatement to the creditors in the case.

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

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

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

20 (c) AMENDMENTS TO SECTION 521 OF TITLE 11,
21 U.S.C.—Section 521(a) of title 11, United States Code,
22 as so designated by this Act, is amended in each of para-
23 graphs (3) and (4) by inserting “or an auditor appointed
24 under section 586(f) of title 28” after “serving in the
25 case”.

1 (d) AMENDMENTS TO SECTION 727 OF TITLE 11,
2 U.S.C.—Section 727(d) of title 11, United States Code,
3 is amended—

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

6 (2) in paragraph (3), by striking the period at
7 the end and 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 referred to in 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 referred to in section
18 586(f) of title 28.”.

19 (e) 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. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**
23 **OF BANKRUPTCY DATA.**

24 It is the sense of Congress that—

1 (1) the national policy of the United States
2 should be that all data held by bankruptcy clerks in
3 electronic form, to the extent such data reflects only
4 public records (as defined in section 107 of title 11,
5 United States Code), should be released in a usable
6 electronic form in bulk to the public, subject to such
7 appropriate privacy concerns and safeguards as Con-
8 gress and the Judicial Conference of the United
9 States may determine; and

10 (2) there should be established a bankruptcy
11 data system in which—

12 (A) a single set of data definitions and
13 forms are used to collect data nationwide; and

14 (B) data for any particular bankruptcy
15 case are aggregated in the same electronic
16 record.

17 **TITLE VII—BANKRUPTCY TAX** 18 **PROVISIONS**

19 **SEC. 701. TREATMENT OF CERTAIN LIENS.**

20 (a) TREATMENT OF CERTAIN LIENS.—Section 724
21 of title 11, United States Code, is amended—

22 (1) in subsection (b), in the matter preceding
23 paragraph (1), by inserting “(other than to the ex-
24 tent that there is a properly perfected unavoidable
25 tax lien arising in connection with an ad valorem tax

1 on real or personal property of the estate)” after
2 “under this title”;

3 (2) in subsection (b)(2), by inserting “(except
4 that such expenses, other than claims for wages, sal-
5 aries, or commissions which arise after the filing of
6 a petition, shall be limited to expenses incurred
7 under chapter 7 of this title and shall not include ex-
8 penses incurred under chapter 11 of this title)” after
9 “507(a)(1)”; and

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

11 “(e) Before subordinating a tax lien on real or per-
12 sonal property of the estate, the trustee shall—

13 “(1) exhaust the unencumbered assets of the
14 estate; and

15 “(2) in a manner consistent with section
16 506(c), recover from property securing an allowed
17 secured claim the reasonable, necessary costs and
18 expenses of preserving or disposing of that property.

19 “(f) Notwithstanding the exclusion of ad valorem tax
20 liens under this section and subject to the requirements
21 of subsection (e), the following may be paid from property
22 of the estate which secures a tax lien, or the proceeds of
23 such property:

1 “(1) Claims for wages, salaries, and commis-
2 sions that are entitled to priority under section
3 507(a)(4).

4 “(2) Claims for contributions to an employee
5 benefit plan entitled to priority under section
6 507(a)(5).”.

7 (b) DETERMINATION OF TAX LIABILITY.—Section
8 505(a)(2) of title 11, United States Code, is amended—

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

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

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

14 “(C) the amount or legality of any amount aris-
15 ing in connection with an ad valorem tax on real or
16 personal property of the estate, if the applicable pe-
17 riod for contesting or redetermining that amount
18 under any law (other than a bankruptcy law) has ex-
19 pired.”.

20 **SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

21 Section 501 of title 11, United States Code, is
22 amended by adding at the end the following:

23 “(e) A claim arising from the liability of a debtor for
24 fuel use tax assessed consistent with the requirements of
25 section 31705 of title 49 may be filed by the base jurisdic-

1 tion designated pursuant to the International Fuel Tax
2 Agreement and, if so filed, shall be allowed as a single
3 claim.”.

4 **SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF**
5 **TAXES.**

6 Section 505(b) of title 11, United States Code, is
7 amended—

8 (1) in the first sentence, by inserting “at the
9 address and in the manner designated in paragraph
10 (1)” after “determination of such tax”;

11 (2) by striking “(1) upon payment” and insert-
12 ing “(A) upon payment”;

13 (3) by striking “(A) such governmental unit”
14 and inserting “(i) such governmental unit”;

15 (4) by striking “(B) such governmental unit”
16 and inserting “(ii) such governmental unit”;

17 (5) by striking “(2) upon payment” and insert-
18 ing “(B) upon payment”;

19 (6) by striking “(3) upon payment” and insert-
20 ing “(C) upon payment”;

21 (7) by striking “(b)” and inserting “(2)”; and

22 (8) by inserting before paragraph (2), as so
23 designated, the following:

24 “(b)(1)(A) The clerk of each district shall maintain
25 a listing under which a Federal, State, or local govern-

1 mental unit responsible for the collection of taxes within
2 the district may—

3 “(i) designate an address for service of requests
4 under this subsection; and

5 “(ii) describe where further information con-
6 cerning additional requirements for filing such re-
7 quests may be found.

8 “(B) If a governmental unit referred to in subpara-
9 graph (A) does not designate an address and provide that
10 address to the clerk under that subparagraph, any request
11 made under this subsection may be served at the address
12 for the filing of a tax return or protest with the appro-
13 priate taxing authority of that governmental unit.”.

14 **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

15 (a) IN GENERAL.—Subchapter I of chapter 5 of title
16 11, United States Code, is amended by adding at the end
17 the following:

18 **“§ 511. Rate of interest on tax claims**

19 “(a) If any provision of this title requires the pay-
20 ment of interest on a tax claim or on an administrative
21 expense tax, or the payment of interest to enable a creditor
22 to receive the present value of the allowed amount of a
23 tax claim, the rate of interest shall be the rate determined
24 under applicable nonbankruptcy law.

1 “(b) In the case of taxes paid under a confirmed plan
2 under this title, the rate of interest shall be determined
3 as of the calendar month in which the plan is confirmed.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 5 of title 11, United States Code, is amended
6 by inserting after the item relating to section 510 the fol-
7 lowing:

“511. Rate of interest on tax claims.”.

8 **SEC. 705. PRIORITY OF TAX CLAIMS.**

9 Section 507(a)(8) of title 11, United States Code, is
10 amended—

11 (1) in subparagraph (A)—

12 (A) in the matter preceding clause (i), by
13 inserting “for a taxable year ending on or be-
14 fore the date of the filing of the petition” after
15 “gross receipts”;

16 (B) in clause (i), by striking “for a taxable
17 year ending on or before the date of filing of
18 the petition”; and

19 (C) by striking clause (ii) and inserting the
20 following:

21 “(ii) assessed within 240 days before
22 the date of the filing of the petition, exclu-
23 sive of—

24 “(I) any time during which an
25 offer in compromise with respect to

1 that tax was pending or in effect dur-
2 ing that 240-day period, plus 30 days;
3 and

4 “(II) any time during which a
5 stay of proceedings against collections
6 was in effect in a prior case under
7 this title during that 240-day period;
8 plus 90 days.”; and

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

10 “An otherwise applicable time period specified in
11 this paragraph shall be suspended for any period
12 during which a governmental unit is prohibited
13 under applicable nonbankruptcy law from collecting
14 a tax as a result of a request by the debtor for a
15 hearing and an appeal of any collection action taken
16 or proposed against the debtor, plus 90 days; plus
17 any time during which the stay of proceedings was
18 in effect in a prior case under this title or during
19 which collection was precluded by the existence of 1
20 or more confirmed plans under this title, plus 90
21 days.”.

22 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

23 Section 507(a)(8)(B) of title 11, United States Code,
24 is amended by striking “assessed” and inserting “in-
25 curred”.

1 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**
2 **TER 13.**

3 Section 1328(a)(2) of title 11, United States Code,
4 as amended by section 314 of this Act, is amended by
5 striking “paragraph” and inserting “section 507(a)(8)(C)
6 or in paragraph (1)(B), (1)(C),”.

7 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**
8 **TER 11.**

9 Section 1141(d) of title 11, United States Code, as
10 amended by this Act, is amended by adding at the end
11 the following:

12 “(6) Notwithstanding paragraph (1), the confirma-
13 tion of a plan does not discharge a debtor that is a cor-
14 poration from any debt described in section 523(a)(2) or
15 for a tax or customs duty with respect to which the
16 debtor—

17 “(A) made a fraudulent return; or

18 “(B) willfully attempted in any manner to
19 evade or defeat that tax or duty.”.

20 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**
21 **PREPETITION TAXES.**

22 Section 362(a)(8) of title 11, United States Code, is
23 amended by striking “the debtor” and inserting “a cor-
24 porate debtor’s tax liability for a taxable period the bank-
25 ruptcy court may determine or concerning an individual

1 debtor's tax liability for a taxable period ending before the
2 order for relief under this title".

3 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**

4 **CASES.**

5 Section 1129(a)(9) of title 11, United States Code,
6 is amended—

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

9 (2) in subparagraph (C), by striking “deferred
10 cash payments,” and all that follows through the
11 end of the subparagraph, and inserting “regular in-
12 stallment payments in cash—

13 “(i) of a total value, as of the effective
14 date of the plan, equal to the allowed
15 amount of such claim;

16 “(ii) over a period ending not later
17 than 5 years after the date of the entry of
18 the order for relief under section 301, 302,
19 or 303; and

20 “(iii) in a manner not less favorable
21 than the most favored nonpriority unse-
22 cured claim provided for in the plan (other
23 than cash payments made to a class of
24 creditors under section 1122(b)); and”;
25 and

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

2 “(D) with respect to a secured claim which
3 would otherwise meet the description of an un-
4 secured claim of a governmental unit under sec-
5 tion 507(a)(8), but for the secured status of
6 that claim, the holder of that claim will receive
7 on account of that claim, cash payments, in the
8 same manner and over the same period, as pre-
9 scribed in subparagraph (C).”.

10 **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**
11 **ITED.**

12 Section 545(2) of title 11, United States Code, is
13 amended by inserting before the semicolon at the end the
14 following: “, except in any case in which a purchaser is
15 a purchaser described in section 6323 of the Internal Rev-
16 enue Code of 1986, or in any other similar provision of
17 State or local law”.

18 **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**
19 **NESS.**

20 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of
21 title 28, United States Code, is amended—

22 (1) by inserting “(a)” before “Any”; and

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

1 “(b) A tax under subsection (a) shall be paid on or
2 before the due date of the tax under applicable nonbank-
3 ruptcy law, unless—

4 “(1) the tax is a property tax secured by a lien
5 against property that is abandoned within a reason-
6 able period of time after the lien attaches by the
7 trustee of a bankruptcy estate under section 554 of
8 title 11; or

9 “(2) payment of the tax is excused under a spe-
10 cific provision of title 11.

11 “(c) In a case pending under chapter 7 of title 11,
12 payment of a tax may be deferred until final distribution
13 is made under section 726 of title 11, if—

14 “(1) the tax was not incurred by a trustee duly
15 appointed under chapter 7 of title 11; or

16 “(2) before the due date of the tax, an order of
17 the court makes a finding of probable insufficiency
18 of funds of the estate to pay in full the administra-
19 tive expenses allowed under section 503(b) of title
20 11 that have the same priority in distribution under
21 section 726(b) of title 11 as the priority of that
22 tax.”.

23 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—
24 Section 503(b)(1)(B)(i) of title 11, United States Code,
25 is amended by inserting “whether secured or unsecured,

1 including property taxes for which liability is in rem, in
2 personam, or both,” before “except”.

3 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE
4 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of
5 title 11, United States Code, is amended—

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

8 (2) in subparagraph (C), by adding “and” at
9 the end; and

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

11 “(D) notwithstanding the requirements of sub-
12 section (a), a governmental unit shall not be re-
13 quired to file a request for the payment of an ex-
14 pense described in subparagraph (B) or (C), as a
15 condition of its being an allowed administrative ex-
16 pense;”.

17 (d) PAYMENT OF TAXES AND FEES AS SECURED
18 CLAIMS.—Section 506 of title 11, United States Code, is
19 amended—

20 (1) in subsection (b), by inserting “or State
21 statute” after “agreement”; and

22 (2) in subsection (c), by inserting “, including
23 the payment of all ad valorem property taxes with
24 respect to the property” before the period at the
25 end.

1 **SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

2 Section 726(a)(1) of title 11, United States Code, is
3 amended by striking “before the date on which the trustee
4 commences distribution under this section;” and inserting
5 the following: “on or before the earlier of—

6 “(A) the date that is 10 days after the
7 mailing to creditors of the summary of the
8 trustee’s final report; or

9 “(B) the date on which the trustee com-
10 mences final distribution under this section;”.

11 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**
12 **THORITIES.**

13 Section 523(a) of title 11, United States Code, as
14 amended by this Act, is amended—

15 (1) in paragraph (1)(B)—

16 (A) in the matter preceding clause (i), by
17 inserting “or equivalent report or notice,” after
18 “a return,”;

19 (B) in clause (i), by inserting “or given”
20 after “filed”; and

21 (C) in clause (ii)—

22 (i) by inserting “or given” after
23 “filed”; and

24 (ii) by inserting “, report, or notice”
25 after “return”; and

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

1 “For purposes of this subsection, the term ‘return’ means
2 a return that satisfies the requirements of applicable non-
3 bankruptcy law (including applicable filing requirements).
4 Such term includes a return prepared pursuant to section
5 6020(a) of the Internal Revenue Code of 1986, or similar
6 State or local law, or a written stipulation to a judgment
7 or a final order entered by a nonbankruptcy tribunal, but
8 does not include a return made pursuant to section
9 6020(b) of the Internal Revenue Code of 1986, or a simi-
10 lar State or local law.”.

11 **SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**
12 **PAID TAXES.**

13 Section 505(b)(2) of title 11, United States Code, as
14 amended by this Act, is amended by inserting “the es-
15 tate,” after “misrepresentation,”.

16 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**
17 **FIRM CHAPTER 13 PLANS.**

18 (a) **FILING OF PREPETITION TAX RETURNS RE-**
19 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of
20 title 11, United States Code, as amended by this Act, is
21 amended by adding at the end the following:

22 “(9) the debtor has filed all applicable Federal,
23 State, and local tax returns as required by section
24 1308.”.

1 (b) ADDITIONAL TIME PERMITTED FOR FILING TAX
2 RETURNS.—

3 (1) IN GENERAL.—Subchapter I of chapter 13
4 of title 11, United States Code, is amended by add-
5 ing at the end the following:

6 **“§ 1308. Filing of prepetition tax returns**

7 “(a) Not later than the day before the date on which
8 the meeting of the creditors is first scheduled to be held
9 under section 341(a), if the debtor was required to file
10 a tax return under applicable nonbankruptcy law, the
11 debtor shall file with appropriate tax authorities all tax
12 returns for all taxable periods ending during the 4-year
13 period ending on the date of the filing of the petition.

14 “(b)(1) Subject to paragraph (2), if the tax returns
15 required by subsection (a) have not been filed by the date
16 on which the meeting of creditors is first scheduled to be
17 held under section 341(a), the trustee may hold open that
18 meeting for a reasonable period of time to allow the debtor
19 an additional period of time to file any unfiled returns,
20 but such additional period of time shall not extend
21 beyond—

22 “(A) for any return that is past due as of the
23 date of the filing of the petition, the date that is 120
24 days after the date of that meeting; or

1 “(B) for any return that is not past due as of
2 the date of the filing of the petition, the later of—

3 “(i) the date that is 120 days after the
4 date of that meeting; or

5 “(ii) the date on which the return is due
6 under the last automatic extension of time for
7 filing that return to which the debtor is enti-
8 tled, and for which request is timely made, in
9 accordance with applicable nonbankruptcy law.

10 “(2) Upon notice and hearing, and order entered be-
11 fore the tolling of any applicable filing period determined
12 under this subsection, if the debtor demonstrates by a pre-
13 ponderance of the evidence that the failure to file a return
14 as required under this subsection is attributable to cir-
15 cumstances beyond the control of the debtor, the court
16 may extend the filing period established by the trustee
17 under this subsection for—

18 “(A) a period of not more than 30 days for re-
19 turns described in paragraph (1); and

20 “(B) a period not to extend after the applicable
21 extended due date for a return described in para-
22 graph (2).

23 “(c) For purposes of this section, the term ‘return’
24 includes a return prepared pursuant to subsection (a) or
25 (b) of section 6020 of the Internal Revenue Code of 1986,

1 or a similar State or local law, or a written stipulation
2 to a judgment or a final order entered by a nonbankruptcy
3 tribunal.”.

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

“1308. Filing of prepetition tax returns.”.

8 (c) DISMISSAL OR CONVERSION ON FAILURE TO
9 COMPLY.—Section 1307 of title 11, United States Code,
10 is amended—

11 (1) by redesignating subsections (e) and (f) as
12 subsections (f) and (g), respectively; and

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

15 “(e) Upon the failure of the debtor to file a tax return
16 under section 1308, on request of a party in interest or
17 the United States trustee and after notice and a hearing,
18 the court shall dismiss a case or convert a case under this
19 chapter to a case under chapter 7 of this title, whichever
20 is in the best interest of the creditors and the estate.”.

21 (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of
22 title 11, United States Code, is amended by inserting be-
23 fore the period at the end the following “, and except that
24 in a case under chapter 13, a claim of a governmental
25 unit for a tax with respect to a return filed under section

1 1308 shall be timely if the claim is filed on or before the
2 date that is 60 days after the date on which such return
3 was filed as required”.

4 (e) RULES FOR OBJECTIONS TO CLAIMS AND TO
5 CONFIRMATION.—It is the sense of Congress that the Ad-
6 visory Committee on Bankruptcy Rules of the Judicial
7 Conference of the United States should, as soon as prac-
8 ticable after the date of enactment of this Act, propose
9 for adoption amended Federal Rules of Bankruptcy Proce-
10 dure which provide that—

11 (1) notwithstanding the provisions of Rule
12 3015(f), in cases under chapter 13 of title 11,
13 United States Code, an objection to the confirmation
14 of a plan filed by a governmental unit on or before
15 the date that is 60 days after the date on which the
16 debtor files all tax returns required under sections
17 1308 and 1325(a)(7) of title 11, United States
18 Code, shall be treated for all purposes as if such ob-
19 jection had been timely filed before such confirma-
20 tion; and

21 (2) in addition to the provisions of Rule 3007,
22 in a case under chapter 13 of title 11, United States
23 Code, no objection to a claim for a tax with respect
24 to which a return is required to be filed under sec-

1 tion 1308 of title 11, United States Code, shall be
2 filed until such return has been filed as required.

3 **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

4 Section 1125(a)(1) of title 11, United States Code,
5 is amended—

6 (1) by inserting “including a discussion of the
7 potential material Federal tax consequences of the
8 plan to the debtor, any successor to the debtor, and
9 a hypothetical investor typical of the holders of
10 claims or interests in the case,” after “records”; and

11 (2) by striking “a hypothetical reasonable inves-
12 tor typical of holders of claims or interests” and in-
13 serting “such a hypothetical investor”.

14 **SEC. 718. SETOFF OF TAX REFUNDS.**

15 Section 362(b) of title 11, United States Code, is
16 amended by inserting after paragraph (26), as added by
17 this Act, the following:

18 “(27) under subsection (a), of the setoff under
19 applicable nonbankruptcy law of an income tax re-
20 fund, by a governmental unit, with respect to a tax-
21 able period that ended before the order for relief
22 against an income tax liability for a taxable period
23 that also ended before the order for relief, except
24 that in any case in which the setoff of an income tax
25 refund is not permitted under applicable nonbank-

1 rruptcy law because of a pending action to determine
2 the amount or legality of a tax liability, the govern-
3 mental unit may hold the refund pending the resolu-
4 tion of the action, unless the court, upon motion of
5 the trustee and after notice and hearing, grants the
6 taxing authority adequate protection (within the
7 meaning of section 361) for the secured claim of
8 that authority in the setoff under section 506(a);”.

9 **SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREAT-**
10 **MENT OF STATE AND LOCAL TAXES.**

11 (a) IN GENERAL.—(1) Section 346 of title 11, United
12 States Code, is amended to read as follows:

13 **“§ 346. Special provisions related to the treatment of**
14 **state and local taxes**

15 “(a) Whenever the Internal Revenue Code of 1986
16 provides that a separate taxable estate or entity is created
17 in a case concerning a debtor under this title, and the in-
18 come, gain, loss, deductions, and credits of such estate
19 shall be taxed to or claimed by the estate, a separate tax-
20 able estate is also created for purposes of any State and
21 local law imposing a tax on or measured by income and
22 such income, gain, loss, deductions, and credits shall be
23 taxed to or claimed by the estate and may not be taxed
24 to or claimed by the debtor. The preceding sentence shall
25 not apply if the case is dismissed. The trustee shall make

1 tax returns of income required under any such State or
2 local law.

3 “(b) Whenever the Internal Revenue Code of 1986
4 provides that no separate taxable estate shall be created
5 in a case concerning a debtor under this title, and the in-
6 come, gain, loss, deductions, and credits of an estate shall
7 be taxed to or claimed by the debtor, such income, gain,
8 loss, deductions, and credits shall be taxed to or claimed
9 by the debtor under a State or local law imposing a tax
10 on or measured by income and may not be taxed to or
11 claimed by the estate. The trustee shall make such tax
12 returns of income of corporations and of partnerships as
13 are required under any State or local law, but with respect
14 to partnerships, shall make said returns only to the extent
15 such returns are also required to be made under such
16 Code. The estate shall be liable for any tax imposed on
17 such corporation or partnership, but not for any tax im-
18 posed on partners or members.

19 “(c) With respect to a partnership or any entity treat-
20 ed as a partnership under a State or local law imposing
21 a tax on or measured by income that is a debtor in a case
22 under this title, any gain or loss resulting from a distribu-
23 tion of property from such partnership, or any distributive
24 share of any income, gain, loss, deduction, or credit of a
25 partner or member that is distributed, or considered dis-

1 tributed, from such partnership, after the commencement
2 of the case, is gain, loss, income, deduction, or credit, as
3 the case may be, of the partner or member, and if such
4 partner or member is a debtor in a case under this title,
5 shall be subject to tax in accordance with subsection (a)
6 or (b).

7 “(d) For purposes of any State or local law imposing
8 a tax on or measured by income, the taxable period of
9 a debtor in a case under this title shall terminate only
10 if and to the extent that the taxable period of such debtor
11 terminates under the Internal Revenue Code of 1986.

12 “(e) The estate in any case described in subsection
13 (a) shall use the same accounting method as the debtor
14 used immediately before the commencement of the case,
15 if such method of accounting complies with applicable non-
16 bankruptcy tax law.

17 “(f) For purposes of any State or local law imposing
18 a tax on or measured by income, a transfer of property
19 from the debtor to the estate or from the estate to the
20 debtor shall not be treated as a disposition for purposes
21 of any provision assigning tax consequences to a dispo-
22 sition, except to the extent that such transfer is treated as
23 a disposition under the Internal Revenue Code of 1986.

24 “(g) Whenever a tax is imposed pursuant to a State
25 or local law imposing a tax on or measured by income pur-

1 suant to subsection (a) or (b), such tax shall be imposed
2 at rates generally applicable to the same types of entities
3 under such State or local law.

4 “(h) The trustee shall withhold from any payment of
5 claims for wages, salaries, commissions, dividends, inter-
6 est, or other payments, or collect, any amount required
7 to be withheld or collected under applicable State or local
8 tax law, and shall pay such withheld or collected amount
9 to the appropriate governmental unit at the time and in
10 the manner required by such tax law, and with the same
11 priority as the claim from which such amount was with-
12 held or collected was paid.

13 “(i)(1) To the extent that any State or local law im-
14 posing a tax on or measured by income provides for the
15 carryover of any tax attribute from one taxable period to
16 a subsequent taxable period, the estate shall succeed to
17 such tax attribute in any case in which such estate is sub-
18 ject to tax under subsection (a).

19 “(2) After such a case is closed or dismissed, the
20 debtor shall succeed to any tax attribute to which the es-
21 tate succeeded under paragraph (1) to the extent con-
22 sistent with the Internal Revenue Code of 1986.

23 “(3) The estate may carry back any loss or tax at-
24 tribute to a taxable period of the debtor that ended before
25 the order for relief under this title to the extent that—

1 “(A) applicable State or local tax law provides
2 for a carryback in the case of the debtor; and

3 “(B) the same or a similar tax attribute may be
4 carried back by the estate to such a taxable period
5 of the debtor under the Internal Revenue Code of
6 1986.

7 “(j)(1) For purposes of any State or local law impos-
8 ing a tax on or measured by income, income is not realized
9 by the estate, the debtor, or a successor to the debtor by
10 reason of discharge of indebtedness in a case under this
11 title, except to the extent, if any, that such income is sub-
12 ject to tax under the Internal Revenue Code of 1986.

13 “(2) Whenever the Internal Revenue Code of 1986
14 provides that the amount excluded from gross income in
15 respect of the discharge of indebtedness in a case under
16 this title shall be applied to reduce the tax attributes of
17 the debtor or the estate, a similar reduction shall be made
18 under any State or local law imposing a tax on or meas-
19 ured by income to the extent such State or local law recog-
20 nizes such attributes. Such State or local law may also
21 provide for the reduction of other attributes to the extent
22 that the full amount of income from the discharge of in-
23 debtedness has not been applied.

24 “(k)(1) Except as provided in this section and section
25 505, the time and manner of filing tax returns and the

1 items of income, gain, loss, deduction, and credit of any
2 taxpayer shall be determined under applicable nonbank-
3 ruptcy law.

4 “(2) For Federal tax purposes, the provisions of this
5 section are subject to the Internal Revenue Code of 1986
6 and other applicable Federal nonbankruptcy law.”.

7 (2) CLERICAL AMENDMENT.—The table of sections
8 for chapter 3 of title 11, United States Code, is amended
9 by striking the item relating to section 346 and inserting
10 the following:

“346. Special provisions related to the treatment of State and local taxes.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1)(A) Section 728 of title 11, United States
13 Code, is repealed.

14 (B) The table of sections for chapter 7 of title
15 11, United States Code, is amended by striking the
16 item relating to section 728.

17 (2) Section 1146 of title 11, United States
18 Code, is amended—

19 (A) by striking subsections (a) and (b);
20 and

21 (B) by redesignating subsections (c) and
22 (d) as subsections (a) and (b), respectively.

23 (3) Section 1231 of title 11, United States
24 Code, is amended—

1 (A) by striking subsections (a) and (b);
2 and
3 (B) by redesignating subsections (c) and
4 (d) as subsections (a) and (b), respectively.

5 **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX**
6 **RETURNS.**

7 Section 521 of title 11, United States Code, as
8 amended by this Act, is amended by adding at the end
9 the following:

10 “(k)(1) Notwithstanding any other provision of this
11 title, if the debtor fails to file a tax return that becomes
12 due after the commencement of the case or to properly
13 obtain an extension of the due date for filing such return,
14 the taxing authority may request that the court enter an
15 order converting or dismissing the case.

16 “(2) If the debtor does not file the required return
17 or obtain the extension referred to in paragraph (1) within
18 90 days after a request is filed by the taxing authority
19 under that paragraph, the court shall convert or dismiss
20 the case, whichever is in the best interests of creditors and
21 the estate.”.

1 **TITLE VIII—ANCILLARY AND**
 2 **OTHER CROSS-BORDER CASES**

3 **SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**
 4 **UNITED STATES CODE.**

5 (a) IN GENERAL.—Title 11, United States Code, is
 6 amended by inserting after chapter 13 the following:

7 **“CHAPTER 15—ANCILLARY AND OTHER**
 8 **CROSS-BORDER CASES**

“Sec.

“1501. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“1502. Definitions.

“1503. International obligations of the United States.

“1504. Commencement of ancillary case.

“1505. Authorization to act in a foreign country.

“1506. Public policy exception.

“1507. Additional assistance.

“1508. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND
 CREDITORS TO THE COURT

“1509. Right of direct access.

“1510. Limited jurisdiction.

“1511. Commencement of case under section 301 or 303.

“1512. Participation of a foreign representative in a case under this title.

“1513. Access of foreign creditors to a case under this title.

“1514. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING
 AND RELIEF

“1515. Application for recognition.

“1516. Presumptions concerning recognition.

“1517. Order granting recognition.

“1518. Subsequent information.

“1519. Relief that may be granted upon filing petition for recognition.

“1520. Effects of recognition of a foreign main proceeding.

“1521. Relief that may be granted upon recognition.

“1522. Protection of creditors and other interested persons.

“1523. Actions to avoid acts detrimental to creditors.

“1524. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND
 FOREIGN REPRESENTATIVES

“1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.

“1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.

“1527. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“1528. Commencement of a case under this title after recognition of a foreign main proceeding.

“1529. Coordination of a case under this title and a foreign proceeding.

“1530. Coordination of more than 1 foreign proceeding.

“1531. Presumption of insolvency based on recognition of a foreign main proceeding.

“1532. Rule of payment in concurrent proceedings.

1 **“§ 1501. Purpose and scope of application**

2 “(a) The purpose of this 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-bor-
5 der insolvency with the objectives of—

6 “(1) cooperation between—

7 “(A) United States courts, United States
8 trustees, trustees, examiners, debtors, and debt-
9 ors in possession; and

10 “(B) the courts and other competent au-
11 thorities of foreign countries involved in cross-
12 border insolvency cases;

13 “(2) greater legal certainty for trade and in-
14 vestment;

15 “(3) fair and efficient administration of cross-
16 border insolvencies that protects the interests of all
17 creditors, and other interested entities, including the
18 debtor;

1 “(4) protection and maximization of the value
2 of the debtor’s assets; and

3 “(5) facilitation of the rescue of financially
4 troubled businesses, thereby protecting investment
5 and preserving employment.

6 “(b) This chapter applies where—

7 “(1) assistance is sought in the United States
8 by a foreign court or a foreign representative in con-
9 nection with a foreign proceeding;

10 “(2) assistance is sought in a foreign country in
11 connection with a case under this title;

12 “(3) a foreign proceeding and a case under this
13 title with respect to the same debtor are taking place
14 concurrently; or

15 “(4) creditors or other interested persons in a
16 foreign country have an interest in requesting the
17 commencement of, or participating in, a case or pro-
18 ceeding under this title.

19 “(c) This chapter does not apply to—

20 “(1) a proceeding concerning an entity, other
21 than a foreign insurance company, identified by ex-
22 clusion in section 109(b);

23 “(2) an individual, or to an individual and such
24 individual’s spouse, who have debts within the limits
25 specified in section 109(e) and who are citizens of

1 the United States or aliens lawfully admitted for
2 permanent residence in the United States; or

3 “(3) an entity subject to a proceeding under the
4 Securities Investor Protection Act of 1970, a stock-
5 broker subject to subchapter III of chapter 7 of this
6 title, or a commodity broker subject to subchapter
7 IV of chapter 7 of this title.

8 “(d) The court may not grant relief under this chap-
9 ter with respect to any deposit, escrow, trust fund, or
10 other security required or permitted under any applicable
11 State insurance law or regulation for the benefit of claim
12 holders in the United States.

13 “SUBCHAPTER I—GENERAL PROVISIONS

14 “§ 1502. Definitions

15 “For the purposes of this chapter, the term—

16 “(1) ‘debtor’ means an entity that is the subject
17 of a foreign proceeding;

18 “(2) ‘establishment’ means any place of oper-
19 ations where the debtor carries out a nontransitory
20 economic activity;

21 “(3) ‘foreign court’ means a judicial or other
22 authority competent to control or supervise a foreign
23 proceeding;

1 “(4) ‘foreign main proceeding’ means a foreign
2 proceeding taking place in the country where the
3 debtor has the center of its main interests;

4 “(5) ‘foreign nonmain proceeding’ means a for-
5 eign proceeding, other than a foreign main pro-
6 ceeding, taking place in a country where the debtor
7 has an establishment;

8 “(6) ‘trustee’ includes a trustee, a debtor in
9 possession in a case under any chapter of this title,
10 or a debtor under chapter 9 of this title;

11 “(7) ‘recognition’ means the entry of an order
12 granting recognition of a foreign main proceeding or
13 foreign nonmain proceeding under this chapter; and

14 “(8) ‘within the territorial jurisdiction of the
15 United States’, when used with reference to property
16 of a debtor, refers to tangible property located with-
17 in the territory of the United States and intangible
18 property deemed under applicable nonbankruptcy
19 law to be located within that territory, including any
20 property subject to attachment or garnishment that
21 may properly be seized or garnished by an action in
22 a Federal or State court in the United States.

23 **“§ 1503. International obligations of the United States**

24 “To the extent that this chapter conflicts with an ob-
25 ligation of the United States arising out of any treaty or

1 other form of agreement to which it is a party with one
2 or more other countries, the requirements of the treaty
3 or agreement prevail.

4 **“§ 1504. Commencement of ancillary case**

5 “A case under this chapter is commenced by the filing
6 of a petition for recognition of a foreign proceeding under
7 section 1515.

8 **“§ 1505. Authorization to act in a foreign country**

9 “A trustee or another entity (including an examiner)
10 may be authorized by the court to act in a foreign country
11 on behalf of an estate created under section 541. An entity
12 authorized to act under this section may act in any way
13 permitted by the applicable foreign law.

14 **“§ 1506. Public policy exception**

15 “Nothing in this chapter prevents the court from re-
16 fusing to take an action governed by this chapter if the
17 action would be manifestly contrary to the public policy
18 of the United States.

19 **“§ 1507. Additional assistance**

20 “(a) Subject to the specific limitations stated else-
21 where in this chapter the court, if recognition is granted,
22 may provide additional assistance to a foreign representa-
23 tive under this title or under other laws of the United
24 States.

1 “(b) In determining whether to provide additional as-
2 sistance under this title or under other laws of the United
3 States, the court shall consider whether such additional
4 assistance, consistent with the principles of comity, will
5 reasonably assure—

6 “(1) just treatment of all holders of claims
7 against or interests in the debtor’s property;

8 “(2) protection of claim holders in the United
9 States against prejudice and inconvenience in the
10 processing of claims in such foreign proceeding;

11 “(3) prevention of preferential or fraudulent
12 dispositions of property of the debtor;

13 “(4) distribution of proceeds of the debtor’s
14 property substantially in accordance with the order
15 prescribed by this title; and

16 “(5) if appropriate, the provision of an oppor-
17 tunity for a fresh start for the individual that such
18 foreign proceeding concerns.

19 **“§ 1508. Interpretation**

20 “‘In interpreting this chapter, the court shall consider
21 its international origin, and the need to promote an appli-
22 cation of this chapter that is consistent with the applica-
23 tion of similar statutes adopted by foreign jurisdictions.

1 “SUBCHAPTER II—ACCESS OF FOREIGN REP-
2 RESENTATIVES AND CREDITORS TO THE
3 COURT

4 “§ 1509. Right of direct access

5 “(a) A foreign representative may commence a case
6 under section 1504 by filing directly with the court a peti-
7 tion for recognition of a foreign proceeding under section
8 1515.

9 “(b) If the court grants recognition under section
10 1515, and subject to any limitations that the court may
11 impose consistent with the policy of this chapter—

12 “(1) the foreign representative has the capacity
13 to sue and be sued in a court in the United States;

14 “(2) the foreign representative may apply di-
15 rectly to a court in the United States for appropriate
16 relief in that court; and

17 “(3) a court in the United States shall grant
18 comity or cooperation to the foreign representative.

19 “(c) A request for comity or cooperation by a foreign
20 representative in a court in the United States other than
21 the court which granted recognition shall be accompanied
22 by a certified copy of an order granting recognition under
23 section 1517.

24 “(d) If the court denies recognition under this chap-
25 ter, the court may issue any appropriate order necessary

1 to prevent the foreign representative from obtaining com-
2 ity or cooperation from courts in the United States.

3 “(e) Whether or not the court grants recognition, and
4 subject to sections 306 and 1510, a foreign representative
5 is subject to applicable nonbankruptcy law.

6 “(f) Notwithstanding any other provision of this sec-
7 tion, the failure of a foreign representative to commence
8 a case or to obtain recognition under this chapter does
9 not affect any right the foreign representative may have
10 to sue in a court in the United States to collect or recover
11 a claim which is the property of the debtor.

12 **“§ 1510. Limited jurisdiction**

13 “The sole fact that a foreign representative files a
14 petition under section 1515 does not subject the foreign
15 representative to the jurisdiction of any court in the
16 United States for any other purpose.

17 **“§ 1511. Commencement of case under section 301 or**
18 **303**

19 “(a) Upon recognition, a foreign representative may
20 commence—

21 “(1) an involuntary case under section 303; or

22 “(2) a voluntary case under section 301 or 302,

23 if the foreign proceeding is a foreign main pro-
24 ceeding.

1 “(1) indicate the time period for filing proofs of
2 claim and specify the place for their filing;

3 “(2) indicate whether secured creditors need to
4 file their proofs of claim; and

5 “(3) contain any other information required to
6 be included in such a notification to creditors under
7 this title and the orders of the court.

8 “(d) Any rule of procedure or order of the court as
9 to notice or the filing of a claim shall provide such addi-
10 tional time to creditors with foreign addresses as is rea-
11 sonable under the circumstances.

12 “SUBCHAPTER III—RECOGNITION OF A
13 FOREIGN PROCEEDING AND RELIEF

14 “§ 1515. **Application for recognition**

15 “(a) A foreign representative applies to the court for
16 recognition of the foreign proceeding in which the foreign
17 representative has been appointed by filing a petition for
18 recognition.

19 “(b) A petition for recognition shall be accompanied
20 by—

21 “(1) a certified copy of the decision com-
22 mencing the foreign proceeding and appointing the
23 foreign representative;

1 “(2) a certificate from the foreign court affirm-
2 ing the existence of the foreign proceeding and of
3 the appointment of the foreign representative; or

4 “(3) in the absence of evidence referred to in
5 paragraphs (1) and (2), any other evidence accept-
6 able to the court of the existence of the foreign pro-
7 ceeding and of the appointment of the foreign rep-
8 resentative.

9 “(c) A petition for recognition shall also be accom-
10 panied by a statement identifying all foreign proceedings
11 with respect to the debtor that are known to the foreign
12 representative.

13 “(d) The documents referred to in paragraphs (1)
14 and (2) of subsection (b) shall be translated into English.
15 The court may require a translation into English of addi-
16 tional documents.

17 **“§ 1516. Presumptions concerning recognition**

18 “(a) If the decision or certificate referred to in section
19 1515(b) indicates that the foreign proceeding is a foreign
20 proceeding (as defined in section 101) and that the person
21 or body is a foreign representative (as defined in section
22 101), the court is entitled to so presume.

23 “(b) The court is entitled to presume that documents
24 submitted in support of the petition for recognition are
25 authentic, whether or not they have been legalized.

1 “(c) In the absence of evidence to the contrary, the
2 debtor’s registered office, or habitual residence in the case
3 of an individual, is presumed to be the center of the debt-
4 or’s main interests.

5 **“§ 1517. Order granting recognition**

6 “(a) Subject to section 1506, after notice and a hear-
7 ing, an order recognizing a foreign proceeding shall be en-
8 tered if—

9 “(1) the foreign proceeding for which recogni-
10 tion is sought is a foreign main proceeding or for-
11 eign nonmain proceeding within the meaning of sec-
12 tion 1502;

13 “(2) the foreign representative applying for rec-
14 ognition is a person or body as defined in section
15 101; and

16 “(3) the petition meets the requirements of sec-
17 tion 1515.

18 “(b) The foreign proceeding shall be recognized—

19 “(1) as a foreign main proceeding if it is taking
20 place in the country where the debtor has the center
21 of its main interests; or

22 “(2) as a foreign nonmain proceeding if the
23 debtor has an establishment within the meaning of
24 section 1502 in the foreign country where the pro-
25 ceeding is pending.

1 “(c) A petition for recognition of a foreign proceeding
2 shall be decided upon at the earliest possible time. Entry
3 of an order recognizing a foreign proceeding constitutes
4 recognition under this chapter.

5 “(d) The provisions of this subchapter do not prevent
6 modification or termination of recognition if it is shown
7 that the grounds for granting it were fully or partially
8 lacking or have ceased to exist, but in considering such
9 action the court shall give due weight to possible prejudice
10 to parties that have relied upon the order granting rec-
11 ognition. The case under this chapter may be closed in
12 the manner prescribed under section 350.

13 **“§ 1518. Subsequent information**

14 “From the time of filing the petition for recognition
15 of the foreign proceeding, the foreign representative shall
16 file with the court promptly a notice of change of status
17 concerning—

18 “(1) any substantial change in the status of the
19 foreign proceeding or the status of the foreign rep-
20 resentative’s appointment; and

21 “(2) any other foreign proceeding regarding the
22 debtor that becomes known to the foreign represent-
23 ative.

1 **“§ 1519. Relief that may be granted upon filing peti-**
2 **tion for recognition**

3 “(a) From the time of filing a petition for recognition
4 until the court rules on the petition, the court may, at
5 the request of the foreign representative, where relief is
6 urgently needed to protect the assets of the debtor or the
7 interests of the creditors, grant relief of a provisional na-
8 ture, including—

9 “(1) staying execution against the debtor’s as-
10 sets;

11 “(2) entrusting the administration or realiza-
12 tion of all or part of the debtor’s assets located in
13 the United States to the foreign representative or
14 another person authorized by the court, including an
15 examiner, in order to protect and preserve the value
16 of assets that, by their nature or because of other
17 circumstances, are perishable, susceptible to devalu-
18 ation or otherwise in jeopardy; and

19 “(3) any relief referred to in paragraph (3),
20 (4), or (7) of section 1521(a).

21 “(b) Unless extended under section 1521(a)(6), the
22 relief granted under this section terminates when the peti-
23 tion for recognition is granted.

24 “(c) It is a ground for denial of relief under this sec-
25 tion that such relief would interfere with the administra-
26 tion of a foreign main proceeding.

1 “(d) The court may not enjoin a police or regulatory
2 act of a governmental unit, including a criminal action or
3 proceeding, under this section.

4 “(e) The standards, procedures, and limitations ap-
5 plicable to an injunction shall apply to relief under this
6 section.

7 “(f) The exercise of rights not subject to the stay
8 arising under section 362(a) pursuant to paragraph (6),
9 (7), (17), or (28) of section 362(b) or pursuant to section
10 362(l) shall not be stayed by any order of a court or ad-
11 ministrative agency in any proceeding under this chapter.

12 **“§ 1520. Effects of recognition of a foreign main pro-**
13 **ceeding**

14 “(a) Upon recognition of a foreign proceeding that
15 is a foreign main proceeding—

16 “(1) sections 361 and 362 apply with respect to
17 the debtor and that property of the debtor that is
18 within the territorial jurisdiction of the United
19 States;

20 “(2) sections 363, 549, and 552 of this title
21 apply to a transfer of an interest of the debtor in
22 property that is within the territorial jurisdiction of
23 the United States to the same extent that the sec-
24 tions would apply to property of an estate;

1 “(3) unless the court orders otherwise, the for-
2 foreign representative may operate the debtor’s busi-
3 ness and may exercise the rights and powers of a
4 trustee under and to the extent provided by sections
5 363 and 552; and

6 “(4) section 552 applies to property of the debt-
7 or that is within the territorial jurisdiction of the
8 United States.

9 “(b) Subsection (a) does not affect the right to com-
10 mence an individual action or proceeding in a foreign
11 country to the extent necessary to preserve a claim against
12 the debtor.

13 “(c) Subsection (a) does not affect the right of a for-
14 eign representative or an entity to file a petition com-
15 mencing a case under this title or the right of any party
16 to file claims or take other proper actions in such a case.

17 **“§ 1521. Relief that may be granted upon recognition**

18 “(a) Upon recognition of a foreign proceeding, wheth-
19 er main or nonmain, where necessary to effectuate the
20 purpose of this chapter and to protect the assets of the
21 debtor or the interests of the creditors, the court may, at
22 the request of the foreign representative, grant any appro-
23 priate relief, including—

24 “(1) staying the commencement or continuation
25 of an individual action or proceeding concerning the

1 debtor's assets, rights, obligations or liabilities to the
2 extent they have not been stayed under section
3 1520(a);

4 “(2) staying execution against the debtor's as-
5 sets to the extent it has not been stayed under sec-
6 tion 1520(a);

7 “(3) suspending the right to transfer, encumber
8 or otherwise dispose of any assets of the debtor to
9 the extent this right has not been suspended under
10 section 1520(a);

11 “(4) providing for the examination of witnesses,
12 the taking of evidence or the delivery of information
13 concerning the debtor's assets, affairs, rights, obliga-
14 tions or liabilities;

15 “(5) entrusting the administration or realiza-
16 tion of all or part of the debtor's assets within the
17 territorial jurisdiction of the United States to the
18 foreign representative or another person, including
19 an examiner, authorized by the court;

20 “(6) extending relief granted under section
21 1519(a); and

22 “(7) granting any additional relief that may be
23 available to a trustee, except for relief available
24 under sections 522, 544, 545, 547, 548, 550, and
25 724(a).

1 “(b) Upon recognition of a foreign proceeding, wheth-
2 er main or nonmain, the court may, at the request of the
3 foreign representative, entrust the distribution of all or
4 part of the debtor’s assets located in the United States
5 to the foreign representative or another person, including
6 an examiner, authorized by the court, provided that the
7 court is satisfied that the interests of creditors in the
8 United States are sufficiently protected.

9 “(c) In granting relief under this section to a rep-
10 resentative of a foreign nonmain proceeding, the court
11 must be satisfied that the relief relates to assets that,
12 under the law of the United States, should be adminis-
13 tered in the foreign nonmain proceeding or concerns infor-
14 mation required in that proceeding.

15 “(d) The court may not enjoin a police or regulatory
16 act of a governmental unit, including a criminal action or
17 proceeding, under this section.

18 “(e) The standards, procedures, and limitations ap-
19 plicable to an injunction shall apply to relief under para-
20 graphs (1), (2), (3), and (6) of subsection (a).

21 “(f) The exercise of rights not subject to the stay
22 arising under section 362(a) pursuant to paragraph (6),
23 (7), (17), or (28) of section 362(b) or pursuant to section
24 362(l) shall not be stayed by any order of a court or ad-
25 ministrative agency in any proceeding under this chapter.

1 **“§ 1522. Protection of creditors and other interested**
2 **persons**

3 “(a) The court may grant relief under section 1519
4 or 1521, or may modify or terminate relief under sub-
5 section (c), only if the interests of the creditors and other
6 interested entities, including the debtor, are sufficiently
7 protected.

8 “(b) The court may subject relief granted under sec-
9 tion 1519 or 1521, or the operation of the debtor’s busi-
10 ness under section 1520(a)(3) of this title, to conditions
11 it considers appropriate, including the giving of security
12 or the filing of a bond.

13 “(c) The court may, at the request of the foreign rep-
14 resentative or an entity affected by relief granted under
15 section 1519 or 1521, or at its own motion, modify or
16 terminate such relief.

17 “(d) Section 1104(d) shall apply to the appointment
18 of an examiner under this chapter. Any examiner shall
19 comply with the qualification requirements imposed on a
20 trustee by section 322.

21 **“§ 1523. Actions to avoid acts detrimental to creditors**

22 “(a) Upon recognition of a foreign proceeding, the
23 foreign representative has standing in a case concerning
24 the debtor pending under another chapter of this title to
25 initiate actions under sections 522, 544, 545, 547, 548,
26 550, 553, and 724(a).

1 “(b) When the foreign proceeding is a foreign
2 nonmain proceeding, the court must be satisfied that an
3 action under subsection (a) relates to assets that, under
4 United States law, should be administered in the foreign
5 nonmain proceeding.

6 **“§ 1524. Intervention by a foreign representative**

7 “Upon recognition of a foreign proceeding, the for-
8 eign representative may intervene in any proceedings in
9 a State or Federal court in the United States in which
10 the debtor is a party.

11 “SUBCHAPTER IV—COOPERATION WITH FOR-
12 EIGN COURTS AND FOREIGN REPRESENTA-
13 TIVES

14 **“§ 1525. Cooperation and direct communication be-
15 tween the court and foreign courts or for-
16 eign representatives**

17 “(a) Consistent with section 1501, the court shall co-
18 operate to the maximum extent possible with foreign
19 courts or foreign representatives, either directly or
20 through the trustee.

21 “(b) The court is entitled to communicate directly
22 with, or to request information or assistance directly from,
23 foreign courts or foreign representatives, subject to the
24 rights of parties in interest to notice and participation.

1 **“§ 1526. Cooperation and direct communication be-**
2 **tween the trustee and foreign courts or**
3 **foreign representatives**

4 “(a) Consistent with section 1501, the trustee or
5 other person, including an examiner, authorized by the
6 court, shall, subject to the supervision of the court, cooper-
7 ate to the maximum extent possible with foreign courts
8 or foreign representatives.

9 “(b) The trustee or other person, including an exam-
10 iner, authorized by the court is entitled, subject to the su-
11 pervision of the court, to communicate directly with for-
12 eign courts or foreign representatives.

13 **“§ 1527. Forms of cooperation**

14 “Cooperation referred to in sections 1525 and 1526
15 may be implemented by any appropriate means,
16 including—

17 “(1) appointment of a person or body, including
18 an examiner, to act at the direction of the court;

19 “(2) communication of information by any
20 means considered appropriate by the court;

21 “(3) coordination of the administration and su-
22 pervision of the debtor’s assets and affairs;

23 “(4) approval or implementation of agreements
24 concerning the coordination of proceedings; and

25 “(5) coordination of concurrent proceedings re-
26 garding the same debtor.

1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

2 **“§ 1528. Commencement of a case under this title**

3 **after recognition of a foreign main pro-**

4 **ceeding**

5 “After recognition of a foreign main proceeding, a
6 case under another chapter of this title may be commenced
7 only if the debtor has assets in the United States. The
8 effects of such case shall be restricted to the assets of the
9 debtor that are within the territorial jurisdiction of the
10 United States and, to the extent necessary to implement
11 cooperation and coordination under sections 1525, 1526,
12 and 1527, to other assets of the debtor that are within
13 the jurisdiction of the court under sections 541(a) of this
14 title, and 1334(e) of title 28, to the extent that such other
15 assets are not subject to the jurisdiction and control of
16 a foreign proceeding that has been recognized under this
17 chapter.

18 **“§ 1529. Coordination of a case under this title and a**

19 **foreign proceeding**

20 “If a foreign proceeding and a case under another
21 chapter of this title are taking place concurrently regard-
22 ing the same debtor, the court shall seek cooperation and
23 coordination under sections 1525, 1526, and 1527, and
24 the following shall apply:

1 “(1) If the case in the United States is taking
2 place at the time the petition for recognition of the
3 foreign proceeding is filed—

4 “(A) any relief granted under sections
5 1519 or 1521 must be consistent with the relief
6 granted in the case in the United States; and

7 “(B) even if the foreign proceeding is rec-
8 ognized as a foreign main proceeding, section
9 1520 does not apply.

10 “(2) If a case in the United States under this
11 title commences after recognition, or after the filing
12 of the petition for recognition, of the foreign
13 proceeding—

14 “(A) any relief in effect under sections
15 1519 or 1521 shall be reviewed by the court
16 and shall be modified or terminated if incon-
17 sistent with the case in the United States; and

18 “(B) if the foreign proceeding is a foreign
19 main proceeding, the stay and suspension re-
20 ferred to in section 1520(a) shall be modified or
21 terminated if inconsistent with the relief grant-
22 ed in the case in the United States.

23 “(3) In granting, extending, or modifying relief
24 granted to a representative of a foreign nonmain
25 proceeding, the court must be satisfied that the re-

1 relief relates to assets that, under the laws of the
2 United States, should be administered in the foreign
3 nonmain proceeding or concerns information re-
4 quired in that proceeding.

5 “(4) In achieving cooperation and coordination
6 under sections 1528 and 1529, the court may grant
7 any of the relief authorized under section 305.

8 **“§ 1530. Coordination of more than 1 foreign pro-**
9 **ceeding**

10 “In matters referred to in section 1501, with respect
11 to more than 1 foreign proceeding regarding the debtor,
12 the court shall seek cooperation and coordination under
13 sections 1525, 1526, and 1527, and the following shall
14 apply:

15 “(1) Any relief granted under section 1519 or
16 1521 to a representative of a foreign nonmain pro-
17 ceeding after recognition of a foreign main pro-
18 ceeding must be consistent with the foreign main
19 proceeding.

20 “(2) If a foreign main proceeding is recognized
21 after recognition, or after the filing of a petition for
22 recognition, of a foreign nonmain proceeding, any
23 relief in effect under section 1519 or 1521 shall be
24 reviewed by the court and shall be modified or termi-

1 nated if inconsistent with the foreign main pro-
2 ceeding.

3 “(3) If, after recognition of a foreign nonmain
4 proceeding, another foreign nonmain proceeding is
5 recognized, the court shall grant, modify, or termi-
6 nate relief for the purpose of facilitating coordina-
7 tion of the proceedings.

8 **“§ 1531. Presumption of insolvency based on recogni-
9 tion of a foreign main proceeding**

10 “In the absence of evidence to the contrary, recogni-
11 tion of a foreign main proceeding is, for the purpose of
12 commencing a proceeding under section 303, proof that
13 the debtor is generally not paying its debts as such debts
14 become due.

15 **“§ 1532. Rule of payment in concurrent proceedings**

16 “Without prejudice to secured claims or rights in
17 rem, a creditor who has received payment with respect to
18 its claim in a foreign proceeding pursuant to a law relating
19 to insolvency may not receive a payment for the same
20 claim in a case under any other chapter of this title re-
21 garding the debtor, so long as the payment to other credi-
22 tors of the same class is proportionately less than the pay-
23 ment the creditor has already received.”.

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

“15. Ancillary and Other Cross-Border Cases 1501”.

4 **SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28,**
 5 **UNITED STATES CODE.**

6 (a) APPLICABILITY OF CHAPTERS.—Section 103 of
 7 title 11, United States Code, is amended—

8 (1) in subsection (a), by inserting before the pe-
 9 riod the following: “, and this chapter, sections 307,
 10 362(l), 555 through 557, and 559 through 562
 11 apply in a case under chapter 15”; and

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

13 “(k) Chapter 15 applies only in a case under such
 14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all
 16 cases under this title; and

17 “(2) section 1509 applies whether or not a case
 18 under this title is pending.”.

19 (b) DEFINITIONS.—Section 101 of title 11, United
 20 States Code, is amended by striking paragraphs (23) and
 21 (24) and inserting the following:

22 “(23) ‘foreign proceeding’ means a collective ju-
 23 dicial or administrative proceeding in a foreign coun-
 24 try, including an interim proceeding, under a law re-
 25 lating to insolvency or adjustment of debt in which

1 proceeding the assets and affairs of the debtor are
2 subject to control or supervision by a foreign court,
3 for the purpose of reorganization or liquidation;

4 “(24) ‘foreign representative’ means a person
5 or body, including a person or body appointed on an
6 interim basis, authorized in a foreign proceeding to
7 administer the reorganization or the liquidation of
8 the debtor’s assets or affairs or to act as a rep-
9 resentative of the foreign proceeding;”.

10 (c) AMENDMENTS TO TITLE 28, UNITED STATES
11 CODE.—

12 (1) PROCEDURES.—Section 157(b)(2) of title
13 28, United States Code, is amended—

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

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

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

19 “(P) recognition of foreign proceedings and
20 other matters under chapter 15 of title 11.”.

21 (2) BANKRUPTCY CASES AND PROCEEDINGS.—
22 Section 1334(c) of title 28, United States Code, is
23 amended by striking “Nothing in” and inserting
24 “Except with respect to a case under chapter 15 of
25 title 11, nothing in”.

1 (3) DUTIES OF TRUSTEES.—Section 586(a)(3)
2 of title 28, United States Code, is amended by strik-
3 ing “or 13” and inserting “13, or 15”.

4 (4) VENUE OF CASES ANCILLARY TO FOREIGN
5 PROCEEDINGS.—Section 1410 of title 28, United
6 States Code, is amended to read as follows:

7 **“§ 1410. Venue of cases ancillary to foreign pro-**
8 **ceedings**

9 “A case under chapter 15 of title 11 may be com-
10 menced in the district court for the district—

11 “(1) in which the debtor has its principal place
12 of business or principal assets in the United States;

13 “(2) if the debtor does not have a place of busi-
14 ness or assets in the United States, in which there
15 is pending against the debtor an action or pro-
16 ceeding in a Federal or State court; or

17 “(3) in a case other than those specified in
18 paragraph (1) or (2), in which venue will be con-
19 sistent with the interests of justice and the conven-
20 ience of the parties, having regard to the relief
21 sought by the foreign representative.”.

22 (d) OTHER SECTIONS OF TITLE 11.—

23 (1) Section 109(b)(3) of title 11, United States
24 Code, is amended to read as follows:

1 “(3)(A) a foreign insurance company, engaged
2 in such business in the United States; or

3 “(B) a foreign bank, savings bank, cooperative
4 bank, savings and loan association, building and
5 loan association, or credit union, that has a branch
6 or agency (as defined in section 1(b) of the Inter-
7 national Banking Act of 1978 (12 U.S.C. 3101) in
8 the United States.”.

9 (2) Section 303(k) of title 11, United States
10 Code, is repealed.

11 (3)(A) Section 304 of title 11, United States
12 Code, is repealed.

13 (B) The table of sections at the beginning of
14 chapter 3 of title 11, United States Code, is amend-
15 ed by striking the item relating to section 304.

16 (C) Section 306 of title 11, United States Code,
17 is amended by striking “, 304,” each place it ap-
18 pears.

19 (4) Section 305(a)(2) of title 11, United States
20 Code, is amended to read as follows:

21 “(2)(A) a petition under section 1515 of this
22 title for recognition of a foreign proceeding has been
23 granted; and

1 “(B) the purposes of chapter 15 of this title
2 would be best served by such dismissal or suspen-
3 sion.”.

4 (5) Section 508 of title 11, United States Code,
5 is amended—

6 (A) by striking subsection (a); and

7 (B) in subsection (b), by striking “(b)”.

8 **TITLE IX—FINANCIAL**
9 **CONTRACT PROVISIONS**

10 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
11 **SERVATORS OR RECEIVERS OF INSURED DE-**
12 **POSITORY INSTITUTIONS.**

13 (a) DEFINITION OF QUALIFIED FINANCIAL CON-
14 TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-
15 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by
16 inserting “, resolution, or order” after “any similar agree-
17 ment that the Corporation determines by regulation”.

18 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-
19 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
20 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
21 lows:

22 “(ii) SECURITIES CONTRACT.—The
23 term ‘securities contract’—

24 “(I) means a contract for the
25 purchase, sale, or loan of a security, a

1 certificate of deposit, a mortgage loan,
2 or any interest in a mortgage loan, a
3 group or index of securities, certifi-
4 cates of deposit, or mortgage loans or
5 interests therein (including any inter-
6 est therein or based on the value
7 thereof) or any option on any of the
8 foregoing, including any option to
9 purchase or sell any such security,
10 certificate of deposit, mortgage loan,
11 interest, group or index, or option,
12 and including any repurchase or re-
13 verse repurchase transaction on any
14 such security, certificate of deposit,
15 loan, interest, group or index, or op-
16 tion;

17 “(II) does not include any pur-
18 chase, sale, or repurchase obligation
19 under a participation in a commercial
20 mortgage loan unless the Corporation
21 determines by regulation, resolution,
22 or order to include any such agree-
23 ment within the meaning of such
24 term;

1 “(III) means any option entered
2 into on a national securities exchange
3 relating to foreign currencies;

4 “(IV) means the guarantee by or
5 to any securities clearing agency of
6 any settlement of cash, securities, cer-
7 tificates of deposit, mortgage loans or
8 interests therein, group or index of se-
9 curities, certificates of deposit, or
10 mortgage loans or interests therein
11 (including any interest therein or
12 based on the value thereof) or option
13 on any of the foregoing, including any
14 option to purchase or sell any such se-
15 curity, certificate of deposit, loan, in-
16 terest, group or index, or option;

17 “(V) means any margin loan;

18 “(VI) means any other agree-
19 ment or transaction that is similar to
20 any agreement or transaction referred
21 to in this clause;

22 “(VII) means any combination of
23 the agreements or transactions re-
24 ferred to in this clause;

1 “(VIII) means any option to
2 enter into any agreement or trans-
3 action referred to in this clause;

4 “(IX) means a master agreement
5 that provides for an agreement or
6 transaction referred to in subclause
7 (I), (III), (IV), (V), (VI), (VII), or
8 (VIII), together with all supplements
9 to any such master agreement, with-
10 out regard to whether the master
11 agreement provides for an agreement
12 or transaction that is not a securities
13 contract under this clause, except that
14 the master agreement shall be consid-
15 ered to be a securities contract under
16 this clause only with respect to each
17 agreement or transaction under the
18 master agreement that is referred to
19 in subclause (I), (III), (IV), (V), (VI),
20 (VII), or (VIII); and

21 “(X) means any security agree-
22 ment or arrangement or other credit
23 enhancement related to any agree-
24 ment or transaction referred to in this
25 clause or any guarantee or reimburse-

1 ment obligation in connection with
2 any agreement or transaction referred
3 to in this clause.”.

4 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
5 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
7 lows:

8 “(iii) COMMODITY CONTRACT.—The
9 term ‘commodity contract’ means—

10 “(I) with respect to a futures
11 commission merchant, a contract for
12 the purchase or sale of a commodity
13 for future delivery on, or subject to
14 the rules of, a contract market or
15 board of trade;

16 “(II) with respect to a foreign fu-
17 tures commission merchant, a foreign
18 future;

19 “(III) with respect to a leverage
20 transaction merchant, a leverage
21 transaction;

22 “(IV) with respect to a clearing
23 organization, a contract for the pur-
24 chase or sale of a commodity for fu-
25 ture delivery on, or subject to the

1 rules of, a contract market or board
2 of trade that is cleared by such clear-
3 ing organization, or commodity option
4 traded on, or subject to the rules of,
5 a contract market or board of trade
6 that is cleared by such clearing orga-
7 nization;

8 “(V) with respect to a commodity
9 options dealer, a commodity option;

10 “(VI) any other agreement or
11 transaction that is similar to any
12 agreement or transaction referred to
13 in this clause;

14 “(VII) any combination of the
15 agreements or transactions referred to
16 in this clause;

17 “(VIII) any option to enter into
18 any agreement or transaction referred
19 to in this clause;

20 “(IX) a master agreement that
21 provides for an agreement or trans-
22 action referred to in subclause (I),
23 (II), (III), (IV), (V), (VI), (VII), or
24 (VIII), together with all supplements
25 to any such master agreement, with-

1 out regard to whether the master
2 agreement provides for an agreement
3 or transaction that is not a com-
4 modity contract under this clause, ex-
5 cept that the master agreement shall
6 be considered to be a commodity con-
7 tract under this clause only with re-
8 spect to each agreement or trans-
9 action under the master agreement
10 that is referred to in subclause (I),
11 (II), (III), (IV), (V), (VI), (VII), or
12 (VIII); or

13 “(X) any security agreement or
14 arrangement or other credit enhance-
15 ment related to any agreement or
16 transaction referred to in this clause
17 or any guarantee or reimbursement
18 obligation in connection with any
19 agreement or transaction referred to
20 in this clause.”.

21 (d) DEFINITION OF FORWARD CONTRACT.—Section
22 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
23 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

24 “(iv) FORWARD CONTRACT.—The
25 term ‘forward contract’ means—

1 “(I) a contract (other than a
2 commodity contract) for the purchase,
3 sale, or transfer of a commodity or
4 any similar good, article, service,
5 right, or interest which is presently or
6 in the future becomes the subject of
7 dealing in the forward contract trade,
8 or product or byproduct thereof, with
9 a maturity date more than 2 days
10 after the date the contract is entered
11 into, including, a repurchase trans-
12 action, reverse repurchase transaction,
13 consignment, lease, swap, hedge
14 transaction, deposit, loan, option, allo-
15 cated transaction, unallocated trans-
16 action, or any other similar agree-
17 ment;

18 “(II) any combination of agree-
19 ments or transactions referred to in
20 subclauses (I) and (III);

21 “(III) any option to enter into
22 any agreement or transaction referred
23 to in subclause (I) or (II);

24 “(IV) a master agreement that
25 provides for an agreement or trans-

1 action referred to in subclauses (I),
2 (II), or (III), together with all supple-
3 ments to any such master agreement,
4 without regard to whether the master
5 agreement provides for an agreement
6 or transaction that is not a forward
7 contract under this clause, except that
8 the master agreement shall be consid-
9 ered to be a forward contract under
10 this clause only with respect to each
11 agreement or transaction under the
12 master agreement that is referred to
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or
15 arrangement or other credit enhance-
16 ment related to any agreement or
17 transaction referred to in subclause
18 (I), (II), (III), or (IV) or any guar-
19 antee or reimbursement obligation in
20 connection with any agreement or
21 transaction referred to in any such
22 subclause.”.

23 (e) DEFINITION OF REPURCHASE AGREEMENT.—
24 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
2 follows:

3 “(v) REPURCHASE AGREEMENT.—The
4 term ‘repurchase agreement’ (which defini-
5 tion also applies to a reverse repurchase
6 agreement)—

7 “(I) means an agreement, includ-
8 ing related terms, which provides for
9 the transfer of one or more certifi-
10 cates of deposit, mortgage-related se-
11 curities (as such term is defined in
12 the Securities Exchange Act of 1934),
13 mortgage loans, interests in mortgage-
14 related securities or mortgage loans,
15 eligible bankers’ acceptances, qualified
16 foreign government securities or secu-
17 rities that are direct obligations of, or
18 that are fully guaranteed by, the
19 United States or any agency of the
20 United States against the transfer of
21 funds by the transferee of such certifi-
22 cates of deposit, eligible bankers’ ac-
23 ceptances, securities, loans, or inter-
24 ests with a simultaneous agreement
25 by such transferee to transfer to the

1 transferor thereof certificates of de-
2 posit, eligible bankers' acceptances,
3 securities, loans, or interests as de-
4 scribed above, at a date certain not
5 later than 1 year after such transfers
6 or on demand, against the transfer of
7 funds, or any other similar agreement;

8 “(II) does not include any repur-
9 chase obligation under a participation
10 in a commercial mortgage loan unless
11 the Corporation determines by regula-
12 tion, resolution, or order to include
13 any such participation within the
14 meaning of such term;

15 “(III) means any combination of
16 agreements or transactions referred to
17 in subclauses (I) and (IV);

18 “(IV) means any option to enter
19 into any agreement or transaction re-
20 ferred to in subclause (I) or (III);

21 “(V) means a master agreement
22 that provides for an agreement or
23 transaction referred to in subclause
24 (I), (III), or (IV), together with all
25 supplements to any such master

1 agreement, without regard to whether
2 the master agreement provides for an
3 agreement or transaction that is not a
4 repurchase agreement under this
5 clause, except that the master agree-
6 ment shall be considered to be a re-
7 purchase agreement under this sub-
8 clause only with respect to each agree-
9 ment or transaction under the master
10 agreement that is referred to in sub-
11 clause (I), (III), or (IV); and

12 “(VI) means any security agree-
13 ment or arrangement or other credit
14 enhancement related to any agree-
15 ment or transaction referred to in
16 subclause (I), (III), (IV), or (V) or
17 any guarantee or reimbursement obli-
18 gation in connection with any agree-
19 ment or transaction referred to in any
20 such subclause.

21 For purposes of this clause, the term
22 ‘qualified foreign government security’
23 means a security that is a direct obligation
24 of, or that is fully guaranteed by, the cen-
25 tral government of a member of the Orga-

1 nization for Economic Cooperation and
2 Development (as determined by regulation
3 or order adopted by the appropriate Fed-
4 eral banking authority).”.

5 (f) DEFINITION OF SWAP AGREEMENT.—Section
6 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12
7 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

8 “(vi) SWAP AGREEMENT.—The term
9 ‘swap agreement’ means—

10 “(I) any agreement, including the
11 terms and conditions incorporated by
12 reference in any such agreement,
13 which is an interest rate swap, option,
14 future, or forward agreement, includ-
15 ing a rate floor, rate cap, rate collar,
16 cross-currency rate swap, and basis
17 swap; a spot, same day-tomorrow, to-
18 morrow-next, forward, or other for-
19 eign exchange or precious metals
20 agreement; a currency swap, option,
21 future, or forward agreement; an eq-
22 uity index or equity swap, option, fu-
23 ture, or forward agreement; a debt
24 index or debt swap, option, future, or
25 forward agreement; a total return,

1 credit spread or credit swap, option,
2 future, or forward agreement; a com-
3 modity index or commodity swap, op-
4 tion, future, or forward agreement; or
5 a weather swap, weather derivative, or
6 weather option;

7 “(II) any agreement or trans-
8 action that is similar to any other
9 agreement or transaction referred to
10 in this clause and that has been, is
11 presently, or in the future becomes,
12 the subject of recurrent dealings in
13 the swap markets (including terms
14 and conditions incorporated by ref-
15 erence in such agreement) and that is
16 a forward, swap, future, or option on
17 one or more rates, currencies, com-
18 modities, equity securities or other eq-
19 uity instruments, debt securities or
20 other debt instruments, quantitative
21 measures associated with an occur-
22 rence, extent of an occurrence or con-
23 tingency associated with a financial,
24 commercial or economic consequence,
25 or economic or financial indices or

1 measures of economic or financial risk
2 or value;

3 “(III) any combination of agree-
4 ments or transactions referred to in
5 this clause;

6 “(IV) any option to enter into
7 any agreement or transaction referred
8 to in this clause;

9 “(V) a master agreement that
10 provides for an agreement or trans-
11 action referred to in subclause (I),
12 (II), (III), or (IV), together with all
13 supplements to any such master
14 agreement, without regard to whether
15 the master agreement contains an
16 agreement or transaction that is not a
17 swap agreement under this clause, ex-
18 cept that the master agreement shall
19 be considered to be a swap agreement
20 under this clause only with respect to
21 each agreement or transaction under
22 the master agreement that is referred
23 to in subclause (I), (II), (III), or (IV);
24 and

1 “(VI) any security agreement or
2 arrangement or other credit enhance-
3 ment related to any agreements or
4 transactions referred to in subclause
5 (I), (II), (III), (IV), or (V) or any
6 guarantee or reimbursement obliga-
7 tion in connection with any agreement
8 or transaction referred to in any such
9 subclause.

10 Such term is applicable for purposes of
11 this title only and shall not be construed or
12 applied so as to challenge or affect the
13 characterization, definition, or treatment of
14 any swap agreement under any other stat-
15 ute, regulation, or rule, including the Secu-
16 rities Act of 1933, the Securities Exchange
17 Act of 1934, the Public Utility Holding
18 Company Act of 1935, the Trust Indenture
19 Act of 1939, the Investment Company Act
20 of 1940, the Investment Advisers Act of
21 1940, the Securities Investor Protection
22 Act of 1970, the Commodity Exchange
23 Act, the Gramm-Leach-Bliley Act, the
24 Legal Certainty for Bank Products Act of
25 2000, and the regulations promulgated by

1 the Securities and Exchange Commission
2 or the Commodity Futures Trading Com-
3 mission.”.

4 (g) DEFINITION OF TRANSFER.—Section
5 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
6 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

7 “(viii) TRANSFER.—The term ‘trans-
8 fer’ means every mode, direct or indirect,
9 absolute or conditional, voluntary or invol-
10 untary, of disposing of or parting with
11 property or with an interest in property,
12 including retention of title as a security in-
13 terest and foreclosure of the depository
14 institutions’s equity of redemption.”.

15 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
16 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1821(e)(8)) is amended—

18 (1) in subparagraph (A)—

19 (A) by striking “paragraph (10)” and in-
20 serting “paragraphs (9) and (10)”;

21 (B) in clause (i), by striking “to cause the
22 termination or liquidation” and inserting “such
23 person has to cause the termination, liquida-
24 tion, or acceleration”; and

1 (C) by striking clause (ii) and inserting the
2 following:

3 “(ii) any right under any security
4 agreement or arrangement or other credit
5 enhancement related to one or more quali-
6 fied financial contracts described in clause
7 (i);” and

8 (2) in subparagraph (E), by striking clause (ii)
9 and inserting the following:

10 “(ii) any right under any security
11 agreement or arrangement or other credit
12 enhancement related to one or more quali-
13 fied financial contracts described in clause
14 (i);”.

15 (i) AVOIDANCE OF TRANSFERS.—Section
16 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
17 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
18 5242 of the Revised Statutes of the United States (12
19 U.S.C. 91) or any other Federal or State law relating to
20 the avoidance of preferential or fraudulent transfers,” be-
21 fore “the Corporation”.

1 **SEC. 902. AUTHORITY OF THE CORPORATION WITH RE-**
2 **SPECT TO FAILED AND FAILING INSTITU-**
3 **TIONS.**

4 (a) **IN GENERAL.**—Section 11(e)(8) of the Federal
5 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is
6 amended—

7 (1) in subparagraph (E), by striking “other
8 than paragraph (12) of this subsection, subsection
9 (d)(9)” and inserting “other than subsections (d)(9)
10 and (e)(10)”; and

11 (2) by adding at the end the following new sub-
12 paragraphs:

13 “(F) **CLARIFICATION.**—No provision of law
14 shall be construed as limiting the right or
15 power of the Corporation, or authorizing any
16 court or agency to limit or delay, in any man-
17 ner, the right or power of the Corporation to
18 transfer any qualified financial contract in ac-
19 cordance with paragraphs (9) and (10) of this
20 subsection or to disaffirm or repudiate any such
21 contract in accordance with subsection (e)(1) of
22 this section.

23 “(G) **WALKAWAY CLAUSES NOT EFFEC-**
24 **TIVE.**—

25 “(i) **IN GENERAL.**—Notwithstanding
26 the provisions of subparagraphs (A) and

1 (E), and sections 403 and 404 of the Fed-
2 eral Deposit Insurance Corporation Im-
3 provement Act of 1991, no walkaway
4 clause shall be enforceable in a qualified fi-
5 nancial contract of an insured depository
6 institution in default.

7 “(ii) WALKAWAY CLAUSE DEFINED.—
8 For purposes of this subparagraph, the
9 term ‘walkaway clause’ means a provision
10 in a qualified financial contract that, after
11 calculation of a value of a party’s position
12 or an amount due to or from 1 of the par-
13 ties in accordance with its terms upon ter-
14 mination, liquidation, or acceleration of the
15 qualified financial contract, either does not
16 create a payment obligation of a party or
17 extinguishes a payment obligation of a
18 party in whole or in part solely because of
19 such party’s status as a nondefaulting
20 party.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—
22 Section 11(e)(12)(A) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting
24 “or the exercise of rights or powers by” after “the ap-
25 pointment of”.

1 **SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF**
2 **QUALIFIED FINANCIAL CONTRACTS.**

3 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
4 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)
5 of the Federal Deposit Insurance Act (12 U.S.C.
6 1821(e)(9)) is amended to read as follows:

7 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
8 TRACTS.—

9 “(A) IN GENERAL.—In making any trans-
10 fer of assets or liabilities of a depository institu-
11 tion in default which includes any qualified fi-
12 nancial contract, the conservator or receiver for
13 such depository institution shall either—

14 “(i) transfer to one financial institu-
15 tion, other than a financial institution for
16 which a conservator, receiver, trustee in
17 bankruptcy, or other legal custodian has
18 been appointed or which is otherwise the
19 subject of a bankruptcy or insolvency
20 proceeding—

21 “(I) all qualified financial con-
22 tracts between any person or any af-
23 filiate of such person and the deposi-
24 tory institution in default;

25 “(II) all claims of such person or
26 any affiliate of such person against

1 such depository institution under any
2 such contract (other than any claim
3 which, under the terms of any such
4 contract, is subordinated to the claims
5 of general unsecured creditors of such
6 institution);

7 “(III) all claims of such depository
8 institution against such person or
9 any affiliate of such person under any
10 such contract; and

11 “(IV) all property securing or
12 any other credit enhancement for any
13 contract described in subclause (I) or
14 any claim described in subclause (II)
15 or (III) under any such contract; or

16 “(ii) transfer none of the qualified fi-
17 nancial contracts, claims, property or other
18 credit enhancement referred to in clause (i)
19 (with respect to such person and any affil-
20 iate of such person).

21 “(B) TRANSFER TO FOREIGN BANK, FOR-
22 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
23 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
24 STITUTION.—In transferring any qualified fi-
25 nancial contracts and related claims and prop-

1 erty under subparagraph (A)(i), the conservator
2 or receiver for the depository institution shall
3 not make such transfer to a foreign bank, fi-
4 nancial institution organized under the laws of
5 a foreign country, or a branch or agency of a
6 foreign bank or financial institution unless,
7 under the law applicable to such bank, financial
8 institution, branch or agency, to the qualified
9 financial contracts, and to any netting contract,
10 any security agreement or arrangement or other
11 credit enhancement related to one or more
12 qualified financial contracts, the contractual
13 rights of the parties to such qualified financial
14 contracts, netting contracts, security agree-
15 ments or arrangements, or other credit en-
16 hancements are enforceable substantially to the
17 same extent as permitted under this section.

18 “(C) TRANSFER OF CONTRACTS SUBJECT
19 TO THE RULES OF A CLEARING ORGANIZA-
20 TION.—In the event that a conservator or re-
21 ceiver transfers any qualified financial contract
22 and related claims, property, and credit en-
23 hancements pursuant to subparagraph (A)(i)
24 and such contract is cleared by or subject to the
25 rules of a clearing organization, the clearing or-

1 organization shall not be required to accept the
2 transferee as a member by virtue of the trans-
3 fer.

4 “(D) DEFINITION.—For purposes of this
5 paragraph, the term ‘financial institution’
6 means a broker or dealer, a depository institu-
7 tion, a futures commission merchant, or any
8 other institution, as determined by the Corpora-
9 tion by regulation to be a financial institution
10 and the term ‘clearing organization’ means a
11 ‘clearing organization’ as defined in section 402
12 of the Federal Deposit Insurance Corporation
13 Improvement Act of 1991.”.

14 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
15 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
16 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
17 amended in the material immediately following clause (ii)
18 by striking “the conservator” and all that follows through
19 the period and inserting the following: “the conservator
20 or receiver shall notify any person who is a party to any
21 such contract of such transfer by 5:00 p.m. (eastern time)
22 on the business day following the date of the appointment
23 of the receiver in the case of a receivership, or the business
24 day following such transfer in the case of a conservator-
25 ship.”.

1 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
2 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-
3 posit Insurance Act (12 U.S.C. 1821(e)(10)) is
4 amended—

5 (1) by redesignating subparagraph (B) as sub-
6 paragraph (D); and

7 (2) by inserting after subparagraph (A) the fol-
8 lowing new subparagraphs:

9 “(B) CERTAIN RIGHTS NOT ENFORCE-
10 ABLE.—

11 “(i) RECEIVERSHIP.—A person who is
12 a party to a qualified financial contract
13 with an insured depository institution may
14 not exercise any right that such person has
15 to terminate, liquidate, or net such con-
16 tract under paragraph (8)(A) of this sub-
17 section or section 403 or 404 of the Fed-
18 eral Deposit Insurance Corporation Im-
19 provement Act of 1991, solely by reason of
20 or incidental to the appointment of a re-
21 ceiver for the depository institution (or the
22 insolvency or financial condition of the de-
23 pository institution for which the receiver
24 has been appointed)—

1 “(I) until 5:00 p.m. (eastern
2 time) on the business day following
3 the date of the appointment of the re-
4 ceiver; or

5 “(II) after the person has re-
6 ceived notice that the contract has
7 been transferred pursuant to para-
8 graph (9)(A).

9 “(ii) CONSERVATORSHIP.—A person
10 who is a party to a qualified financial con-
11 tract with an insured depository institution
12 may not exercise any right that such per-
13 son has to terminate, liquidate, or net such
14 contract under paragraph (8)(E) of this
15 subsection or sections 403 or 404 of the
16 Federal Deposit Insurance Corporation
17 Improvement Act of 1991, solely by reason
18 of or incidental to the appointment of a
19 conservator for the depository institution
20 (or the insolvency or financial condition of
21 the depository institution for which the
22 conservator has been appointed).

23 “(iii) NOTICE.—For purposes of this
24 paragraph, the Corporation as receiver or
25 conservator of an insured depository insti-

1 tution shall be deemed to have notified a
2 person who is a party to a qualified finan-
3 cial contract with such depository institu-
4 tion if the Corporation has taken steps
5 reasonably calculated to provide notice to
6 such person by the time specified in sub-
7 paragraph (A).

8 “(C) TREATMENT OF BRIDGE BANKS.—

9 The following institutions shall not be consid-
10 ered to be a financial institution for which a
11 conservator, receiver, trustee in bankruptcy, or
12 other legal custodian has been appointed or
13 which is otherwise the subject of a bankruptcy
14 or insolvency proceeding for purposes of para-
15 graph (9):

16 “(i) A bridge bank.

17 “(ii) A depository institution orga-
18 nized by the Corporation, for which a con-
19 servator is appointed either—

20 “(I) immediately upon the orga-
21 nization of the institution; or

22 “(II) at the time of a purchase
23 and assumption transaction between
24 the depository institution and the Cor-

1 poration as receiver for a depository
2 institution in default.”.

3 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
4 **REPUDIATION OF QUALIFIED FINANCIAL**
5 **CONTRACTS.**

6 Section 11(e) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1821(e)) is amended—

8 (1) by redesignating paragraphs (11) through
9 (15) as paragraphs (12) through (16), respectively;
10 and

11 (2) by inserting after paragraph (10) the fol-
12 lowing new paragraph:

13 “(11) DISAFFIRMANCE OR REPUDIATION OF
14 QUALIFIED FINANCIAL CONTRACTS.—In exercising
15 the rights of disaffirmance or repudiation of a con-
16 servator or receiver with respect to any qualified fi-
17 nancial contract to which an insured depository in-
18 stitution is a party, the conservator or receiver for
19 such institution shall either—

20 “(A) disaffirm or repudiate all qualified fi-
21 nancial contracts between—

22 “(i) any person or any affiliate of
23 such person; and

24 “(ii) the depository institution in de-
25 fault; or

1 “(B) disaffirm or repudiate none of the
2 qualified financial contracts referred to in sub-
3 paragraph (A) (with respect to such person or
4 any affiliate of such person).”.

5 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**
6 **AGREEMENTS.**

7 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
9 read as follows:

10 “(vii) TREATMENT OF MASTER
11 AGREEMENT AS ONE AGREEMENT.—Any
12 master agreement for any contract or
13 agreement described in any preceding
14 clause of this subparagraph (or any master
15 agreement for such master agreement or
16 agreements), together with all supplements
17 to such master agreement, shall be treated
18 as a single agreement and a single quali-
19 fied financial contract. If a master agree-
20 ment contains provisions relating to agree-
21 ments or transactions that are not them-
22 selves qualified financial contracts, the
23 master agreement shall be deemed to be a
24 qualified financial contract only with re-

1 spect to those transactions that are them-
2 selves qualified financial contracts.”.

3 **SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION**
4 **IMPROVEMENT ACT OF 1991.**

5 (a) DEFINITIONS.—Section 402 of the Federal De-
6 posit Insurance Corporation Improvement Act of 1991 (12
7 U.S.C. 4402) is amended—

8 (1) in paragraph (2)—

9 (A) in subparagraph (A)(ii), by inserting
10 before the semicolon “, or is exempt from such
11 registration by order of the Securities and Ex-
12 change Commission”; and

13 (B) in subparagraph (B), by inserting be-
14 fore the period “, that has been granted an ex-
15 emption under section 4(c)(1) of the Com-
16 modity Exchange Act or that is a multilateral
17 clearing organization (as defined in section 408
18 of this Act)”;

19 (2) in paragraph (6)—

20 (A) by redesignating subparagraphs (B)
21 through (D) as subparagraphs (C) through (E),
22 respectively;

23 (B) by inserting after subparagraph (A)
24 the following new subparagraph:

1 “(B) an uninsured national bank or an un-
2 insured State bank that is a member of the
3 Federal Reserve System, if the national bank or
4 State member bank is not eligible to make ap-
5 plication to become an insured bank under sec-
6 tion 5 of the Federal Deposit Insurance Act;”;
7 and

8 (C) by amending subparagraph (C) (as re-
9 designated) to read as follows:

10 “(C) a branch or agency of a foreign bank,
11 a foreign bank and any branch or agency of the
12 foreign bank, or the foreign bank that estab-
13 lished the branch or agency, as those terms are
14 defined in section 1(b) of the International
15 Banking Act of 1978;”;

16 (3) in paragraph (11), by inserting before the
17 period “and any other clearing organization with
18 which such clearing organization has a netting con-
19 tract”;

20 (4) by amending paragraph (14)(A)(i) to read
21 as follows:

22 “(i) means a contract or agreement
23 between 2 or more financial institutions,
24 clearing organizations, or members that
25 provides for netting present or future pay-

1 ment obligations or payment entitlements
2 (including liquidation or closeout values re-
3 lating to such obligations or entitlements)
4 among the parties to the agreement; and”;
5 and

6 (5) by adding at the end the following new
7 paragraph:

8 “(15) PAYMENT.—The term ‘payment’ means a
9 payment of United States dollars, another currency,
10 or a composite currency, and a noncash delivery, in-
11 cluding a payment or delivery to liquidate an
12 unmatured obligation.”.

13 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
14 TRACTS.—Section 403 of the Federal Deposit Insurance
15 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
16 is amended—

17 (1) by striking subsection (a) and inserting the
18 following:

19 “(a) GENERAL RULE.—Notwithstanding any other
20 provision of State or Federal law (other than paragraphs
21 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
22 Deposit Insurance Act or any order authorized under sec-
23 tion 5(b)(2) of the Securities Investor Protection Act of
24 1970), the covered contractual payment obligations and
25 the covered contractual payment entitlements between any

1 2 financial institutions shall be netted in accordance with,
2 and subject to the conditions of, the terms of any applica-
3 ble netting contract (except as provided in section
4 561(b)(2) of title 11, United States Code).”; and

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

7 “(f) ENFORCEABILITY OF SECURITY AGREE-
8 MENTS.—The provisions of any security agreement or ar-
9 rangement or other credit enhancement related to one or
10 more netting contracts between any 2 financial institu-
11 tions shall be enforceable in accordance with their terms
12 (except as provided in section 561(b)(2) of title 11, United
13 States Code), and shall not be stayed, avoided, or other-
14 wise limited by any State or Federal law (other than para-
15 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the
16 Federal Deposit Insurance Act and section 5(b)(2) of the
17 Securities Investor Protection Act of 1970).”.

18 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
19 NETTING CONTRACTS.—Section 404 of the Federal De-
20 posit Insurance Corporation Improvement Act of 1991 (12
21 U.S.C. 4404) is amended—

22 (1) by striking subsection (a) and inserting the
23 following:

24 “(a) GENERAL RULE.—Notwithstanding any other
25 provision of State or Federal law (other than paragraphs

1 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
2 Deposit Insurance Act and any order authorized under
3 section 5(b)(2) of the Securities Investor Protection Act
4 of 1970), the covered contractual payment obligations and
5 the covered contractual payment entitlements of a member
6 of a clearing organization to and from all other members
7 of a clearing organization shall be netted in accordance
8 with and subject to the conditions of any applicable net-
9 ting contract (except as provided in section 561(b)(2) of
10 title 11, United States Code).”; and

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

13 “(h) ENFORCEABILITY OF SECURITY AGREE-
14 MENTS.—The provisions of any security agreement or ar-
15 rangement or other credit enhancement related to one or
16 more netting contracts between any 2 members of a clear-
17 ing organization shall be enforceable in accordance with
18 their terms (except as provided in section 561(b)(2) of
19 title 11, United States Code), and shall not be stayed,
20 avoided, or otherwise limited by any State or Federal law
21 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
22 tion 11(e) of the Federal Deposit Insurance Act and sec-
23 tion 5(b)(2) of the Securities Investor Protection Act of
24 1970).”.

1 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
2 SURED NATIONAL BANKS, UNINSURED FEDERAL
3 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE
4 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The
5 Federal Deposit Insurance Corporation Improvement Act
6 of 1991 (12 U.S.C. 4401 et seq.) is amended—

7 (1) by redesignating section 407 as 407A; and
8 (2) by inserting after section 406 the following
9 new section:

10 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
11 **NATIONAL BANKS, UNINSURED FEDERAL**
12 **BRANCHES AND AGENCIES, CERTAIN UNIN-**
13 **SURED STATE MEMBER BANKS, AND EDGE**
14 **ACT CORPORATIONS.**

15 “(a) IN GENERAL.—Notwithstanding any other pro-
16 vision of law, paragraphs (8), (9), (10), and (11) of section
17 11(e) of the Federal Deposit Insurance Act shall apply
18 to an uninsured national bank or uninsured Federal
19 branch or Federal agency, or a corporation chartered
20 under section 25A of the Federal Reserve Act or an unin-
21 sured State member bank which operates, or operates as,
22 a multilateral clearing organization pursuant to section
23 409 of this Act, except that for such purpose—

24 “(1) any reference to the ‘Corporation as re-
25 ceiver’ or ‘the receiver or the Corporation’ shall refer

1 to the receiver of an uninsured national bank or un-
2 insured Federal branch or Federal agency appointed
3 by the Comptroller of the Currency in the case of an
4 uninsured national bank or uninsured Federal
5 branch or agency, or to the receiver of a corporation
6 chartered under section 25A of the Federal Reserve
7 Act or an uninsured State member bank appointed
8 by the Board of Governors of the Federal Reserve
9 System in the case of a corporation chartered under
10 section 25A of the Federal Reserve Act or an unin-
11 sured State member bank;

12 “(2) any reference to the ‘Corporation’ (other
13 than in section 11(e)(8)(D) of such Act), the ‘Cor-
14 poration, whether acting as such or as conservator
15 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer
16 to the receiver or conservator of an uninsured na-
17 tional bank or uninsured Federal branch or Federal
18 agency appointed by the Comptroller of the Cur-
19 rency in the case of an uninsured national bank or
20 uninsured Federal branch or agency, or to the re-
21 ceiver or conservator of a corporation chartered
22 under section 25A of the Federal Reserve Act or an
23 uninsured State member bank appointed by the
24 Board of Governors of the Federal Reserve System
25 in the case of a corporation chartered under section

1 25A of the Federal Reserve Act or an uninsured
2 State member bank; and

3 “(3) any reference to an ‘insured depository in-
4 stitution’ or ‘depository institution’ shall refer to an
5 uninsured national bank, an uninsured Federal
6 branch or Federal agency a corporation chartered
7 under section 25A of the Federal Reserve Act or an
8 uninsured State member bank which operates, or op-
9 erates as, a multilateral clearing organization pursu-
10 ant to section 409 of this Act.

11 “(b) LIABILITY.—The liability of a receiver or conser-
12 vator of an uninsured national bank, uninsured Federal
13 branch or agency a corporation chartered under section
14 25A of the Federal Reserve Act or an uninsured State
15 member bank which operates, or operates as, a multilat-
16 eral clearing organization pursuant to section 409 of this
17 Act, shall be determined in the same manner and subject
18 to the same limitations that apply to receivers and con-
19 servators of insured depository institutions under section
20 11(e) of the Federal Deposit Insurance Act.

21 “(c) REGULATORY AUTHORITY.—

22 “(1) IN GENERAL.—The Comptroller of the
23 Currency and the Board of Governors of the Federal
24 Reserve System, in consultation with the Federal

1 Deposit Insurance Corporation, may each promul-
2 gate regulations to implement this section.

3 “(2) SPECIFIC REQUIREMENT.—In promul-
4 gating regulations to implement this section, the
5 Comptroller of the Currency and the Board of Gov-
6 ernors of the Federal Reserve System shall each en-
7 sure that the regulations generally are consistent
8 with the regulations and policies of the Federal De-
9 posit Insurance Corporation adopted pursuant to the
10 Federal Deposit Insurance Act.

11 “(d) DEFINITIONS.—For purposes of this section, the
12 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
13 bank’ have the same meanings as in section 1(b) of the
14 International Banking Act of 1978.”.

15 **SEC. 907. BANKRUPTCY CODE AMENDMENTS.**

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

21 (1) in section 101—

22 (A) in paragraph (25)—

23 (i) by striking “means a contract”

24 and inserting “means—

25 “(A) a contract”;

1 (ii) by striking “, or any combination
2 thereof or option thereon;” and inserting
3 “, or any other similar agreement;”; and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(B) any combination of agreements or
7 transactions referred to in subparagraphs (A)
8 and (C);

9 “(C) any option to enter into an agreement
10 or transaction referred to in subparagraph (A)
11 or (B);

12 “(D) a master agreement that provides for
13 an agreement or transaction referred to in sub-
14 paragraph (A), (B), or (C), together with all
15 supplements to any such master agreement,
16 without regard to whether such master agree-
17 ment provides for an agreement or transaction
18 that is not a forward contract under this para-
19 graph, except that such master agreement shall
20 be considered to be a forward contract under
21 this paragraph only with respect to each agree-
22 ment or transaction under such master agree-
23 ment that is referred to in subparagraph (A),
24 (B), or (C); or

1 “(E) any security agreement or arrange-
2 ment, or other credit enhancement related to
3 any agreement or transaction referred to in
4 subparagraph (A), (B), (C), or (D), or any
5 guarantee or reimbursement obligation by or to
6 a forward contract merchant or financial partic-
7 ipant in connection with any agreement or
8 transaction referred to in any such subpara-
9 graph, but not to exceed the damages in con-
10 nection with any such agreement or transaction
11 measured in accordance with section 562 of this
12 title;”;

13 (B) in paragraph (46), by striking “on any
14 day during the period beginning 90 days before
15 the date of” and inserting “at any time before”;

16 (C) by amending paragraph (47) to read
17 as follows:

18 “(47) ‘repurchase agreement’ (which definition
19 also applies to a reverse repurchase agreement)—

20 “(A) means—

21 “(i) an agreement, including related
22 terms, which provides for the transfer of
23 one or more certificates of deposit, mort-
24 gage related securities (as defined in sec-
25 tion 3 of the Securities Exchange Act of

1 1934), mortgage loans, interests in mort-
2 gage related securities or mortgage loans,
3 eligible bankers' acceptances, qualified for-
4 eign government securities (defined as a
5 security that is a direct obligation of, or
6 that is fully guaranteed by, the central
7 government of a member of the Organiza-
8 tion for Economic Cooperation and Devel-
9 opment), or securities that are direct obli-
10 gations of, or that are fully guaranteed by,
11 the United States or any agency of the
12 United States against the transfer of funds
13 by the transferee of such certificates of de-
14 posit, eligible bankers' acceptances, securi-
15 ties, loans, or interests, with a simulta-
16 neous agreement by such transferee to
17 transfer to the transferor thereof certifi-
18 cates of deposit, eligible bankers' accept-
19 ance, securities, loans, or interests of the
20 kind described in this clause, at a date cer-
21 tain not later than 1 year after such trans-
22 fer or on demand, against the transfer of
23 funds;

1 “(ii) any combination of agreements
2 or transactions referred to in clauses (i)
3 and (iii);

4 “(iii) an option to enter into an agree-
5 ment or transaction referred to in clause
6 (i) or (ii);

7 “(iv) a master agreement that pro-
8 vides for an agreement or transaction re-
9 ferred to in clause (i), (ii), or (iii), together
10 with all supplements to any such master
11 agreement, without regard to whether such
12 master agreement provides for an agree-
13 ment or transaction that is not a repur-
14 chase agreement under this paragraph, ex-
15 cept that such master agreement shall be
16 considered to be a repurchase agreement
17 under this paragraph only with respect to
18 each agreement or transaction under the
19 master agreement that is referred to in
20 clause (i), (ii), or (iii); or

21 “(v) any security agreement or ar-
22 rangement or other credit enhancement re-
23 lated to any agreement or transaction re-
24 ferred to in clause (i), (ii), (iii), or (iv) or
25 any guarantee or reimbursement obligation

1 by or to a repo participant or financial
2 participant in connection with any agree-
3 ment or transaction referred to in any such
4 clause, but not to exceed the damages in
5 connection with any such agreement or
6 transaction measured in accordance with
7 section 562 of this title; and

8 “(B) does not include a repurchase obliga-
9 tion under a participation in a commercial
10 mortgage loan;”;

11 (D) in paragraph (48), by inserting “, or
12 exempt from such registration under such sec-
13 tion pursuant to an order of the Securities and
14 Exchange Commission,” after “1934”; and

15 (E) by amending paragraph (53B) to read
16 as follows:

17 “(53B) ‘swap agreement’—

18 “(A) means—

19 “(i) any agreement, including the
20 terms and conditions incorporated by ref-
21 erence in such agreement, which is—

22 “(I) an interest rate swap, op-
23 tion, future, or forward agreement, in-
24 cluding a rate floor, rate cap, rate col-

1 lar, cross-currency rate swap, and
2 basis swap;

3 “(II) a spot, same day-tomorrow,
4 tomorrow-next, forward, or other for-
5 eign exchange or precious metals
6 agreement;

7 “(III) a currency swap, option,
8 future, or forward agreement;

9 “(IV) an equity index or an eq-
10 uity swap, option, future, or forward
11 agreement;

12 “(V) a debt index or a debt swap,
13 option, future, or forward agreement;

14 “(VI) a total return, credit
15 spread or a credit swap, option, fu-
16 ture, or forward agreement;

17 “(VII) a commodity index or a
18 commodity swap, option, future, or
19 forward agreement; or

20 “(VIII) a weather swap, weather
21 derivative, or weather option;

22 “(ii) any agreement or transaction
23 that is similar to any other agreement or
24 transaction referred to in this paragraph
25 and that—

1 “(I) has been, is presently, or in
2 the future becomes, the subject of re-
3 current dealings in the swap markets
4 (including terms and conditions incor-
5 porated by reference therein); and

6 “(II) is a forward, swap, future,
7 or option on one or more rates, cur-
8 rencies, commodities, equity securities,
9 or other equity instruments, debt se-
10 curities or other debt instruments,
11 quantitative measures associated with
12 an occurrence, extent of an occurrence
13 or contingency associated with a fi-
14 nancial, commercial or economic con-
15 sequence, or economic or financial in-
16 dices or measures of economic or fi-
17 nancial risk or value;

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

21 “(iv) any option to enter into an
22 agreement or transaction referred to in
23 this subparagraph;

24 “(v) a master agreement that provides
25 for an agreement or transaction referred to

1 in clause (i), (ii), (iii), or (iv), together
2 with all supplements to any such master
3 agreement, and without regard to whether
4 the master agreement contains an agree-
5 ment or transaction that is not a swap
6 agreement under this paragraph, except
7 that the master agreement shall be consid-
8 ered to be a swap agreement under this
9 paragraph only with respect to each agree-
10 ment or transaction under the master
11 agreement that is referred to in clause (i),
12 (ii), (iii), or (iv); or

13 “(vi) any security agreement or ar-
14 rangement or other credit enhancement re-
15 lated to any agreements or transactions re-
16 ferred to in clause (i) through (v) or any
17 guarantee or reimbursement obligation by
18 or to a swap participant or financial par-
19 ticipant in connection with any agreement
20 or transaction referred to in any such
21 clause, but not to exceed the damages in
22 connection with any such agreement or
23 transaction measured in accordance with
24 section 562 of this title; and

1 “(B) is applicable for purposes of this title
2 only, and shall not be construed or applied so
3 as to challenge or affect the characterization,
4 definition, or treatment of any swap agreement
5 under any other statute, regulation, or rule, in-
6 cluding the Securities Act of 1933, the Securi-
7 ties Exchange Act of 1934, the Public Utility
8 Holding Company Act of 1935, the Trust In-
9 denture Act of 1939, the Investment Company
10 Act of 1940, the Investment Advisers Act of
11 1940, the Securities Investor Protection Act of
12 1970, the Commodity Exchange Act, the
13 Gramm-Leach-Bliley Act, the Legal Certainty
14 for Bank Products Act of 2000, and the regula-
15 tions prescribed by the Securities and Exchange
16 Commission or the Commodity Futures Trading
17 Commission;”;

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

20 “(7) ‘securities contract’—

21 “(A) means—

22 “(i) a contract for the purchase, sale,
23 or loan of a security, a certificate of de-
24 posit, a mortgage loan or any interest in a
25 mortgage loan, a group or index of securi-

1 ties, certificates of deposit, or mortgage
2 loans or interests therein (including an in-
3 terest therein or based on the value there-
4 of), or option on any of the foregoing, in-
5 cluding an option to purchase or sell any
6 such security, certificate of deposit, mort-
7 gage loan, interest, group or index, or op-
8 tion, and including any repurchase or re-
9 verse repurchase transaction on any such
10 security, certificate of deposit, loan, inter-
11 est, group or index, or option;

12 “(ii) any option entered into on a na-
13 tional securities exchange relating to for-
14 eign currencies;

15 “(iii) the guarantee by or to any secu-
16 rities clearing agency of a settlement of
17 cash, securities, certificates of deposit,
18 mortgage loans or interests therein, group
19 or index of securities, or mortgage loans or
20 interests therein (including any interest
21 therein or based on the value thereof), or
22 option on any of the foregoing, including
23 an option to purchase or sell any such se-
24 curity, certificate of deposit, loan, interest,
25 group or index, or option;

1 “(iv) any margin loan;

2 “(v) any other agreement or trans-
3 action that is similar to an agreement or
4 transaction referred to in this subpara-
5 graph;

6 “(vi) any combination of the agree-
7 ments or transactions referred to in this
8 subparagraph;

9 “(vii) any option to enter into any
10 agreement or transaction referred to in
11 this subparagraph;

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

1 ferred to in clause (i), (ii), (iii), (iv), (v),
2 (vi), or (vii); or

3 “(ix) any security agreement or ar-
4 rangement or other credit enhancement re-
5 lated to any agreement or transaction re-
6 ferred to in this subparagraph or any
7 guarantee or reimbursement obligation by
8 or to a stockbroker, securities clearing
9 agency, financial institution or financial
10 participant in connection with any agree-
11 ment or transaction referred to in this sub-
12 paragraph, but not to exceed the damages
13 in connection with any such agreement or
14 transaction measured in accordance with
15 section 562 of this title; and

16 “(B) does not include any purchase, sale,
17 or repurchase obligation under a participation
18 in a commercial mortgage loan.”; and

19 (3) in section 761(4)—

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

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

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

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

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

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

20 “(J) any security agreement or arrange-
21 ment or other credit enhancement related to
22 any agreement or transaction referred to in this
23 paragraph or any guarantee or reimbursement
24 obligation by or to a commodity broker or fi-
25 nancial participant in connection with any

1 agreement or transaction referred to in this
2 paragraph, but not to exceed the damages in
3 connection with any such agreement or trans-
4 action measured in accordance with section 562
5 of this title;”.

6 (b) DEFINITIONS OF FINANCIAL PARTICIPANT AND
7 FORWARD CONTRACT MERCHANT.—Section 101 of title
8 11, United States Code, is amended—

9 (1) by striking paragraph (22) and inserting
10 the following:

11 “(22) ‘financial institution’ means—

12 “(A) a Federal reserve bank, or an entity
13 (domestic or foreign) that is a commercial or
14 savings bank, industrial savings bank, savings
15 and loan association, trust company, or receiver
16 or conservator for such entity and, when any
17 such Federal reserve bank, receiver, conservator
18 or entity is acting as agent or custodian for a
19 customer in connection with a securities con-
20 tract, as defined in section 741, such customer;
21 or

22 “(B) in connection with a securities con-
23 tract, as defined in section 741, an investment
24 company registered under the Investment Com-
25 pany Act of 1940;”;

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

3 “(22A) ‘financial participant’ means—

4 “(A) an entity that, at the time it enters
5 into a securities contract, commodity contract,
6 swap agreement, repurchase agreement, or for-
7 ward contract, or at the time of the filing of the
8 petition, has one or more agreements or trans-
9 actions described in paragraph (1), (2), (3), (4),
10 (5), or (6) of section 561(a) with the debtor or
11 any other entity (other than an affiliate) of a
12 total gross dollar value of not less than
13 \$1,000,000,000 in notional or actual principal
14 amount outstanding on any day during the pre-
15 vious 15-month period, or has gross mark-to-
16 market positions of not less than \$100,000,000
17 (aggregated across counterparties) in one or
18 more such agreements or transactions with the
19 debtor or any other entity (other than an affil-
20 iate) on any day during the previous 15-month
21 period; and

22 “(B) a ‘clearing organization’ (as such
23 term is defined in section 402 of the Federal
24 Deposit Insurance Corporation Improvement
25 Act of 1991);” and

1 (3) by striking paragraph (26) and inserting
2 the following:

3 “(26) ‘forward contract merchant’ means a
4 Federal reserve bank, or an entity the business of
5 which consists in whole or in part of entering into
6 forward contracts as or with merchants in a com-
7 modity, as defined or in section 761 or any similar
8 good, article, service, right, or interest which is pres-
9 ently or in the future becomes the subject of dealing
10 in the forward contract trade;”.

11 (c) DEFINITION OF MASTER NETTING AGREEMENT
12 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
13 tion 101 of title 11, United States Code, is amended by
14 inserting after paragraph (38) the following new para-
15 graphs:

16 “(38A) ‘master netting agreement’—

17 “(A) means an agreement providing for
18 the exercise of rights, including rights of net-
19 ting, setoff, liquidation, termination, accelera-
20 tion, or closeout, under or in connection with
21 one or more contracts that are described in any
22 one or more of paragraphs (1) through (5) of
23 section 561(a), or any security agreement or ar-
24 rangement or other credit enhancement related
25 to one or more of the foregoing or any guar-

1 antee or reimbursement obligation related to 1
2 or more of the foregoing; and

3 “(B) if the agreement contains provisions
4 relating to agreements or transactions that are
5 not contracts described in paragraphs (1)
6 through (5) of section 561(a), shall be deemed
7 to be a master netting agreement only with re-
8 spect to those agreements or transactions that
9 are described in any one or more of paragraphs
10 (1) through (5) of section 561(a);

11 “(38B) ‘master netting agreement participant’
12 means an entity that, at any time before the filing
13 of the petition, is a party to an outstanding master
14 netting agreement with the debtor;”.

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

19 (1) IN GENERAL.—Section 362(b) of title 11,
20 United States Code, as amended by this Act, is
21 amended—

22 (A) in paragraph (6), by inserting “,
23 pledged to, under the control of,” after “held
24 by”;

1 (B) in paragraph (7), by inserting “,
2 pledged to, under the control of,” after “held
3 by”;

4 (C) by striking paragraph (17) and insert-
5 ing the following:

6 “(17) under subsection (a), of the setoff by a
7 swap participant or financial participant of a mutual
8 debt and claim under or in connection with one or
9 more swap agreements that constitutes the setoff of
10 a claim against the debtor for any payment or other
11 transfer of property due from the debtor under or in
12 connection with any swap agreement against any
13 payment due to the debtor from the swap partici-
14 pant or financial participant under or in connection
15 with any swap agreement or against cash, securities,
16 or other property held by, pledged to, under the con-
17 trol of, or due from such swap participant or finan-
18 cial participant to margin, guarantee, secure, or set-
19 tle any swap agreement;” and

20 (D) by inserting after paragraph (27), as
21 added by this Act, the following new paragraph:

22 “(28) under subsection (a), of the setoff by a
23 master netting agreement participant of a mutual
24 debt and claim under or in connection with one or
25 more master netting agreements or any contract or

1 agreement subject to such agreements that con-
2 stitutes the setoff of a claim against the debtor for
3 any payment or other transfer of property due from
4 the debtor under or in connection with such agree-
5 ments or any contract or agreement subject to such
6 agreements against any payment due to the debtor
7 from such master netting agreement participant
8 under or in connection with such agreements or any
9 contract or agreement subject to such agreements or
10 against cash, securities, or other property held by,
11 pledged to, under the control of, or due from such
12 master netting agreement participant to margin,
13 guarantee, secure, or settle such agreements or any
14 contract or agreement subject to such agreements,
15 to the extent that such participant is eligible to exer-
16 cise such offset rights under paragraph (6), (7), or
17 (17) for each individual contract covered by the mas-
18 ter netting agreement in issue; or”.

19 (2) LIMITATION.—Section 362 of title 11,
20 United States Code, as amended by this Act, is
21 amended by adding at the end the following:

22 “(m) LIMITATION.—The exercise of rights not sub-
23 ject to the stay arising under subsection (a) pursuant to
24 paragraph (6), (7), (17), or (28) of subsection (b) shall

1 not be stayed by any order of a court or administrative
2 agency in any proceeding under this title.”.

3 (e) LIMITATION OF AVOIDANCE POWERS UNDER
4 MASTER NETTING AGREEMENT.—Section 546 of title 11,
5 United States Code, as amended by this Act, is
6 amended—

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

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

10 (B) by striking “in connection with a swap
11 agreement” and inserting “under or in connec-
12 tion with any swap agreement”; and

13 (C) by inserting “or financial participant”
14 after “swap participant” each time such term
15 appears; and

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

17 “(j) Notwithstanding sections 544, 545, 547,
18 548(a)(1)(B), and 548(b) the trustee may not avoid a
19 transfer made by or to a master netting agreement partici-
20 pant under or in connection with any master netting
21 agreement or any individual contract covered thereby that
22 is made before the commencement of the case, except
23 under section 548(a)(1)(A) and except to the extent that
24 the trustee could otherwise avoid such a transfer made

1 under an individual contract covered by such master net-
2 ting agreement.”.

3 (f) FRAUDULENT TRANSFERS OF MASTER NETTING
4 AGREEMENTS.—Section 548(d)(2) of title 11, United
5 States Code, is amended—

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

8 (2) in subparagraph (D), by striking the period
9 and inserting “; and”; and

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(E) a master netting agreement participant
13 that receives a transfer in connection with a master
14 netting agreement or any individual contract covered
15 thereby takes for value to the extent of such trans-
16 fer, except that, with respect to a transfer under any
17 individual contract covered thereby, to the extent
18 that such master netting agreement participant oth-
19 erwise did not take (or is otherwise not deemed to
20 have taken) such transfer for value.”.

21 (g) TERMINATION OR ACCELERATION OF SECURITIES
22 CONTRACTS.—Section 555 of title 11, United States Code,
23 is amended—

24 (1) by amending the section heading to read as
25 follows:

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 amending the section heading to read as
11 follows:

12 **“§ 556. Contractual right to liquidate, terminate, or**
13 **accelerate a commodities contract or for-**
14 **ward contract”;**

15 (2) in the first sentence, by striking “liquida-
16 tion” and inserting “liquidation, termination, or ac-
17 celeration”; and

18 (3) by striking so much of the text of the sec-
19 ond sentence as appears before “whether” and in-
20 sserting “As used in this section, the term “contrac-
21 tual right” includes a right set forth in a rule or
22 bylaw of a derivatives clearing organization (as de-
23 fined in the Commodity Exchange Act), a multilat-
24 eral clearing organization (as defined in the Federal
25 Deposit Insurance Corporation Improvement Act of
26 1991), a national securities exchange, a national se-

1 securities association, a contract market designated
2 under the Commodity Exchange Act, a derivatives
3 transaction execution facility registered under the
4 Commodity Exchange Act, or a board of trade (as
5 defined in the Commodity Exchange Act) or in a
6 resolution of the governing board thereof and a
7 right.”.

8 (i) TERMINATION OR ACCELERATION OF REPUR-
9 CHASE AGREEMENTS.—Section 559 of title 11, United
10 States Code, is amended—

11 (1) by amending the section heading to read as
12 follows:

13 **“§ 559. Contractual right to liquidate, terminate, or**
14 **accelerate a repurchase agreement”;**

15 (2) in the first sentence, by striking “liquida-
16 tion” and inserting “liquidation, termination, or ac-
17 celeration”; and

18 (3) by striking so much of the text of the third
19 sentence as appears before “whether” and inserting
20 “As used in this section, the term “contractual
21 right” includes a right set forth in a rule or bylaw
22 of a derivatives clearing organization (as defined in
23 the Commodity Exchange Act), a multilateral clear-
24 ing organization (as defined in the Federal Deposit
25 Insurance Corporation Improvement Act of 1991), a

1 national securities exchange, a national securities as-
2 sociation, a contract market designated under the
3 Commodity Exchange Act, a derivatives transaction
4 execution facility registered under the Commodity
5 Exchange Act, or a board of trade (as defined in the
6 Commodity Exchange Act) or in a resolution of the
7 governing board thereof and a right.

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

11 (1) by amending the section heading to read as
12 follows:

13 **“§ 560. Contractual right to liquidate, terminate, or**
14 **accelerate a swap agreement”;**

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

19 (3) by striking “in connection with any swap
20 agreement” and inserting “in connection with the
21 termination, liquidation, or acceleration of one or
22 more swap agreements”; and

23 (4) by striking so much of the text of the sec-
24 ond sentence as appears before “whether” and in-
25 serting “As used in this section, the term ‘contrac-

1 tual right’ includes a right set forth in a rule or
2 bylaw of a derivatives clearing organization (as de-
3 fined in the Commodity Exchange Act), a multilat-
4 eral clearing organization (as defined in the Federal
5 Deposit Insurance Corporation Improvement Act of
6 1991), a national securities exchange, a national se-
7 curities association, a contract market designated
8 under the Commodity Exchange Act), a derivatives
9 transaction execution facility registered under the
10 Commodity Exchange Act, or a board of trade (as
11 defined in the Commodity Exchange Act) or in a
12 resolution of the governing board thereof and a
13 right.”.

14 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
15 OFFSET UNDER A MASTER NETTING AGREEMENT AND
16 ACROSS CONTRACTS.—

17 (1) IN GENERAL.—Title 11, United States
18 Code, is amended by inserting after section 560 the
19 following:

20 **“§ 561. Contractual right to terminate, liquidate, ac-**
21 **celerate, or offset under a master netting**
22 **agreement and across contracts; pro-**
23 **ceedings under chapter 15**

24 “(a) IN GENERAL.—Subject to subsection (b), the ex-
25 ercise of any contractual right, because of a condition of

1 the kind specified in section 365(e)(1), to cause the termi-
2 nation, liquidation, or acceleration of or to offset or net
3 termination values, payment amounts, or other transfer
4 obligations arising under or in connection with one or
5 more (or the termination, liquidation, or acceleration of
6 one or more)—

7 “(1) securities contracts, as defined in section
8 741(7);

9 “(2) commodity contracts, as defined in section
10 761(4);

11 “(3) forward contracts;

12 “(4) repurchase agreements;

13 “(5) swap agreements; or

14 “(6) master netting agreements,

15 shall not be stayed, avoided, or otherwise limited by oper-
16 ation of any provision of this title or by any order of a
17 court or administrative agency in any proceeding under
18 this title.

19 “(b) EXCEPTION.—

20 “(1) IN GENERAL.—A party may exercise a
21 contractual right described in subsection (a) to ter-
22minate, liquidate, or accelerate only to the extent
23that such party could exercise such a right under
24section 555, 556, 559, or 560 for each individual

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

3 “(2) COMMODITY BROKERS.—If a debtor is a
4 commodity broker subject to subchapter IV of chap-
5 ter 7—

6 “(A) a party may not net or offset an obli-
7 gation to the debtor arising under, or in con-
8 nection with, a commodity contract traded on
9 or subject to the rules of a contract market des-
10 ignated under the Commodity Exchange Act or
11 a derivatives transaction execution facility reg-
12 istered under the Commodity Exchange Act
13 against any claim arising under, or in connec-
14 tion with, other instruments, contracts, or
15 agreements listed in subsection (a) except to
16 the extent that the party has positive net equity
17 in the commodity accounts at the debtor, as cal-
18 culated under that subchapter IV; and

19 “(B) another commodity broker may not
20 net or offset an obligation to the debtor arising
21 under, or in connection with, a commodity con-
22 tract entered into or held on behalf of a cus-
23 tomer of the debtor and traded on or subject to
24 the rules of a contract market designated under
25 the Commodity Exchange Act or a derivatives

1 transaction execution facility registered under
2 the Commodity Exchange Act against any claim
3 arising under, or in connection with, other in-
4 struments, contracts, or agreements listed in
5 subsection (a).

6 “(3) CONSTRUCTION.—No provision of sub-
7 paragraph (A) or (B) of paragraph (2) shall prohibit
8 the offset of claims and obligations that arise
9 under—

10 “(A) a cross-margining or similar arrange-
11 ment that has been approved by the Commodity
12 Futures Trading Commission or submitted to
13 the Commodity Futures Trading Commission
14 under paragraph (1) or (2) of section 5c(e) of
15 the Commodity Exchange Act and has not been
16 abrogated or rendered ineffective by the Com-
17modity Futures Trading Commission; or

18 “(B) any other netting agreement between
19 a clearing organization, as defined in section
20 761, and another entity that has been approved
21 by the Commodity Futures Trading Commis-
22 sion.

23 “(c) DEFINITION.—As used in this section, the term
24 ‘contractual right’ includes a right set forth in a rule or
25 bylaw of a derivatives clearing organization (as defined in

1 the Commodity Exchange Act), a multilateral clearing or-
2 ganization (as defined in the Federal Deposit Insurance
3 Corporation Improvement Act of 1991), a national securi-
4 ties exchange, a national securities association, a contract
5 market designated under the Commodity Exchange Act,
6 a derivatives transaction execution facility registered
7 under the Commodity Exchange Act, or a board of trade
8 (as defined in the Commodity Exchange Act) or in a reso-
9 lution of the governing board thereof, and a right, whether
10 or not evidenced in writing, arising under common law,
11 under law merchant, or by reason of normal business prac-
12 tice.

13 “(d) CASES ANCILLARY TO FOREIGN PRO-
14 CEEDINGS.—Any provisions of this title relating to securi-
15 ties contracts, commodity contracts, forward contracts, re-
16 purchase agreements, swap agreements, or master netting
17 agreements shall apply in a case under chapter 15 of this
18 title, so that enforcement of contractual provisions of such
19 contracts and agreements in accordance with their terms
20 will not be stayed or otherwise limited by operation of any
21 provision of this title or by order of a court in any case
22 under this title, and to limit avoidance powers to the same
23 extent as in a proceeding under chapter 7 or 11 of this
24 title (such enforcement not to be limited based on the

1 presence or absence of assets of the debtor in the United
2 States).”.

3 (2) CONFORMING AMENDMENT.—The table of sec-
4 tions for chapter 5 of title 11, United States Code, is
5 amended by inserting after the item relating to section
6 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a
master netting agreement and across contracts; proceedings
under chapter 15.”.

7 (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,
8 United States Code, is amended by inserting after section
9 766 the following:

10 **“§ 767. Commodity broker liquidation and forward**
11 **contract merchants, commodity brokers,**
12 **stockbrokers, financial institutions, fi-**
13 **nancial participants, securities clearing**
14 **agencies, swap participants, repo partici-**
15 **pants, and master netting agreement par-**
16 **ticipants**

17 “Notwithstanding any other provision of this title,
18 the exercise of rights by a forward contract merchant,
19 commodity broker, stockbroker, financial institution, fi-
20 nancial participant, securities clearing agency, swap par-
21 ticipant, repo participant, or master netting agreement
22 participant under this title shall not affect the priority of
23 any unsecured claim it may have after the exercise of such
24 rights.”.

1 (m) STOCKBROKER LIQUIDATIONS.—Title 11,
2 United States Code, is amended by inserting after section
3 752 the following:

4 **“§ 753. Stockbroker liquidation and forward contract**
5 **merchants, commodity brokers, stock-**
6 **brokers, financial institutions, financial**
7 **participants securities clearing agencies,**
8 **swap participants, repo participants, and**
9 **master netting agreement participants**

10 “Notwithstanding any other provision of this title,
11 the exercise of rights by a forward contract merchant,
12 commodity broker, stockbroker, financial institution, secu-
13 rities clearing agency, swap participant, repo participant,
14 financial participant, or master netting agreement partici-
15 pant under this title shall not affect the priority of any
16 unsecured claim it may have after the exercise of such
17 rights.”.

18 (n) SETOFF.—Section 553 of title 11, United States
19 Code, is amended—

20 (1) in subsection (a)(2)(B)(ii), by inserting be-
21 fore the semicolon, and in subsection (a)(3)(C), by
22 inserting before the period, the following: “(except
23 for a setoff of a kind described in section 362(b)(6),
24 362(b)(7), 362(b)(17), 362(b)(28), 555, 556, 559,
25 560, or 561 of this title)”; and

1 (2) in subsection (b)(1), by striking
2 “362(b)(14),” and inserting “362(b)(17),
3 362(b)(28), 555, 556, 559, 560, 561,”.

4 (o) SECURITIES CONTRACTS, COMMODITY CON-
5 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
6 States Code, is amended—

7 (1) in section 362(b)(6), by striking “financial
8 institutions,” each place such term appears and in-
9 serting “financial institution, financial participant,”;

10 (2) in sections 362(b)(7) and 546(f), by insert-
11 ing “or financial participant” after “repo partici-
12 pant” each time such term appears;

13 (3) in section 546(e), by inserting “financial
14 participant,” after “financial institution,”;

15 (4) in section 548(d)(2)(B), by inserting “fi-
16 nancial participant,” after “financial institution,”;

17 (5) in section 548(d)(2)(C), by inserting “or fi-
18 nancial participant” after “repo participant”;

19 (6) in section 548(d)(2)(D), by inserting “or fi-
20 nancial participant” after “swap participant”;

21 (7) in section 555—

22 (A) by inserting “financial participant,”
23 after “financial institution,”; and

24 (B) by striking the second sentence and in-
25 serting “As used in this section, the term ‘con-

1 tractual right’ includes a right set forth in a
2 rule or bylaw of a derivatives clearing organiza-
3 tion (as defined in the Commodity Exchange
4 Act), a multilateral clearing organization (as
5 defined in the Federal Deposit Insurance Cor-
6 poration Improvement Act of 1991), a national
7 securities exchange, a national securities asso-
8 ciation, a contract market designated under the
9 Commodity Exchange Act, a derivatives trans-
10 action execution facility registered under the
11 Commodity Exchange Act, or a board of trade
12 (as defined in the Commodity Exchange Act) or
13 in a resolution of the governing board thereof,
14 and a right, whether or not in writing, arising
15 under common law, under law merchant, or by
16 reason of normal business practice”;

17 (8) in section 556, by inserting “, financial par-
18 ticipant,” after “commodity broker”;

19 (9) in section 559, by inserting “or financial
20 participant” after “repo participant” each time such
21 term appears; and

22 (10) in section 560, by inserting “or financial
23 participant” after “swap participant”.

24 (p) CONFORMING AMENDMENTS.—Title 11, United
25 States Code, is amended—

1 (1) in the table of sections for chapter 5—

2 (A) by amending the items relating to sec-
3 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
tract or forward contract.”;

4 and

5 (B) by amending the items relating to sec-
6 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
ment.”;

7 and

8 (2) in the table of sections for chapter 7—

9 (A) by inserting after the item relating to
10 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-
modity brokers, stockbrokers, financial institutions, financial
participants, securities clearing agencies, swap participants,
repo participants, and master netting agreement participants.”;

11 and

12 (B) by inserting after the item relating to
13 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-
kers, stockbrokers, financial institutions, financial participants,
securities clearing agencies, swap participants, repo partici-
pants, and master netting agreement participants.”.

1 **SEC. 907A. SECURITIES BROKER AND COMMODITY BROKER**
2 **LIQUIDATION.**

3 The Securities and Exchange Commission and the
4 Commodity Futures Trading Commission may consult
5 with each other with respect to—

6 (1) whether, under what circumstances, and the
7 extent to which security futures products will be
8 treated as commodity contracts or securities in a liq-
9 uidation of a person that is both a securities broker
10 and a commodity broker; and

11 (2) the treatment in such a liquidation of ac-
12 counts in which both commodity contracts and secu-
13 rities are carried.

14 **SEC. 908. RECORDKEEPING REQUIREMENTS.**

15 Section 11(e)(8) of the Federal Deposit Insurance
16 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
17 end the following new subparagraph:

18 “(H) RECORDKEEPING REQUIREMENTS.—
19 The Corporation, in consultation with the ap-
20 propriate Federal banking agencies, may pre-
21 scribe regulations requiring more detailed rec-
22 ordkeeping with respect to qualified financial
23 contracts (including market valuations) by in-
24 sured depository institutions.”.

1 **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**
2 **TION REQUIREMENT.**

3 Section 13(e)(2) of the Federal Deposit Insurance
4 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

5 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
6 EXECUTION REQUIREMENT.—An agreement to pro-
7 vide for the lawful collateralization of—

8 “(A) deposits of, or other credit extension
9 by, a Federal, State, or local governmental enti-
10 ty, or of any depositor referred to in section
11 11(a)(2), including an agreement to provide col-
12 lateral in lieu of a surety bond;

13 “(B) bankruptcy estate funds pursuant to
14 section 345(b)(2) of title 11, United States
15 Code;

16 “(C) extensions of credit, including any
17 overdraft, from a Federal reserve bank or Fed-
18 eral home loan bank; or

19 “(D) one or more qualified financial con-
20 tracts, as defined in section 11(e)(8)(D),

21 shall not be deemed invalid pursuant to paragraph
22 (1)(B) solely because such agreement was not exe-
23 cuted contemporaneously with the acquisition of the
24 collateral or because of pledges, delivery, or substi-
25 tution of the collateral made in accordance with such
26 agreement.”.

1 **SEC. 910. DAMAGE MEASURE.**

2 (a) IN GENERAL.—Title 11, United States Code, is
3 amended—

4 (1) by inserting after section 561, as added by
5 this Act, the following:

6 **“§ 562. Damage measure in connection with swap**
7 **agreements, securities contracts, forward**
8 **contracts, commodity contracts, repur-**
9 **chase agreements, or master netting**
10 **agreements**

11 “If the trustee rejects a swap agreement, securities
12 contract (as defined in section 741), forward contract,
13 commodity contract (as defined in section 761), repur-
14 chase agreement, or master netting agreement pursuant
15 to section 365(a), or if a forward contract merchant,
16 stockbroker, financial institution, securities clearing agen-
17 cy, repo participant, financial participant, master netting
18 agreement participant, or swap participant liquidates, ter-
19 minates, or accelerates such contract or agreement, dam-
20 ages shall be measured as of the earlier of—

21 “(1) the date of such rejection; or

22 “(2) the date of such liquidation, termination,
23 or acceleration.”; and

24 (2) in the table of sections for chapter 5, by in-
25 sserting after the item relating to section 561 (as
26 added by this Act) the following:

“562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.

1 (b) CLAIMS ARISING FROM REJECTION.—Section
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

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

5 “(2) A claim for damages calculated in accordance
6 with section 562 of this title shall be allowed under sub-
7 section (a), (b), or (c), or disallowed under subsection (d)
8 or (e), as if such claim had arisen before the date of the
9 filing of the petition.”.

10 **SEC. 911. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of
16 title 11, United States Code, neither the
17 filing of an application under subsection
18 (a)(3) nor any order or decree obtained by
19 SIPC from the court shall operate as a
20 stay of any contractual rights of a creditor
21 to liquidate, terminate, or accelerate a se-
22 curities contract, commodity contract, for-
23 ward contract, repurchase agreement, swap
24 agreement, or master netting agreement,

1 as those terms are defined in sections 101,
2 741, and 761 of title 11, United States
3 Code, to offset or net termination values,
4 payment amounts, or other transfer obliga-
5 tions arising under or in connection with
6 one or more of such contracts or agree-
7 ments, or to foreclose on any cash collat-
8 eral pledged by the debtor, whether or not
9 with respect to one or more of such con-
10 tracts or agreements.

11 “(ii) Notwithstanding clause (i), such
12 application, order, or decree may operate
13 as a stay of the foreclosure on, or disposi-
14 tion of, securities collateral pledged by the
15 debtor, whether or not with respect to one
16 or more of such contracts or agreements,
17 securities sold by the debtor under a repur-
18 chase agreement, or securities lent under a
19 securities lending agreement.

20 “(iii) As used in this subparagraph,
21 the term ‘contractual right’ includes a
22 right set forth in a rule or bylaw of a na-
23 tional securities exchange, a national secu-
24 rities association, or a securities clearing
25 agency, a right set forth in a bylaw of a

1 clearing organization or contract market or
2 in a resolution of the governing board
3 thereof, and a right, whether or not in
4 writing, arising under common law, under
5 law merchant, or by reason of normal busi-
6 ness practice.”.

7 **SEC. 912. ASSET-BACKED SECURITIZATIONS.**

8 Section 541 of title 11, United States Code, is
9 amended—

10 (1) in subsection (b), by inserting after para-
11 graph (7), as added by this Act, the following:

12 “(8) any eligible asset (or proceeds thereof), to
13 the extent that such eligible asset was transferred by
14 the debtor, before the date of commencement of the
15 case, to an eligible entity in connection with an
16 asset-backed securitization, except to the extent such
17 asset (or proceeds or value thereof) may be recov-
18 ered by the trustee under section 550 by virtue of
19 avoidance under section 548(a);” and

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

22 “(f) For purposes of this section—

23 “(1) the term ‘asset-backed securitization’
24 means a transaction in which eligible assets trans-
25 ferred to an eligible entity are used as the source of

1 payment on securities, including, without limitation,
2 all securities issued by governmental units, at least
3 one class or tranche of which was rated investment
4 grade by one or more nationally recognized securities
5 rating organizations, when the securities were ini-
6 tially issued by an issuer;

7 “(2) the term ‘eligible asset’ means—

8 “(A) financial assets (including interests
9 therein and proceeds thereof), either fixed or re-
10 volving, whether or not the same are in exist-
11 ence as of the date of the transfer, including
12 residential and commercial mortgage loans, con-
13 sumer receivables, trade receivables, assets of
14 governmental units, including payment obliga-
15 tions relating to taxes, receipts, fines, tickets,
16 and other sources of revenue, and lease receiv-
17 ables, that, by their terms, convert into cash
18 within a finite time period, plus any residual in-
19 terest in property subject to receivables in-
20 cluded in such financial assets plus any rights
21 or other assets designed to assure the servicing
22 or timely distribution of proceeds to security
23 holders;

24 “(B) cash; and

1 “(C) securities, including without limita-
2 tion, all securities issued by governmental units;

3 “(3) the term ‘eligible entity’ means—

4 “(A) an issuer; or

5 “(B) a trust, corporation, partnership, gov-
6 ernmental unit, limited liability company (in-
7 cluding a single member limited liability com-
8 pany), or other entity engaged exclusively in the
9 business of acquiring and transferring eligible
10 assets directly or indirectly to an issuer and
11 taking actions ancillary thereto;

12 “(4) the term ‘issuer’ means a trust, corpora-
13 tion, partnership, or other entity engaged exclusively
14 in the business of acquiring and holding eligible as-
15 sets, issuing securities backed by eligible assets, and
16 taking actions ancillary thereto; and

17 “(5) the term ‘transferred’ means the debtor,
18 under a written agreement, represented and war-
19 ranted that eligible assets were sold, contributed, or
20 otherwise conveyed with the intention of removing
21 them from the estate of the debtor pursuant to sub-
22 section (b)(8) (whether or not reference is made to
23 this title or any section hereof), irrespective and
24 without limitation of—

1 “(A) whether the debtor directly or indi-
2 rectly obtained or held an interest in the issuer
3 or in any securities issued by the issuer;

4 “(B) whether the debtor had an obligation
5 to repurchase or to service or supervise the
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 **TITLE X—PROTECTION OF**
12 **FAMILY FARMERS**

13 **SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

14 (a) REENACTMENT.—

15 (1) IN GENERAL.—Chapter 12 of title 11,
16 United States Code, as reenacted by section 149 of
17 division C of the Omnibus Consolidated and Emer-
18 gency Supplemental Appropriations Act, 1999 (Pub-
19 lic Law 105–277), is hereby reenacted, and as here
20 reenacted is amended by this Act.

21 (2) EFFECTIVE DATE.—Subsection (a) shall
22 take effect on July 1, 2000.

23 (b) CONFORMING AMENDMENT.—Section 302 of the
24 Bankruptcy Judges, United States Trustees, and Family

1 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is
2 amended by striking subsection (f).

3 **SEC. 1002. DEBT LIMIT INCREASE.**

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

6 “(4) The dollar amount in section 101(18) shall be
7 adjusted at the same times and in the same manner as
8 the dollar amounts in paragraph (1) of this subsection,
9 beginning with the adjustment to be made on April 1,
10 2004.”.

11 **SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL**
12 **UNITS.**

13 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title
14 11, United States Code, is amended to read as follows:

15 “(2) provide for the full payment, in deferred
16 cash payments, of all claims entitled to priority
17 under section 507, unless—

18 “(A) the claim is a claim owed to a govern-
19 mental unit that arises as a result of the sale,
20 transfer, exchange, or other disposition of any
21 farm asset used in the debtor’s farming oper-
22 ation, in which case the claim shall be treated
23 as an unsecured claim that is not entitled to
24 priority under section 507, but the debt shall be

1 treated in such manner only if the debtor re-
2 ceives a discharge; or

3 “(B) the holder of a particular claim
4 agrees to a different treatment of that claim;”.

5 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)
6 of title 11, United States Code, as so designated by this
7 Act, is amended by striking “a State or local governmental
8 unit” and inserting “any governmental unit”.

9 **TITLE XI—HEALTH CARE AND** 10 **EMPLOYEE BENEFITS**

11 **SEC. 1101. DEFINITIONS.**

12 (a) HEALTH CARE BUSINESS DEFINED.—Section
13 101 of title 11, United States Code, is amended—

14 (1) by redesignating paragraph (27A), as added
15 by this Act, as paragraph (27B); and

16 (2) by inserting after paragraph (27) the fol-
17 lowing:

18 “(27A) ‘health care business’—

19 “(A) means any public or private entity
20 (without regard to whether that entity is orga-
21 nized for profit or not for profit) that is pri-
22 marily engaged in offering to the general public
23 facilities and services for—

24 “(i) the diagnosis or treatment of in-
25 jury, deformity, or disease; and

1 “(ii) surgical, drug treatment, psy-
2 chiatric, or obstetric care; and
3 “(B) includes—
4 “(i) any—
5 “(I) general or specialized hos-
6 pital;
7 “(II) ancillary ambulatory, emer-
8 gency, or surgical treatment facility;
9 “(III) hospice;
10 “(IV) home health agency; and
11 “(V) other health care institution
12 that is similar to an entity referred to
13 in subclause (I), (II), (III), or (IV);
14 and
15 “(ii) any long-term care facility, in-
16 cluding any—
17 “(I) skilled nursing facility;
18 “(II) intermediate care facility;
19 “(III) assisted living facility;
20 “(IV) home for the aged;
21 “(V) domiciliary care facility; and
22 “(VI) health care institution that
23 is related to a facility referred to in
24 subclause (I), (II), (III), (IV), or (V),
25 if that institution is primarily engaged

1 in offering room, board, laundry, or
2 personal assistance with activities of
3 daily living and incidentals to activi-
4 ties of daily living;”.

5 (b) PATIENT AND PATIENT RECORDS DEFINED.—
6 Section 101 of title 11, United States Code, is amended
7 by inserting after paragraph (40) the following:

8 “(40A) ‘patient’ means any person who obtains
9 or receives services from a health care business;

10 “(40B) ‘patient records’ means any written doc-
11 ument relating to a patient or a record recorded in
12 a magnetic, optical, or other form of electronic me-
13 dium;”.

14 (c) RULE OF CONSTRUCTION.—The amendments
15 made by subsection (a) of this section shall not affect the
16 interpretation of section 109(b) of title 11, United States
17 Code.

18 **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

19 (a) IN GENERAL.—Subchapter III of chapter 3 of
20 title 11, United States Code, is amended by adding at the
21 end the following:

22 **“§ 351. Disposal of patient records**

23 “If a health care business commences a case under
24 chapter 7, 9, or 11, and the trustee does not have a suffi-
25 cient amount of funds to pay for the storage of patient

1 records in the manner required under applicable Federal
2 or State law, the following requirements shall apply:

3 “(1) The trustee shall—

4 “(A) promptly publish notice, in 1 or more
5 appropriate newspapers, that if patient records
6 are not claimed by the patient or an insurance
7 provider (if applicable law permits the insur-
8 ance provider to make that claim) by the date
9 that is 365 days after the date of that notifica-
10 tion, the trustee will destroy the patient
11 records; and

12 “(B) during the first 180 days of the 365-
13 day period described in subparagraph (A),
14 promptly attempt to notify directly each patient
15 that is the subject of the patient records and
16 appropriate insurance carrier concerning the
17 patient records by mailing to the last known ad-
18 dress of that patient, or a family member or
19 contact person for that patient, and to the ap-
20 propriate insurance carrier an appropriate no-
21 tice regarding the claiming or disposing of pa-
22 tient records.

23 “(2) If, after providing the notification under
24 paragraph (1), patient records are not claimed dur-
25 ing the 365-day period described under that para-

1 graph, the trustee shall mail, by certified mail, at
2 the end of such 365-day period a written request to
3 each appropriate Federal agency to request permis-
4 sion from that agency to deposit the patient records
5 with that agency, except that no Federal agency is
6 required to accept patient records under this para-
7 graph.

8 “(3) If, following the 365-day period described
9 in paragraph (2) and after providing the notification
10 under paragraph (1), patient records are not claimed
11 by a patient or insurance provider, or request is not
12 granted by a Federal agency to deposit such records
13 with that agency, the trustee shall destroy those
14 records by—

15 “(A) if the records are written, shredding
16 or burning the records; or

17 “(B) if the records are magnetic, optical,
18 or other electronic records, by otherwise de-
19 stroying those records so that those records
20 cannot be retrieved.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for chapter 3 of title 11, United States Code, is amended
23 by inserting after the item relating to section 350 the fol-
24 lowing:

“351. Disposal of patient records.”.

1 **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**
2 **OF CLOSING A HEALTH CARE BUSINESS AND**
3 **OTHER ADMINISTRATIVE EXPENSES.**

4 Section 503(b) of title 11, United States Code, as
5 amended by this Act, is amended by adding at the end
6 the following:

7 “(8) the actual, necessary costs and expenses of
8 closing a health care business incurred by a trustee
9 or by a Federal agency (as that term is defined in
10 section 551(1) of title 5) or a department or agency
11 of a State or political subdivision thereof, including
12 any cost or expense incurred—

13 “(A) in disposing of patient records in ac-
14 cordance with section 351; or

15 “(B) in connection with transferring pa-
16 tients from the health care business that is in
17 the process of being closed to another health
18 care business;

19 “(9) with respect to a nonresidential real prop-
20 erty lease previously assumed under section 365,
21 and subsequently rejected, a sum equal to all mone-
22 tary obligations due, excluding those arising from or
23 related to a failure to operate or penalty provisions,
24 for the period of 2 years following the later of the
25 rejection date or date of actual turnover of the
26 premises, without reduction or setoff for any reason

1 whatsoever except for sums actually received or to be
2 received from a nondebtor, and the claim for remain-
3 ing sums due for the balance of the term of the lease
4 shall be a claim under section 502(b)(6); and”.

5 **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**
6 **TIENT ADVOCATE.**

7 (a) IN GENERAL.—

8 (1) APPOINTMENT OF OMBUDSMAN.—Sub-
9 chapter II of chapter 3 of title 11, United States
10 Code, is amended by inserting after section 331 the
11 following:

12 **“§ 332. Appointment of ombudsman**

13 “(a) IN GENERAL.—

14 “(1) AUTHORITY TO APPOINT.—Not later than
15 30 days after a case is commenced by a health care
16 business under chapter 7, 9, or 11, the court shall
17 order the appointment of an ombudsman to monitor
18 the quality of patient care to represent the interests
19 of the patients of the health care business, unless
20 the court finds that the appointment of the ombuds-
21 man is not necessary for the protection of patients
22 under the specific facts of the case.

23 “(2) QUALIFICATIONS.—If the court orders the
24 appointment of an ombudsman, the United States
25 trustee shall appoint 1 disinterested person, other

1 than the United States trustee, to serve as an om-
2 budsman, including a person who is serving as a
3 State Long-Term Care Ombudsman appointed under
4 title III or VII of the Older Americans Act of 1965.

5 “(b) DUTIES.—An ombudsman appointed under sub-
6 section (a) shall—

7 “(1) monitor the quality of patient care, to the
8 extent necessary under the circumstances, including
9 interviewing patients and physicians;

10 “(2) not later than 60 days after the date of
11 appointment, and not less frequently than every 60
12 days thereafter, report to the court, at a hearing or
13 in writing, regarding the quality of patient care at
14 the health care business involved; and

15 “(3) if the ombudsman determines that the
16 quality of patient care is declining significantly or is
17 otherwise being materially compromised, notify the
18 court by motion or written report, with notice to ap-
19 propriate parties in interest, immediately upon mak-
20 ing that determination.

21 “(c) CONFIDENTIALITY.—An ombudsman shall main-
22 tain any information obtained by the ombudsman under
23 this section that relates to patients (including information
24 relating to patient records) as confidential information.
25 The ombudsman may not review confidential patient

1 records, unless the court provides prior approval, with re-
 2 strictions on the ombudsman to protect the confidentiality
 3 of patient records.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
 5 tions for chapter 3 of title 11, United States Code,
 6 is amended by inserting after the item relating to
 7 section 331 the following:

“332. Appointment of ombudsman.”.

8 (b) COMPENSATION OF OMBUDSMAN.—Section
 9 330(a)(1) of title 11, United States Code, is amended—
 10 (1) in the matter proceeding subparagraph (A),
 11 by inserting “an ombudsman appointed under sec-
 12 tion 331, or” before “a professional person”; and
 13 (2) in subparagraph (A), by inserting “ombuds-
 14 man,” before “professional person”.

15 **SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**
 16 **TRANSFER PATIENTS.**

17 (a) IN GENERAL.—Section 704(a) of title 11, United
 18 States Code, as amended by this Act, is amended by add-
 19 ing at the end the following:

20 “(11) use all reasonable and best efforts to
 21 transfer patients from a health care business that is
 22 in the process of being closed to an appropriate
 23 health care business that—

24 “(A) is in the vicinity of the health care
 25 business that is closing;

1 “(B) provides the patient with services
2 that are substantially similar to those provided
3 by the health care business that is in the proc-
4 ess of being closed; and

5 “(C) maintains a reasonable quality of
6 care.”.

7 (b) CONFORMING AMENDMENT.—Section 1106(a)(1)
8 of title 11, United States Code, is amended by striking
9 “sections 704(2), 704(5), 704(7), 704(8), and 704(9)”
10 and inserting “paragraphs (2), (5), (7), (8), (9), and (11)
11 of section 704(a)”.

12 **SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION**
13 **NOT SUBJECT TO AUTOMATIC STAY.**

14 Section 362(b) of title 11, United States Code, is
15 amended by inserting after paragraph (28), as added by
16 this Act, the following:

17 “(29) under subsection (a), of the exclusion by
18 the Secretary of Health and Human Services of the
19 debtor from participation in the medicare program
20 or any other Federal health care program (as de-
21 fined in section 1128B(f) of the Social Security Act
22 pursuant to title XI of such Act or title XVIII of
23 such Act.”.

1 **TITLE XII—TECHNICAL**
2 **AMENDMENTS**

3 **SEC. 1201. DEFINITIONS.**

4 Section 101 of title 11, United States Code, as
5 amended by this Act, is amended—

6 (1) by striking “In this title—” and inserting
7 “In this title the following definitions shall apply.”;

8 (2) in each paragraph, by inserting “The term”
9 after the paragraph designation;

10 (3) in paragraph (35)(B), by striking “para-
11 graphs (21B) and (33)(A)” and inserting “para-
12 graphs (23) and (35)”;

13 (4) in each of paragraphs (35A), (38), and
14 (54A), by striking “; and” at the end and inserting
15 a period;

16 (5) in paragraph (51B)—

17 (A) by inserting “who is not a family farm-
18 er” after “debtor” the first place it appears;
19 and

20 (B) by striking “thereto having aggregate”
21 and all that follows through the end of the
22 paragraph and inserting a semicolon;

23 (6) by striking paragraph (54) and inserting
24 the following:

25 “(54) The term ‘transfer’ means—

1 “(A) the creation of a lien;

2 “(B) the retention of title as a security in-
3 terest;

4 “(C) the foreclosure of a debtor’s equity of
5 redemption; or

6 “(D) each mode, direct or indirect, abso-
7 lute or conditional, voluntary or involuntary, of
8 disposing of or parting with—

9 “(i) property; or

10 “(ii) an interest in property;” and

11 (7) in each of paragraphs (1) through (35), in
12 each of paragraphs (36), (37), (38A), and (38B),
13 and in each of paragraphs (40) through (55), by
14 striking the semicolon at the end and inserting a pe-
15 riod.

16 **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

17 Section 104 of title 11, United States Code, as
18 amended by section 322 of this Act, is amended by insert-
19 ing “522(f)(3),” after “522(d),” each place it appears.

20 **SEC. 1203. EXTENSION OF TIME.**

21 Section 108(c)(2) of title 11, United States Code, is
22 amended by striking “922” and all that follows through
23 “or”, and inserting “922, 1201, or”.

24 **SEC. 1204. TECHNICAL AMENDMENTS.**

25 Title 11, United States Code, is amended—

1 (1) in section 109(b)(2), by striking “subsection
2 (c) or (d) of”; and

3 (2) in section 552(b)(1), by striking “product”
4 each place it appears and inserting “products”.

5 **SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
6 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
7 **TITIONS.**

8 Section 110(j)(4) of title 11, United States Code, as
9 so designated by this Act, is amended by striking “attor-
10 ney’s” and inserting “attorneys’”.

11 **SEC. 1206. LIMITATION ON COMPENSATION OF PROFES-**
12 **SIONAL PERSONS.**

13 Section 328(a) of title 11, United States Code, is
14 amended by inserting “on a fixed or percentage fee basis,”
15 after “hourly basis,”.

16 **SEC. 1207. EFFECT OF CONVERSION.**

17 Section 348(f)(2) of title 11, United States Code, is
18 amended by inserting “of the estate” after “property” the
19 first place it appears.

20 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

21 Section 503(b)(4) of title 11, United States Code, is
22 amended by inserting “subparagraph (A), (B), (C), (D),
23 or (E) of” before “paragraph (3)”.

1 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

2 Section 523 of title 11, United States Code, as
3 amended by this Act, is amended—

4 (1) by transferring paragraph (15), as added by
5 section 304(e) of Public Law 103–394 (108 Stat.
6 4133), so as to insert such paragraph after sub-
7 section (a)(14);

8 (2) in subsection (a)(9), by striking “motor ve-
9 hicle” and inserting “motor vehicle, vessel, or air-
10 craft”; and

11 (3) in subsection (e), by striking “a insured”
12 and inserting “an insured”.

13 **SEC. 1210. EFFECT OF DISCHARGE.**

14 Section 524(a)(3) of title 11, United States Code, is
15 amended by striking “section 523” and all that follows
16 through “or that” and inserting “section 523, 1228(a)(1),
17 or 1328(a)(1), or that”.

18 **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**
19 **MENT.**

20 Section 525(c) of title 11, United States Code, is
21 amended—

22 (1) in paragraph (1), by inserting “student” be-
23 fore “grant” the second place it appears; and

24 (2) in paragraph (2), by striking “the program
25 operated under part B, D, or E of” and inserting
26 “any program operated under”.

1 **SEC. 1212. PROPERTY OF THE ESTATE.**

2 Section 541(b)(4)(B)(ii) of title 11, United States
3 Code, is amended by inserting “365 or” before “542”.

4 **SEC. 1213. PREFERENCES.**

5 (a) IN GENERAL.—Section 547 of title 11, United
6 States Code, as amended by this Act, is amended—

7 (1) in subsection (b), by striking “subsection
8 (c)” and inserting “subsections (c) and (i)”; and

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

10 “(i) If the trustee avoids under subsection (b) a
11 transfer made between 90 days and 1 year before the date
12 of the filing of the petition, by the debtor to an entity
13 that is not an insider for the benefit of a creditor that
14 is an insider, such transfer shall be considered to be avoid-
15 ed under this section only with respect to the creditor that
16 is an insider.”.

17 (b) APPLICABILITY.—The amendments made by this
18 section shall apply to any case that is pending or com-
19 menced on or after the date of enactment of this Act.

20 **SEC. 1214. POSTPETITION TRANSACTIONS.**

21 Section 549(c) of title 11, United States Code, is
22 amended—

23 (1) by inserting “an interest in” after “transfer
24 of” each place it appears;

25 (2) by striking “such property” and inserting
26 “such real property”; and

1 (3) by striking “the interest” and inserting
2 “such interest”.

3 **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

4 Section 726(b) of title 11, United States Code, is
5 amended by striking “1009,”.

6 **SEC. 1216. GENERAL PROVISIONS.**

7 Section 901(a) of title 11, United States Code, as
8 amended by this Act, is amended by inserting “1123(d),”
9 after “1123(b),”.

10 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

11 Section 1170(e)(1) of title 11, United States Code,
12 is amended by striking “section 11347” and inserting
13 “section 11326(a)”.

14 **SEC. 1218. CONTENTS OF PLAN.**

15 Section 1172(c)(1) of title 11, United States Code,
16 is amended by striking “section 11347” and inserting
17 “section 11326(a)”.

18 **SEC. 1219. DISCHARGE UNDER CHAPTER 12.**

19 Subsections (a) and (c) of section 1228 of title 11,
20 United States Code, are amended by striking
21 “1222(b)(10)” each place it appears and inserting
22 “1222(b)(9)”.

23 **SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.**

24 Section 1334(d) of title 28, United States Code, is
25 amended—

1 (1) by striking “made under this subsection”
2 and inserting “made under subsection (c)”; and
3 (2) by striking “This subsection” and inserting
4 “Subsection (c) and this subsection”.

5 **SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
6 **RULE.**

7 Section 156(a) of title 18, United States Code, is
8 amended—

9 (1) in the first undesignated paragraph—

10 (A) by inserting “(1) the term” before
11 “bankruptcy”; and

12 (B) by striking the period at the end and
13 inserting “; and”; and

14 (2) in the second undesignated paragraph—

15 (A) by inserting “(2) the term” before
16 “document”; and

17 (B) by striking “this title” and inserting
18 “title 11”.

19 **SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE**
20 **CORPORATIONS.**

21 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)
22 of title 11, United States Code, is amended by striking
23 “only” and all that follows through the end of the sub-
24 section and inserting “only—

1 “(1) in accordance with applicable nonbank-
2 ruptcy law that governs the transfer of property by
3 a corporation or trust that is not a moneyed, busi-
4 ness, or commercial corporation or trust; and

5 “(2) to the extent not inconsistent with any re-
6 lief granted under subsection (c), (d), (e), or (f) of
7 section 362.”.

8 (b) CONFIRMATION OF PLAN FOR REORGANIZA-
9 TION.—Section 1129(a) of title 11, United States Code,
10 as amended by this Act, is amended by adding at the end
11 the following:

12 “(16) All transfers of property of the plan shall
13 be made in accordance with any applicable provi-
14 sions of nonbankruptcy law that govern the transfer
15 of property by a corporation or trust that is not a
16 moneyed, business, or commercial corporation or
17 trust.”.

18 (c) TRANSFER OF PROPERTY.—Section 541 of title
19 11, United States Code, as amended by this Act, is
20 amended by adding at the end the following:

21 “(g) Notwithstanding any other provision of this title,
22 property that is held by a debtor that is a corporation de-
23 scribed in section 501(c)(3) of the Internal Revenue Code
24 of 1986 and exempt from tax under section 501(a) of such
25 Code may be transferred to an entity that is not such a

1 corporation, but only under the same conditions as would
2 apply if the debtor had not filed a case under this title.”.

3 (d) **APPLICABILITY.**—The amendments made by this
4 section shall apply to a case pending under title 11, United
5 States Code, on the date of enactment of this Act, or filed
6 under that title on or after that date of enactment, except
7 that the court shall not confirm a plan under chapter 11
8 of title 11, United States Code, without considering
9 whether this section would substantially affect the rights
10 of a party in interest who first acquired rights with respect
11 to the debtor after the date of the petition. The parties
12 who may appear and be heard in a proceeding under this
13 section include the attorney general of the State in which
14 the debtor is incorporated, was formed, or does business.

15 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-
16 tion shall be construed to require the court in which a
17 case under chapter 11 of title 11, United States Code, is
18 pending to remand or refer any proceeding, issue, or con-
19 troversy to any other court or to require the approval of
20 any other court for the transfer of property.

21 **SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SE-**
22 **CURITY INTERESTS.**

23 Section 547(c)(3)(B) of title 11, United States Code,
24 is amended by striking “20” and inserting “30”.

1 **SEC. 1224. BANKRUPTCY JUDGESHIPS.**

2 (a) **SHORT TITLE.**—This section may be cited as the
3 “Bankruptcy Judgeship Act of 2001”.

4 (b) **TEMPORARY JUDGESHIPS.**—

5 (1) **APPOINTMENTS.**—The following bankruptcy
6 judges shall be appointed in the manner prescribed
7 in section 152(a)(1) of title 28, United States Code,
8 for the appointment of bankruptcy judges provided
9 for in section 152(a)(2) of such title:

10 (A) One additional bankruptcy judge for
11 the eastern district of California.

12 (B) Four additional bankruptcy judges for
13 the central district of California.

14 (C) One additional bankruptcy judge for
15 the district of Delaware.

16 (D) Two additional bankruptcy judges for
17 the southern district of Florida.

18 (E) One additional bankruptcy judge for
19 the southern district of Georgia.

20 (F) Two additional bankruptcy judges for
21 the district of Maryland.

22 (G) One additional bankruptcy judge for
23 the eastern district of Michigan.

24 (H) One additional bankruptcy judge for
25 the southern district of Mississippi.

1 (I) One additional bankruptcy judge for
2 the district of New Jersey.

3 (J) One additional bankruptcy judge for
4 the eastern district of New York.

5 (K) One additional bankruptcy judge for
6 the northern district of New York.

7 (L) One additional bankruptcy judge for
8 the southern district of New York.

9 (M) One additional bankruptcy judge for
10 the eastern district of North Carolina.

11 (N) One additional bankruptcy judge for
12 the eastern district of Pennsylvania.

13 (O) One additional bankruptcy judge for
14 the middle district of Pennsylvania.

15 (P) One additional bankruptcy judge for
16 the district of Puerto Rico.

17 (Q) One additional bankruptcy judge for
18 the western district of Tennessee.

19 (R) One additional bankruptcy judge for
20 the eastern district of Virginia.

21 (2) VACANCIES.—The first vacancy occurring in
22 the office of a bankruptcy judge in each of the judi-
23 cial districts set forth in paragraph (1) shall not be
24 filled if the vacancy—

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

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

6 (c) EXTENSIONS.—

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

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

22 (B) 10 years or more after October 28,
23 1993, with respect to the district of Delaware;

1 (C) 8 years or more after August 29,
2 1994, with respect to the district of Puerto
3 Rico;

4 (D) 8 years or more after June 27, 1994,
5 with respect to the district of South Carolina;
6 and

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

10 (2) APPLICABILITY OF OTHER PROVISIONS.—

11 All other provisions of section 3 of the Bankruptcy
12 Judgeship Act of 1992 (28 U.S.C. 152 note) remain
13 applicable to temporary office of bankruptcy judges
14 referred to in paragraph (1).

15 (d) TECHNICAL AMENDMENTS.—Section 152(a) of
16 title 28, United States Code, is amended—

17 (1) in paragraph (1), by striking the first sen-
18 tence and inserting the following: “Each bankruptcy
19 judge to be appointed for a judicial district, as pro-
20 vided in paragraph (2), shall be appointed by the
21 United States court of appeals for the circuit in
22 which such district is located.”; and

23 (2) in paragraph (2)—

1 (A) in the item relating to the middle dis-
2 trict of Georgia, by striking “2” and inserting
3 “3”; and

4 (B) in the collective item relating to the
5 middle and southern districts of Georgia, by
6 striking “Middle and Southern 1”.

7 (e) EFFECTIVE DATES.—(1) Except as provided in
8 paragraph (2), this section and the amendments made by
9 this section shall take effect on the date of the enactment
10 of this Act.

11 (2) With respect to the temporary bankruptcy judge-
12 ship authorized for the district of South Carolina under
13 paragraph (8) of the Bankruptcy Judgeship Act of 1992
14 (28 U.S.C. 152 note), subsection (c)(1) as it applies to
15 the extension specified in subparagraph (D) of such sub-
16 section shall take effect immediately before December 31,
17 2000.

18 **SEC. 1225. COMPENSATING TRUSTEES.**

19 Section 1326 of title 11, United States Code, is
20 amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1), by striking “and”;

23 (B) in paragraph (2), by striking the pe-
24 riod at the end and inserting “; and”; and

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

1 “(3) if a chapter 7 trustee has been allowed
2 compensation due to the conversion or dismissal of
3 the debtor’s prior case pursuant to section 707(b),
4 and some portion of that compensation remains un-
5 paid in a case converted to this chapter or in the
6 case dismissed under section 707(b) and refiled
7 under this chapter, the amount of any such unpaid
8 compensation, which shall be paid monthly—

9 “(A) by prorating such amount over the
10 remaining duration of the plan; and

11 “(B) by monthly payments not to exceed
12 the greater of—

13 “(i) \$25; or

14 “(ii) the amount payable to unsecured
15 nonpriority creditors, as provided by the
16 plan, multiplied by 5 percent, and the re-
17 sult divided by the number of months in
18 the plan.”; and

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

20 “(d) Notwithstanding any other provision of this
21 title—

22 “(1) compensation referred to in subsection
23 (b)(3) is payable and may be collected by the trustee
24 under that paragraph, even if such amount has been
25 discharged in a prior proceeding under this title; and

1 “(2) such compensation is payable in a case
2 under this chapter only to the extent permitted by
3 subsection (b)(3).”.

4 **SEC. 1226. AMENDMENT TO SECTION 362 OF TITLE 11,**
5 **UNITED STATES CODE.**

6 Section 362(b)(18) of title 11, United States Code,
7 is amended to read as follows:

8 “(18) under subsection (a) of the creation or
9 perfection of a statutory lien for an ad valorem
10 property tax, or a special tax or special assessment
11 on real property whether or not ad valorem, imposed
12 by a governmental unit, if such tax or assessment
13 comes due after the filing of the petition;”.

14 **SEC. 1227. JUDICIAL EDUCATION.**

15 The Director of the Federal Judicial Center, in con-
16 sultation with the Director of the Executive Office for
17 United States Trustees, shall develop materials and con-
18 duct such training as may be useful to courts in imple-
19 menting this Act and the amendments made by this Act,
20 including the requirements relating to the means test and
21 reaffirmations under section 707(b) of title 11, United
22 States Code, as amended by this Act.

1 **SEC. 1228. RECLAMATION.**

2 (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-
3 tion 546(c) of title 11, United States Code, is amended
4 to read as follows:

5 “(c)(1) Except as provided in subsection (d) of this
6 section and subsection (c) of section 507, and subject to
7 the prior rights of holders of security interests in such
8 goods or the proceeds thereof, the rights and powers of
9 the trustee under sections 544(a), 545, 547, and 549 are
10 subject to the right of a seller of goods that has sold goods
11 to the debtor, in the ordinary course of such seller’s busi-
12 ness, to reclaim such goods if the debtor has received such
13 goods while insolvent, not later than 45 days after the date
14 of the commencement of a case under this title, but such
15 seller may not reclaim such goods unless such seller de-
16 mands in writing reclamation of such goods—

17 “(A) not later than 45 days after the date of
18 receipt of such goods by the debtor; or

19 “(B) not later than 20 days after the date of
20 commencement of the case, if the 45-day period ex-
21 pires after the commencement of the case.

22 “(2) If a seller of goods fails to provide notice in the
23 manner described in paragraph (1), the seller still may
24 assert the rights contained in section 503(b)(7).”.

1 (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of
2 title 11, United States Code, as amended by this Act, is
3 amended by adding at the end the following:

4 “(10) the value of any goods received by the
5 debtor not later than 20 days after the date of com-
6 mencement of a case under this title in which the
7 goods have been sold to the debtor in the ordinary
8 course of such debtor’s business.”.

9 **SEC. 1229. PROVIDING REQUESTED TAX DOCUMENTS TO**
10 **THE COURT.**

11 (a) CHAPTER 7 CASES.—The court shall not grant
12 a discharge in the case of an individual seeking bank-
13 ruptcy under chapter 7 of title 11, United States Code,
14 unless requested tax documents have been provided to the
15 court.

16 (b) CHAPTER 11 AND CHAPTER 13 CASES.—The
17 court shall not confirm a plan of reorganization in the case
18 of an individual under chapter 11 or 13 of title 11, United
19 States Code, unless requested tax documents have been
20 filed with the court.

21 (c) DOCUMENT RETENTION.—The court shall de-
22 stroy documents submitted in support of a bankruptcy
23 claim not sooner than 3 years after the date of the conclu-
24 sion of a bankruptcy case filed by an individual under
25 chapter 7, 11, or 13 of title 11, United States Code. In

1 the event of a pending audit or enforcement action, the
2 court may extend the time for destruction of such re-
3 quested tax documents.

4 **SEC. 1230. ENCOURAGING CREDITWORTHINESS.**

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

7 (1) certain lenders may sometimes offer credit
8 to consumers indiscriminately, without taking steps
9 to ensure that consumers are capable of repaying
10 the resulting debt, and in a manner which may en-
11 courage certain consumers to accumulate additional
12 debt; and

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

15 (b) STUDY REQUIRED.—The Board of Governors of
16 the Federal Reserve System (hereafter in this section re-
17 ferred to as the “Board”) shall conduct a study of—

18 (1) consumer credit industry practices of solici-
19 ting and extending credit—

20 (A) indiscriminately;

21 (B) without taking steps to ensure that
22 consumers are capable of repaying the resulting
23 debt; and

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

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

3 (c) REPORT AND REGULATIONS.—Not later than 12
4 months after the date of enactment of this Act, the
5 Board—

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

9 (2) may issue regulations that would require
10 additional disclosures to consumers; and

11 (3) may take any other actions, consistent with
12 its existing statutory authority, that the Board finds
13 necessary to ensure responsible industrywide prac-
14 tices and to prevent resulting consumer debt and in-
15 solvency.

16 **SEC. 1231. PROPERTY NO LONGER SUBJECT TO REDEMP-**
17 **TION.**

18 Section 541(b) of title 11, United States Code, is
19 amended by inserting after paragraph (8), as added by
20 this Act, the following:

21 “(9) subject to subchapter III of chapter 5, any
22 interest of the debtor in property where the debtor
23 pledged or sold tangible personal property (other
24 than securities or written or printed evidences of in-
25 debtedness or title) as collateral for a loan or ad-

1 vance of money given by a person licensed under law
2 to make such loans or advances, where—

3 “(A) the tangible personal property is in
4 the possession of the pledgee or transferee;

5 “(B) the debtor has no obligation to repay
6 the money, redeem the collateral, or buy back
7 the property at a stipulated price; and

8 “(C) neither the debtor nor the trustee
9 have exercised any right to redeem provided
10 under the contract or State law, in a timely
11 manner as provided under State law and sec-
12 tion 108(b) of this title; or”.

13 **SEC. 1232. TRUSTEES.**

14 (a) **SUSPENSION AND TERMINATION OF PANEL**
15 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of
16 title 28, United States Code, is amended—

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

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

19 “(2) A trustee whose appointment under subsection
20 (a)(1) or under subsection (b) is terminated or who ceases
21 to be assigned to cases filed under title 11, United States
22 Code, may obtain judicial review of the final agency deci-
23 sion by commencing an action in the United States district
24 court for the district for which the panel to which the
25 trustee is appointed under subsection (a)(1), or in the

1 United States district court for the district in which the
2 trustee is appointed under subsection (b) resides, after
3 first exhausting all available administrative remedies,
4 which if the trustee so elects, shall also include an admin-
5 istrative hearing on the record. Unless the trustee elects
6 to have an administrative hearing on the record, the trust-
7 ee shall be deemed to have exhausted all administrative
8 remedies for purposes of this paragraph if the agency fails
9 to make a final agency decision within 90 days after the
10 trustee requests administrative remedies. The Attorney
11 General shall prescribe procedures to implement this para-
12 graph. The decision of the agency shall be affirmed by
13 the district court unless it is unreasonable and without
14 cause based on the administrative record before the agen-
15 cy.”.

16 (b) EXPENSES OF STANDING TRUSTEES.—Section
17 586(e) of title 28, United States Code, is amended by add-
18 ing at the end the following:

19 “(3) After first exhausting all available administra-
20 tive remedies, an individual appointed under subsection
21 (b) may obtain judicial review of final agency action to
22 deny a claim of actual, necessary expenses under this sub-
23 section by commencing an action in the United States dis-
24 trict court in the district where the individual resides. The
25 decision of the agency shall be affirmed by the district

1 court unless it is unreasonable and without cause based
2 upon the administrative record before the agency.

3 “(4) The Attorney General shall prescribe procedures
4 to implement this subsection.”.

5 **SEC. 1233. BANKRUPTCY FORMS.**

6 Section 2075 of title 28, United States Code, is
7 amended by adding at the end the following:

8 “The bankruptcy rules promulgated under this section
9 shall prescribe a form for the statement required under
10 section 707(b)(2)(C) of title 11 and may provide general
11 rules on the content of such statement.”.

12 **SEC. 1234. EXPEDITED APPEALS OF BANKRUPTCY CASES**
13 **TO COURTS OF APPEALS.**

14 (a) IN GENERAL.—Section 158 of title 28, United
15 States Code, is amended—

16 (1) by striking subsection (d) and inserting the
17 following:

18 “(d)(1) In a case in which the appeal is heard by the
19 district court, the judgment, decision, order, or decree of
20 the bankruptcy judge shall be deemed a judgment, deci-
21 sion, order, or decree of the district court entered 31 days
22 after such appeal is filed with the district court, unless
23 not later than 30 days after such appeal is filed with the
24 district court—

25 “(A) the district court—

1 “(i) files a decision on the appeal from the
2 judgment, decision, order, or decree of the
3 bankruptcy judge; or

4 “(ii) enters an order extending such 30-day
5 period for cause upon motion of a party or
6 upon the court’s own motion; or

7 “(B) all parties to the appeal file written con-
8 sent that the district court may retain such appeal
9 until it enters a decision.

10 “(2) For the purpose of this subsection, an appeal
11 shall be considered filed with the district court on the date
12 on which the notice of appeal is filed, except that in a
13 case in which the appeal is heard by the district court be-
14 cause a party has made an election under subsection
15 (c)(1)(B), the appeal shall be considered filed with the dis-
16 trict court on the date on which such election is made.

17 “(e) The courts of appeals shall have jurisdiction of
18 appeals from—

19 “(1) all final judgments, decisions, orders, and
20 decrees of district courts entered under subsection
21 (a);

22 “(2) all final judgments, decisions, orders, and
23 decrees of bankruptcy appellate panels entered under
24 subsection (b); and

1 “(3) all judgments, decisions, orders, and de-
2 crees of district courts entered under subsection (d)
3 to the extent that such judgments, decisions, orders,
4 and decrees would be reviewable by a district court
5 under subsection (a).

6 “(f) In accordance with rules prescribed by the Su-
7 preme Court of the United States under sections 2072
8 through 2077, the court of appeals may, in its discretion,
9 exercise jurisdiction over an appeal from an interlocutory
10 judgment, decision, order, or decree under subsection
11 (e)(3).”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) Section 305(e) of title 11, United States
14 Code, is amended by striking “section 158(d)” and
15 inserting “subsection (e) or (f) of section 158”.

16 (2) Section 1334(d) of title 28, United States
17 Code, is amended by striking “section 158(d)” and
18 inserting “subsection (e) or (f) of section 158”.

19 (3) Section 1452(b) of title 28, United States
20 Code, is amended by striking “section 158(d)” and
21 inserting “subsection (e) or (f) of section 158”.

1 **TITLE XIII—CONSUMER CREDIT**
2 **DISCLOSURE**

3 **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**
4 **CREDIT PLAN.**

5 (a) **MINIMUM PAYMENT DISCLOSURES.**—Section
6 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))
7 is amended by adding at the end the following:

8 “(11)(A) In the case of an open end credit plan
9 that requires a minimum monthly payment of not
10 more than 4 percent of the balance on which finance
11 charges are accruing, the following statement, lo-
12 cated on the front of the billing statement, disclosed
13 clearly and conspicuously: ‘Minimum Payment
14 Warning: Making only the minimum payment will
15 increase the interest you pay and the time it takes
16 to repay your balance. For example, making only the
17 typical 2% minimum monthly payment on a balance
18 of \$1,000 at an interest rate of 17% would take 88
19 months to repay the balance in full. For an estimate
20 of the time it would take to repay your balance,
21 making only minimum payments, call this toll-free
22 number: _____.’ (the blank space to be
23 filled in by the creditor).

24 “(B) In the case of an open end credit plan
25 that requires a minimum monthly payment of more

1 than 4 percent of the balance on which finance
2 charges are accruing, the following statement, in a
3 prominent location on the front of the billing state-
4 ment, disclosed clearly and conspicuously: ‘Minimum
5 Payment Warning: Making only the required min-
6 imum payment will increase the interest you pay and
7 the time it takes to repay your balance. Making a
8 typical 5% minimum monthly payment on a balance
9 of \$300 at an interest rate of 17% would take 24
10 months to repay the balance in full. For an estimate
11 of the time it would take to repay your balance,
12 making only minimum monthly payments, call this
13 toll-free number: _____.’ (the blank space to
14 be filled in by the creditor).

15 “(C) Notwithstanding subparagraphs (A) and
16 (B), in the case of a creditor with respect to which
17 compliance with this title is enforced by the Federal
18 Trade Commission, the following statement, in a
19 prominent location on the front of the billing state-
20 ment, disclosed clearly and conspicuously: ‘Minimum
21 Payment Warning: Making only the required min-
22 imum payment will increase the interest you pay and
23 the time it takes to repay your balance. For exam-
24 ple, making only the typical 5% minimum monthly
25 payment on a balance of \$300 at an interest rate of

1 17% would take 24 months to repay the balance in
2 full. For an estimate of the time it would take to
3 repay your balance, making only minimum monthly
4 payments, call the Federal Trade Commission at
5 this toll-free number: _____.’ (the blank
6 space to be filled in by the creditor). A creditor who
7 is subject to this subparagraph shall not be subject
8 to subparagraph (A) or (B).

9 “(D) Notwithstanding subparagraph (A), (B),
10 or (C), in complying with any such subparagraph, a
11 creditor may substitute an example based on an in-
12 terest rate that is greater than 17 percent. Any
13 creditor that is subject to subparagraph (B) may
14 elect to provide the disclosure required under sub-
15 paragraph (A) in lieu of the disclosure required
16 under subparagraph (B).

17 “(E) The Board shall, by rule, periodically re-
18 calculate, as necessary, the interest rate and repay-
19 ment period under subparagraphs (A), (B), and (C).

20 “(F)(i) The toll-free telephone number disclosed
21 by a creditor or the Federal Trade Commission
22 under subparagraph (A), (B), or (G), as appro-
23 priate, may be a toll-free telephone number estab-
24 lished and maintained by the creditor or the Federal
25 Trade Commission, as appropriate, or may be a toll-

1 free telephone number established and maintained
2 by a third party for use by the creditor or multiple
3 creditors or the Federal Trade Commission, as ap-
4 propriate. The toll-free telephone number may con-
5 nect consumers to an automated device through
6 which consumers may obtain information described
7 in subparagraph (A), (B), or (C), by inputting infor-
8 mation using a touch-tone telephone or similar de-
9 vice, if consumers whose telephones are not equipped
10 to use such automated device are provided the op-
11 portunity to be connected to an individual from
12 whom the information described in subparagraph
13 (A), (B), or (C), as applicable, may be obtained. A
14 person that receives a request for information de-
15 scribed in subparagraph (A), (B), or (C) from an ob-
16 ligor through the toll-free telephone number dis-
17 closed under subparagraph (A), (B), or (C), as ap-
18 plicable, shall disclose in response to such request
19 only the information set forth in the table promul-
20 gated by the Board under subparagraph (H)(i).

21 “(ii)(I) The Board shall establish and maintain
22 for a period not to exceed 24 months following the
23 effective date of the Bankruptcy Abuse Prevention
24 and Consumer Protection Act of 2001, a toll-free
25 telephone number, or provide a toll-free telephone

1 number established and maintained by a third party,
2 for use by creditors that are depository institutions
3 (as defined in section 3 of the Federal Deposit In-
4 surance Act), including a Federal credit union or
5 State credit union (as defined in section 101 of the
6 Federal Credit Union Act (12 U.S.C. 1752)), with
7 total assets not exceeding \$250,000,000. The toll-
8 free telephone number may connect consumers to an
9 automated device through which consumers may ob-
10 tain information described in subparagraph (A) or
11 (B), as applicable, by inputting information using a
12 touch-tone telephone or similar device, if consumers
13 whose telephones are not equipped to use such auto-
14 mated device are provided the opportunity to be con-
15 nected to an individual from whom the information
16 described in subparagraph (A) or (B), as applicable,
17 may be obtained. A person that receives a request
18 for information described in subparagraph (A) or
19 (B) from an obligor through the toll-free telephone
20 number disclosed under subparagraph (A) or (B), as
21 applicable, shall disclose in response to such request
22 only the information set forth in the table promul-
23 gated by the Board under subparagraph (H)(i). The
24 dollar amount contained in this subclause shall be

1 adjusted according to an indexing mechanism estab-
2 lished by the Board.

3 “(II) Not later than 6 months prior to the expi-
4 ration of the 24-month period referenced in sub-
5 clause (I), the Board shall submit to the Committee
6 on Banking, Housing, and Urban Affairs of the Sen-
7 ate and the Committee on Banking and Financial
8 Services of the House of Representatives a report on
9 the program described in subclause (I).

10 “(G) The Federal Trade Commission shall es-
11 tablish and maintain a toll-free number for the pur-
12 pose of providing to consumers the information re-
13 quired to be disclosed under subparagraph (C).

14 “(H) The Board shall—

15 “(i) establish a detailed table illustrating
16 the approximate number of months that it
17 would take to repay an outstanding balance if
18 a consumer pays only the required minimum
19 monthly payments and if no other advances are
20 made, which table shall clearly present stand-
21 ardized information to be used to disclose the
22 information required to be disclosed under sub-
23 paragraph (A), (B), or (C), as applicable;

24 “(ii) establish the table required under
25 clause (i) by assuming—

1 “(I) a significant number of different
2 annual percentage rates;

3 “(II) a significant number of different
4 account balances;

5 “(III) a significant number of dif-
6 ferent minimum payment amounts; and

7 “(IV) that only minimum monthly
8 payments are made and no additional ex-
9 tensions of credit are obtained; and

10 “(iii) promulgate regulations that provide
11 instructional guidance regarding the manner in
12 which the information contained in the table es-
13 tablished under clause (i) should be used in re-
14 sponding to the request of an obligor for any
15 information required to be disclosed under sub-
16 paragraph (A), (B), or (C).

17 “(I) The disclosure requirements of this para-
18 graph do not apply to any charge card account, the
19 primary purpose of which is to require payment of
20 charges in full each month.

21 “(J) A creditor that maintains a toll-free tele-
22 phone number for the purpose of providing cus-
23 tomers with the actual number of months that it will
24 take to repay the customer’s outstanding balance is

1 not subject to the requirements of subparagraph (A)
2 or (B).

3 “(K) A creditor that maintains a toll-free tele-
4 phone number for the purpose of providing cus-
5 tomers with the actual number of months that it will
6 take to repay an outstanding balance shall include
7 the following statement on each billing statement:
8 ‘Making only the minimum payment will increase
9 the interest you pay and the time it takes to repay
10 your balance. For more information, call this toll-
11 free number: _____.’ (the blank space to be filled
12 in by the creditor).”.

13 (b) REGULATORY IMPLEMENTATION.—

14 (1) IN GENERAL.—The Board of Governors of
15 the Federal Reserve System (hereafter in this title
16 referred to as the “Board”) shall promulgate regula-
17 tions implementing the requirements of section
18 127(b)(11) of the Truth in Lending Act, as added
19 by subsection (a) of this section.

20 (2) EFFECTIVE DATE.—Section 127(b)(11) of
21 the Truth in Lending Act, as added by subsection
22 (a) of this section, and the regulations issued under
23 paragraph (1) of this subsection shall not take effect
24 until the later of—

1 (A) 18 months after the date of enactment
2 of this Act; or

3 (B) 12 months after the publication of
4 such final regulations by the Board.

5 (c) STUDY OF FINANCIAL DISCLOSURES.—

6 (1) IN GENERAL.—The Board may conduct a
7 study to determine the types of information available
8 to potential borrowers from consumer credit lending
9 institutions regarding factors qualifying potential
10 borrowers for credit, repayment requirements, and
11 the consequences of default.

12 (2) FACTORS FOR CONSIDERATION.—In con-
13 ducting a study under paragraph (1), the Board
14 should, in consultation with the other Federal bank-
15 ing agencies (as defined in section 3 of the Federal
16 Deposit Insurance Act), the National Credit Union
17 Administration, and the Federal Trade Commission,
18 consider the extent to which—

19 (A) consumers, in establishing new credit
20 arrangements, are aware of their existing pay-
21 ment obligations, the need to consider those ob-
22 ligations in deciding to take on new credit, and
23 how taking on excessive credit can result in fi-
24 nancial difficulty;

1 (B) minimum periodic payment features
2 offered in connection with open end credit plans
3 impact consumer default rates;

4 (C) consumers make only the required
5 minimum payment under open end credit plans;

6 (D) consumers are aware that making only
7 required minimum payments will increase the
8 cost and repayment period of an open end cred-
9 it obligation; and

10 (E) the availability of low minimum pay-
11 ment options is a cause of consumers experi-
12 encing financial difficulty.

13 (3) REPORT TO CONGRESS.—Findings of the
14 Board in connection with any study conducted under
15 this subsection shall be submitted to Congress. Such
16 report shall also include recommendations for legis-
17 lative initiatives, if any, of the Board, based on its
18 findings.

19 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**
20 **SIONS SECURED BY A DWELLING.**

21 (a) OPEN END CREDIT EXTENSIONS.—

22 (1) CREDIT APPLICATIONS.—Section
23 127A(a)(13) of the Truth in Lending Act (15
24 U.S.C. 1637a(a)(13)) is amended—

1 (A) by striking “CONSULTATION OF TAX
2 ADVISER.—A statement that the” and inserting
3 the following: “TAX DEDUCTIBILITY.—A state-
4 ment that—

5 “(A) the”; and

6 (B) by striking the period at the end and
7 inserting the following: “; and

8 “(B) in any case in which the extension of
9 credit exceeds the fair market value (as defined
10 under the Internal Revenue Code of 1986) of
11 the dwelling, the interest on the portion of the
12 credit extension that is greater than the fair
13 market value of the dwelling is not tax deduct-
14 ible for Federal income tax purposes.”.

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

18 (A) by striking “If any” and inserting the
19 following:

20 “(1) IN GENERAL.—If any”; and

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

22 “(2) CREDIT IN EXCESS OF FAIR MARKET
23 VALUE.—Each advertisement described in subsection
24 (a) that relates to an extension of credit that may
25 exceed the fair market value of the dwelling, and

1 which advertisement is disseminated in paper form
2 to the public or through the Internet, as opposed to
3 by radio or television, shall include a clear and con-
4 spicuous statement that—

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

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

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

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

16 (A) in subsection (a), by adding at the end
17 the following:

18 “(15) In the case of a consumer credit trans-
19 action that is secured by the principal dwelling of
20 the consumer, in which the extension of credit may
21 exceed the fair market value of the dwelling, a clear
22 and conspicuous statement that—

23 “(A) the interest on the portion of the
24 credit extension that is greater than the fair

1 market value of the dwelling is not tax deduct-
2 ible for Federal income tax purposes; and

3 “(B) the consumer should consult a tax
4 adviser for further information regarding the
5 deductibility of interest and charges.”; and

6 (B) in subsection (b), by adding at the end
7 the following:

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

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

15 “(e) Each advertisement to which this section applies
16 that relates to a consumer credit transaction that is se-
17 cured by the principal dwelling of a consumer in which
18 the extension of credit may exceed the fair market value
19 of the dwelling, and which advertisement is disseminated
20 in paper form to the public or through the Internet, as
21 opposed to by radio or television, shall clearly and con-
22 spicuously state that—

23 “(1) the interest on the portion of the credit ex-
24 tension that is greater than the fair market value of

1 the dwelling is not tax deductible for Federal income
2 tax purposes; and

3 “(2) the consumer should consult a tax adviser
4 for further information regarding the deductibility of
5 interest and charges.”.

6 (c) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board shall promulgate
8 regulations implementing the amendments made by
9 this section.

10 (2) EFFECTIVE DATE.—Regulations issued
11 under paragraph (1) shall not take effect until the
12 later of—

13 (A) 12 months after the date of enactment
14 of this Act; or

15 (B) 12 months after the date of publica-
16 tion of such final regulations by the Board.

17 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**
18 **RATES”.**

19 (a) INTRODUCTORY RATE DISCLOSURES.—Section
20 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))
21 is amended by adding at the end the following:

22 “(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-
23 DUCTORY RATES’.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), an application or solicitation

1 to open a credit card account and all pro-
2 motional materials accompanying such applica-
3 tion or solicitation for which a disclosure is re-
4 quired under paragraph (1), and that offers a
5 temporary annual percentage rate of interest,
6 shall—

7 “(i) use the term ‘introductory’ in im-
8 mediate proximity to each listing of the
9 temporary annual percentage rate applica-
10 ble to such account, which term shall ap-
11 pear clearly and conspicuously;

12 “(ii) if the annual percentage rate of
13 interest that will apply after the end of the
14 temporary rate period will be a fixed rate,
15 state in a clear and conspicuous manner in
16 a prominent location closely proximate to
17 the first listing of the temporary annual
18 percentage rate (other than a listing of the
19 temporary annual percentage rate in the
20 tabular format described in section
21 122(c)), the time period in which the intro-
22 ductory period will end and the annual
23 percentage rate that will apply after the
24 end of the introductory period; and

1 “(iii) if the annual percentage rate
2 that will apply after the end of the tem-
3 porary rate period will vary in accordance
4 with an index, state in a clear and con-
5 spicuous manner in a prominent location
6 closely proximate to the first listing of the
7 temporary annual percentage rate (other
8 than a listing in the tabular format pre-
9 scribed by section 122(c)), the time period
10 in which the introductory period will end
11 and the rate that will apply after that,
12 based on an annual percentage rate that
13 was in effect within 60 days before the
14 date of mailing the application or sollicita-
15 tion.

16 “(B) EXCEPTION.—Clauses (ii) and (iii) of
17 subparagraph (A) do not apply with respect to
18 any listing of a temporary annual percentage
19 rate on an envelope or other enclosure in which
20 an application or solicitation to open a credit
21 card account is mailed.

22 “(C) CONDITIONS FOR INTRODUCTORY
23 RATES.—An application or solicitation to open
24 a credit card account for which a disclosure is
25 required under paragraph (1), and that offers a

1 temporary annual percentage rate of interest
2 shall, if that rate of interest is revocable under
3 any circumstance or upon any event, clearly
4 and conspicuously disclose, in a prominent man-
5 ner on or with such application or solicitation—

6 “(i) a general description of the cir-
7 cumstances that may result in the revoca-
8 tion of the temporary annual percentage
9 rate; and

10 “(ii) if the annual percentage rate
11 that will apply upon the revocation of the
12 temporary annual percentage rate—

13 “(I) will be a fixed rate, the an-
14 nual percentage rate that will apply
15 upon the revocation of the temporary
16 annual percentage rate; or

17 “(II) will vary in accordance with
18 an index, the rate that will apply after
19 the temporary rate, based on an an-
20 nual percentage rate that was in ef-
21 fect within 60 days before the date of
22 mailing the application or solicitation.

23 “(D) DEFINITIONS.—In this paragraph—

24 “(i) the terms ‘temporary annual per-
25 centage rate of interest’ and ‘temporary

1 annual percentage rate’ mean any rate of
2 interest applicable to a credit card account
3 for an introductory period of less than 1
4 year, if that rate is less than an annual
5 percentage rate that was in effect within
6 60 days before the date of mailing the ap-
7 plication or solicitation; and

8 “(ii) the term ‘introductory period’
9 means the maximum time period for which
10 the temporary annual percentage rate may
11 be applicable.

12 “(E) RELATION TO OTHER DISCLOSURE
13 REQUIREMENTS.—Nothing in this paragraph
14 may be construed to supersede subsection (a) of
15 section 122, or any disclosure required by para-
16 graph (1) or any other provision of this sub-
17 section.”.

18 (b) REGULATORY IMPLEMENTATION.—

19 (1) IN GENERAL.—The Board shall promulgate
20 regulations implementing the requirements of section
21 127(c)(6) of the Truth in Lending Act, as added by
22 this section.

23 (2) EFFECTIVE DATE.—Section 127(c)(6) of
24 the Truth in Lending Act, as added by this section,

1 and regulations issued under paragraph (1) of this
2 subsection shall not take effect until the later of—

3 (A) 12 months after the date of enactment
4 of this Act; or

5 (B) 12 months after the date of publica-
6 tion of such final regulations by the Board.

7 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

8 (a) INTERNET-BASED SOLICITATIONS.—Section
9 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))
10 is amended by adding at the end the following:

11 “(7) INTERNET-BASED SOLICITATIONS.—

12 “(A) IN GENERAL.—In any solicitation to
13 open a credit card account for any person under
14 an open end consumer credit plan using the
15 Internet or other interactive computer service,
16 the person making the solicitation shall clearly
17 and conspicuously disclose—

18 “(i) the information described in sub-
19 paragraphs (A) and (B) of paragraph (1);
20 and

21 “(ii) the information described in
22 paragraph (6).

23 “(B) FORM OF DISCLOSURE.—The disclo-
24 sures required by subparagraph (A) shall be—

1 “(i) readily accessible to consumers in
2 close proximity to the solicitation to open
3 a credit card account; and

4 “(ii) updated regularly to reflect the
5 current policies, terms, and fee amounts
6 applicable to the credit card account.

7 “(C) DEFINITIONS.—For purposes of this
8 paragraph—

9 “(i) the term ‘Internet’ means the
10 international computer network of both
11 Federal and non-Federal interoperable
12 packet switched data networks; and

13 “(ii) the term ‘interactive computer
14 service’ means any information service,
15 system, or access software provider that
16 provides or enables computer access by
17 multiple users to a computer server, in-
18 cluding specifically a service or system that
19 provides access to the Internet and such
20 systems operated or services offered by li-
21 braries or educational institutions.”.

22 (b) REGULATORY IMPLEMENTATION.—

23 (1) IN GENERAL.—The Board shall promulgate
24 regulations implementing the requirements of section

1 127(c)(7) of the Truth in Lending Act, as added by
2 this section.

3 (2) EFFECTIVE DATE.—The amendment made
4 by subsection (a) and the regulations issued under
5 paragraph (1) of this subsection shall not take effect
6 until the later of—

7 (A) 12 months after the date of enactment
8 of this Act; or

9 (B) 12 months after the date of publica-
10 tion of such final regulations by the Board.

11 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**
12 **DEADLINES AND PENALTIES.**

13 (a) DISCLOSURES RELATED TO LATE PAYMENT
14 DEADLINES AND PENALTIES.—Section 127(b) of the
15 Truth in Lending Act (15 U.S.C. 1637(b)) is amended
16 by adding at the end the following:

17 “(12) If a late payment fee is to be imposed
18 due to the failure of the obligor to make payment on
19 or before a required payment due date, the following
20 shall be stated clearly and conspicuously on the bill-
21 ing statement:

22 “(A) The date on which that payment is
23 due or, if different, the earliest date on which
24 a late payment fee may be charged.

1 “(B) The amount of the late payment fee
2 to be imposed if payment is made after such
3 date.”.

4 (b) REGULATORY IMPLEMENTATION.—

5 (1) IN GENERAL.—The Board shall promulgate
6 regulations implementing the requirements of section
7 127(b)(12) of the Truth in Lending Act, as added
8 by this section.

9 (2) EFFECTIVE DATE.—The amendment made
10 by subsection (a) and regulations issued under para-
11 graph (1) of this subsection shall not take effect
12 until the later of—

13 (A) 12 months after the date of enactment
14 of this Act; or

15 (B) 12 months after the date of publica-
16 tion of such final regulations by the Board.

17 **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**
18 **URE TO INCUR FINANCE CHARGES.**

19 (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
20 URE TO INCUR FINANCE CHARGES.—Section 127 of the
21 Truth in Lending Act (15 U.S.C. 1637) is amended by
22 adding at the end the following:

23 “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
24 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-
25 count under an open end consumer credit plan may not

1 terminate an account prior to its expiration date solely be-
2 cause the consumer has not incurred finance charges on
3 the account. Nothing in this subsection shall prohibit a
4 creditor from terminating an account for inactivity in 3
5 or more consecutive months.”.

6 (b) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board shall promulgate
8 regulations implementing the requirements of section
9 127(h) of the Truth in Lending Act, as added by
10 this section.

11 (2) EFFECTIVE DATE.—The amendment made
12 by subsection (a) and regulations issued under para-
13 graph (1) of this subsection shall not take effect
14 until the later of—

15 (A) 12 months after the date of enactment
16 of this Act; or

17 (B) 12 months after the date of publica-
18 tion of such final regulations by the Board.

19 **SEC. 1307. DUAL USE DEBIT CARD.**

20 (a) REPORT.—The Board may conduct a study of,
21 and present to Congress a report containing its analysis
22 of, consumer protections under existing law to limit the
23 liability of consumers for unauthorized use of a debit card
24 or similar access device. Such report, if submitted, shall

1 include recommendations for legislative initiatives, if any,
2 of the Board, based on its findings.

3 (b) CONSIDERATIONS.—In preparing a report under
4 subsection (a), the Board may include—

5 (1) the extent to which section 909 of the Elec-
6 tronic Fund Transfer Act (15 U.S.C. 1693g), as in
7 effect at the time of the report, and the imple-
8 menting regulations promulgated by the Board to
9 carry out that section provide adequate unauthorized
10 use liability protection for consumers;

11 (2) the extent to which any voluntary industry
12 rules have enhanced or may enhance the level of pro-
13 tection afforded consumers in connection with such
14 unauthorized use liability; and

15 (3) whether amendments to the Electronic
16 Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-
17 visions to regulations promulgated by the Board to
18 carry out that Act, are necessary to further address
19 adequate protection for consumers concerning unau-
20 thorized use liability.

21 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**
22 **TENDED TO DEPENDENT STUDENTS.**

23 (a) STUDY.—

24 (1) IN GENERAL.—The Board shall conduct a
25 study regarding the impact that the extension of

1 credit described in paragraph (2) has on the rate of
2 bankruptcy cases filed under title 11, United States
3 Code.

4 (2) EXTENSION OF CREDIT.—The extension of
5 credit described in this paragraph is the extension of
6 credit to individuals who are—

7 (A) claimed as dependents for purposes of
8 the Internal Revenue Code of 1986; and

9 (B) enrolled within 1 year of successfully
10 completing all required secondary education re-
11 quirements and on a full-time basis, in postsec-
12 ondary educational institutions.

13 (b) REPORT.—Not later than 1 year after the date
14 of enactment of this Act, the Board shall submit to the
15 Senate and the House of Representatives a report summa-
16 rizing the results of the study conducted under subsection
17 (a).

18 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

19 (a) REGULATIONS.—Not later than 6 months after
20 the date of enactment of this Act, the Board, in consulta-
21 tion with the other Federal banking agencies (as defined
22 in section 3 of the Federal Deposit Insurance Act), the
23 National Credit Union Administration Board, and the
24 Federal Trade Commission, shall promulgate regulations
25 to provide guidance regarding the meaning of the term

1 “clear and conspicuous”, as used in subparagraphs (A),
2 (B), and (C) of section 127(b)(11) and clauses (ii) and
3 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

4 (b) **EXAMPLES.**—Regulations promulgated under
5 subsection (a) shall include examples of clear and con-
6 spicuous model disclosures for the purposes of disclosures
7 required by the provisions of the Truth in Lending Act
8 referred to in subsection (a).

9 (c) **STANDARDS.**—In promulgating regulations under
10 this section, the Board shall ensure that the clear and con-
11 spicuous standard required for disclosures made under the
12 provisions of the Truth in Lending Act referred to in sub-
13 section (a) can be implemented in a manner which results
14 in disclosures which are reasonably understandable and
15 designed to call attention to the nature and significance
16 of the information in the notice.

17 **SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDG-**
18 **MENTS BARRED.**

19 (a) **IN GENERAL.**—Notwithstanding any other provi-
20 sion of law or contract, a court within the United States
21 shall not recognize or enforce any judgment rendered in
22 a foreign court if, by clear and convincing evidence, the
23 court in which recognition or enforcement of the judgment
24 is sought determines that the judgment gives effect to any
25 purported right or interest derived, directly or indirectly,

1 from any fraudulent misrepresentation or fraudulent omis-
2 sion that occurred in the United States during the period
3 beginning on January 1, 1975, and ending on December
4 31, 1993.

5 (b) EXCEPTION.—Subsection (a) shall not prevent
6 recognition or enforcement of a judgment rendered in a
7 foreign court if the foreign tribunal rendering judgment
8 giving effect to the right or interest concerned determines
9 that no fraudulent misrepresentation or fraudulent omis-
10 sion described in subsection (a) occurred.

11 **TITLE XIV—GENERAL EFFEC-**
12 **TIVE DATE; APPLICATION OF**
13 **AMENDMENTS**

14 **SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMEND-**
15 **MENTS.**

16 (a) EFFECTIVE DATE.—Except as otherwise provided
17 in this Act, this Act and the amendments made by this
18 Act shall take effect 180 days after the date of enactment
19 of this Act.

20 (b) APPLICATION OF AMENDMENTS.—Except as oth-
21 erwise provided in this Act, the amendments made by this
22 Act shall not apply with respect to cases commenced under

1 title 11, United States Code, before the effective date of
2 this Act.

Passed the House of Representatives March 1,
2001.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 17

107TH CONGRESS
1ST SESSION

H. R. 333

AN ACT

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

MARCH 5, 2001

Received; read twice and placed on the calendar