

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 2002”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:
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1 **TITLE I—NEEDS-BASED**
2 **BANKRUPTCY**

3 **SEC. 101. CONVERSION.**

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

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

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

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

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

13 and

14 (2) in subsection (b)—

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

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

18 (i) in the first sentence—

19 (I) by striking “but not at the re-
20 quest or suggestion of” and inserting



1 “trustee, bankruptcy administrator,
2 or”;

3 (II) by inserting “, or, with the
4 debtor’s consent, convert such a case
5 to a case under chapter 11 or 13 of
6 this title,” after “consumer debts”;
7 and

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

10 (ii) by striking the next to last sen-
11 tence; and

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

13 “(2)(A)(i) In considering under paragraph (1) wheth-
14 er the granting of relief would be an abuse of the provi-
15 sions of this chapter, the court shall presume abuse exists
16 if the debtor’s current monthly income reduced by the
17 amounts determined under clauses (ii), (iii), and (iv), and
18 multiplied by 60 is not less than the lesser of—

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

22 “(II) \$10,000.

23 “(ii)(I) The debtor’s monthly expenses shall be the
24 debtor’s applicable monthly expense amounts specified
25 under the National Standards and Local Standards, and



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

23 “(II) In addition, the debtor's monthly expenses may
24 include, if applicable, the continuation of actual expenses
25 paid by the debtor that are reasonable and necessary for



1 care and support of an elderly, chronically ill, or disabled
2 household member or member of the debtor's immediate
3 family (including parents, grandparents, siblings, children,
4 and grandchildren of the debtor, the dependents of the
5 debtor, and the spouse of the debtor in a joint case who
6 is not a dependent) and who is unable to pay for such
7 reasonable and necessary expenses.

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

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



1 “(V) In addition, the debtor’s monthly expenses may
2 include an allowance for housing and utilities, in excess
3 of the allowance specified by the Local Standards for
4 housing and utilities issued by the Internal Revenue Serv-
5 ice, based on the actual expenses for home energy costs
6 if the debtor provides documentation of such actual ex-
7 penses and demonstrates that such actual expenses are
8 reasonable and necessary.

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

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

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

21 divided by 60.

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



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

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

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

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

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

17 “(iv) The presumption of abuse may only be rebutted
18 if the additional expenses or adjustments to income re-
19 ferred to in clause (i) cause the product of the debtor’s
20 current monthly income reduced by the amounts deter-
21 mined under clauses (ii), (iii), and (iv) of subparagraph

22 (A) when multiplied by 60 to be less than the lesser of—

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

25 “(II) \$10,000.



1 “(C) As part of the schedule of current income and
2 expenditures required under section 521, the debtor shall
3 include a statement of the debtor’s current monthly in-
4 come, and the calculations that determine whether a pre-
5 sumption arises under subparagraph (A)(i), that shows
6 how each such amount is calculated.

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

12 “(A) whether the debtor filed the petition in
13 bad faith; or

14 “(B) the totality of the circumstances (includ-
15 ing whether the debtor seeks to reject a personal
16 services contract and the financial need for such re-
17 jection as sought by the debtor) of the debtor’s fi-
18 nancial situation demonstrates abuse.

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



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

3 “(ii) the court—

4 “(I) grants such motion; and

5 “(II) finds that the action of the attorney
6 for the debtor in filing under this chapter vio-
7 lated rule 9011 of the Federal Rules of Bank-
8 ruptcy Procedure.

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

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

16 “(ii) the payment of such civil penalty to the
17 trustee, the United States trustee, or the bankruptcy
18 administrator.

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

22 “(i) performed a reasonable investigation into
23 the circumstances that gave rise to the petition,
24 pleading, or written motion; and



1 “(ii) determined that the petition, pleading, or
2 written motion—

3 “(I) is well grounded in fact; and

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

8 “(D) The signature of an attorney on the petition
9 shall constitute a certification that the attorney has no
10 knowledge after an inquiry that the information in the
11 schedules filed with such petition is incorrect.

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

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

22 “(ii) the court finds that—

23 “(I) the position of the party that filed the
24 motion violated rule 9011 of the Federal Rules
25 of Bankruptcy Procedure; or



1 “(II) the attorney (if any) who filed the
2 motion did not comply with the requirements of
3 clauses (i) and (ii) of paragraph (4)(C), and the
4 motion was made solely for the purpose of co-
5 ercing a debtor into waiving a right guaranteed
6 to the debtor under this title.

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

10 “(C) For purposes of this paragraph—

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

14 “(I) has fewer than 25 full-time employees
15 as determined on the date on which the motion
16 is filed; and

17 “(II) is engaged in commercial or business
18 activity; and

19 “(ii) the number of employees of a wholly
20 owned subsidiary of a corporation includes the em-
21 ployees of—

22 “(I) a parent corporation; and

23 “(II) any other subsidiary corporation of
24 the parent corporation.



1 “(6) Only the judge, United States trustee, or bank-
2 ruptcy administrator may file a motion under section
3 707(b), if the current monthly income of the debtor, or
4 in a joint case, the debtor and the debtor’s spouse, as of
5 the date of the order for relief, when multiplied by 12,
6 is equal to or less than—

7 “(A) in the case of a debtor in a household of
8 1 person, the median family income of the applicable
9 State for 1 earner;

10 “(B) in the case of a debtor in a household of
11 2, 3, or 4 individuals, the highest median family in-
12 come of the applicable State for a family of the same
13 number or fewer individuals; or

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

19 “(7)(A) No judge, United States trustee, trustee,
20 bankruptcy administrator, or other party in interest may
21 file a motion under paragraph (2) if the current monthly
22 income of the debtor and the debtor’s spouse combined,
23 as of the date of the order for relief when multiplied by
24 12, is equal to or less than—



1 “(i) 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;

4 “(ii) in the case of a debtor in a household of
5 2, 3, or 4 individuals, the highest median family in-
6 come of the applicable State for a family of the same
7 number or fewer individuals; or

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

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

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

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

21 “(ii) the debtor files a statement under penalty
22 of perjury—

23 “(I) specifying that the debtor meets the
24 requirement of subclause (I) or (II) of clause
25 (i); and



1 “(II) disclosing the aggregate, or best esti-
2 mate of the aggregate, amount of any cash or
3 money payments received from the debtor’s
4 spouse attributed to the debtor’s current
5 monthly income.”.

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

9 “(10A) ‘current monthly income’—

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

16 “(i) the last day of the calendar
17 month immediately preceding the date of
18 the commencement of the case if the debt-
19 or files the schedule of current income re-
20 quired by section 521(a)(1)(B)(ii); or

21 “(ii) the date on which current income
22 is determined by the court for purposes of
23 this title if the debtor does not file the
24 schedule of current income required by sec-
25 tion 521(a)(1)(B)(ii); and



1 “(B) includes any amount paid by any en-
2 tity other than the debtor (or in a joint case the
3 debtor and the debtor’s spouse), on a regular
4 basis for the household expenses of the debtor
5 or the debtor’s dependents (and in a joint case
6 the debtor’s spouse if not otherwise a depend-
7 ent), but excludes benefits received under the
8 Social Security Act, payments to victims of war
9 crimes or crimes against humanity on account
10 of their status as victims of such crimes, and
11 payments to victims of international terrorism
12 (as defined in section 2331 of title 18) or do-
13 mestic terrorism (as defined in section 2331 of
14 title 18) on account of their status as victims
15 of such terrorism;”.

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

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

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

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

24 “(A) the United States trustee or bankruptcy
25 administrator shall review all materials filed by the



1 debtor and, not later than 10 days after the date of
2 the first meeting of creditors, file with the court a
3 statement as to whether the debtor's case would be
4 presumed to be an abuse under section 707(b); and

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

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

19 “(A) in the case of a debtor in a household of
20 1 person, the median family income of the applicable
21 State for 1 earner; or

22 “(B) in the case of a debtor in a household of
23 2 or more individuals, the highest median family in-
24 come of the applicable State for a family of the same
25 number or fewer individuals .”.



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

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

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

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

18 “(c)(1) In this subsection—

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

21 “(B) the term ‘drug trafficking crime’ has the
22 meaning given such term in section 924(c)(2) of title
23 18.

24 “(2) Except as provided in paragraph (3), after no-
25 tice and a hearing, the court, on a motion by the victim



1 of a crime of violence or a drug trafficking crime, may
2 when it is in the best interest of the victim dismiss a vol-
3 untary case filed under this chapter by a debtor who is
4 an individual if such individual was convicted of such
5 crime.

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

21 (1) in paragraph (2) by striking “or” at the
22 end;

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

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



1 “(4) reduce amounts to be paid under the plan
2 by the actual amount expended by the debtor to pur-
3 chase health insurance for the debtor (and for any
4 dependent of the debtor if such dependent does not
5 otherwise have health insurance coverage) if the
6 debtor documents the cost of such insurance and
7 demonstrates that—

8 “(A) such expenses are reasonable and
9 necessary;

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

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



1 “(C) the amount is not otherwise allowed
2 for purposes of determining disposable income
3 under section 1325(b) of this title;
4 and upon request of any party in interest, files proof
5 that a health insurance policy was purchased.”.

6 (j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section
7 104(b) of title 11, United States Code, is amended by
8 striking “and 523(a)(2)(C)” each place it appears and in-
9 serting “523(a)(2)(C), 707(b), and 1325(b)(3)”.

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

13 “(39A) ‘median family income’ means for any
14 year—

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

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



1 the period of years occurring after such most
2 recent year and before such current year;”.

3 (k) CLERICAL AMENDMENT.—The table of sections
4 for chapter 7 of title 11, United States Code, is amended
5 by striking the item relating to section 707 and inserting
6 the following:

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

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

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

14 (b) STUDY.—

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

23 (A) the current monthly expenses of a
24 debtor under section 707(b) of title 11, United
25 States Code; and



1 (B) the impact that the application of such
2 standards has had on debtors and on the bank-
3 ruptey courts.

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

9 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

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

16 “(1) a brief description of—

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

20 “(B) the types of services available from
21 credit counseling agencies; and

22 “(2) statements specifying that—

23 “(A) a person who knowingly and fraudu-
24 lently conceals assets or makes a false oath or
25 statement under penalty of perjury in connec-



1 tion with a bankruptcy case shall be subject to
2 fine, imprisonment, or both; and

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

6 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**
7 **TEST PROGRAM.**

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

20 (b) TEST.—

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



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

8 (c) EVALUATION.—

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

12 (A) the financial management training cur-
13 riculum and materials developed under sub-
14 section (a); and

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

24 (2) REPORT.—Not later than 3 months after
25 concluding such evaluation, the Director shall sub-



1 mit a report to the Speaker of the House of Rep-
2 resentatives and the President pro tempore of the
3 Senate, for referral to the appropriate committees of
4 the Congress, containing the findings of the Director
5 regarding the effectiveness of such curriculum, such
6 materials, and such programs and their costs.

7 **SEC. 106. CREDIT COUNSELING.**

8 (a) WHO MAY BE A DEBTOR.—Section 109 of title
9 11, United States Code, is amended by adding at the end
10 the following:

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

22 “(2)(A) Paragraph (1) shall not apply with respect
23 to a debtor who resides in a district for which the United
24 States trustee or bankruptcy administrator of the bank-
25 ruptcy court of that district determines that the approved



1 nonprofit budget and credit counseling agencies for that
2 district are not reasonably able to provide adequate serv-
3 ices to the additional individuals who would otherwise seek
4 credit counseling from that agency by reason of the re-
5 quirements of paragraph (1).

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

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

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

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



1 “(iii) is satisfactory to the court.

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

9 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
10 11, United States Code, is amended—

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

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

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

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



1 (Each United States trustee or bankruptcy adminis-
2 trator who makes a determination described in this
3 paragraph shall review such determination not later
4 than 1 year after the date of such determination,
5 and not less frequently than annually thereafter.)”.

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

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

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

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



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

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

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

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

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

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

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



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

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

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

12 (e) GENERAL PROVISIONS.—

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

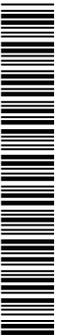
7 “‘1. Read the disclosures in this Part A care-
8 fully. Consider the decision to reaffirm carefully.
9 Then, if you want to reaffirm, sign the reaffirmation
10 agreement in Part B (or you may use a separate
11 agreement you and your creditor agree on).

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

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

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

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



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

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

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

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



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

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

4 A reaffirmed debt remains your personal legal obligation.

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

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

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

8 property or your wages. Otherwise, your obligations will

9 be determined by the reaffirmation agreement which may

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

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

12 ment, the creditor may be permitted by that agreement

13 or applicable law to change the terms of the agreement

14 in the future under certain conditions.

15 “Are you required to enter into a reaffirmation

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

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

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

19 ments you agree to make.

20 “What if your creditor has a security interest or

21 lien? Your bankruptcy discharge does not eliminate any

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

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

24 Even if you do not reaffirm and your personal liability

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



1 “Borrower:

2 “Co-borrower, if also reaffirming:

3 “Accepted by creditor:

4 “Date of creditor acceptance:’.

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

15 (b) LAW ENFORCEMENT.—

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



1 **Subtitle B—Priority Child Support**

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

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

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

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

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

15 “(A) owed to or recoverable by—

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

19 “(ii) a governmental unit;

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



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

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

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

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

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

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

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

21 (1) by striking paragraph (7);

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

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



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

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

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

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

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

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

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

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

16 “(1) First:

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



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

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

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



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

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

10 Title 11, United States Code, is amended—

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

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

19 (2) in section 1208(c)—

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

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

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



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

4 (3) in section 1222(a)—

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

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

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

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

18 (4) in section 1222(b)—

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

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

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



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

5 (5) in section 1225(a)—

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

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

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

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

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



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

3 (7) in section 1307(c)—

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

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

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

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

12 (8) in section 1322(a)—

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

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

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

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



1 (9) in section 1322(b)—

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

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

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

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

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

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

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



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

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

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

15 “(2) under subsection (a)—

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

18 “(i) for the establishment of paternity;

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

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

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



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

3 “(v) regarding domestic violence;

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

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

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

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

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



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

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

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

8 (1) in subsection (a)—

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

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

12 (B) by striking paragraph (18);

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

11 (1) in subsection (a)—

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

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

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

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

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

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

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



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

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

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

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

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

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

21 “(i) the granting of the discharge;

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

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



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

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

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

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

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

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

21 (1) in subsection (a)—

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

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



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

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

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

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

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

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

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

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

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



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

3 “(i) the granting of the discharge;

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

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

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

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

12 or

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

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

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



1 (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—
2 Section 1202 of title 11, United States Code, is
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 the debtor there is a
11 claim for a domestic support obligation, provide the
12 applicable notice specified in subsection (c).”; and

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

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

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



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

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

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

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

13 “(i) the granting of the discharge;

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

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

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

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

22 or

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



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

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

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

14 (1) in subsection (b)—

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

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

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

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

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

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



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

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

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

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

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

21 “(i) the granting of the discharge;

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

24 (2) in subsection (b)—



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

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

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

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

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

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

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

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



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

3 “(iii) shall—

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

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

9 (3) in subsection (c)—

10 (A) in paragraph (2)—

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

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

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

21 (B) by striking paragraph (3);

22 (4) in subsection (d)—

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

25 (B) by striking paragraph (2);



1 (5) in subsection (e)—

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

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

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

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

9 “(i) whether—

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

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

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

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

18 “(iv) concerning—

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

21 “(II) the dischargeability of tax claims;

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



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

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

6 (6) in subsection (f)—

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

9 (B) by striking paragraph (2);

10 (7) in subsection (g)—

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

13 (B) by striking paragraph (2);

14 (8) in subsection (h)—

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

3 (10) in subsection (j)—

4 (A) in paragraph (2)—

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

8 (ii) in subparagraph (B)—

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

3 **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**
4 **RUPTCY.**

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

7 (1) in subsection (b)—

8 (A) in paragraph (2)—

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

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

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

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

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

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

24 “(A) any property”;



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

13 (2) in subsection (d)—

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

11 (e) ASSET LIMITATION.—

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

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



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

3 (2) ADJUSTMENT OF DOLLAR AMOUNTS.—

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

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

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

11 (1) in subsection (b)—

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

17 **SEC. 226. DEFINITIONS.**

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

 “526. Restrictions on debt relief agencies.”.

8 **SEC. 228. DISCLOSURES.**

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

12 **“§ 527. Disclosures**

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

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

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

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



1 thereafter during a case under this title is re-
2 quired to be complete, accurate, and truthful;

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

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

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

22 “(b) A debt relief agency providing bankruptcy assist-
23 ance to an assisted person shall provide each assisted per-
24 son at the same time as the notices required under sub-
25 section (a)(1) with the following statement, to the extent



1 applicable, or one substantially similar. The statement
2 shall be clear and conspicuous and shall be in a single
3 document separate from other documents or notices pro-
4 vided to the assisted person:

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

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

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

23 “‘Before filing a bankruptcy case, either you or your
24 attorney should analyze your eligibility for different forms
25 of debt relief made available by the Bankruptcy Code and



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

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

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

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



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

5 “(c) Except to the extent the debt relief agency pro-
6 vides the required information itself after reasonably dili-
7 gent inquiry of the assisted person or others so as to ob-
8 tain such information reasonably accurately for inclusion
9 on the petition, schedules or statement of financial affairs,
10 a debt relief agency providing bankruptcy assistance to an
11 assisted person, to the extent permitted by nonbankruptcy
12 law, shall provide each assisted person at the time re-
13 quired for the notice required under subsection (a)(1) rea-
14 sonably sufficient information (which shall be provided in
15 a clear and conspicuous writing) to the assisted person
16 on how to provide all the information the assisted person
17 is required to provide under this title pursuant to section
18 521, including—

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



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

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

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

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for chapter 5 of title 11, United States Code, as
13 amended by section 227, is amended by inserting after the
14 item relating to section 526 the following:

 “527. Disclosures.”.

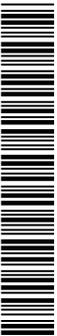
15 **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

16 (a) ENFORCEMENT.—Subchapter II of chapter 5 of
17 title 11, United States Code, as amended by sections 227
18 and 228, is amended by adding at the end the following:

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

20 “(a) A debt relief agency shall—

21 “(1) not later than 5 business days after the
22 first date on which such agency provides any bank-
23 ruptcy assistance services to an assisted person, but
24 prior to such assisted person’s petition under this
25 title being filed, execute a written contract with such



1 assisted person that explains clearly and
2 conspicuously—

3 “(A) the services such agency will provide
4 to such assisted person; and

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

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

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

16 “(4) clearly and conspicuously use the following
17 statement in such advertisement: ‘We are a debt re-
18 lief agency. We help people file for bankruptcy relief
19 under the Bankruptcy Code.’ or a substantially simi-
20 lar statement.

21 “(b)(1) An advertisement of bankruptcy assistance
22 services or of the benefits of bankruptcy directed to the
23 general public includes—

24 “(A) descriptions of bankruptcy assistance in
25 connection with a chapter 13 plan whether or not



1 chapter 13 is specifically mentioned in such adver-
2 tisement; and

3 “(B) statements such as ‘federally supervised
4 repayment plan’ or ‘Federal debt restructuring help’
5 or other similar statements that could lead a reason-
6 able consumer to believe that debt counseling was
7 being offered when in fact the services were directed
8 to providing bankruptcy assistance with a chapter
9 13 plan or other form of bankruptcy relief under
10 this title.

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

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

19 “(B) include the following statement: ‘We are a
20 debt relief agency. We help people file for bank-
21 ruptcy relief under the Bankruptcy Code.’ or a sub-
22 stantially similar statement.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-
24 tions for chapter 5 of title 11, United States Code, as



1 amended by section 227 and 228, is amended by inserting
2 after the item relating to section 527, the following:

“528. Requirements for debt relief agencies.”.

3 **SEC. 230. GAO STUDY.**

4 (a) **STUDY.**—Not later than 270 days after the date
5 of enactment of this Act, the Comptroller General of the
6 United States shall conduct a study of the feasibility, ef-
7 fectiveness, and cost of requiring trustees appointed under
8 title 11, United States Code, or the bankruptcy courts,
9 to provide to the Office of Child Support Enforcement
10 promptly after the commencement of cases by debtors who
11 are individuals under such title, the names and social secu-
12 rity numbers of such debtors for the purposes of allowing
13 such Office to determine whether such debtors have out-
14 standing obligations for child support (as determined on
15 the basis of information in the Federal Case Registry or
16 other national database).

17 (b) **REPORT.**—Not later than 300 days after the date
18 of enactment of this Act, the Comptroller General shall
19 submit to the President pro tempore of the Senate and
20 the Speaker of the House of Representatives a report con-
21 taining the results of the study required by subsection (a).



1 **SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**
2 **FORMATION.**

3 (a) **LIMITATION.**—Section 363(b)(1) of title 11,
4 United States Code, is amended by striking the period at
5 the end and inserting the following:

6 “, except that if the debtor in connection with offering
7 a product or a service discloses to an individual a policy
8 prohibiting the transfer of personally identifiable informa-
9 tion about individuals to persons that are not affiliated
10 with the debtor and if such policy is in effect on the date
11 of the commencement of the case, then the trustee may
12 not sell or lease personally identifiable information to any
13 person unless—

14 “(A) such sale or such lease is consistent with
15 such policy; or

16 “(B) after appointment of a consumer privacy
17 ombudsman in accordance with section 332, and
18 after notice and a hearing, the court approves such
19 sale or such lease—

20 “(i) giving due consideration to the facts,
21 circumstances, and conditions of such sale or
22 such lease; and

23 “(ii) finding that no showing was made
24 that such sale or such lease would violate appli-
25 cable nonbankruptcy law.”.



1 (b) DEFINITION.—Section 101 of title 11, United
2 States Code, is amended by inserting after paragraph (41)
3 the following:

4 “(41A) ‘personally identifiable information’
5 means—

6 “(A) if provided by an individual to the
7 debtor in connection with obtaining a product
8 or a service from the debtor primarily for per-
9 sonal, family, or household purposes—

10 “(i) the first name (or initial) and last
11 name of such individual, whether given at
12 birth or time of adoption, or resulting from
13 a lawful change of name;

14 “(ii) the geographical address of a
15 physical place of residence of such indi-
16 vidual;

17 “(iii) an electronic address (including
18 an e-mail address) of such individual;

19 “(iv) a telephone number dedicated to
20 contacting such individual at such physical
21 place of residence;

22 “(v) a social security account number
23 issued to such individual; or

24 “(vi) the account number of a credit
25 card issued to such individual; or



1 “(B) if identified in connection with 1 or
2 more of the items of information specified in
3 subparagraph (A)—

4 “(i) a birth date, the number of a cer-
5 tificate of birth or adoption, or a place of
6 birth; or

7 “(ii) any other information concerning
8 an identified individual that, if disclosed,
9 will result in contacting or identifying such
10 individual physically or electronically;”.

11 **SEC. 232. CONSUMER PRIVACY OMBUDSMAN.**

12 (a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of
13 the United States Code is amended by inserting after sec-
14 tion 331 the following:

15 **“§ 332. Consumer privacy ombudsman**

16 “(a) If a hearing is required under section
17 363(b)(1)(B) of this title, the court shall order the United
18 States trustee to appoint, not later than 5 days before the
19 commencement of the hearing, 1 disinterested person
20 (other than the United States trustee) to serve as the con-
21 sumer privacy ombudsman in the case and shall require
22 that notice of such hearing be timely given to such om-
23 budsman.

24 “(b) The consumer privacy ombudsman may appear
25 and be heard at such hearing and shall provide to the



1 court information to assist the court in its consideration
2 of the facts, circumstances, and conditions of the proposed
3 sale or lease of personally identifiable information under
4 section 363(b)(1)(B) of this title. Such information may
5 include presentation of—

6 “(1) the debtor’s privacy policy;

7 “(2) the potential losses or gains of privacy to
8 consumers if such sale or such lease is approved by
9 the court;

10 “(3) the potential costs or benefits to con-
11 sumers if such sale or such lease is approved by the
12 court; and

13 “(4) the potential alternatives that would miti-
14 gate potential privacy losses or potential costs to
15 consumers.

16 “(c) A consumer privacy ombudsman shall not dis-
17 close any personally identifiable information obtained by
18 the ombudsman under this title.”

19 (b) COMPENSATION OF CONSUMER PRIVACY OM-
20 BUDSMAN.—Section 330(a)(1) of title 11, United States
21 Code, is amended in the matter preceding subparagraph
22 (A), by inserting “a consumer privacy ombudsman ap-
23 pointed under section 332,” before “an examiner”.

24 (c) CONFORMING AMENDMENT.—The table of sec-
25 tions for subchapter II of chapter 3 of title 11, United



1 States Code, is amended by adding at the end the fol-
2 lowing:

“332. Consumer privacy ombudsman.”.

3 **SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF**
4 **MINOR CHILDREN.**

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

8 **“§ 112. Prohibition on disclosure of name of minor**
9 **children**

10 “The debtor may be required to provide information
11 regarding a minor child involved in matters under this title
12 but may not be required to disclose in the public records
13 in the case the name of such minor child. The debtor may
14 be required to disclose the name of such minor child in
15 a nonpublic record that is maintained by the court and
16 made available by the court for examination by the United
17 States trustee, the trustee, and the auditor (if any) ap-
18 pointed under section 586(f) of title 28, in the case. The
19 court, the United States trustee, the trustee, and such
20 auditor shall not disclose the name of such minor child
21 maintained in such nonpublic record.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for chapter 1 of title 11, United States Code, as amended



1 by section 106, is amended by inserting after the item re-
2 lating to section 111 the following:

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

3 (c) CONFORMING AMENDMENT.—Section 107(a) of
4 title 11, United States Code, is amended by inserting “and
5 subject to section 112 of this title” after “section”.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

24 “(C) for purposes of subparagraph (B), a
25 case is presumptively filed not in good faith



1 (but such presumption may be rebutted by clear
2 and convincing evidence to the contrary)—

3 “(i) as to all creditors, if—

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

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

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

23 “(bb) provide adequate pro-
24 tection as ordered by the court;
25 or



1 “(cc) perform the terms of a
2 plan confirmed by the court; or

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

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

12 “(bb) if a case under chap-
13 ter 11 or 13, with a confirmed
14 plan that will be fully performed;
15 and

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

24 “(4)(A)(i) if a single or joint case is filed by or
25 against a debtor who is an individual under this



1 title, and if 2 or more single or joint cases of the
2 debtor were pending within the previous year but
3 were dismissed, other than a case refiled under sec-
4 tion 707(b), the stay under subsection (a) shall not
5 go into effect upon the filing of the later case; and

6 “(ii) on request of a party in interest, the court
7 shall promptly enter an order confirming that no
8 stay is in effect;

9 “(B) if, within 30 days after the filing of the
10 later case, a party in interest requests the court may
11 order the stay to take effect in the case as to any
12 or all creditors (subject to such conditions or limita-
13 tions as the court may impose), after notice and a
14 hearing, only if the party in interest demonstrates
15 that the filing of the later case is in good faith as
16 to the creditors to be stayed;

17 “(C) a stay imposed under subparagraph (B)
18 shall be effective on the date of entry of the order
19 allowing the stay to go into effect; and

20 “(D) for purposes of subparagraph (B), a case
21 is presumptively not filed in good faith (but such
22 presumption may be rebutted by clear and con-
23 vincing evidence to the contrary)—

24 “(i) as to all creditors if—



1 “(I) 2 or more previous cases under
2 this title in which the individual was a
3 debtor were pending within the 1-year pe-
4 riod;

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

19 “(III) there has not been a substan-
20 tial change in the financial or personal af-
21 fairs of the debtor since the dismissal of
22 the next most previous case under this
23 title, or any other reason to conclude that
24 the later case will not be concluded, if a
25 case under chapter 7, with a discharge,



1 and if a case under chapter 11 or 13, with
2 a confirmed plan that will be fully per-
3 formed; or

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

11 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

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

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

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

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



1 “(A) transfer of all or part ownership of,
2 or other interest in, the real property without
3 the consent of the secured creditor or court ap-
4 proval; or

5 “(B) multiple bankruptcy filings affecting
6 the real property.

7 If recorded in compliance with applicable State laws gov-
8 erning notices of interests or liens in real property, an
9 order entered under this subsection shall be binding in any
10 other case under this title purporting to affect the real
11 property filed not later than 2 years after the date of entry
12 of such order by the court, except that a debtor in a subse-
13 quent case may move for relief from such order based
14 upon changed circumstances or for good cause shown,
15 after notice and a hearing. Any Federal, State, or local
16 governmental unit that accepts notices of interests or liens
17 in real property shall accept any certified copy of an order
18 described in this subsection for indexing and recording.”.

19 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
20 United States Code, as amended by section 224, is amend-
21 ed by inserting after paragraph (19), the following:

22 “(20) under subsection (a), of any act to en-
23 force any lien against or security interest in real
24 property following the entry of an order under sec-
25 tion 362(d)(4) as to that property in any prior bank-



1 ruptcy case for a period of 2 years after entry of
2 such an order, except that the debtor, in a subse-
3 quent case, may move the court for relief from such
4 order based upon changed circumstances or for
5 other good cause shown, after notice and a hearing;

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

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

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

16 **SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY**
17 **SECURITY.**

18 Title 11, United States Code, is amended—

19 (1) in section 521(a), as so designated by sec-
20 tion 106—

21 (A) in paragraph (4), by striking “, and”
22 at the end and inserting a semicolon;

23 (B) in paragraph (5), by striking the pe-
24 riod at the end and inserting “; and”; and

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



1 “(6) in a case under chapter 7 of this title in
2 which the debtor is an individual, not retain posses-
3 sion of personal property as to which a creditor has
4 an allowed claim for the purchase price secured in
5 whole or in part by an interest in that personal
6 property unless the debtor, not later than 45 days
7 after the first meeting of creditors under section
8 341(a), either—

9 “(A) enters into an agreement with the
10 creditor pursuant to section 524(c) of this title
11 with respect to the claim secured by such prop-
12 erty; or

13 “(B) redeems such property from the secu-
14 rity interest pursuant to section 722 of this
15 title.

16 If the debtor fails to so act within the 45-day period re-
17 ferred to in paragraph (6), the stay under section 362(a)
18 of this title is terminated with respect to the personal
19 property of the estate or of the debtor which is affected,
20 such property shall no longer be property of the estate,
21 and the creditor may take whatever action as to such prop-
22 erty as is permitted by applicable nonbankruptcy law, un-
23 less the court determines on the motion of the trustee
24 filed before the expiration of such 45-day period, and after
25 notice and a hearing, that such property is of consequen-



1 tial value or benefit to the estate, orders appropriate ade-
2 quate protection of the creditor's interest, and orders the
3 debtor to deliver any collateral in the debtor's possession
4 to the trustee.”; and

5 (2) in section 722, by inserting “in full at the
6 time of redemption” before the period at the end.

7 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**
8 **DEBTOR DOES NOT COMPLETE INTENDED**
9 **SURRENDER OF CONSUMER DEBT COLLAT-**
10 **ERAL.**

11 Title 11, United States Code, is amended—

12 (1) in section 362, as amended by section
13 106—

14 (A) in subsection (e), by striking “(e), and
15 (f)” and inserting “(e), (f), and (h)”;

16 (B) by redesignating subsection (h) as sub-
17 section (k) and transferring such subsection so
18 as to insert it after subsection (j) as added by
19 section 106; and

20 (C) by inserting after subsection (g) the
21 following:

22 “(h)(1) In a case in which the debtor is an individual,
23 the stay provided by subsection (a) is terminated with re-
24 spect to personal property of the estate or of the debtor
25 securing in whole or in part a claim, or subject to an unex-



1 pired lease, and such personal property shall no longer be
2 property of the estate if the debtor fails within the applica-
3 ble time set by section 521(a)(2) of this title—

4 “(A) to file timely any statement of intention
5 required under section 521(a)(2) of this title with
6 respect to that property or to indicate in that state-
7 ment that the debtor will either surrender the prop-
8 erty or retain it and, if retaining it, either redeem
9 the property pursuant to section 722 of this title, re-
10 affirm the debt it secures pursuant to section 524(c)
11 of this title, or assume the unexpired lease pursuant
12 to section 365(p) of this title if the trustee does not
13 do so, as applicable; and

14 “(B) to take timely the action specified in that
15 statement of intention, as it may be amended before
16 expiration of the period for taking action, unless the
17 statement of intention specifies reaffirmation and
18 the creditor refuses to reaffirm on the original con-
19 tract terms.

20 “(2) Paragraph (1) does not apply if the court deter-
21 mines, on the motion of the trustee filed before the expira-
22 tion of the applicable time set by section 521(a)(2), after
23 notice and a hearing, that such property is of consequen-
24 tial value or benefit to the estate, and orders appropriate
25 adequate protection of the creditor’s interest, and orders



1 the debtor to deliver any collateral in the debtor's posses-
2 sion to the trustee. If the court does not so determine,
3 the stay provided by subsection (a) shall terminate upon
4 the conclusion of the proceeding on the motion.”; and

5 (2) in section 521, as amended by sections 106
6 and 225—

7 (A) in subsection (a)(2) by striking “con-
8 sumer”;

9 (B) in subsection (a)(2)(B)—

10 (i) by striking “forty-five days after
11 the filing of a notice of intent under this
12 section” and inserting “30 days after the
13 first date set for the meeting of creditors
14 under section 341(a) of this title”; and

15 (ii) by striking “forty-five day” and
16 inserting “30-day”;

17 (C) in subsection (a)(2)(C) by inserting “,
18 except as provided in section 362(h) of this
19 title” before the semicolon; and

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

21 “(d) If the debtor fails timely to take the action speci-
22 fied in subsection (a)(6) of this section, or in paragraphs
23 (1) and (2) of section 362(h) of this title, with respect
24 to property which a lessor or bailor owns and has leased,
25 rented, or bailed to the debtor or as to which a creditor



1 holds a security interest not otherwise voidable under sec-
 2 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-
 3 ing in this title shall prevent or limit the operation of a
 4 provision in the underlying lease or agreement which has
 5 the effect of placing the debtor in default under such lease
 6 or agreement by reason of the occurrence, pendency, or
 7 existence of a proceeding under this title or the insolvency
 8 of the debtor. Nothing in this subsection shall be deemed
 9 to justify limiting such a provision in any other cir-
 10 cumstance.”.

11 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

12 **IN CHAPTER 13.**

13 (a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title
 14 11, United States Code, is amended to read as follows:

15 “(i) the plan provides that—

16 “(I) the holder of such claim retain
 17 the lien securing such claim until the ear-
 18 lier of—

19 “(aa) the payment of the under-
 20 lying debt determined under nonbank-
 21 ruptcy law; or

22 “(bb) discharge under section
 23 1328; and

24 “(II) if the case under this chapter is
 25 dismissed or converted without completion



1 of the plan, such lien shall also be retained
2 by such holder to the extent recognized by
3 applicable nonbankruptcy law; and”.

4 (b) RESTORING THE FOUNDATION FOR SECURED
5 CREDIT.—Section 1325(a) of title 11, United States Code,
6 is amended by adding at the end the following:

7 “For purposes of paragraph (5), section 506 shall not
8 apply to a claim described in that paragraph if the creditor
9 has a purchase money security interest securing the debt
10 that is the subject of the claim, the debt was incurred
11 within the 910-day preceding the filing of the petition, and
12 the collateral for that debt consists of a motor vehicle (as
13 defined in section 30102 of title 49) acquired for the per-
14 sonal use of the debtor, or if collateral for that debt con-
15 sists of any other thing of value, if the debt was incurred
16 during the 1-year period preceding that filing.”.

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

19 (1) by inserting after paragraph (13) the fol-
20 lowing:

21 “(13A) ‘debtor’s principal residence’—

22 “(A) means a residential structure, includ-
23 ing incidental property, without regard to
24 whether that structure is attached to real prop-
25 erty; and



1 “(B) includes an individual condominium
2 or cooperative unit, a mobile or manufactured
3 home, or trailer;”; and

4 (2) by inserting after paragraph (27), the fol-
5 lowing:

6 “(27A) ‘incidental property’ means, with re-
7 spect to a debtor’s principal residence—

8 “(A) property commonly conveyed with a
9 principal residence in the area where the real
10 estate is located;

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

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

16 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

17 Section 522(b)(3) of title 11, United States Code, as
18 so designated by section 106, is amended—

19 (1) in subparagraph (A)—

20 (A) by striking “180 days” and inserting
21 “730 days”; and

22 (B) by striking “, or for a longer portion
23 of such 180-day period than in any other place”
24 and inserting “or if the debtor’s domicile has
25 not been located at a single State for such 730-



1 day period, the place in which the debtor's
2 domicile was located for 180 days immediately
3 preceding the 730-day period or for a longer
4 portion of such 180-day period than in any
5 other place"; and

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

7 "If the effect of the domiciliary requirement under sub-
8 paragraph (A) is to render the debtor ineligible for any
9 exemption, the debtor may elect to exempt property that
10 is specified under subsection (d).".

11 **SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR**
12 **FRAUD.**

13 Section 522 of title 11, United States Code, as
14 amended by section 224, is amended—

15 (1) in subsection (b)(3)(A), as so designated by
16 this Act, by inserting "subject to subsections (o) and
17 (p)," before "any property"; and

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

19 "(o) For purposes of subsection (b)(3)(A), and not-
20 withstanding subsection (a), the value of an interest in—

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

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



1 “(3) a burial plot for the debtor or a dependent
2 of the debtor; or

3 “(4) real or personal property that the debtor
4 or a dependent of the debtor claims as a homestead;
5 shall be reduced to the extent that such value is attrib-
6 utable to any portion of any property that the debtor dis-
7 posed of in the 10-year period ending on the date of the
8 filing of the petition with the intent to hinder, delay, or
9 defraud a creditor and that the debtor could not exempt,
10 or that portion that the debtor could not exempt, under
11 subsection (b), if on such date the debtor had held the
12 property so disposed of.”.

13 **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**
14 **13 CASES.**

15 (a) STOPPING ABUSIVE CONVERSIONS FROM CHAP-
16 TER 13.—Section 348(f)(1) of title 11, United States
17 Code, is amended—

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

20 (2) in subparagraph (B)—

21 (A) by striking “in the converted case,
22 with allowed secured claims” and inserting
23 “only in a case converted to a case under chap-
24 ter 11 or 12, but not in a case converted to a



1 case under chapter 7, with allowed secured
2 claims in cases under chapters 11 and 12”; and

3 (B) by striking the period and inserting “;
4 and”; and

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

6 “(C) with respect to cases converted from chap-
7 ter 13—

8 “(i) the claim of any creditor holding secu-
9 rity as of the date of the petition shall continue
10 to be secured by that security unless the full
11 amount of such claim determined under appli-
12 cable nonbankruptcy law has been paid in full
13 as of the date of conversion, notwithstanding
14 any valuation or determination of the amount
15 of an allowed secured claim made for the pur-
16 poses of the case under chapter 13; and

17 “(ii) unless a prebankruptcy default has
18 been fully cured under the plan at the time of
19 conversion, in any proceeding under this title or
20 otherwise, the default shall have the effect given
21 under applicable nonbankruptcy law.”.

22 (b) GIVING DEBTORS THE ABILITY TO KEEP
23 LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section
24 365 of title 11, United States Code, is amended by adding
25 at the end the following:



1 “(p)(1) If a lease of personal property is rejected or
2 not timely assumed by the trustee under subsection (d),
3 the leased property is no longer property of the estate and
4 the stay under section 362(a) is automatically terminated.

5 “(2)(A) If the debtor in a case under chapter 7 is
6 an individual, the debtor may notify the creditor in writing
7 that the debtor desires to assume the lease. Upon being
8 so notified, the creditor may, at its option, notify the debt-
9 or that it is willing to have the lease assumed by the debt-
10 or and may condition such assumption on cure of any out-
11 standing default on terms set by the contract.

12 “(B) If, not later than 30 days after notice is pro-
13 vided under subparagraph (A), the debtor notifies the les-
14 sor in writing that the lease is assumed, the liability under
15 the lease will be assumed by the debtor and not by the
16 estate.

17 “(C) The stay under section 362 and the injunction
18 under section 524(a)(2) shall not be violated by notifica-
19 tion of the debtor and negotiation of cure under this sub-
20 section.

21 “(3) In a case under chapter 11 in which the debtor
22 is an individual and in a case under chapter 13, if the
23 debtor is the lessee with respect to personal property and
24 the lease is not assumed in the plan confirmed by the
25 court, the lease is deemed rejected as of the conclusion



1 of the hearing on confirmation. If the lease is rejected,
2 the stay under section 362 and any stay under section
3 1301 is automatically terminated with respect to the prop-
4 erty subject to the lease.”.

5 (c) ADEQUATE PROTECTION OF LESSORS AND PUR-
6 CHASE MONEY SECURED CREDITORS.—

7 (1) CONFIRMATION OF PLAN.—Section
8 1325(a)(5)(B) of title 11, United States Code, as
9 amended by section 306, is amended—

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

12 (B) in clause (ii), by striking “or” at the
13 end and inserting “and”; and

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

15 “(iii) if—

16 “(I) property to be distributed pursu-
17 ant to this subsection is in the form of
18 periodic payments, such payments shall be
19 in equal monthly amounts; and

20 “(II) the holder of the claim is se-
21 cured by personal property, the amount of
22 such payments shall not be less than an
23 amount sufficient to provide to the holder
24 of such claim adequate protection during
25 the period of the plan; or”.



1 (2) PAYMENTS.—Section 1326(a) of title 11,
2 United States Code, is amended to read as follows:

3 “(a)(1) Unless the court orders otherwise, the debtor
4 shall commence making payments not later than 30 days
5 after the date of the filing of the plan or the order for
6 relief, whichever is earlier, in the amount—

7 “(A) proposed by the plan to the trustee;

8 “(B) scheduled in a lease of personal property
9 directly to the lessor for that portion of the obliga-
10 tion that becomes due after the order for relief, re-
11 ducing the payments under subparagraph (A) by the
12 amount so paid and providing the trustee with evi-
13 dence of such payment, including the amount and
14 date of payment; and

15 “(C) that provides adequate protection directly
16 to a creditor holding an allowed claim secured by
17 personal property to the extent the claim is attrib-
18 utable to the purchase of such property by the debt-
19 or for that portion of the obligation that becomes
20 due after the order for relief, reducing the payments
21 under subparagraph (A) by the amount so paid and
22 providing the trustee with evidence of such payment,
23 including the amount and date of payment.

24 “(2) A payment made under paragraph (1)(A) shall
25 be retained by the trustee until confirmation or denial of



1 confirmation. If a plan is confirmed, the trustee shall dis-
2 tribute any such payment in accordance with the plan as
3 soon as is practicable. If a plan is not confirmed, the trust-
4 ee shall return any such payments not previously paid and
5 not yet due and owing to creditors pursuant to paragraph
6 (3) to the debtor, after deducting any unpaid claim al-
7 lowed under section 503(b).

8 “(3) Subject to section 363, the court may, upon no-
9 tice and a hearing, modify, increase, or reduce the pay-
10 ments required under this subsection pending confirma-
11 tion of a plan.

12 “(4) Not later than 60 days after the date of filing
13 of a case under this chapter, a debtor retaining possession
14 of personal property subject to a lease or securing a claim
15 attributable in whole or in part to the purchase price of
16 such property shall provide the lessor or secured creditor
17 reasonable evidence of the maintenance of any required
18 insurance coverage with respect to the use or ownership
19 of such property and continue to do so for so long as the
20 debtor retains possession of such property.”

21 **SEC. 310. LIMITATION ON LUXURY GOODS.**

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

24 “(C)(i) for purposes of subparagraph

25 (A)—



1 “(I) consumer debts owed to a single
2 creditor and aggregating more than \$500
3 for luxury goods or services incurred by an
4 individual debtor on or within 90 days be-
5 fore the order for relief under this title are
6 presumed to be nondischargeable; and

7 “(II) cash advances aggregating more
8 than \$750 that are extensions of consumer
9 credit under an open end credit plan ob-
10 tained by an individual debtor on or within
11 70 days before the order for relief under
12 this title, are presumed to be non-
13 dischargeable; and

14 “(ii) for purposes of this subparagraph—

15 “(I) the terms ‘consumer’, ‘credit’,
16 and ‘open end credit plan’ have the same
17 meanings as in section 103 of the Truth in
18 Lending Act; and

19 “(II) the term ‘luxury goods or serv-
20 ices’ does not include goods or services rea-
21 sonably necessary for the support or main-
22 tenance of the debtor or a dependent of the
23 debtor.”.



1 **SEC. 311. AUTOMATIC STAY.**

2 (a) IN GENERAL.—Section 362(b) of title 11, United
3 States Code, as amended by sections 224 and 303, is
4 amended by inserting after paragraph (21), the following:

5 “(22) subject to subsection (n), under sub-
6 section (a)(3), of the continuation of any eviction,
7 unlawful detainer action, or similar proceeding by a
8 lessor against a debtor involving residential property
9 in which the debtor resides as a tenant under a lease
10 or rental agreement and with respect to which the
11 lessor has obtained before the date of the filing of
12 the bankruptcy petition, a judgment for possession
13 of such property against the debtor;

14 “(23) subject to subsection (o), under sub-
15 section (a)(3), of an eviction action that seeks pos-
16 session of the residential property in which the debt-
17 or resides as a tenant under a lease or rental agree-
18 ment based on endangerment of such property or
19 the illegal use of controlled substances on such prop-
20 erty, but only if the lessor files with the court, and
21 serves upon the debtor, a certification under penalty
22 of perjury that such an eviction action has been
23 filed, or that the debtor, during the 30-day period
24 preceding the date of the filing of the certification,
25 has endangered property or illegally used or allowed
26 to be used a controlled substance on the property;



1 “(24) under subsection (a), of any transfer that
2 is not avoidable under section 544 and that is not
3 avoidable under section 549;”.

4 (b) LIMITATIONS.—Section 362 of title 11, United
5 States Code, as amended by sections 106 and 305, is
6 amended by adding at the end the following:

7 “(n)(1) Except as otherwise provided in this sub-
8 section, subsection (b)(22) shall apply on the date that
9 is 30 days after the date on which the bankruptcy petition
10 is filed, if the debtor files with the petition and serves upon

11 the lessor a certification under penalty of perjury that—

12 “(A) under nonbankruptcy law applicable in the
13 jurisdiction, there are circumstances under which the
14 debtor would be permitted to cure the entire mone-
15 tary default that gave rise to the judgment for pos-
16 session, after that judgment for possession was en-
17 tered; and

18 “(B) the debtor (or an adult dependent of the
19 debtor) has deposited with the clerk of the court,
20 any rent that would become due during the 30-day
21 period after the filing of the bankruptcy petition.

22 “(2) If, within the 30-day period after the filing of
23 the bankruptcy petition, the debtor (or an adult dependent
24 of the debtor) complies with paragraph (1) and files with
25 the court and serves upon the lessor a further certification



1 under penalty of perjury that the debtor (or an adult de-
2 pendent of the debtor) has cured, under nonbankruptcy
3 law applicable in the jurisdiction, the entire monetary de-
4 fault that gave rise to the judgment under which posses-
5 sion is sought by the lessor, subsection (b)(22) shall not
6 apply, unless ordered to apply by the court under para-
7 graph (3).

8 “(3)(A) If the lessor files an objection to any certifi-
9 cation filed by the debtor under paragraph (1) or (2), and
10 serves such objection upon the debtor, the court shall hold
11 a hearing within 10 days after the filing and service of
12 such objection to determine if the certification filed by the
13 debtor under paragraph (1) or (2) is true.

14 “(B) If the court upholds the objection of the lessor
15 filed under subparagraph (A)—

16 “(i) subsection (b)(22) shall apply immediately
17 and relief from the stay provided under subsection
18 (a)(3) shall not be required to enable the lessor to
19 complete the process to recover full possession of the
20 property; and

21 “(ii) the clerk of the court shall immediately
22 serve upon the lessor and the debtor a certified copy
23 of the court’s order upholding the lessor’s objection.

24 “(4) If a debtor, in accordance with paragraph (5),
25 indicates on the petition that there was a judgment for



1 possession of the residential rental property in which the
2 debtor resides and does not file a certification under para-
3 graph (1) or (2)—

4 “(A) subsection (b)(22) shall apply immediately
5 upon failure to file such certification, and relief from
6 the stay provided under subsection (a)(3) shall not
7 be required to enable the lessor to complete the
8 process to recover full possession of the property;
9 and

10 “(B) the clerk of the court shall immediately
11 serve upon the lessor and the debtor a certified copy
12 of the docket indicating the absence of a filed certifi-
13 cation and the applicability of the exception to the
14 stay under subsection (b)(22).

15 “(5)(A) Where a judgment for possession of residen-
16 tial property in which the debtor resides as a tenant under
17 a lease or rental agreement has been obtained by the les-
18 sor, the debtor shall so indicate on the bankruptcy petition
19 and shall provide the name and address of the lessor that
20 obtained that pre-petition judgment on the petition and
21 on any certification filed under this subsection.

22 “(B) The form of certification filed with the petition,
23 as specified in this subsection, shall provide for the debtor
24 to certify, and the debtor shall certify—



1 “(i) whether a judgment for possession of resi-
2 dential rental housing in which the debtor resides
3 has been obtained against the debtor before the fil-
4 ing of the petition; and

5 “(ii) whether the debtor is claiming under para-
6 graph (1) that under nonbankruptcy law applicable
7 in the jurisdiction, there are circumstances under
8 which the debtor would be permitted to cure the en-
9 tire monetary default that gave rise to the judgment
10 for possession, after that judgment of possession was
11 entered, and has made the appropriate deposit with
12 the court.

13 “(C) The standard forms (electronic and otherwise)
14 used in a bankruptcy proceeding shall be amended to re-
15 flect the requirements of this subsection.

16 “(D) The clerk of the court shall arrange for the
17 prompt transmittal of the rent deposited in accordance
18 with paragraph (1)(B) to the lessor.

19 “(o)(1) Except as otherwise provided in this sub-
20 section, subsection (b)(23) shall apply on the date that
21 is 15 days after the date on which the lessor files and
22 serves a certification described in subsection (b)(23).

23 “(2)(A) If the debtor files with the court an objection
24 to the truth or legal sufficiency of the certification de-
25 scribed in subsection (b)(23) and serves such objection



1 upon the lessor, subsection (b)(23) shall not apply, unless
2 ordered to apply by the court under this subsection.

3 “(B) If the debtor files and serves the objection under
4 subparagraph (A), the court shall hold a hearing within
5 10 days after the filing and service of such objection to
6 determine if the situation giving rise to the lessor’s certifi-
7 cation under paragraph (1) existed or has been remedied.

8 “(C) If the debtor can demonstrate to the satisfaction
9 of the court that the situation giving rise to the lessor’s
10 certification under paragraph (1) did not exist or has been
11 remedied, the stay provided under subsection (a)(3) shall
12 remain in effect until the termination of the stay under
13 this section.

14 “(D) If the debtor cannot demonstrate to the satis-
15 faction of the court that the situation giving rise to the
16 lessor’s certification under paragraph (1) did not exist or
17 has been remedied—

18 “(i) relief from the stay provided under sub-
19 section (a)(3) shall not be required to enable the les-
20 sor to proceed with the eviction; and

21 “(ii) the clerk of the court shall immediately
22 serve upon the lessor and the debtor a certified copy
23 of the court’s order upholding the lessor’s certifi-
24 cation.



1 “(3) If the debtor fails to file, within 15 days, an
2 objection under paragraph (2)(A)—

3 “(A) subsection (b)(23) shall apply immediately
4 upon such failure and relief from the stay provided
5 under subsection (a)(3) shall not be required to en-
6 able the lessor to complete the process to recover full
7 possession of the property; and

8 “(B) the clerk of the court shall immediately
9 serve upon the lessor and the debtor a certified copy
10 of the docket indicating such failure.”.

11 **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**

12 **DISCHARGES.**

13 Title 11, United States Code, is amended—

14 (1) in section 727(a)(8), by striking “six” and
15 inserting “8”; and

16 (2) in section 1328, by inserting after sub-
17 section (e) the following:

18 “(f) Notwithstanding subsections (a) and (b), the
19 court shall not grant a discharge of all debts provided for
20 in the plan or disallowed under section 502, if the debtor
21 has received a discharge—

22 “(1) in a case filed under chapter 7, 11, or 12
23 of this title during the 4-year period preceding the
24 date of the order for relief under this chapter, or



1 “(2) in a case filed under chapter 13 of this
2 title during the 2-year period preceding the date of
3 such order.”.

4 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**
5 **TIQUES.**

6 (a) DEFINITION.—Section 522(f) of title 11, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “(4)(A) Subject to subparagraph (B), for purposes
10 of paragraph (1)(B), the term ‘household goods’ means—

11 “(i) clothing;

12 “(ii) furniture;

13 “(iii) appliances;

14 “(iv) 1 radio;

15 “(v) 1 television;

16 “(vi) 1 VCR;

17 “(vii) linens;

18 “(viii) china;

19 “(ix) crockery;

20 “(x) kitchenware;

21 “(xi) educational materials and educational
22 equipment primarily for the use of minor dependent
23 children of the debtor;

24 “(xii) medical equipment and supplies;



1 “(xiii) furniture exclusively for the use of minor
2 children, or elderly or disabled dependents of the
3 debtor;

4 “(xiv) personal effects (including the toys and
5 hobby equipment of minor dependent children and
6 wedding rings) of the debtor and the dependents of
7 the debtor; and

8 “(xv) 1 personal computer and related equip-
9 ment.

10 “(B) The term ‘household goods’ does not include—

11 “(i) works of art (unless by or of the debtor, or
12 any relative of the debtor);

13 “(ii) electronic entertainment equipment with a
14 fair market value of more than \$500 in the aggre-
15 gate (except 1 television, 1 radio, and 1 VCR);

16 “(iii) items acquired as antiques with a fair
17 market value of more than \$500 in the aggregate;

18 “(iv) jewelry with a fair market value of more
19 than \$500 in the aggregate (except wedding rings);
20 and

21 “(v) a computer (except as otherwise provided
22 for in this section), motor vehicle (including a trac-
23 tor or lawn tractor), boat, or a motorized rec-
24 reational device, conveyance, vehicle, watercraft, or
25 aircraft.”.



1 (b) STUDY.—Not later than 2 years after the date
2 of enactment of this Act, the Director of the Executive
3 Office for United States Trustees shall submit a report
4 to the Committee on the Judiciary of the Senate and the
5 Committee on the Judiciary of the House of Representa-
6 tives containing its findings regarding utilization of the
7 definition of household goods, as defined in section
8 522(f)(4) of title 11, United States Code, as added by this
9 section, with respect to the avoidance of nonpossessory,
10 nonpurchase money security interests in household goods
11 under section 522(f)(1)(B) of title 11, United States Code,
12 and the impact that section 522(f)(4) of that title, as
13 added by this section, has had on debtors and on the bank-
14 ruptcy courts. Such report may include recommendations
15 for amendments to section 522(f)(4) of title 11, United
16 States Code, consistent with the Director’s findings.

17 **SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE**
18 **DEBTS.**

19 (a) IN GENERAL.—Section 523(a) of title 11, United
20 States Code, is amended by inserting after paragraph (14)
21 the following:

22 “(14A) incurred to pay a tax to a governmental
23 unit, other than the United States, that would be
24 nondischargeable under paragraph (1);”.



1 (b) DISCHARGE UNDER CHAPTER 13.—Section
2 1328(a) of title 11, United States Code, is amended by
3 striking paragraphs (1) through (3) and inserting the fol-
4 lowing:

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

6 “(2) of the kind specified in paragraph (2), (3),
7 (4), (5), (8), or (9) of section 523(a);

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

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

16 **SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7**
17 **AND 13 CASES.**

18 (a) NOTICE.—Section 342 of title 11, United States
19 Code, as amended by section 102, is amended—

20 (1) in subsection (c)—

21 (A) by inserting “(1)” after “(c)”;

22 (B) by striking “, but the failure of such
23 notice to contain such information shall not in-
24 validate the legal effect of such notice”; and

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



1 “(2)(A) If, within the 90 days before the commence-
2 ment of a voluntary case, a creditor supplies the debtor
3 in at least 2 communications sent to the debtor with the
4 current account number of the debtor and the address at
5 which such creditor requests to receive correspondence,
6 then any notice required by this title to be sent by the
7 debtor to such creditor shall be sent to such address and
8 shall include such account number.

9 (B) If a creditor would be in violation of applicable
10 nonbankruptcy law by sending any such communication
11 within such 90-day period and if such creditor supplies
12 the debtor in the last 2 communications with the current
13 account number of the debtor and the address at which
14 such creditor requests to receive correspondence, then any
15 notice required by this title to be sent by the debtor to
16 such creditor shall be sent to such address and shall in-
17 clude such account number; and

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

19 “(e)(1) In a case under chapter 7 or 13 of this title
20 of a debtor who is an individual, a creditor at any time
21 may both file with the court and serve on the debtor a
22 notice of address to be used to provide notice in such case
23 to such creditor.

24 “(2) Any notice in such case required to be provided
25 to such creditor by the debtor or the court later than 5



1 days after the court and the debtor receive such creditor's
2 notice of address, shall be provided to such address.

3 “(f)(1) An entity may file with any bankruptcy court
4 a notice of address to be used by all the bankruptcy courts
5 or by particular bankruptcy courts, as so specified by such
6 entity at the time such notice is filed, to provide notice
7 to such entity in all cases under chapters 7 and 13 pend-
8 ing in the courts with respect to which such notice is filed,
9 in which such entity is a creditor.

10 “(2) In any case filed under chapter 7 or 13, any
11 notice required to be provided by a court with respect to
12 which a notice is filed under paragraph (1), to such entity
13 later than 30 days after the filing of such notice under
14 paragraph (1) shall be provided to such address unless
15 with respect to a particular case a different address is
16 specified in a notice filed and served in accordance with
17 subsection (e).

18 “(3) A notice filed under paragraph (1) may be with-
19 drawn by such entity.

20 “(g)(1) Notice provided to a creditor by the debtor
21 or the court other than in accordance with this section
22 (excluding this subsection) shall not be effective notice
23 until such notice is brought to the attention of such cred-
24 itor. If such creditor designates a person or an organiza-
25 tional subdivision of such creditor to be responsible for



1 receiving notices under this title and establishes reason-
2 able procedures so that such notices receivable by such
3 creditor are to be delivered to such person or such subdivi-
4 sion, then a notice provided to such creditor other than
5 in accordance with this section (excluding this subsection)
6 shall not be considered to have been brought to the atten-
7 tion of such creditor until such notice is received by such
8 person or such subdivision.

9 “(2) A monetary penalty may not be imposed on a
10 creditor for a violation of a stay in effect under section
11 362(a) of this title (including a monetary penalty imposed
12 under section 362(k) of this title) or for failure to comply
13 with section 542 or 543 unless the conduct that is the
14 basis of such violation or of such failure occurs after such
15 creditor receives notice effective under this section of the
16 order for relief.”.

17 (b) DEBTOR’S DUTIES.—Section 521 of title 11,
18 United States Code, as amended by sections 106, 225, and
19 305, is amended—

20 (1) in subsection (a), as so designated by sec-
21 tion 106, by amending paragraph (1) to read as fol-
22 lows:

23 “(1) file—

24 “(A) a list of creditors; and

25 “(B) unless the court orders otherwise—



1 “(i) a schedule of assets and liabil-
2 ities;

3 “(ii) a schedule of current income and
4 current expenditures;

5 “(iii) a statement of the debtor’s fi-
6 nancial affairs and, if section 342(b) ap-
7 plies, a certificate—

8 “(I) of an attorney whose name
9 is indicated on the petition as the at-
10 torney for the debtor, or any bank-
11 ruptcy petition preparer signing the
12 petition under section 110(b)(1), indi-
13 cating that such attorney or such
14 bankruptcy petition preparer delivered
15 to the debtor the notice required by
16 section 342(b); or

17 “(II) if no attorney is so indi-
18 cated, and no bankruptcy petition pre-
19 parer signed the petition, of the debt-
20 or that such notice was received and
21 read by the debtor;

22 “(iv) copies of all payment advices or
23 other evidence of payment received within
24 60 days before the filing of the petition, by



1 the debtor from any employer of the debt-
2 or;

3 “(v) a statement of the amount of
4 monthly net income, itemized to show how
5 the amount is calculated; and

6 “(vi) a statement disclosing any rea-
7 sonably anticipated increase in income or
8 expenditures over the 12-month period fol-
9 lowing the date of the filing of the peti-
10 tion;” and

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

12 “(e)(1) If the debtor in a case under chapter 7 or
13 13 is an individual and if a creditor files with the court
14 at any time a request to receive a copy of the petition,
15 schedules, and statement of financial affairs filed by the
16 debtor, then the court shall make such petition, such
17 schedules, and such statement available to such creditor.

18 “(2)(A) The debtor shall provide—

19 “(i) not later than 7 days before the date first
20 set for the first meeting of creditors, to the trustee
21 a copy of the Federal income tax return required
22 under applicable law (or at the election of the debt-
23 or, a transcript of such return) for the most recent
24 tax year ending immediately before the commence-



1 ment of the case and for which a Federal income tax
2 return was filed; and

3 “(ii) at the same time the debtor complies with
4 clause (i), a copy of such return (or if elected under
5 clause (i), such transcript) to any creditor that time-
6 ly requests such copy.

7 “(B) If the debtor fails to comply with clause (i) or
8 (ii) of subparagraph (A), the court shall dismiss the case
9 unless the debtor demonstrates that the failure to so com-
10 ply is due to circumstances beyond the control of the debt-
11 or.

12 “(C) If a creditor requests a copy of such tax return
13 or such transcript and if the debtor fails to provide a copy
14 of such tax return or such transcript to such creditor at
15 the time the debtor provides such tax return or such tran-
16 script to the trustee, then the court shall dismiss the case
17 unless the debtor demonstrates that the failure to provide
18 a copy of such tax return or such transcript is due to cir-
19 cumstances beyond the control of the debtor.

20 “(3) If a creditor in a case under chapter 13 files
21 with the court at any time a request to receive a copy
22 of the plan filed by the debtor, then the court shall make
23 available to such creditor a copy of such plan—

24 “(A) at a reasonable cost; and



1 “(B) not later than 5 days after such request
2 is filed.

3 “(f) At the request of the court, the United States
4 trustee, or any party in interest in a case under chapter
5 7, 11, or 13, a debtor who is an individual shall file with
6 the court—

7 “(1) at the same time filed with the taxing au-
8 thority, a copy of each Federal income tax return re-
9 quired under applicable law (or at the election of the
10 debtor, a transcript of such tax return) with respect
11 to each tax year of the debtor ending while the case
12 is pending under such chapter;

13 “(2) at the same time filed with the taxing au-
14 thority, each Federal income tax return required
15 under applicable law (or at the election of the debt-
16 or, a transcript of such tax return) that had not
17 been filed with such authority as of the date of the
18 commencement of the case and that was subse-
19 quently filed for any tax year of the debtor ending
20 in the 3-year period ending on the date of the com-
21 mencement of the case;

22 “(3) a copy of each amendment to any Federal
23 income tax return or transcript filed with the court
24 under paragraph (1) or (2); and

25 “(4) in a case under chapter 13—



1 “(A) on the date that is either 90 days
2 after the end of such tax year or 1 year after
3 the date of the commencement of the case,
4 whichever is later, if a plan is not confirmed be-
5 fore such later date; and

6 “(B) annually after the plan is confirmed
7 and until the case is closed, not later than the
8 date that is 45 days before the anniversary of
9 the confirmation of such plan;

10 a statement, under penalty of perjury, of the income
11 and expenditures of the debtor during the tax year
12 of the debtor most recently concluded before such
13 statement is filed under this paragraph, and of the
14 monthly income of the debtor, that shows how in-
15 come, expenditures, and monthly income are cal-
16 culated.

17 “(g)(1) A statement referred to in subsection (f)(4)
18 shall disclose—

19 “(A) the amount and sources of the income of
20 the debtor;

21 “(B) the identity of any person responsible with
22 the debtor for the support of any dependent of the
23 debtor; and



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

4 “(2) The tax returns, amendments, and statement of
5 income and expenditures described in subsections
6 (e)(2)(A) and (f) shall be available to the United States
7 trustee (or the bankruptcy administrator, if any), the
8 trustee, and any party in interest for inspection and copy-
9 ing, subject to the requirements of subsection (h).

10 “(h)(1) Not later than 180 days after the date of the
11 enactment of the Bankruptcy Abuse Prevention and Con-
12 sumer Protection Act of 2002, the Director of the Admin-
13 istrative Office of the United States Courts shall establish
14 procedures for safeguarding the confidentiality of any tax
15 information required to be provided under this section.

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

19 “(3) Not later than 540 days after the date of enact-
20 ment of the Bankruptcy Abuse Prevention and Consumer
21 Protection Act of 2002, the Director of the Administrative
22 Office of the United States Courts shall prepare and sub-
23 mit to the President pro tempore of the Senate and the
24 Speaker of the House of Representatives a report that—



1 voluntary case under chapter 7 or 13 fails to file all of
2 the information required under subsection (a)(1) within
3 45 days after the filing of the petition commencing the
4 case, the case shall be automatically dismissed effective
5 on the 46th day after the filing of the petition.

6 “(2) Subject to paragraph (4) and with respect to
7 a case described in paragraph (1), any party in interest
8 may request the court to enter an order dismissing the
9 case. If requested, the court shall enter an order of dis-
10 missal not later than 5 days after such request.

11 “(3) Subject to paragraph (4) and upon request of
12 the debtor made within 45 days after the filing of the peti-
13 tion commencing a case described in paragraph (1), the
14 court may allow the debtor an additional period of not to
15 exceed 45 days to file the information required under sub-
16 section (a)(1) if the court finds justification for extending
17 the period for the filing.

18 “(4) Notwithstanding any other provision of this sub-
19 section, on the motion of the trustee filed before the expi-
20 ration of the applicable period of time specified in para-
21 graph (1), (2), or (3), and after notice and a hearing, the
22 court may decline to dismiss the case if the court finds
23 that the debtor attempted in good faith to file all the infor-
24 mation required by subsection (a)(1)(B)(iv) and that the



1 best interests of creditors would be served by administra-
2 tion of the case.”.

3 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**
4 **CONFIRMATION OF THE PLAN.**

5 Section 1324 of title 11, United States Code, is
6 amended—

7 (1) by striking “After” and inserting the fol-
8 lowing:

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

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

12 “(b) The hearing on confirmation of the plan may
13 be held not earlier than 20 days and not later than 45
14 days after the date of the meeting of creditors under sec-
15 tion 341(a), unless the court determines that it would be
16 in the best interests of the creditors and the estate to hold
17 such hearing at an earlier date and there is no objection
18 to such earlier date.”.

19 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**
20 **IN CERTAIN CASES.**

21 Title 11, United States Code, is amended—

22 (1) by amending section 1322(d) to read as fol-
23 lows:



1 “(d)(1) If the current monthly income of the debtor
2 and the debtor’s spouse combined, when multiplied by 12,
3 is not less than—

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

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

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

16 the plan may not provide for payments over a period that
17 is longer than 5 years.

18 “(2) If the current monthly income of the debtor and
19 the debtor’s spouse combined, when multiplied by 12, is
20 less than—

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

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



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

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

8 the plan may not provide for payments over a period that
9 is longer than 3 years, unless the court, for cause, ap-
10 proves a longer period, but the court may not approve a
11 period that is longer than 5 years.”;

12 (2) in section 1325(b)(1)(B), by striking
13 “three-year period” and inserting “applicable com-
14 mitment period”; and

15 (3) in section 1325(b), as amended by section
16 102, by adding at the end the following:

17 “(4) For purposes of this subsection, the ‘applicable
18 commitment period’—

19 “(A) subject to subparagraph (B), shall be—

20 “(i) 3 years; or

21 “(ii) not less than 5 years, if the current
22 monthly income of the debtor and the debtor’s
23 spouse combined, when multiplied by 12, is not
24 less than—



1 “(I) in the case of a debtor in a
2 household of 1 person, the median family
3 income of the applicable State for 1 earn-
4 er;

5 “(II) in the case of a debtor in a
6 household of 2, 3, or 4 individuals, the
7 highest median family income of the appli-
8 cable State for a family of the same num-
9 ber or fewer individuals; or

10 “(III) in the case of a debtor in a
11 household exceeding 4 individuals, the
12 highest median family income of the appli-
13 cable State for a family of 4 or fewer indi-
14 viduals , plus \$525 per month for each in-
15 dividual in excess of 4; and

16 “(B) may be less than 3 or 5 years, whichever
17 is applicable under subparagraph (A), but only if the
18 plan provides for payment in full of all allowed unse-
19 cured claims over a shorter period.”; and

20 (4) in section 1329(c), by striking “three
21 years” and inserting “the applicable commitment pe-
22 riod under section 1325(b)(1)(B)”.



1 **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**
2 **RULE 9011 OF THE FEDERAL RULES OF BANK-**
3 **RUPTCY PROCEDURE.**

4 It is the sense of Congress that rule 9011 of the Fed-
5 eral Rules of Bankruptcy Procedure (11 U.S.C. App.)
6 should be modified to include a requirement that all docu-
7 ments (including schedules), signed and unsigned, sub-
8 mitted to the court or to a trustee by debtors who rep-
9 resent themselves and debtors who are represented by at-
10 torneys be submitted only after the debtors or the debtors'
11 attorneys have made reasonable inquiry to verify that the
12 information contained in such documents is—

13 (1) well grounded in fact; and

14 (2) warranted by existing law or a good faith
15 argument for the extension, modification, or reversal
16 of existing law.

17 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**
18 **CASES.**

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

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

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

23 “(2) Notwithstanding paragraph (1), in a case under
24 chapter 7, 11, or 13 in which the debtor is an individual,
25 the stay under subsection (a) shall terminate on the date



1 that is 60 days after a request is made by a party in inter-
2 est under subsection (d), unless—

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

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

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

8 or

9 “(ii) by the court for such specific period
10 of time as the court finds is required for good
11 cause, as described in findings made by the
12 court.”.

13 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

14 (a) PROPERTY OF THE ESTATE.—

15 (1) IN GENERAL.—Subchapter I of chapter 11
16 of title 11, United States Code, is amended by add-
17 ing at the end the following:

18 **“§ 1115. Property of the estate**

19 “(a) In a case concerning a debtor who is an indi-
20 vidual, property of the estate includes, in addition to the
21 property specified in section 541—

22 “(1) all property of the kind specified in section
23 541 that the debtor acquires after the commence-
24 ment of the case but before the case is closed, dis-



1 missed, or converted to a case under chapter 7, 12,
2 or 13, whichever occurs first; and

3 “(2) earnings from services performed by the
4 debtor after the commencement of the case but be-
5 fore the case is closed, dismissed, or converted to a
6 case under chapter 7, 12, or 13, whichever occurs
7 first.”.

8 “(b) Except as provided in section 1104 or a con-
9 firmed plan or order confirming a plan, the debtor shall
10 remain in possession of all property of the estate.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for subchapter I of chapter 11 of title 11,
13 United States Code, is amended by adding at the
14 end the following:

“1115. Property of the estate.”.

15 (b) CONTENTS OF PLAN.—Section 1123(a) of title
16 11, United States Code, is amended—

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

19 (2) in paragraph (7), by striking the period and
20 inserting “; and”; and

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

22 “(8) in a case in which the debtor is an indi-
23 vidual, provide for the payment to creditors under
24 the plan of all or such portion of earnings from per-
25 sonal services performed by the debtor after the



1 commencement of the case or other future income of
2 the debtor as is necessary for the execution of the
3 plan.”.

4 (c) CONFIRMATION OF PLAN.—

5 (1) REQUIREMENTS RELATING TO VALUE OF
6 PROPERTY.—Section 1129(a) of title 11, United
7 States Code, as amended by section 213, is amended
8 by adding at the end the following:

9 “(15) In a case in which the debtor is an indi-
10 vidual and in which the holder of an allowed unse-
11 cured claim objects to the confirmation of the plan—

12 “(A) the value, as of the effective date of
13 the plan, of the property to be distributed
14 under the plan on account of such claim is not
15 less than the amount of such claim; or

16 “(B) the value of the property to be dis-
17 tributed under the plan is not less than the pro-
18 jected disposable income of the debtor (as de-
19 fined in section 1325(b)(2)) to be received dur-
20 ing the 5-year period beginning on the date that
21 the first payment is due under the plan, or dur-
22 ing the period for which the plan provides pay-
23 ments, whichever is longer.”.

24 (2) REQUIREMENT RELATING TO INTERESTS IN
25 PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,



1 United States Code, is amended by inserting before
2 the period at the end the following: “, except that
3 in a case in which the debtor is an individual, the
4 debtor may retain property included in the estate
5 under section 1115, subject to the requirements of
6 subsection (a)(14) of this section.”.

7 (d) EFFECT OF CONFIRMATION.—Section 1141(d) of
8 title 11, United States Code, is amended—

9 (1) in paragraph (2), by striking “The con-
10 firmation of a plan does not discharge an individual
11 debtor” and inserting “A discharge under this chap-
12 ter does not discharge a debtor who is an indi-
13 vidual”; and

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

15 “(5) In a case in which the debtor is an individual—

16 “(A) unless after notice and a hearing the court
17 orders otherwise for cause, confirmation of the plan
18 does not discharge any debt provided for in the plan
19 until the court grants a discharge on completion of
20 all payments under the plan;

21 “(B) at any time after the confirmation of the
22 plan, and after notice and a hearing, the court may
23 not grant a discharge to the debtor who has not
24 completed payments under the plan unless—



1 “(i) for each allowed unsecured claim, the
2 value, as of the effective date of the plan, of
3 property actually distributed under the plan on
4 account of that claim is not less than the
5 amount that would have been paid on such
6 claim if the estate of the debtor had been liq-
7 uidated under chapter 7 of this title on such
8 date; and

9 “(ii) modification of the plan under section
10 1127 of this title is not practicable; and”.

11 (e) MODIFICATION OF PLAN.—Section 1127 of title
12 11, United States Code, is amended by adding at the end
13 the following:

14 “(e) If the debtor is an individual, the plan may be
15 modified at any time after confirmation of the plan but
16 before the completion of payments under the plan, whether
17 or not the plan has been substantially consummated, upon
18 request of the debtor, the trustee, the United States trust-
19 ee, or the holder of an allowed unsecured claim, to—

20 “(1) increase or reduce the amount of payments
21 on claims of a particular class provided for by the
22 plan;

23 “(2) extend or reduce the time period for such
24 payments; or



1 “(3) alter the amount of the distribution to a
2 creditor whose claim is provided for by the plan to
3 the extent necessary to take account of any payment
4 of such claim made other than under the plan.

5 “(f)(1) Sections 1121 through 1128 of this title and
6 the requirements of section 1129 of this title apply to any
7 modification under subsection (a).

8 “(2) The plan, as modified, shall become the plan
9 only after there has been disclosure under section 1125
10 as the court may direct, notice and a hearing, and such
11 modification is approved.”.

12 **SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.**

13 (a) EXEMPTIONS.—Section 522 of title 11, United
14 States Code, as amended by sections 224 and 308, is
15 amended by adding at the end the following:

16 “(p)(1) Except as provided in paragraph (2) of this
17 subsection and sections 544 and 548 of this title, as a
18 result of electing under subsection (b)(3)(A) to exempt
19 property under State or local law, a debtor may not ex-
20 empt any amount of interest that was acquired by the
21 debtor during the 1215-day period preceding the filing of
22 the petition which exceeds in the aggregate \$125,000 in
23 value in—

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



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

4 “(C) a burial plot for the debtor or a dependent
5 of the debtor; or

6 “(D) real or personal property that the debtor
7 or dependent of the debtor claims as a homestead.

8 “(2)(A) The limitation under paragraph (1) shall not
9 apply to an exemption claimed under subsection (b)(3)(A)
10 by a family farmer for the principal residence of that
11 farmer.

12 “(B) For purposes of paragraph (1), any amount of
13 such interest does not include any interest transferred
14 from a debtor’s previous principal residence (which was
15 acquired prior to the beginning of such 1215-day period)
16 into the debtor’s current principal residence, if the debt-
17 or’s previous and current residences are located in the
18 same State.

19 “(q)(1) As a result of electing under subsection
20 (b)(3)(A) to exempt property under State or local law, a
21 debtor may not exempt any amount of an interest in prop-
22 erty described in subparagraphs (A), (B), and (C) of sub-
23 section (p) which exceeds in the aggregate \$125,000 if—

24 “(A) the court determines, after notice and a
25 hearing, that the debtor has been convicted of a fel-



1 ony (as defined in section 3156 of title 18), which
2 under the circumstances, demonstrates that the fil-
3 ing of the case was an abuse of the provisions of this
4 title; or

5 “(B) the debtor owes a debt arising from—

6 “(i) any violation of the Federal securities
7 laws (as defined in section 3(a)(47) of the Secu-
8 rities Exchange Act of 1934), any State securi-
9 ties laws, or any regulation or order issued
10 under Federal securities laws or State securities
11 laws;

12 “(ii) fraud, deceit, or manipulation in a fi-
13 duciary capacity or in connection with the pur-
14 chase or sale of any security registered under
15 section 12 or 15(d) of the Securities Exchange
16 Act of 1934 or under section 6 of the Securities
17 Act of 1933;

18 “(iii) any civil remedy under section 1964
19 of title 18, United States Code; or

20 “(iv) any criminal act, intentional tort, or
21 willful or reckless misconduct that caused seri-
22 ous physical injury or death to another indi-
23 vidual in the preceding 5 years.

24 “(2) Paragraph (1) shall not apply to the extent the
25 amount of an interest in property described in subpara-



1 graphs (A), (B), and (C) of subsection (p) is reasonably
2 necessary for the support of the debtor and any dependent
3 of the debtor.”.

4 (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Para-
5 graphs (1) and (2) of section 104(b) of title 11, United
6 States Code, as amended by section 224, are amended by
7 inserting “522(p), 522(q),” after “522(n),”.

8 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**
9 **PANT CONTRIBUTIONS AND OTHER PROP-**
10 **ERTY FROM THE ESTATE.**

11 Section 541(b) of title 11, United States Code, as
12 amended by section 225, is amended by adding at the end
13 the following:

14 “(7) any amount—

15 “(A) withheld by an employer from the
16 wages of employees for payment as contribu-
17 tions to—

18 “(i) an employee benefit plan subject
19 to title I of the Employee Retirement In-
20 come Security Act of 1974 or under an
21 employee benefit plan which is a govern-
22 mental plan under section 414(d) of the
23 Internal Revenue Code of 1986, a deferred
24 compensation plan under section 457 of
25 the Internal Revenue Code of 1986, or a



1 tax-deferred annuity under section 403(b)
2 of the Internal Revenue Code of 1986, ex-
3 cept that such amount under this clause
4 shall not constitute disposable income, as
5 defined in section 1325(b)(2) of this title;
6 or

7 “(ii) a health insurance plan regulated
8 by State law whether or not subject to
9 such title; or

10 “(B) received by the employer from em-
11 ployees for payment as contributions to—

12 “(i) an employee benefit plan subject
13 to title I of the Employee Retirement In-
14 come Security Act of 1974 or under an
15 employee benefit plan which is a govern-
16 mental plan under section 414(d) of the
17 Internal Revenue Code of 1986, a deferred
18 compensation plan under section 457 of
19 the Internal Revenue Code of 1986, or a
20 tax-deferred annuity under section 403(b)
21 of the Internal Revenue Code of 1986, ex-
22 cept that such amount under this clause
23 shall not constitute disposable income, as
24 defined in section 1325(b)(2) of this title;
25 or



1 “(ii) a health insurance plan regulated
2 by State law whether or not subject to
3 such title;”.

4 **SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLV-**
5 **ING BANKRUPTCY PROFESSIONALS.**

6 (a) IN GENERAL.—Section 1334 of title 28, United
7 States Code, is amended—

8 (1) in subsection (b), by striking “Notwith-
9 standing” and inserting “Except as provided in sub-
10 section (e)(2), and notwithstanding”; and

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

13 “(e) The district court in which a case under title
14 11 is commenced or is pending shall have exclusive
15 jurisdiction—

16 “(1) of all the property, wherever located, of the
17 debtor as of the date of commencement of such case,
18 and of property of the estate; and

19 “(2) over all claims or causes of action that in-
20 volve construction of section 327 of title 11, United
21 States Code, or rules relating to disclosure require-
22 ments under section 327.”.

23 (b) APPLICABILITY.—This section shall only apply to
24 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) If the debtor is an individual in a case under
4 chapter 7 or 13, such value with respect to personal prop-
5 erty securing an allowed claim shall be determined based
6 on the replacement value of such property as of the date
7 of filing the petition without deduction for costs of sale
8 or marketing. With respect to property acquired for per-
9 sonal, family, or household purposes, replacement value
10 shall mean the price a retail merchant would charge for
11 property of that kind considering the age and condition
12 of the 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 this paragraph;” 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 nonresidential 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 **SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND**
4 **BENEFITS.**

5 Section 503(b)(1)(A) of title 11, United States Code,
6 is amended to read as follows:

7 “(A) the actual, necessary costs and expenses of pre-
8 serving the estate including—

9 “(i) wages, salaries, or commissions for services
10 rendered after the commencement of the case; and

11 “(ii) wages and benefits awarded pursuant to a
12 judicial proceeding or a proceeding of the National
13 Labor Relations Board as back pay attributable to
14 any period of time occurring after commencement of
15 the case under this title, as a result of a violation
16 of Federal or State law by the debtor, without re-
17 gard to the time of the occurrence of unlawful con-
18 duct on which such award is based or to whether
19 any services were rendered, if the court determines
20 that payment of wages and benefits by reason of the
21 operation of this clause will not substantially in-
22 crease the probability of layoff or termination of cur-
23 rent employees, or of nonpayment of domestic sup-
24 port obligations, during the case under this title;”.



1 **SEC. 330. NONDISCHARGEABILITY OF DEBTS INCURRED**
2 **THROUGH VIOLATIONS OF LAWS RELATING**
3 **TO THE PROVISION OF LAWFUL GOODS AND**
4 **SERVICES.**

5 (a) DEBTS INCURRED THROUGH VIOLATIONS OF
6 LAW RELATING TO THE PROVISION OF LAWFUL GOODS
7 AND SERVICES.—Section 523(a) of title 11, United States
8 Code, as amended by section 224, is amended—

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

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

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

14 “(20) that results from any judgment, order,
15 consent order, or decree entered in any Federal or
16 State court, or contained in any settlement agree-
17 ment entered into by the debtor (including any
18 court-ordered damages, fine, penalty, or attorney fee
19 or cost owed by the debtor), that arises from—

20 “(A) the violation by the debtor of any
21 Federal or State statutory law, including but
22 not limited to violations of title 18, that results
23 from intentional actions of the debtor that—

24 “(i) by force or threat of force or by
25 physical obstruction, intentionally injure,
26 intimidate, or interfere with or attempt to



1 injure, intimidate or interfere with any
2 person because that person is or has been,
3 or in order to intimidate such person or
4 any other person or any class of persons
5 from, obtaining or providing lawful goods
6 or services;

7 “(ii) by force or threat of force or by
8 physical obstruction, intentionally injure,
9 intimidate, or interfere with or attempt to
10 injure, intimidate or interfere with any
11 person lawfully exercising or seeking to ex-
12 ercise the First Amendment right of reli-
13 gious freedom at a place of religious wor-
14 ship; or

15 “(iii) intentionally damage or destroy
16 the property of a facility, or attempt to do
17 so, because such facility provides lawful
18 goods or services, or intentionally damage
19 or destroy the property of a place of reli-
20 gious worship; or

21 “(B) a violation of a court order or injunc-
22 tion that protects access to a facility that or a
23 person who provides lawful goods or services or
24 the provision of lawful goods or services if—



1 “(i) such violation is intentional or
2 knowing; or

3 “(ii) such violation occurs after a
4 court has found that the debtor previously
5 violated—

6 “(I) such court order or such in-
7 junction; or

8 “(II) any other court order or in-
9 junction that protects access to the
10 same facility or the same person;

11 except that nothing in this paragraph shall be con-
12 strued to affect any expressive conduct (including
13 peaceful picketing, peaceful prayer, or other peaceful
14 demonstration) protected from legal prohibition by
15 the first amendment to the Constitution of the
16 United States.”.

17 (b) RESTITUTION.—Section 523(a)(13) of title 11,
18 United States Code, is amended by inserting “or under
19 the criminal law of a State” after “title 18”.

20 **SEC. 331. DELAY OF DISCHARGE DURING PENDENCY OF**
21 **CERTAIN PROCEEDINGS.**

22 (a) CHAPTER 7.—Section 727(a) of title 11, United
23 States Code, as amended by section 106, is amended—

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



1 (2) in paragraph (11) by striking the period at
2 the end and inserting “; or”; and

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

5 “(12) the court after notice and a hearing held
6 not more than 10 days before the date of entry of
7 the order granting the discharge finds that there is
8 reasonable cause to believe that—

9 “(A) section 522(q)(1) may be applicable
10 to the debtor; and

11 “(B) there is pending any proceeding in
12 which the debtor may be found guilty of a fel-
13 ony of the kind described in section
14 522(q)(1)(A) or liable for a debt of the kind de-
15 scribed in section 522(q)(1)(B); or”.

16 (b) CHAPTER 11.—Section 1141(d) of title 11,
17 United States Code, as amended by section 321, is amend-
18 ed by adding at the end the following:

19 “(C) unless after notice and a hearing held
20 not more than 10 days before the date of entry
21 of the order granting the discharge, the court
22 finds that there is no reasonable cause to be-
23 lieve that—

24 “(i) section 522(q)(1) may be applica-
25 ble to the debtor; and



1 “(ii) there is pending any proceeding
2 in which the debtor may be found guilty of
3 a felony of the kind described in section
4 522(q)(1)(A) or liable for a debt of the
5 kind described in section 522(q)(1)(B).”.

6 (c) CHAPTER 12.—Section 1228 of title 11, United
7 States Code, is amended—

8 (1) in subsection (a) by striking “As” and in-
9 serting “Subject to subsection (d), as”,

10 (2) in subsection (b) by striking “At” and in-
11 serting “Subject to subsection (d), at”, and

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

13 “(f) The court may not grant a discharge under this
14 chapter unless the court after notice and a hearing held
15 not more than 10 days before the date of entry of the
16 order granting the discharge finds that there is no reason-
17 able cause to believe that—

18 “(1) section 522(q)(1) may be applicable to the
19 debtor; and

20 “(2) there is pending any proceeding in which
21 the debtor may be found guilty of a felony of the
22 kind described in section 522(q)(1)(A) or liable for
23 a debt of the kind described in section
24 522(q)(1)(B).”.



1 (d) CHAPTER 13.—Section 1328 of title 11, United
2 States Code, as amended by section 106, is amended—

3 (1) in subsection (a) by striking “As” and in-
4 serting “Subject to subsection (d), as”,

5 (2) in subsection (b) by striking “At” and in-
6 serting “Subject to subsection (d), at”, and

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

8 “(h) The court may not grant a discharge under this
9 chapter unless the court after notice and a hearing held
10 not more than 10 days before the date of entry of the
11 order granting the discharge finds that there is no reason-
12 able cause to believe that—

13 “(1) section 522(q)(1) may be applicable to the
14 debtor; and

15 “(2) there is pending any proceeding in which
16 the debtor may be found guilty of a felony of the
17 kind described in section 522(q)(1)(A) or liable for
18 a debt of the kind described in section
19 522(q)(1)(B).”.



1 **TITLE IV—GENERAL AND SMALL**
2 **BUSINESS BANKRUPTCY PRO-**
3 **VISIONS**

4 **Subtitle A—General Business**
5 **Bankruptcy Provisions**

6 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

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

10 “(48A) ‘securities self regulatory organization’
11 means either a securities association registered with
12 the Securities and Exchange Commission under sec-
13 tion 15A of the Securities Exchange Act of 1934 or
14 a national securities exchange registered with the
15 Securities and Exchange Commission under section
16 6 of the Securities Exchange Act of 1934;”.

17 (b) AUTOMATIC STAY.—Section 362(b) of title 11,
18 United States Code, as amended by sections 224, 303, and
19 311, is amended by inserting after paragraph (24) the fol-
20 lowing:

21 “(25) under subsection (a), of—

22 “(A) the commencement or continuation of
23 an investigation or action by a securities self
24 regulatory organization to enforce such organi-
25 zation’s regulatory power;



1 “(B) the enforcement of an order or deci-
2 sion, other than for monetary sanctions, ob-
3 tained in an action by the securities self regu-
4 latory organization to enforce such organiza-
5 tion’s regulatory power; or

6 “(C) any act taken by the securities self
7 regulatory organization to delist, delete, or
8 refuse to permit quotation of any stock that
9 does not meet applicable regulatory require-
10 ments;”.

11 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**
12 **HOLDERS.**

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

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



1 **SEC. 403. PROTECTION OF REFINANCE OF SECURITY IN-**
2 **TEREST.**

3 Subparagraphs (A), (B), and (C) of section 547(e)(2)
4 of title 11, United States Code, are each amended by strik-
5 ing “10” each place it appears and inserting “30”.

6 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**
7 **LEASES.**

8 (a) IN GENERAL.—Section 365(d)(4) of title 11,
9 United States Code, is amended to read as follows:

10 “(4)(A) Subject to subparagraph (B), an unexpired
11 lease of nonresidential real property under which the debt-
12 or is the lessee shall be deemed rejected, and the trustee
13 shall immediately surrender that nonresidential real prop-
14 erty to the lessor, if the trustee does not assume or reject
15 the unexpired lease by the earlier of—

16 “(i) the date that is 120 days after the date of
17 the order for relief; or

18 “(ii) the date of the entry of an order con-
19 firming a plan.

20 “(B)(i) The court may extend the period determined
21 under subparagraph (A), prior to the expiration of the
22 120-day period, for 90 days on the motion of the trustee
23 or lessor for cause.

24 “(ii) If the court grants an extension under clause
25 (i), the court may grant a subsequent extension only upon
26 prior written consent of the lessor in each instance.”



1 (b) EXCEPTION.—Section 365(f)(1) of title 11,
2 United States Code, is amended by striking “subsection”
3 the first place it appears and inserting “subsections (b)
4 and”.

5 **SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS**
6 **COMMITTEES.**

7 (a) APPOINTMENT.—Section 1102(a) of title 11,
8 United States Code, is amended by adding at the end the
9 following:

10 “(4) On request of a party in interest and after notice
11 and a hearing, the court may order the United States
12 trustee to change the membership of a committee ap-
13 pointed under this subsection, if the court determines that
14 the change is necessary to ensure adequate representation
15 of creditors or equity security holders. The court may
16 order the United States trustee to increase the number
17 of members of a committee to include a creditor that is
18 a small business concern (as described in section 3(a)(1)
19 of the Small Business Act , if the court determines that
20 the creditor holds claims (of the kind represented by the
21 committee) the aggregate amount of which, in comparison
22 to the annual gross revenue of that creditor, is dispro-
23 tionately large.”.



1 (b) INFORMATION.—Section 1102(b) of title 11,
2 United States Code, is amended by adding at the end the
3 following:

4 “(3) A committee appointed under subsection (a)
5 shall—

6 “(A) provide access to information for creditors
7 who—

8 “(i) hold claims of the kind represented by
9 that committee; and

10 “(ii) are not appointed to the committee;

11 “(B) solicit and receive comments from the
12 creditors described in subparagraph (A); and

13 “(C) be subject to a court order that compels
14 any additional report or disclosure to be made to the
15 creditors described in subparagraph (A).”.

16 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**
17 **UNITED STATES CODE.**

18 Section 546 of title 11, United States Code, is
19 amended—

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

23 (2) in subsection (i), as so redesignated, by in-
24 serting “and subject to the prior rights of holders of



1 security interests in such goods or the proceeds of
2 such goods” after “consent of a creditor”; and

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

4 “(j)(1) Notwithstanding paragraphs (2) and (3) of
5 section 545, the trustee may not avoid a warehouseman’s
6 lien for storage, transportation, or other costs incidental
7 to the storage and handling of goods.

8 “(2) The prohibition under paragraph (1) shall be ap-
9 plied in a manner consistent with any State statute appli-
10 cable to such lien that is similar to section 7–209 of the
11 Uniform Commercial Code, as in effect on the date of en-
12 actment of the Bankruptcy Abuse Prevention and Con-
13 sumer Protection Act of 2002, or any successor to such
14 section 7–209.”.

15 **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**
16 **UNITED STATES CODE.**

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

19 (1) in paragraph (3)—

20 (A) by striking “(A) In” and inserting
21 “In”; and

22 (B) by inserting “to an examiner, trustee
23 under chapter 11, or professional person” after
24 “awarded”; and

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



1 “(7) In determining the amount of reasonable com-
2 pensation to be awarded to a trustee, the court shall treat
3 such compensation as a commission, based on section 326
4 of this title.”.

5 **SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.**

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

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

14 **SEC. 409. PREFERENCES.**

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

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

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

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



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

3 (2) in paragraph (8), by striking the period at
4 the end and inserting “; or”; and

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

6 “(9) if, in a case filed by a debtor whose debts
7 are not primarily consumer debts, the aggregate
8 value of all property that constitutes or is affected
9 by such transfer is less than \$5,000.”.

10 **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

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

14 **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

15 Section 1121(d) of title 11, United States Code, is
16 amended—

17 (1) by striking “On” and inserting “(1) Subject
18 to paragraph (2), on”; and

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

20 “(2)(A) The 120-day period specified in paragraph
21 (1) may not be extended beyond a date that is 18 months
22 after the date of the order for relief under this chapter.

23 “(B) The 180-day period specified in paragraph (1)
24 may not be extended beyond a date that is 20 months after
25 the date of the order for relief under this chapter.”.



1 **SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP IN-**
2 **TERESTS.**

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

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

7 (2) by striking “ownership or” and inserting
8 “ownership,”;

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

11 (4) by striking “but only” and all that follows
12 through “such period,” and inserting “or a lot in a
13 homeowners association, for as long as the debtor or
14 the trustee has a legal, equitable, or possessory own-
15 ership interest in such unit, such corporation, or
16 such lot,”.

17 **SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING**
18 **OF CREDITORS.**

19 Section 341(e) of title 11, United States Code, is
20 amended by inserting at the end the following: “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, is
4 amended—

5 (1) in subparagraph (D), by striking “and” at
6 the end;

7 (2) by redesignating subparagraph (E) as sub-
8 paragraph (F); and

9 (3) by inserting after subparagraph (D) the fol-
10 lowing:

11 “(E) with respect to a professional person,
12 whether the person is board certified or otherwise
13 has demonstrated skill and experience in the bank-
14 ruptcy field; and”.

15 **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

16 Section 1104(b) of title 11, United States Code, is
17 amended—

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

19 (2) by adding at the end the following:

20 “(2)(A) If an eligible, disinterested trustee is elected
21 at a meeting of creditors under paragraph (1), the United
22 States trustee shall file a report certifying that election.

23 “(B) Upon the filing of a report under subparagraph
24 (A)—



1 “(i) the trustee elected under paragraph (1)
2 shall be considered to have been selected and ap-
3 pointed for purposes of this section; and

4 “(ii) the service of any trustee appointed under
5 subsection (d) shall terminate.

6 “(C) The court shall resolve any dispute arising out
7 of an election described in subparagraph (A).”.

8 **SEC. 417. UTILITY SERVICE.**

9 Section 366 of title 11, United States Code, is
10 amended—

11 (1) in subsection (a), by striking “subsection
12 (b)” and inserting “subsections (b) and (c)”; and

13 (2) by adding at the end the following:

14 “(c)(1)(A) For purposes of this subsection, the term
15 ‘assurance of payment’ means—

16 “(i) a cash deposit;

17 “(ii) a letter of credit;

18 “(iii) a certificate of deposit;

19 “(iv) a surety bond;

20 “(v) a prepayment of utility consumption; or

21 “(vi) another form of security that is mutually
22 agreed on between the utility and the debtor or the
23 trustee.



1 “(B) For purposes of this subsection an administrative ex-
2 pense priority shall not constitute an assurance of pay-
3 ment.

4 “(2) Subject to paragraphs (3) and (4), with respect
5 to a case filed under chapter 11, a utility referred to in
6 subsection (a) may alter, refuse, or discontinue utility
7 service, if during the 30-day period beginning on the date
8 of filing of the petition, the utility does not receive from
9 the debtor or the trustee adequate assurance of payment
10 for utility service that is satisfactory to the utility.

11 “(3)(A) On request of a party in interest and after
12 notice and a hearing, the court may order modification
13 of the amount of an assurance of payment under para-
14 graph (2).

15 “(B) In making a determination under this para-
16 graph whether an assurance of payment is adequate, the
17 court may not consider—

18 “(i) the absence of security before the date of
19 filing of the petition;

20 “(ii) the payment by the debtor of charges for
21 utility service in a timely manner before the date of
22 filing of the petition; or

23 “(iii) the availability of an administrative ex-
24 pense priority.



1 “(4) Notwithstanding any other provision of law, with
2 respect to a case subject to this subsection, a utility may
3 recover or set off against a security deposit provided to
4 the utility by the debtor before the date of filing of the
5 petition without notice or order of the court.”.

6 **SEC. 418. BANKRUPTCY FEES.**

7 Section 1930 of title 28, United States Code, is
8 amended—

9 (1) in subsection (a), by striking “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 individual has income less than 150
18 percent of the income official poverty line (as defined by
19 the Office of Management and Budget, and revised annu-
20 ally in accordance with section 673(2) of the Omnibus
21 Budget Reconciliation Act of 1981) applicable to a family
22 of the size involved and is unable to pay that fee in install-
23 ments. For purposes of this paragraph, the term ‘filing
24 fee’ means the filing required by subsection (a), or any
25 other fee prescribed by the Judicial Conference under sub-



1 sections (b) and (c) that is payable to the clerk upon the
2 commencement of a case under chapter 7.

3 “(2) The district court or the bankruptcy court may
4 waive for such debtors other fees prescribed under sub-
5 sections (b) and (c).

6 “(3) This subsection does not restrict the district
7 court or the bankruptcy court from waiving, in accordance
8 with Judicial Conference policy, fees prescribed under this
9 section for other debtors and creditors.”.

10 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**
11 **SETS OF THE ESTATE.**

12 (a) IN GENERAL.—

13 (1) DISCLOSURE.—The Advisory Committee on
14 Bankruptcy Rules of the Judicial Conference of the
15 United States, after consideration of the views of the
16 Director of the Executive Office for United States
17 Trustees, shall propose for adoption amended Fed-
18 eral Rules of Bankruptcy Procedure and Official
19 Bankruptcy Forms directing debtors under chapter
20 11 of title 11, United States Code, to disclose the
21 information described in paragraph (2) by filing and
22 serving periodic financial and other reports designed
23 to provide such information.

24 (2) INFORMATION.—The information referred
25 to in paragraph (1) is the value, operations, and



1 profitability of any closely held corporation, partner-
2 ship, or of any other entity in which the debtor holds
3 a substantial or controlling interest.

4 (b) PURPOSE.—The purpose of the rules and reports
5 under subsection (a) shall be to assist parties in interest
6 taking steps to ensure that the debtor’s interest in any
7 entity referred to in subsection (a)(2) is used for the pay-
8 ment of allowed claims against debtor.

9 **Subtitle B—Small Business**
10 **Bankruptcy Provisions**

11 **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**
12 **AND PLAN.**

13 Section 1125 of title 11, United States Code, is
14 amended—

15 (1) in subsection (a)(1), by inserting before the
16 semicolon “and in determining whether a disclosure
17 statement provides adequate information, the court
18 shall consider the complexity of the case, the benefit
19 of additional information to creditors and other par-
20 ties in interest, and the cost of providing additional
21 information”; and

22 (2) by striking subsection (f), and inserting the
23 following:

24 “(f) Notwithstanding subsection (b), in a small busi-
25 ness case—



1 “(1) the court may determine that the plan
2 itself provides adequate information and that a sepa-
3 rate disclosure statement is not necessary;

4 “(2) the court may approve a disclosure state-
5 ment submitted on standard forms approved by the
6 court or adopted under section 2075 of title 28; and

7 “(3)(A) the court may conditionally approve a
8 disclosure statement subject to final approval after
9 notice and a hearing;

10 “(B) acceptances and rejections of a plan may
11 be solicited based on a conditionally approved disclo-
12 sure statement if the debtor provides adequate infor-
13 mation to each holder of a claim or interest that is
14 solicited, but a conditionally approved disclosure
15 statement shall be mailed not later than 20 days be-
16 fore the date of the hearing on confirmation of the
17 plan; and

18 “(C) the hearing on the disclosure statement
19 may be combined with the hearing on confirmation
20 of a plan.”.

21 **SEC. 432. DEFINITIONS.**

22 (a) DEFINITIONS.—Section 101 of title 11, United
23 States Code, is amended by striking paragraph (51C) and
24 inserting the following:



1 “(51C) ‘small business case’ means a case filed
2 under chapter 11 of this title in which the debtor is
3 a small business debtor;

4 “(51D) ‘small business debtor’—

5 “(A) subject to subparagraph (B), means a
6 person engaged in commercial or business ac-
7 tivities (including any affiliate of such person
8 that is also a debtor under this title and exclud-
9 ing a person whose primary activity is the busi-
10 ness of owning or operating real property or ac-
11 tivities incidental thereto) that has aggregate
12 noncontingent, liquidated secured and unse-
13 cured debts as of the date of the petition or the
14 order for relief in an amount not more than
15 \$2,000,000 (excluding debts owed to 1 or more
16 affiliates or insiders) for a case in which the
17 United States trustee has not appointed under
18 section 1102(a)(1) a committee of unsecured
19 creditors or where the court has determined
20 that the committee of unsecured creditors is not
21 sufficiently active and representative to provide
22 effective oversight of the debtor; and

23 “(B) does not include any member of a
24 group of affiliated debtors that has aggregate
25 noncontingent liquidated secured and unsecured



1 debts in an amount greater than \$2,000,000
2 (excluding debt owed to 1 or more affiliates or
3 insiders);”.

4 (b) CONFORMING AMENDMENT.—Section 1102(a)(3)
5 of title 11, United States Code, is amended by inserting
6 “debtor” after “small business”.

7 (c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section
8 104(b) of title 11, United States Code, as amended by
9 section 226, is amended by inserting “101(51D),” after
10 “101(3),” each place it appears.

11 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**
12 **PLAN.**

13 Within a reasonable period of time after the date of
14 enactment of this Act, the Advisory Committee on Bank-
15 ruptcy Rules of the Judicial Conference of the United
16 States shall propose for adoption standard form disclosure
17 statements and plans of reorganization for small business
18 debtors (as defined in section 101 of title 11, United
19 States Code, as amended by this Act), designed to achieve
20 a practical balance between—

- 21 (1) the reasonable needs of the courts, the
22 United States trustee, creditors, and other parties in
23 interest for reasonably complete information; and
24 (2) economy and simplicity for debtors.



1 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**
2 **MENTS.**

3 (a) REPORTING REQUIRED.—

4 (1) IN GENERAL.—Chapter 3 of title 11, United
5 States Code, is amended by inserting after section
6 307 the following:

7 **“§ 308. Debtor reporting requirements**

8 “(a) For purposes of this section, the term ‘profit-
9 ability’ means, with respect to a debtor, the amount of
10 money that the debtor has earned or lost during current
11 and recent fiscal periods.

12 “(b) A small business debtor shall file periodic finan-
13 cial and other reports containing information including—

14 “(1) the debtor’s profitability;

15 “(2) reasonable approximations of the debtor’s
16 projected cash receipts and cash disbursements over
17 a reasonable period;

18 “(3) comparisons of actual cash receipts and
19 disbursements with projections in prior reports;

20 “(4)(A) whether the debtor is—

21 “(i) in compliance in all material respects
22 with postpetition requirements imposed by this
23 title and the Federal Rules of Bankruptcy Pro-
24 cedure; and



1 “(ii) timely filing tax returns and other re-
2 quired government filings and paying taxes and
3 other administrative expenses when due;

4 “(B) if the debtor is not in compliance with the
5 requirements referred to in subparagraph (A)(i) or
6 filing tax returns and other required government fil-
7 ings and making the payments referred to in sub-
8 paragraph (A)(ii), what the failures are and how, at
9 what cost, and when the debtor intends to remedy
10 such failures; and

11 “(C) such other matters as are in the best in-
12 terests of the debtor and creditors, and in the public
13 interest in fair and efficient procedures under chap-
14 ter 11 of this title.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions for chapter 3 of title 11, United States Code,
17 is amended by inserting after the item relating to
18 section 307 the following:

“308. Debtor reporting requirements.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall take effect 60 days after the date on
21 which rules are prescribed under section 2075 of title 28,
22 United States Code, to establish forms to be used to com-
23 ply with section 308 of title 11, United States Code, as
24 added by subsection (a).



1 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**
2 **SMALL BUSINESS CASES.**

3 (a) PROPOSAL OF RULES AND FORMS.—The Advi-
4 sory Committee on Bankruptcy Rules of the Judicial Con-
5 ference of the United States shall propose for adoption
6 amended Federal Rules of Bankruptcy Procedure and Of-
7 ficial Bankruptcy Forms to be used by small business
8 debtors to file periodic financial and other reports con-
9 taining information, including information relating to—

10 (1) the debtor’s profitability;

11 (2) the debtor’s cash receipts and disburse-
12 ments; and

13 (3) whether the debtor is timely filing tax re-
14 turns and paying taxes and other administrative ex-
15 penses when due.

16 (b) PURPOSE.—The rules and forms proposed under
17 subsection (a) shall be designed to achieve a practical bal-
18 ance among—

19 (1) the reasonable needs of the bankruptcy
20 court, the United States trustee, creditors, and other
21 parties in interest for reasonably complete informa-
22 tion;

23 (2) the small business debtor’s interest that re-
24 quired reports be easy and inexpensive to complete;
25 and



1 “(2) attend, through its senior management
2 personnel and counsel, meetings scheduled by the
3 court or the United States trustee, including initial
4 debtor interviews, scheduling conferences, and meet-
5 ings of creditors convened under section 341 unless
6 the court waives that requirement after notice and
7 a hearing, upon a finding of extraordinary and com-
8 pelling circumstances;

9 “(3) timely file all schedules and statements of
10 financial affairs, unless the court, after notice and a
11 hearing, grants an extension, which shall not extend
12 such time period to a date later than 30 days after
13 the date of the order for relief, absent extraordinary
14 and compelling circumstances;

15 “(4) file all postpetition financial and other re-
16 ports required by the Federal Rules of Bankruptcy
17 Procedure or by local rule of the district court;

18 “(5) subject to section 363(c)(2), maintain in-
19 surance customary and appropriate to the industry;

20 “(6)(A) timely file tax returns and other re-
21 quired government filings; and

22 “(B) subject to section 363(c)(2), timely pay all
23 taxes entitled to administrative expense priority ex-
24 cept those being contested by appropriate pro-
25 ceedings being diligently prosecuted; and



1 “(7) allow the United States trustee, or a des-
2 ignated representative of the United States trustee,
3 to inspect the debtor’s business premises, books, and
4 records at reasonable times, after reasonable prior
5 written notice, unless notice is waived by the debt-
6 or.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for chapter 11 of title 11, United States Code, as amended
9 by section 321, is amended by inserting after the item re-
10 lating to section 1115 the following:

 “1116. Duties of trustee or debtor in possession in small business cases.”.

11 **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

12 Section 1121 of title 11, United States Code, is
13 amended by striking subsection (e) and inserting the fol-
14 lowing:

15 “(e) In a small business case—

16 “(1) only the debtor may file a plan until after
17 180 days after the date of the order for relief, unless
18 that period is—

19 “(A) extended as provided by this sub-
20 section, after notice and a hearing; or

21 “(B) the court, for cause, orders otherwise;

22 “(2) the plan, and any necessary disclosure
23 statement, shall be filed not later than 300 days
24 after the date of the order for relief; and



1 “(3) the time periods specified in paragraphs
2 (1) and (2), and the time fixed in section 1129(e)
3 within which the plan shall be confirmed, may be ex-
4 tended only if—

5 “(A) the debtor, after providing notice to
6 parties in interest (including the United States
7 trustee), demonstrates by a preponderance of
8 the evidence that it is more likely than not that
9 the court will confirm a plan within a reason-
10 able period of time;

11 “(B) a new deadline is imposed at the time
12 the extension is granted; and

13 “(C) the order extending time is signed be-
14 fore the existing deadline has expired.”.

15 **SEC. 438. PLAN CONFIRMATION DEADLINE.**

16 Section 1129 of title 11, United States Code, is
17 amended by adding at the end the following:

18 “(e) In a small business case, the court shall confirm
19 a plan that complies with the applicable provisions of this
20 title and that is filed in accordance with section 1121(e)
21 not later than 45 days after such plan is filed unless the
22 time for confirmation is extended in accordance with sec-
23 tion 1121(e)(3).”.



1 **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

2 Section 586(a) of title 28, United States Code, is
3 amended—

4 (1) in paragraph (3)—

5 (A) in subparagraph (G), by striking
6 “and” at the end;

7 (B) by redesignating subparagraph (H) as
8 subparagraph (I); and

9 (C) by inserting after subparagraph (G)
10 the following:

11 “(H) in small business cases (as defined in
12 section 101 of title 11), performing the addi-
13 tional duties specified in title 11 pertaining to
14 such cases; and”;

15 (2) in paragraph (5), by striking “and” at the
16 end;

17 (3) in paragraph (6), by striking the period at
18 the end and inserting a semicolon; and

19 (4) by adding at the end the following:

20 “(7) in each of such small business cases—

21 “(A) conduct an initial debtor interview as
22 soon as practicable after the entry of order for
23 relief but before the first meeting scheduled
24 under section 341(a) of title 11, at which time
25 the United States trustee shall—



1 “(i) begin to investigate the debtor’s
2 viability;

3 “(ii) inquire about the debtor’s busi-
4 ness plan;

5 “(iii) explain the debtor’s obligations
6 to file monthly operating reports and other
7 required reports;

8 “(iv) attempt to develop an agreed
9 scheduling order; and

10 “(v) inform the debtor of other obliga-
11 tions;

12 “(B) if determined to be appropriate and
13 advisable, visit the appropriate business prem-
14 ises of the debtor and ascertain the state of the
15 debtor’s books and records and verify that the
16 debtor has filed its tax returns; and

17 “(C) review and monitor diligently the
18 debtor’s activities, to identify as promptly as
19 possible whether the debtor will be unable to
20 confirm a plan; and

21 “(8) in any case in which the United States
22 trustee finds material grounds for any relief under
23 section 1112 of title 11, the United States trustee
24 shall apply promptly after making that finding to
25 the court for relief.”.



1 **SEC. 440. SCHEDULING CONFERENCES.**

2 Section 105(d) of title 11, United States Code, is
3 amended—

4 (1) in the matter preceding paragraph (1), by
5 striking “, may”; and

6 (2) by striking paragraph (1) and inserting the
7 following:

8 “(1) shall hold such status conferences as are
9 necessary to further the expeditious and economical
10 resolution of the case; and”.

11 **SEC. 441. SERIAL FILER PROVISIONS.**

12 Section 362 of title 11, United States Code, as
13 amended by sections 106, 305, and 311, is amended—

14 (1) in subsection (k), as so redesignated by sec-
15 tion 305—

16 (A) by striking “An” and inserting “(1)
17 Except as provided in paragraph (2), an”; and

18 (B) by adding at the end the following:

19 “(2) If such violation is based on an action taken by
20 an entity in the good faith belief that subsection (h) ap-
21 plies to the debtor, the recovery under paragraph (1) of
22 this subsection against such entity shall be limited to ac-
23 tual damages.”; and

24 (2) by adding at the end the following:

25 “(n)(1) Except as provided in paragraph (2), sub-
26 section (a) does not apply in a case in which the debtor—



1 “(A) is a debtor in a small business case pend-
2 ing at the time the petition is filed;

3 “(B) was a debtor in a small business case that
4 was dismissed for any reason by an order that be-
5 came final in the 2-year period ending on the date
6 of the order for relief entered with respect to the pe-
7 tition;

8 “(C) was a debtor in a small business case in
9 which a plan was confirmed in the 2-year period
10 ending on the date of the order for relief entered
11 with respect to the petition; or

12 “(D) is an entity that has acquired substan-
13 tially all of the assets or business of a small business
14 debtor described in subparagraph (A), (B), or (C),
15 unless such entity establishes by a preponderance of
16 the evidence that such entity acquired substantially
17 all of the assets or business of such small business
18 debtor in good faith and not for the purpose of evad-
19 ing this paragraph.

20 “(2) Paragraph (1) does not apply—

21 “(A) to an involuntary case involving no collu-
22 sion by the debtor with creditors; or

23 “(B) to the filing of a petition if—

24 “(i) the debtor proves by a preponderance
25 of the evidence that the filing of that petition



1 resulted from circumstances beyond the control
2 of the debtor not foreseeable at the time the
3 case then pending was filed; and

4 “(ii) it is more likely than not that the
5 court will confirm a feasible plan, but not a liq-
6 uidating plan, within a reasonable period of
7 time.”.

8 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**
9 **VERSION AND APPOINTMENT OF TRUSTEE.**

10 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-
11 VERSION.—Section 1112 of title 11, United States Code,
12 is amended by striking subsection (b) and inserting the
13 following:

14 “(b)(1) Except as provided in paragraph (2) of this
15 subsection, subsection (c) of this section, and section
16 1104(a)(3), on request of a party in interest, and after
17 notice and a hearing, absent unusual circumstances spe-
18 cifically identified by the court that establish that the re-
19 quested conversion or dismissal is not in the best interests
20 of creditors and the estate, the court shall convert a case
21 under this chapter to a case under chapter 7 or dismiss
22 a case under this chapter, whichever is in the best inter-
23 ests of creditors and the estate, if the movant establishes
24 cause.



1 “(2) The relief provided in paragraph (1) shall not
2 be granted absent unusual circumstances specifically iden-
3 tified by the court that establish that such relief is not
4 in the best interests of creditors and the estate, if the
5 debtor or another party in interest objects and establishes
6 that—

7 “(A) there is a reasonable likelihood that a plan
8 will be confirmed within the timeframes established
9 in sections 1121(e) and 1129(e) of this title, or if
10 such sections do not apply, within a reasonable pe-
11 riod of time; and

12 “(B) the grounds for granting such relief in-
13 clude an act or omission of the debtor other than
14 under paragraph (4)(A)—

15 “(i) for which there exists a reasonable
16 justification for the act or omission; and

17 “(ii) that will be cured within a reasonable
18 period of time fixed by the court.

19 “(3) The court shall commence the hearing on a mo-
20 tion under this subsection not later than 30 days after
21 filing of the motion, and shall decide the motion not later
22 than 15 days after commencement of such hearing, unless
23 the movant expressly consents to a continuance for a spe-
24 cific period of time or compelling circumstances prevent



1 the court from meeting the time limits established by this
2 paragraph.

3 “(4) For purposes of this subsection, the term ‘cause’
4 includes—

5 “(A) substantial or continuing loss to or dimi-
6 nution of the estate and the absence of a reasonable
7 likelihood of rehabilitation;

8 “(B) gross mismanagement of the estate;

9 “(C) failure to maintain appropriate insurance
10 that poses a risk to the estate or to the public;

11 “(D) unauthorized use of cash collateral sub-
12 stantially harmful to 1 or more creditors;

13 “(E) failure to comply with an order of the
14 court;

15 “(F) unexcused failure to satisfy timely any fil-
16 ing or reporting requirement established by this title
17 or by any rule applicable to a case under this chap-
18 ter;

19 “(G) failure to attend the meeting of creditors
20 convened under section 341(a) or an examination or-
21 dered under rule 2004 of the Federal Rules of
22 Bankruptcy Procedure without good cause shown by
23 the debtor;



1 “(H) failure timely to provide information or
2 attend meetings reasonably requested by the United
3 States trustee or the bankruptcy administrator;

4 “(I) failure timely to pay taxes owed after the
5 date of the order for relief or to file tax returns due
6 after the order for relief;

7 “(J) failure to file a disclosure statement, or to
8 file or confirm a plan, within the time fixed by this
9 title or by order of the court;

10 “(K) failure to pay any fees or charges required
11 under chapter 123 of title 28;

12 “(L) revocation of an order of confirmation
13 under section 1144;

14 “(M) inability to effectuate substantial con-
15 summation of a confirmed plan;

16 “(N) material default by the debtor with re-
17 spect to a confirmed plan;

18 “(O) termination of a confirmed plan by reason
19 of the occurrence of a condition specified in the plan;
20 and

21 “(P) failure of the debtor to pay any domestic
22 support obligation that first becomes payable after
23 the date on which the petition is filed.

24 “(5) The court shall commence the hearing on a mo-
25 tion under this subsection not later than 30 days after



1 filing of the motion, and shall decide the motion not later
2 than 15 days after commencement of such hearing, unless
3 the movant expressly consents to a continuance for a spe-
4 cific period of time or compelling circumstances prevent
5 the court from meeting the time limits established by this
6 paragraph.”.

7 (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF
8 TRUSTEE.—Section 1104(a) of title 11, United States
9 Code, is amended—

10 (1) in paragraph (1), by striking “or” at the
11 end;

12 (2) in paragraph (2), by striking the period at
13 the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(3) if grounds exist to convert or dismiss the
16 case under section 1112, but the court determines
17 that the appointment of a trustee or an examiner is
18 in the best interests of creditors and the estate.”.

19 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**
20 **STATES CODE, WITH RESPECT TO SMALL**
21 **BUSINESSES.**

22 Not later than 2 years after the date of enactment
23 of this Act, the Administrator of the Small Business Ad-
24 ministration, in consultation with the Attorney General,
25 the Director of the Executive Office for United States



1 Trustees, and the Director of the Administrative Office
2 of the United States Courts, shall—

3 (1) conduct a study to determine—

4 (A) the internal and external factors that
5 cause small businesses, especially sole propri-
6 etorships, to become debtors in cases under title
7 11, United States Code, and that cause certain
8 small businesses to successfully complete cases
9 under chapter 11 of such title; and

10 (B) how Federal laws relating to bank-
11 ruptcy may be made more effective and efficient
12 in assisting small businesses to remain viable;
13 and

14 (2) submit to the President pro tempore of the
15 Senate and the Speaker of the House of Representa-
16 tives a report summarizing that study.

17 **SEC. 444. PAYMENT OF INTEREST.**

18 Section 362(d)(3) of title 11, United States Code, is
19 amended—

20 (1) by inserting “or 30 days after the court de-
21 termines that the debtor is subject to this para-
22 graph, whichever is later” after “90-day period”;
23 and

24 (2) by striking subparagraph (B) and inserting
25 the following:



1 “(B) the debtor has commenced monthly
2 payments that—

3 “(i) may, in the debtor’s sole discre-
4 tion, notwithstanding section 363(c)(2), be
5 made from rents or other income generated
6 before or after the commencement of the
7 case by or from the property to each cred-
8 itor whose claim is secured by such real es-
9 tate (other than a claim secured by a judg-
10 ment lien or by an unmatured statutory
11 lien); and

12 “(ii) are in an amount equal to inter-
13 est at the then applicable nondefault con-
14 tract rate of interest on the value of the
15 creditor’s interest in the real estate; or”.

16 **SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

17 Section 503(b) of title 11, United States Code, is
18 amended—

19 (1) in paragraph (5), by striking “and” at the
20 end;

21 (2) in paragraph (6), by striking the period at
22 the end and inserting a semicolon; and

23 (3) by adding at the end the following:

24 “(7) with respect to a nonresidential real prop-
25 erty lease previously assumed under section 365,



1 and subsequently rejected, a sum equal to all mone-
2 tary obligations due, excluding those arising from or
3 relating to a failure to operate or a penalty provi-
4 sion, for the period of 2 years following the later of
5 the rejection date or the date of actual turnover of
6 the premises, without reduction or setoff for any
7 reason whatsoever except for sums actually received
8 or to be received from a nondebtor, and the claim
9 for remaining sums due for the balance of the term
10 of the lease shall be a claim under section
11 502(b)(6);”.

12 **SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A**
13 **PLAN ADMINISTRATOR OF AN EMPLOYEE**
14 **BENEFIT PLAN.**

15 (a) IN GENERAL.—Section 521(a) of title 11, United
16 States Code, as amended by section 106, is amended-

17 (1) in paragraph (4), by striking “and” at the
18 end;

19 (2) in paragraph (5), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(6) unless a trustee is serving in the case, if
23 at the time of filing the debtor served as the admin-
24 istrator (as defined in section 3 of the Employee Re-
25 tirement Income Security Act of 1974 of an em-



1 ployee benefit plan, continue to perform the obliga-
2 tions required of the administrator.”.

3 (b) DUTIES OF TRUSTEES.—Section 704(a) of title
4 11, United States Code, as amended by sections 102 and
5 219, is amended—

6 (1) in paragraph (9), by striking “and” at the
7 end;

8 (2) in paragraph (10), by striking the period at
9 the end; and

10 (3) by adding at the end the following:

11 “(11) if, at the time of the commencement of
12 the case, the debtor served as the administrator (as
13 defined in section 3 of the Employee Retirement In-
14 come Security Act of 1974) of an employee benefit
15 plan, continue to perform the obligations required of
16 the administrator; and”.

17 (c) CONFORMING AMENDMENT.—Section 1106(a)(1)
18 of title 11, United States Code, is amended to read as
19 follows:

20 “(1) perform the duties of the trustee, as speci-
21 fied in paragraphs (2), (5), (7), (8), (9), (10), and
22 (11) of section 704;”.



1 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**
2 **TER 9.**

3 Section 901(a) of title 11, United States Code, is
4 amended—

5 (1) by inserting “555, 556,” after “553,”; and

6 (2) by inserting “559, 560, 561, 562” after
7 “557.”.

8 **TITLE VI—BANKRUPTCY DATA**

9 **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

10 (a) IN GENERAL.—Chapter 6 of title 28, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 **“§ 159. Bankruptcy statistics**

14 “(a) The clerk of the district court, or the clerk of
15 the bankruptcy court if one is certified pursuant to section
16 156(b) of this title, shall collect statistics regarding debt-
17 ors who are individuals with primarily consumer debts
18 seeking relief under chapters 7, 11, and 13 of title 11.
19 Those statistics shall be in a standardized format pre-
20 scribed by the Director of the Administrative Office of the
21 United States Courts (referred to in this section as the
22 ‘Director’).

23 “(b) The Director shall—

24 “(1) compile the statistics referred to in sub-
25 section (a);



1 “(2) make the statistics available to the public;
2 and

3 “(3) not later than June 1, 2005, and annually
4 thereafter, prepare, and submit to Congress a report
5 concerning the information collected under sub-
6 section (a) that contains an analysis of the informa-
7 tion.

8 “(c) The compilation required under subsection (b)
9 shall—

10 “(1) be itemized, by chapter, with respect to
11 title 11;

12 “(2) be presented in the aggregate and for each
13 district; and

14 “(3) include information concerning—

15 “(A) the total assets and total liabilities of
16 the debtors described in subsection (a), and in
17 each category of assets and liabilities, as re-
18 ported in the schedules prescribed pursuant to
19 section 2075 of this title and filed by those
20 debtors;

21 “(B) the current monthly income, average
22 income, and average expenses of those debtors
23 as reported on the schedules and statements
24 that each such debtor files under sections 521
25 and 1322 of title 11;



1 “(C) the aggregate amount of debt dis-
2 charged in cases filed during the reporting pe-
3 riod, determined as the difference between the
4 total amount of debt and obligations of a debtor
5 reported on the schedules and the amount of
6 such debt reported in categories which are pre-
7 dominantly nondischargeable;

8 “(D) the average period of time between
9 the filing of the petition and the closing of the
10 case for cases closed during the reporting pe-
11 riod;

12 “(E) for cases closed during the reporting
13 period—

14 “(i) the number of cases in which a
15 reaffirmation was filed; and

16 “(ii)(I) the total number of reaffirma-
17 tions filed;

18 “(II) of those cases in which a reaffir-
19 mation was filed, the number of cases in
20 which the debtor was not represented by
21 an attorney; and

22 “(III) of those cases in which a reaf-
23 firmation was filed, the number of cases in
24 which the reaffirmation was approved by
25 the court;



1 “(F) with respect to cases filed under
2 chapter 13 of title 11, for the reporting
3 period—

4 “(i)(I) the number of cases in which a
5 final order was entered determining the
6 value of property securing a claim in an
7 amount less than the amount of the claim;
8 and

9 “(II) the number of final orders en-
10 tered determining the value of property se-
11 curing a claim;

12 “(ii) the number of cases dismissed,
13 the number of cases dismissed for failure
14 to make payments under the plan, the
15 number of cases refiled after dismissal,
16 and the number of cases in which the plan
17 was completed, separately itemized with re-
18 spect to the number of modifications made
19 before completion of the plan, if any; and

20 “(iii) the number of cases in which
21 the debtor filed another case during the 6-
22 year period preceding the filing;

23 “(G) the number of cases in which credi-
24 tors were fined for misconduct and any amount



1 of punitive damages awarded by the court for
2 creditor misconduct; and

3 “(H) the number of cases in which sanc-
4 tions under rule 9011 of the Federal Rules of
5 Bankruptcy Procedure were imposed against
6 debtor’s attorney or damages awarded under
7 such Rule.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for chapter 6 of title 28, United States Code, is amended
10 by adding at the end the following:

“159. Bankruptcy statistics.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect 18 months after the date of
13 enactment of this Act.

14 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**
15 **RUPTCY DATA.**

16 (a) AMENDMENT.—Chapter 39 of title 28, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 **“§ 589b. Bankruptcy data**

20 “(a) RULES.—The Attorney General shall, within a
21 reasonable time after the effective date of this section,
22 issue rules requiring uniform forms for (and from time
23 to time thereafter to appropriately modify and approve)—

24 “(1) final reports by trustees in cases under
25 chapters 7, 12, and 13 of title 11; and



1 “(2) periodic reports by debtors in possession or
2 trustees in cases under chapter 11 of title 11.

3 “(b) REPORTS.—Each report referred to in sub-
4 section (a) shall be designed (and the requirements as to
5 place and manner of filing shall be established) so as to
6 facilitate compilation of data and maximum possible ac-
7 cess of the public, both by physical inspection at one or
8 more central filing locations, and by electronic access
9 through the Internet or other appropriate media.

10 “(c) REQUIRED INFORMATION.—The information re-
11 quired to be filed in the reports referred to in subsection
12 (b) shall be that which is in the best interests of debtors
13 and creditors, and in the public interest in reasonable and
14 adequate information to evaluate the efficiency and practi-
15 cality of the Federal bankruptcy system. In issuing rules
16 proposing the forms referred to in subsection (a), the At-
17 torney General shall strike the best achievable practical
18 balance between—

19 “(1) the reasonable needs of the public for in-
20 formation about the operational results of the Fed-
21 eral bankruptcy system;

22 “(2) economy, simplicity, and lack of undue
23 burden on persons with a duty to file reports; and

24 “(3) appropriate privacy concerns and safe-
25 guards.



1 “(d) FINAL REPORTS.—The uniform forms for final
2 reports required under subsection (a) for use by trustees
3 under chapters 7, 12, and 13 of title 11 shall, in addition
4 to such other matters as are required by law or as the
5 Attorney General in the discretion of the Attorney General
6 shall propose, include with respect to a case under such
7 title—

8 “(1) information about the length of time the
9 case was pending;

10 “(2) assets abandoned;

11 “(3) assets exempted;

12 “(4) receipts and disbursements of the estate;

13 “(5) expenses of administration, including for
14 use under section 707(b), actual costs of admin-
15 istering cases under chapter 13 of title 11;

16 “(6) claims asserted;

17 “(7) claims allowed; and

18 “(8) distributions to claimants and claims dis-
19 charged without payment,

20 in each case by appropriate category and, in cases under
21 chapters 12 and 13 of title 11, date of confirmation of
22 the plan, each modification thereto, and defaults by the
23 debtor in performance under the plan.

24 “(e) PERIODIC REPORTS.—The uniform forms for
25 periodic reports required under subsection (a) for use by



1 trustees or debtors in possession under chapter 11 of title
2 11 shall, in addition to such other matters as are required
3 by law or as the Attorney General in the discretion of the
4 Attorney General shall propose, include—

5 “(1) information about the standard industry
6 classification, published by the Department of Com-
7 merce, for the businesses conducted by the debtor;

8 “(2) length of time the case has been pending;

9 “(3) number of full-time employees as of the
10 date of the order for relief and at the end of each
11 reporting period since the case was filed;

12 “(4) cash receipts, cash disbursements and
13 profitability of the debtor for the most recent period
14 and cumulatively since the date of the order for re-
15 lief;

16 “(5) compliance with title 11, whether or not
17 tax returns and tax payments since the date of the
18 order for relief have been timely filed and made;

19 “(6) all professional fees approved by the court
20 in the case for the most recent period and cumula-
21 tively since the date of the order for relief (sepa-
22 rately reported, for the professional fees incurred by
23 or on behalf of the debtor, between those that would
24 have been incurred absent a bankruptcy case and
25 those not); and



1 “(7) plans of reorganization filed and confirmed
2 and, with respect thereto, by class, the recoveries of
3 the holders, expressed in aggregate dollar values
4 and, in the case of claims, as a percentage of total
5 claims of the class allowed.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for chapter 39 of title 28, United States Code, is amended
8 by adding at the end the following:

 “589b. Bankruptcy data.”.

9 **SEC. 603. AUDIT PROCEDURES.**

10 (a) IN GENERAL.—

11 (1) ESTABLISHMENT OF PROCEDURES.—The
12 Attorney General (in judicial districts served by
13 United States trustees) and the Judicial Conference
14 of the United States (in judicial districts served by
15 bankruptcy administrators) shall establish proce-
16 dures to determine the accuracy, veracity, and com-
17 pleteness of petitions, schedules, and other informa-
18 tion which the debtor is required to provide under
19 sections 521 and 1322 of title 11, United States
20 Code, and, if applicable, section 111 of such title, in
21 cases filed under chapter 7 or 13 of such title in
22 which the debtor is an individual. Such audits shall
23 be in accordance with generally accepted auditing
24 standards and performed by independent certified
25 public accountants or independent licensed public ac-



1 countants, provided that the Attorney General and
2 the Judicial Conference, as appropriate, may develop
3 alternative auditing standards not later than 2 years
4 after the date of enactment of this Act.

5 (2) PROCEDURES.—Those procedures required
6 by paragraph (1) shall—

7 (A) establish a method of selecting appro-
8 priate qualified persons to contract to perform
9 those audits;

10 (B) establish a method of randomly select-
11 ing cases to be audited, except that not less
12 than 1 out of every 250 cases in each Federal
13 judicial district shall be selected for audit;

14 (C) require audits for schedules of income
15 and expenses which reflect greater than average
16 variances from the statistical norm of the dis-
17 trict in which the schedules were filed if those
18 variances occur by reason of higher income or
19 higher expenses than the statistical norm of the
20 district in which the schedules were filed; and

21 (D) establish procedures for providing, not
22 less frequently than annually, public informa-
23 tion concerning the aggregate results of such
24 audits including the percentage of cases, by dis-



1 trict, in which a material misstatement of in-
2 come or expenditures is reported.

3 (b) AMENDMENTS.—Section 586 of title 28, United
4 States Code, is amended—

5 (1) in subsection (a), by striking paragraph (6)
6 and inserting the following:

7 “(6) make such reports as the Attorney General
8 directs, including the results of audits performed
9 under section 603(a) of the Bankruptcy Abuse Pre-
10 vention and Consumer Protection Act of 2002;”;

11 (2) by adding at the end the following:

12 “(f)(1) The United States trustee for each district is
13 authorized to contract with auditors to perform audits in
14 cases designated by the United States trustee, in accord-
15 ance with the procedures established under section 603(a)
16 of the Bankruptcy Abuse Prevention and Consumer Pro-
17 tection Act of 2002.

18 “(2)(A) The report of each audit referred to in para-
19 graph (1) shall be filed with the court and transmitted
20 to the United States trustee. Each report shall clearly and
21 conspicuously specify any material misstatement of income
22 or expenditures or of assets identified by the person per-
23 forming the audit. In any case in which a material
24 misstatement of income or expenditures or of assets has
25 been reported, the clerk of the district court (or the clerk



1 of the bankruptcy court if one is certified under section
2 156(b) of this title) shall give notice of the misstatement
3 to the creditors in the case.

4 “(B) If a material misstatement of income or expend-
5 itures or of assets is reported, the United States trustee
6 shall—

7 “(i) report the material misstatement, if appro-
8 priate, to the United States Attorney pursuant to
9 section 3057 of title 18; and

10 “(ii) if advisable, take appropriate action, in-
11 cluding but not limited to commencing an adversary
12 proceeding to revoke the debtor’s discharge pursuant
13 to section 727(d) of title 11.”.

14 (c) AMENDMENTS TO SECTION 521 OF TITLE 11,
15 U.S.C.—Section 521(a) of title 11, United States Code,
16 as so designated by section 106, is amended in each of
17 paragraphs (3) and (4) by inserting “or an auditor ap-
18 pointed under section 586(f) of title 28” after “serving
19 in the case”.

20 (d) AMENDMENTS TO SECTION 727 OF TITLE 11,
21 U.S.C.—Section 727(d) of title 11, United States Code,
22 is amended—

23 (1) in paragraph (2), by striking “or” at the
24 end;



1 (2) in paragraph (3), by striking the period at
2 the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(4) the debtor has failed to explain
5 satisfactorily—

6 “(A) a material misstatement in an audit
7 referred to in section 586(f) of title 28; or

8 “(B) a failure to make available for inspec-
9 tion all necessary accounts, papers, documents,
10 financial records, files, and all other papers,
11 things, or property belonging to the debtor that
12 are requested for an audit referred to in section
13 586(f) of title 28.”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect 18 months after the date of
16 enactment of this Act.

17 **SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**
18 **OF BANKRUPTCY DATA.**

19 It is the sense of Congress that—

20 (1) the national policy of the United States
21 should be that all data held by bankruptcy clerks in
22 electronic form, to the extent such data reflects only
23 public records (as defined in section 107 of title 11,
24 United States Code), should be released in a usable
25 electronic form in bulk to the public, subject to such



1 appropriate privacy concerns and safeguards as Con-
2 gress and the Judicial Conference of the United
3 States may determine; and

4 (2) there should be established a bankruptcy
5 data system in which—

6 (A) a single set of data definitions and
7 forms are used to collect data nationwide; and

8 (B) data for any particular bankruptcy
9 case are aggregated in the same electronic
10 record.

11 **TITLE VII—BANKRUPTCY TAX**
12 **PROVISIONS**

13 **SEC. 701. TREATMENT OF CERTAIN LIENS.**

14 (a) TREATMENT OF CERTAIN LIENS.—Section 724
15 of title 11, United States Code, is amended—

16 (1) in subsection (b), in the matter preceding
17 paragraph (1), by inserting “(other than to the ex-
18 tent that there is a properly perfected unavoidable
19 tax lien arising in connection with an ad valorem tax
20 on real or personal property of the estate)” after
21 “under this title”;

22 (2) in subsection (b)(2), by inserting “(except
23 that such expenses, other than claims for wages, sal-
24 aries, or commissions which arise after the filing of
25 a petition, shall be limited to expenses incurred



1 under chapter 7 of this title and shall not include ex-
2 penses incurred under chapter 11 of this title)” after
3 “507(a)(1)”;

4 (3) by adding at the end the following:

5 “(e) Before subordinating a tax lien on real or per-
6 sonal property of the estate, the trustee shall—

7 “(1) exhaust the unencumbered assets of the
8 estate; and

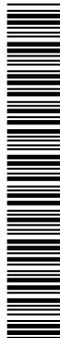
9 “(2) in a manner consistent with section
10 506(c), recover from property securing an allowed
11 secured claim the reasonable, necessary costs and
12 expenses of preserving or disposing of that property.

13 “(f) Notwithstanding the exclusion of ad valorem tax
14 liens under this section and subject to the requirements
15 of subsection (e), the following may be paid from property
16 of the estate which secures a tax lien, or the proceeds of
17 such property:

18 “(1) Claims for wages, salaries, and commis-
19 sions that are entitled to priority under section
20 507(a)(4).

21 “(2) Claims for contributions to an employee
22 benefit plan entitled to priority under section
23 507(a)(5).”.

24 (b) DETERMINATION OF TAX LIABILITY.—Section
25 505(a)(2) of title 11, United States Code, is amended—



1 (1) in subparagraph (A), by striking “or” at
2 the end;

3 (2) in subparagraph (B), by striking the period
4 at the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(C) the amount or legality of any amount aris-
7 ing in connection with an ad valorem tax on real or
8 personal property of the estate, if the applicable pe-
9 riod for contesting or redetermining that amount
10 under any law (other than a bankruptcy law) has ex-
11 pired.”.

12 **SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

13 Section 501 of title 11, United States Code, is
14 amended by adding at the end the following:

15 “(e) A claim arising from the liability of a debtor for
16 fuel use tax assessed consistent with the requirements of
17 section 31705 of title 49 may be filed by the base jurisdic-
18 tion designated pursuant to the International Fuel Tax
19 Agreement (as defined in section 31701 of title 49) and,
20 if so filed, shall be allowed as a single claim.”.

21 **SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF**
22 **TAXES.**

23 Section 505(b) of title 11, United States Code, is
24 amended—



1 (1) in the first sentence, by inserting “at the
2 address and in the manner designated in paragraph
3 (1)” after “determination of such tax”;

4 (2) by striking “(1) upon payment” and insert-
5 ing “(A) upon payment”;

6 (3) by striking “(A) such governmental unit”
7 and inserting “(i) such governmental unit”;

8 (4) by striking “(B) such governmental unit”
9 and inserting “(ii) such governmental unit”;

10 (5) by striking “(2) upon payment” and insert-
11 ing “(B) upon payment”;

12 (6) by striking “(3) upon payment” and insert-
13 ing “(C) upon payment”;

14 (7) by striking “(b)” and inserting “(2)”; and

15 (8) by inserting before paragraph (2), as so
16 designated, the following:

17 “(b)(1)(A) The clerk shall maintain a listing under
18 which a Federal, State, or local governmental unit respon-
19 sible for the collection of taxes within the district may—

20 “(i) designate an address for service of requests
21 under this subsection; and

22 “(ii) describe where further information con-
23 cerning additional requirements for filing such re-
24 quests may be found.



1 “(B) If a governmental unit referred to in subpara-
2 graph (A) does not designate an address and provide that
3 address to the clerk under that subparagraph, any request
4 made under this subsection may be served at the address
5 for the filing of a tax return or protest with the appro-
6 priate taxing authority of that governmental unit.”.

7 **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

8 (a) IN GENERAL.—Subchapter I of chapter 5 of title
9 11, United States Code, is amended by adding at the end
10 the following:

11 **“§ 511. Rate of interest on tax claims**

12 “(a) If any provision of this title requires the pay-
13 ment of interest on a tax claim or on an administrative
14 expense tax, or the payment of interest to enable a creditor
15 to receive the present value of the allowed amount of a
16 tax claim, the rate of interest shall be the rate determined
17 under applicable nonbankruptcy law.

18 “(b) In the case of taxes paid under a confirmed plan
19 under this title, the rate of interest shall be determined
20 as of the calendar month in which the plan is confirmed.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for subchapter 1 of chapter 5 of title 11, United States
23 Code, is amended by adding at the end the following:

“511. Rate of interest on tax claims.”.



1 **SEC. 705. PRIORITY OF TAX CLAIMS.**

2 Section 507(a)(8) of title 11, United States Code, is
3 amended—

4 (1) in subparagraph (A)—

5 (A) in the matter preceding clause (i), by
6 inserting “for a taxable year ending on or be-
7 fore the date of the filing of the petition” after
8 “gross receipts”;

9 (B) in clause (i), by striking “for a taxable
10 year ending on or before the date of the filing
11 of the petition”; and

12 (C) by striking clause (ii) and inserting the
13 following:

14 “(ii) assessed within 240 days before
15 the date of the filing of the petition, exclu-
16 sive of—

17 “(I) any time during which an
18 offer in compromise with respect to
19 that tax was pending or in effect dur-
20 ing that 240-day period, plus 30 days;
21 and

22 “(II) any time during which a
23 stay of proceedings against collections
24 was in effect in a prior case under
25 this title during that 240-day period,
26 plus 90 days.”; and



1 (2) by adding at the end the following:

2 “An otherwise applicable time period specified in
3 this paragraph shall be suspended for any period
4 during which a governmental unit is prohibited
5 under applicable nonbankruptcy law from collecting
6 a tax as a result of a request by the debtor for a
7 hearing and an appeal of any collection action taken
8 or proposed against the debtor, plus 90 days; plus
9 any time during which the stay of proceedings was
10 in effect in a prior case under this title or during
11 which collection was precluded by the existence of 1
12 or more confirmed plans under this title, plus 90
13 days.”.

14 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

15 Section 507(a)(8)(B) of title 11, United States Code,
16 is amended by striking “assessed” and inserting “in-
17 curred”.

18 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**

19 **TER 13.**

20 Section 1328(a)(2) of title 11, United States Code,
21 as amended by section 314, is amended by striking “para-
22 graph” and inserting “section 507(a)(8)(C) or in para-
23 graph (1)(B), (1)(C),”.



1 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**
2 **TER 11.**

3 Section 1141(d) of title 11, United States Code, as
4 amended by section 321, is amended by adding at the end
5 the following:

6 “(6) Notwithstanding paragraph (1), the confirma-
7 tion of a plan does not discharge a debtor that is a cor-
8 poration from any debt—

9 “(A) of a kind specified in paragraph (2)(A) or
10 (2)(B) of section 523(a) that is owed to a domestic
11 governmental unit, or owed to a person as the result
12 of an action filed under subchapter III of chapter 37
13 of title 31 or any similar State statute; or

14 “(B) for a tax or customs duty with respect to
15 which the debtor—

16 “(i) made a fraudulent return; or

17 “(ii) willfully attempted in any manner to
18 evade or to defeat such tax or such customs
19 duty.”.

20 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**
21 **PREPETITION TAXES.**

22 Section 362(a)(8) of title 11, United States Code, is
23 amended by striking “the debtor” and inserting “a cor-
24 porate debtor’s tax liability for a taxable period the bank-
25 ruptcy court may determine or concerning the tax liability



1 of a debtor who is an individual for a taxable period end-
2 ing before the order for relief under this title”.

3 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**
4 **CASES.**

5 Section 1129(a)(9) of title 11, United States Code,
6 is amended—

7 (1) in subparagraph (B), by striking “and” at
8 the end;

9 (2) in subparagraph (C), by striking “deferred
10 cash payments,” and all that follows through the
11 end of the subparagraph, and inserting “regular in-
12 stallment payments in cash—

13 “(i) of a total value, as of the effective
14 date of the plan, equal to the allowed
15 amount of such claim;

16 “(ii) over a period ending not later
17 than 5 years after the date of the entry of
18 the order for relief under section 301, 302,
19 or 303; and

20 “(iii) in a manner not less favorable
21 than the most favored nonpriority unse-
22 cured claim provided for by the plan (other
23 than cash payments made to a class of
24 creditors under section 1122(b)); and”;
25 and



1 (3) by adding at the end the following:

2 “(D) with respect to a secured claim which
3 would otherwise meet the description of an un-
4 secured claim of a governmental unit under sec-
5 tion 507(a)(8), but for the secured status of
6 that claim, the holder of that claim will receive
7 on account of that claim, cash payments, in the
8 same manner and over the same period, as pre-
9 scribed in subparagraph (C).”.

10 **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**
11 **ITED.**

12 Section 545(2) of title 11, United States Code, is
13 amended by inserting before the semicolon at the end the
14 following: “, except in any case in which a purchaser is
15 a purchaser described in section 6323 of the Internal Rev-
16 enue Code of 1986, or in any other similar provision of
17 State or local law”.

18 **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**
19 **NESS.**

20 (a) **PAYMENT OF TAXES REQUIRED.**—Section 960 of
21 title 28, United States Code, is amended—

22 (1) by inserting “(a)” before “Any”; and

23 (2) by adding at the end the following:



1 “(b) A tax under subsection (a) shall be paid on or
2 before the due date of the tax under applicable nonbank-
3 ruptcy law, unless—

4 “(1) the tax is a property tax secured by a lien
5 against property that is abandoned within a reason-
6 able period of time after the lien attaches by the
7 trustee of a bankruptcy estate under section 554 of
8 title 11; or

9 “(2) payment of the tax is excused under a spe-
10 cific provision of title 11.

11 “(c) In a case pending under chapter 7 of title 11,
12 payment of a tax may be deferred until final distribution
13 is made under section 726 of title 11, if—

14 “(1) the tax was not incurred by a trustee duly
15 appointed under chapter 7 of title 11; or

16 “(2) before the due date of the tax, an order of
17 the court makes a finding of probable insufficiency
18 of funds of the estate to pay in full the administra-
19 tive expenses allowed under section 503(b) of title
20 11 that have the same priority in distribution under
21 section 726(b) of title 11 as the priority of that
22 tax.”.

23 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—
24 Section 503(b)(1)(B)(i) of title 11, United States Code,
25 is amended by inserting “whether secured or unsecured,



1 including property taxes for which liability is in rem, in
2 personam, or both,” before “except”.

3 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE
4 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of
5 title 11, United States Code, is amended—

6 (1) in subparagraph (B), by striking “and” at
7 the end;

8 (2) in subparagraph (C), by adding “and” at
9 the end; and

10 (3) by adding at the end the following:

11 “(D) notwithstanding the requirements of sub-
12 section (a), a governmental unit shall not be re-
13 quired to file a request for the payment of an ex-
14 pense described in subparagraph (B) or (C), as a
15 condition of its being an allowed administrative ex-
16 pense;”.

17 (d) PAYMENT OF TAXES AND FEES AS SECURED
18 CLAIMS.—Section 506 of title 11, United States Code, is
19 amended—

20 (1) in subsection (b), by inserting “or State
21 statute” after “agreement”; and

22 (2) in subsection (c), by inserting “, including
23 the payment of all ad valorem property taxes with
24 respect to the property” before the period at the
25 end.



1 **SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

2 Section 726(a)(1) of title 11, United States Code, is
3 amended by striking “before the date on which the trustee
4 commences distribution under this section;” and inserting
5 the following: “on or before the earlier of—

6 “(A) the date that is 10 days after the
7 mailing to creditors of the summary of the
8 trustee’s final report; or

9 “(B) the date on which the trustee com-
10 mences final distribution under this section;”.

11 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**
12 **THORITIES.**

13 Section 523(a) of title 11, United States Code, as
14 amended by sections 215 and 224, is amended—

15 (1) in paragraph (1)(B)—

16 (A) in the matter preceding clause (i), by
17 inserting “or equivalent report or notice,” after
18 “a return,”;

19 (B) in clause (i), by inserting “or given”
20 after “filed”; and

21 (C) in clause (ii)—

22 (i) by inserting “or given” after
23 “filed”; and

24 (ii) by inserting “, report, or notice”
25 after “return”; and

26 (2) by adding at the end the following:



1 “For purposes of this subsection, the term ‘return’ means
2 a return that satisfies the requirements of applicable non-
3 bankruptcy law (including applicable filing requirements).
4 Such term includes a return prepared pursuant to section
5 6020(a) of the Internal Revenue Code of 1986, or similar
6 State or local law, or a written stipulation to a judgment
7 or a final order entered by a nonbankruptcy tribunal, but
8 does not include a return made pursuant to section
9 6020(b) of the Internal Revenue Code of 1986, or a simi-
10 lar State or local law.”.

11 **SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**
12 **PAID TAXES.**

13 Section 505(b)(2) of title 11, United States Code, as
14 amended by section 703, is amended by inserting “the es-
15 tate,” after “misrepresentation,”.

16 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**
17 **FIRM CHAPTER 13 PLANS.**

18 (a) **FILING OF PREPETITION TAX RETURNS RE-**
19 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of
20 title 11, United States Code, as amended by sections 102,
21 213, and 306, is amended by inserting after paragraph
22 (8) the following:

23 “(9) the debtor has filed all applicable Federal,
24 State, and local tax returns as required by section
25 1308.”.



1 (b) ADDITIONAL TIME PERMITTED FOR FILING TAX
2 RETURNS.—

3 (1) IN GENERAL.—Subchapter I of chapter 13
4 of title 11, United States Code, is amended by add-
5 ing at the end the following:

6 **“§ 1308. Filing of prepetition tax returns**

7 “(a) Not later than the day before the date on which
8 the meeting of the creditors is first scheduled to be held
9 under section 341(a), if the debtor was required to file
10 a tax return under applicable nonbankruptcy law, the
11 debtor shall file with appropriate tax authorities all tax
12 returns for all taxable periods ending during the 4-year
13 period ending on the date of the filing of the petition.

14 “(b)(1) Subject to paragraph (2), if the tax returns
15 required by subsection (a) have not been filed by the date
16 on which the meeting of creditors is first scheduled to be
17 held under section 341(a), the trustee may hold open that
18 meeting for a reasonable period of time to allow the debtor
19 an additional period of time to file any unfiled returns,
20 but such additional period of time shall not extend
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) After notice and a hearing, and order entered
11 before the tolling of any applicable filing period deter-
12 mined under this subsection, if the debtor demonstrates
13 by a preponderance of the evidence that the failure to file
14 a return as required under this subsection is attributable
15 to circumstances beyond the control of the debtor, the
16 court may extend the filing period established by the trust-
17 ee under this subsection for—

18 “(A) a period of not more than 30 days for re-
19 turns described in paragraph (1); and

20 “(B) a period not to extend after the applicable
21 extended due date for a return described in para-
22 graph (2).

23 “(c) For purposes of this section, the term ‘return’
24 includes a return prepared pursuant to subsection (a) or
25 (b) of section 6020 of the Internal Revenue Code of 1986,



1 or a similar State or local law, or a written stipulation
2 to a judgment or a final order entered by a nonbankruptcy
3 tribunal.”.

4 (2) CONFORMING AMENDMENT.—The table of
5 sections for subchapter I of chapter 13 of title 11,
6 United States Code, is amended by adding at the
7 end the following:

“1308. Filing of prepetition tax returns.”.

8 (c) DISMISSAL OR CONVERSION ON FAILURE TO
9 COMPLY.—Section 1307 of title 11, United States Code,
10 is amended—

11 (1) by redesignating subsections (e) and (f) as
12 subsections (f) and (g), respectively; and

13 (2) by inserting after subsection (d) the fol-
14 lowing:

15 “(e) Upon the failure of the debtor to file a tax return
16 under section 1308, on request of a party in interest or
17 the United States trustee and after notice and a hearing,
18 the court shall dismiss a case or convert a case under this
19 chapter to a case under chapter 7 of this title, whichever
20 is in the best interest of the creditors and the estate.”.

21 (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of
22 title 11, United States Code, is amended by inserting be-
23 fore the period at the end the following: “, and except that
24 in a case under chapter 13, a claim of a governmental
25 unit for a tax with respect to a return filed under section



1 1308 shall be timely if the claim is filed on or before the
2 date that is 60 days after the date on which such return
3 was filed as required”.

4 (e) RULES FOR OBJECTIONS TO CLAIMS AND TO
5 CONFIRMATION.—It is the sense of Congress that the Ad-
6 visory Committee on Bankruptcy Rules of the Judicial
7 Conference of the United States should, as soon as prac-
8 ticable after the date of enactment of this Act, propose
9 for adoption amended Federal Rules of Bankruptcy Proce-
10 dure which provide that—

11 (1) notwithstanding the provisions of Rule
12 3015(f), in cases under chapter 13 of title 11,
13 United States Code, an objection to the confirmation
14 of a plan filed by a governmental unit on or before
15 the date that is 60 days after the date on which the
16 debtor files all tax returns required under sections
17 1308 and 1325(a)(7) of title 11, United States
18 Code, shall be treated for all purposes as if such ob-
19 jection had been timely filed before such confirma-
20 tion; and

21 (2) in addition to the provisions of Rule 3007,
22 in a case under chapter 13 of title 11, United States
23 Code, no objection to a claim for a tax with respect
24 to which a return is required to be filed under sec-



1 tion 1308 of title 11, United States Code, shall be
2 filed until such return has been filed as required.

3 **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

4 Section 1125(a)(1) of title 11, United States Code,
5 is amended—

6 (1) by inserting “including a discussion of the
7 potential material Federal tax consequences of the
8 plan to the debtor, any successor to the debtor, and
9 a hypothetical investor typical of the holders of
10 claims or interests in the case,” after “records”; and

11 (2) by striking “a hypothetical reasonable inves-
12 tor typical of holders of claims or interests” and in-
13 serting “such a hypothetical investor”.

14 **SEC. 718. SETOFF OF TAX REFUNDS.**

15 Section 362(b) of title 11, United States Code, as
16 amended by sections 224, 303, 311, and 401, is amended
17 by inserting after paragraph (25) the following:

18 “(26) under subsection (a), of the setoff under
19 applicable nonbankruptcy law of an income tax re-
20 fund, by a governmental unit, with respect to a tax-
21 able period that ended before the order for relief
22 against an income tax liability for a taxable period
23 that also ended before the order for relief, except
24 that in any case in which the setoff of an income tax
25 refund is not permitted under applicable nonbank-



1 rruptcy law because of a pending action to determine
2 the amount or legality of a tax liability, the govern-
3 mental unit may hold the refund pending the resolu-
4 tion of the action, unless the court, on the motion
5 of the trustee and after notice and a hearing, grants
6 the taxing authority adequate protection (within the
7 meaning of section 361) for the secured claim of
8 that authority in the setoff under section 506(a);”.

9 **SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREAT-**
10 **MENT OF STATE AND LOCAL TAXES.**

11 (a) IN GENERAL.—

12 (1) SPECIAL PROVISIONS.—Section 346 of title
13 11, United States Code, is amended to read as fol-
14 lows:

15 **“§ 346. Special provisions related to the treatment of**
16 **State and local taxes**

17 “(a) Whenever the Internal Revenue Code of 1986
18 provides that a separate taxable estate or entity is created
19 in a case concerning a debtor under this title, and the in-
20 come, gain, loss, deductions, and credits of such estate
21 shall be taxed to or claimed by the estate, a separate tax-
22 able estate is also created for purposes of any State and
23 local law imposing a tax on or measured by income and
24 such income, gain, loss, deductions, and credits shall be
25 taxed to or claimed by the estate and may not be taxed



1 to or claimed by the debtor. The preceding sentence shall
2 not apply if the case is dismissed. The trustee shall make
3 tax returns of income required under any such State or
4 local law.

5 “(b) Whenever the Internal Revenue Code of 1986
6 provides that no separate taxable estate shall be created
7 in a case concerning a debtor under this title, and the in-
8 come, gain, loss, deductions, and credits of an estate shall
9 be taxed to or claimed by the debtor, such income, gain,
10 loss, deductions, and credits shall be taxed to or claimed
11 by the debtor under a State or local law imposing a tax
12 on or measured by income and may not be taxed to or
13 claimed by the estate. The trustee shall make such tax
14 returns of income of corporations and of partnerships as
15 are required under any State or local law, but with respect
16 to partnerships, shall make said returns only to the extent
17 such returns are also required to be made under such
18 Code. The estate shall be liable for any tax imposed on
19 such corporation or partnership, but not for any tax im-
20 posed on partners or members.

21 “(c) With respect to a partnership or any entity treat-
22 ed as a partnership under a State or local law imposing
23 a tax on or measured by income that is a debtor in a case
24 under this title, any gain or loss resulting from a distribu-
25 tion of property from such partnership, or any distributive



1 share of any income, gain, loss, deduction, or credit of a
2 partner or member that is distributed, or considered dis-
3 tributed, from such partnership, after the commencement
4 of the case, is gain, loss, income, deduction, or credit, as
5 the case may be, of the partner or member, and if such
6 partner or member is a debtor in a case under this title,
7 shall be subject to tax in accordance with subsection (a)
8 or (b).

9 “(d) For purposes of any State or local law imposing
10 a tax on or measured by income, the taxable period of
11 a debtor in a case under this title shall terminate only
12 if and to the extent that the taxable period of such debtor
13 terminates under the Internal Revenue Code of 1986.

14 “(e) The estate in any case described in subsection
15 (a) shall use the same accounting method as the debtor
16 used immediately before the commencement of the case,
17 if such method of accounting complies with applicable non-
18 bankruptcy tax law.

19 “(f) For purposes of any State or local law imposing
20 a tax on or measured by income, a transfer of property
21 from the debtor to the estate or from the estate to the
22 debtor shall not be treated as a disposition for purposes
23 of any provision assigning tax consequences to a disposi-
24 tion, except to the extent that such transfer is treated as
25 a disposition under the Internal Revenue Code of 1986.



1 “(g) Whenever a tax is imposed pursuant to a State
2 or local law imposing a tax on or measured by income pur-
3 suant to subsection (a) or (b), such tax shall be imposed
4 at rates generally applicable to the same types of entities
5 under such State or local law.

6 “(h) The trustee shall withhold from any payment of
7 claims for wages, salaries, commissions, dividends, inter-
8 est, or other payments, or collect, any amount required
9 to be withheld or collected under applicable State or local
10 tax law, and shall pay such withheld or collected amount
11 to the appropriate governmental unit at the time and in
12 the manner required by such tax law, and with the same
13 priority as the claim from which such amount was with-
14 held or collected was paid.

15 “(i)(1) To the extent that any State or local law im-
16 posing a tax on or measured by income provides for the
17 carryover of any tax attribute from one taxable period to
18 a subsequent taxable period, the estate shall succeed to
19 such tax attribute in any case in which such estate is sub-
20 ject to tax under subsection (a).

21 “(2) After such a case is closed or dismissed, the
22 debtor shall succeed to any tax attribute to which the es-
23 tate succeeded under paragraph (1) to the extent con-
24 sistent with the Internal Revenue Code of 1986.



1 “(3) The estate may carry back any loss or tax at-
2 tribute to a taxable period of the debtor that ended before
3 the order for relief under this title to the extent that—

4 “(A) applicable State or local tax law provides
5 for a carryback in the case of the debtor; and

6 “(B) the same or a similar tax attribute may be
7 carried back by the estate to such a taxable period
8 of the debtor under the Internal Revenue Code of
9 1986.

10 “(j)(1) For purposes of any State or local law impos-
11 ing a tax on or measured by income, income is not realized
12 by the estate, the debtor, or a successor to the debtor by
13 reason of discharge of indebtedness in a case under this
14 title, except to the extent, if any, that such income is sub-
15 ject to tax under the Internal Revenue Code of 1986.

16 “(2) Whenever the Internal Revenue Code of 1986
17 provides that the amount excluded from gross income in
18 respect of the discharge of indebtedness in a case under
19 this title shall be applied to reduce the tax attributes of
20 the debtor or the estate, a similar reduction shall be made
21 under any State or local law imposing a tax on or meas-
22 ured by income to the extent such State or local law recog-
23 nizes such attributes. Such State or local law may also
24 provide for the reduction of other attributes to the extent



1 that the full amount of income from the discharge of in-
2 debtedness has not been applied.

3 “(k)(1) Except as provided in this section and section
4 505, the time and manner of filing tax returns and the
5 items of income, gain, loss, deduction, and credit of any
6 taxpayer shall be determined under applicable nonbank-
7 ruptcy law.

8 “(2) For Federal tax purposes, the provisions of this
9 section are subject to the Internal Revenue Code of 1986
10 and other applicable Federal nonbankruptcy law.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for chapter 3 of title 11, United States Code,
13 is amended by striking the item relating to section
14 346 and inserting the following:

“346. Special provisions related to the treatment of State and local taxes.”.

15 (b) CONFORMING AMENDMENTS.—Title 11 of the
16 United States Code is amended—

17 (1) by striking section 728;

18 (2) in the table of sections for chapter 7 by
19 striking the item relating to section 728;

20 (3) in section 1146—

21 (A) by striking subsections (a) and (b);

22 and

23 (B) by redesignating subsections (c) and

24 (d) as subsections (a) and (b), respectively; and

25 (4) in section 1231—



1 (A) by striking subsections (a) and (b);
2 and
3 (B) by redesignating subsections (c) and
4 (d) as subsections (a) and (b), respectively.

5 **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX**
6 **RETURNS.**

7 Section 521 of title 11, United States Code, as
8 amended by sections 106, 225, 305, 315, and 316, is
9 amended by adding at the end the following:

10 “(k)(1) Notwithstanding any other provision of this
11 title, if the debtor fails to file a tax return that becomes
12 due after the commencement of the case or to properly
13 obtain an extension of the due date for filing such return,
14 the taxing authority may request that the court enter an
15 order converting or dismissing the case.

16 “(2) If the debtor does not file the required return
17 or obtain the extension referred to in paragraph (1) within
18 90 days after a request is filed by the taxing authority
19 under that paragraph, the court shall convert or dismiss
20 the case, whichever is in the best interests of creditors and
21 the estate.”.



1 **TITLE VIII—ANCILLARY AND**
2 **OTHER CROSS-BORDER CASES**

3 **SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**
4 **UNITED STATES CODE.**

5 (a) IN GENERAL.—Title 11, United States Code, is
6 amended by inserting after chapter 13 the following:

7 **“CHAPTER 15—ANCILLARY AND OTHER**
8 **CROSS-BORDER CASES**

“Sec.

“1501. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“1502. Definitions.

“1503. International obligations of the United States.

“1504. Commencement of ancillary case.

“1505. Authorization to act in a foreign country.

“1506. Public policy exception.

“1507. Additional assistance.

“1508. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND
CREDITORS TO THE COURT

“1509. Right of direct access.

“1510. Limited jurisdiction.

“1511. Commencement of case under section 301 or 303.

“1512. Participation of a foreign representative in a case under this title.

“1513. Access of foreign creditors to a case under this title.

“1514. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING
AND RELIEF

“1515. Application for recognition.

“1516. Presumptions concerning recognition.

“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) courts of the United States, United
8 States trustees, trustees, examiners, debtors,
9 and debtors in possession; and

10 “(B) the courts and other competent au-
11 thorities of foreign countries involved in cross-
12 border insolvency cases;

13 “(2) greater legal certainty for trade and in-
14 vestment;

15 “(3) fair and efficient administration of cross-
16 border insolvencies that protects the interests of all
17 creditors, and other interested entities, including the
18 debtor;



1 “(4) protection and maximization of the value
2 of the debtor’s assets; and

3 “(5) facilitation of the rescue of financially
4 troubled businesses, thereby protecting investment
5 and preserving employment.

6 “(b) This chapter applies where—

7 “(1) assistance is sought in the United States
8 by a foreign court or a foreign representative in con-
9 nection with a foreign proceeding;

10 “(2) assistance is sought in a foreign country in
11 connection with a case under this title;

12 “(3) a foreign proceeding and a case under this
13 title with respect to the same debtor are taking place
14 concurrently; or

15 “(4) creditors or other interested persons in a
16 foreign country have an interest in requesting the
17 commencement of, or participating in, a case or pro-
18 ceeding under this title.

19 “(c) This chapter does not apply to—

20 “(1) a proceeding concerning an entity, other
21 than a foreign insurance company, identified by ex-
22 clusion in section 109(b);

23 “(2) an individual, or to an individual and such
24 individual’s spouse, who have debts within the limits
25 specified in section 109(e) and who are citizens of



1 the United States or aliens lawfully admitted for
2 permanent residence in the United States; or

3 “(3) an entity subject to a proceeding under the
4 Securities Investor Protection Act of 1970, a stock-
5 broker subject to subchapter III of chapter 7 of this
6 title, or a commodity broker subject to subchapter
7 IV of chapter 7 of this title.

8 “(d) The court may not grant relief under this chap-
9 ter with respect to any deposit, escrow, trust fund, or
10 other security required or permitted under any applicable
11 State insurance law or regulation for the benefit of claim
12 holders in the United States.

13 “SUBCHAPTER I—GENERAL PROVISIONS

14 “§ 1502. Definitions

15 “For the purposes of this chapter, the term—

16 “(1) ‘debtor’ means an entity that is the subject
17 of a foreign proceeding;

18 “(2) ‘establishment’ means any place of oper-
19 ations where the debtor carries out a nontransitory
20 economic activity;

21 “(3) ‘foreign court’ means a judicial or other
22 authority competent to control or supervise a foreign
23 proceeding;



1 “(4) ‘foreign main proceeding’ means a foreign
2 proceeding taking place in the country where the
3 debtor has the center of its main interests;

4 “(5) ‘foreign nonmain proceeding’ means a for-
5 eign proceeding, other than a foreign main pro-
6 ceeding, taking place in a country where the debtor
7 has an establishment;

8 “(6) ‘trustee’ includes a trustee, a debtor in
9 possession in a case under any chapter of this title,
10 or a debtor under chapter 9 of this title;

11 “(7) ‘recognition’ means the entry of an order
12 granting recognition of a foreign main proceeding or
13 foreign nonmain proceeding under this chapter; and

14 “(8) ‘within the territorial jurisdiction of the
15 United States’, when used with reference to property
16 of a debtor, refers to tangible property located with-
17 in the territory of the United States and intangible
18 property deemed under applicable nonbankruptcy
19 law to be located within that territory, including any
20 property subject to attachment or garnishment that
21 may properly be seized or garnished by an action in
22 a Federal or State court in the United States.

23 **“§ 1503. International obligations of the United States**

24 “To the extent that this chapter conflicts with an ob-
25 ligation of the United States arising out of any treaty or



1 other form of agreement to which it is a party with one
2 or more other countries, the requirements of the treaty
3 or agreement prevail.

4 **“§ 1504. Commencement of ancillary case**

5 “A case under this chapter is commenced by the filing
6 of a petition for recognition of a foreign proceeding under
7 section 1515.

8 **“§ 1505. Authorization to act in a foreign country**

9 “A trustee or another entity (including an examiner)
10 may be authorized by the court to act in a foreign country
11 on behalf of an estate created under section 541. An entity
12 authorized to act under this section may act in any way
13 permitted by the applicable foreign law.

14 **“§ 1506. Public policy exception**

15 “Nothing in this chapter prevents the court from re-
16 fusing to take an action governed by this chapter if the
17 action would be manifestly contrary to the public policy
18 of the United States.

19 **“§ 1507. Additional assistance**

20 “(a) Subject to the specific limitations stated else-
21 where in this chapter the court, if recognition is granted,
22 may provide additional assistance to a foreign representa-
23 tive under this title or under other laws of the United
24 States.



1 “(b) In determining whether to provide additional as-
2 sistance under this title or under other laws of the United
3 States, the court shall consider whether such additional
4 assistance, consistent with the principles of comity, will
5 reasonably assure—

6 “(1) just treatment of all holders of claims
7 against or interests in the debtor’s property;

8 “(2) protection of claim holders in the United
9 States against prejudice and inconvenience in the
10 processing of claims in such foreign proceeding;

11 “(3) prevention of preferential or fraudulent
12 dispositions of property of the debtor;

13 “(4) distribution of proceeds of the debtor’s
14 property substantially in accordance with the order
15 prescribed by this title; and

16 “(5) if appropriate, the provision of an oppor-
17 tunity for a fresh start for the individual that such
18 foreign proceeding concerns.

19 **“§ 1508. Interpretation**

20 “In interpreting this chapter, the court shall consider
21 its international origin, and the need to promote an appli-
22 cation of this chapter that is consistent with the applica-
23 tion of similar statutes adopted by foreign jurisdictions.



1 “SUBCHAPTER II—ACCESS OF FOREIGN REP-
2 RESENTATIVES AND CREDITORS TO THE
3 COURT

4 “§ 1509. Right of direct access

5 “(a) A foreign representative may commence a case
6 under section 1504 by filing directly with the court a peti-
7 tion for recognition of a foreign proceeding under section
8 1515.

9 “(b) If the court grants recognition under section
10 1515, and subject to any limitations that the court may
11 impose consistent with the policy of this chapter—

12 “(1) the foreign representative has the capacity
13 to sue and be sued in a court in the United States;

14 “(2) the foreign representative may apply di-
15 rectly to a court in the United States for appropriate
16 relief in that court; and

17 “(3) a court in the United States shall grant
18 comity or cooperation to the foreign representative.

19 “(c) A request for comity or cooperation by a foreign
20 representative in a court in the United States other than
21 the court which granted recognition shall be accompanied
22 by a certified copy of an order granting recognition under
23 section 1517.

24 “(d) If the court denies recognition under this chap-
25 ter, the court may issue any appropriate order necessary



1 to prevent the foreign representative from obtaining com-
2 ity or cooperation from courts in the United States.

3 “(e) Whether or not the court grants recognition, and
4 subject to sections 306 and 1510, a foreign representative
5 is subject to applicable nonbankruptcy law.

6 “(f) Notwithstanding any other provision of this sec-
7 tion, the failure of a foreign representative to commence
8 a case or to obtain recognition under this chapter does
9 not affect any right the foreign representative may have
10 to sue in a court in the United States to collect or recover
11 a claim which is the property of the debtor.

12 **“§ 1510. Limited jurisdiction**

13 “The sole fact that a foreign representative files a
14 petition under section 1515 does not subject the foreign
15 representative to the jurisdiction of any court in the
16 United States for any other purpose.

17 **“§ 1511. Commencement of case under section 301 or**
18 **303**

19 “(a) Upon recognition, a foreign representative may
20 commence—

21 “(1) an involuntary case under section 303; or

22 “(2) a voluntary case under section 301 or 302,
23 if the foreign proceeding is a foreign main pro-
24 ceeding.



1 “(2)(A) Subsection (a) and paragraph (1) do not
2 change or codify present law as to the allowability of for-
3 eign revenue claims or other foreign public law claims in
4 a proceeding under this title.

5 “(B) Allowance and priority as to a foreign tax claim
6 or other foreign public law claim shall be governed by any
7 applicable tax treaty of the United States, under the con-
8 ditions and circumstances specified therein.

9 **“§ 1514. Notification to foreign creditors concerning a**
10 **case under this title**

11 “(a) Whenever in a case under this title notice is to
12 be given to creditors generally or to any class or category
13 of creditors, such notice shall also be given to the known
14 creditors generally, or to creditors in the notified class or
15 category, that do not have addresses in the United States.
16 The court may order that appropriate steps be taken with
17 a view to notifying any creditor whose address is not yet
18 known.

19 “(b) Such notification to creditors with foreign ad-
20 dresses described in subsection (a) shall be given individ-
21 ually, unless the court considers that, under the cir-
22 cumstances, some other form of notification would be
23 more appropriate. No letter or other formality is required.

24 “(c) When a notification of commencement of a case
25 is to be given to foreign creditors, the notification shall—



1 “(1) indicate the time period for filing proofs of
2 claim and specify the place for their filing;

3 “(2) indicate whether secured creditors need to
4 file their proofs of claim; and

5 “(3) contain any other information required to
6 be included in such a notification to creditors under
7 this title and the orders of the court.

8 “(d) Any rule of procedure or order of the court as
9 to notice or the filing of a claim shall provide such addi-
10 tional time to creditors with foreign addresses as is rea-
11 sonable under the circumstances.

12 “SUBCHAPTER III—RECOGNITION OF A
13 FOREIGN PROCEEDING AND RELIEF

14 “§ 1515. **Application for recognition**

15 “(a) A foreign representative applies to the court for
16 recognition of the foreign proceeding in which the foreign
17 representative has been appointed by filing a petition for
18 recognition.

19 “(b) A petition for recognition shall be accompanied
20 by—

21 “(1) a certified copy of the decision com-
22 mencing the foreign proceeding and appointing the
23 foreign representative;



1 “(2) a certificate from the foreign court affirm-
2 ing the existence of the foreign proceeding and of
3 the appointment of the foreign representative; or

4 “(3) in the absence of evidence referred to in
5 paragraphs (1) and (2), any other evidence accept-
6 able to the court of the existence of the foreign pro-
7 ceeding and of the appointment of the foreign rep-
8 resentative.

9 “(c) A petition for recognition shall also be accom-
10 panied by a statement identifying all foreign proceedings
11 with respect to the debtor that are known to the foreign
12 representative.

13 “(d) The documents referred to in paragraphs (1)
14 and (2) of subsection (b) shall be translated into English.
15 The court may require a translation into English of addi-
16 tional documents.

17 **“§ 1516. Presumptions concerning recognition**

18 “(a) If the decision or certificate referred to in section
19 1515(b) indicates that the foreign proceeding is a foreign
20 proceeding and that the person or body is a foreign rep-
21 resentative, the court is entitled to so presume.

22 “(b) The court is entitled to presume that documents
23 submitted in support of the petition for recognition are
24 authentic, whether or not they have been legalized.



1 “(c) In the absence of evidence to the contrary, the
2 debtor’s registered office, or habitual residence in the case
3 of an individual, is presumed to be the center of the debt-
4 or’s main interests.

5 **“§ 1517. Order granting recognition**

6 “(a) Subject to section 1506, after notice and a hear-
7 ing, an order recognizing a foreign proceeding shall be en-
8 tered if—

9 “(1) the foreign proceeding for which recogni-
10 tion is sought is a foreign main proceeding or for-
11 eign nonmain proceeding within the meaning of sec-
12 tion 1502;

13 “(2) the foreign representative applying for rec-
14 ognition is a person or body; and

15 “(3) the petition meets the requirements of sec-
16 tion 1515.

17 “(b) The foreign proceeding shall be recognized—

18 “(1) as a foreign main proceeding if it is taking
19 place in the country where the debtor has the center
20 of its main interests; or

21 “(2) as a foreign nonmain proceeding if the
22 debtor has an establishment within the meaning of
23 section 1502 in the foreign country where the pro-
24 ceeding is pending.



1 “(c) A petition for recognition of a foreign proceeding
2 shall be decided upon at the earliest possible time. Entry
3 of an order recognizing a foreign proceeding constitutes
4 recognition under this chapter.

5 “(d) The provisions of this subchapter do not prevent
6 modification or termination of recognition if it is shown
7 that the grounds for granting it were fully or partially
8 lacking or have ceased to exist, but in considering such
9 action the court shall give due weight to possible prejudice
10 to parties that have relied upon the order granting rec-
11 ognition. The case under this chapter may be closed in
12 the manner prescribed under section 350.

13 **“§ 1518. Subsequent information**

14 “From the time of filing the petition for recognition
15 of the foreign proceeding, the foreign representative shall
16 file with the court promptly a notice of change of status
17 concerning—

18 “(1) any substantial change in the status of the
19 foreign proceeding or the status of the foreign rep-
20 resentative’s appointment; and

21 “(2) any other foreign proceeding regarding the
22 debtor that becomes known to the foreign represent-
23 ative.



1 **“§ 1519. Relief that may be granted upon filing peti-**
2 **tion for recognition**

3 “(a) From the time of filing a petition for recognition
4 until the court rules on the petition, the court may, at
5 the request of the foreign representative, where relief is
6 urgently needed to protect the assets of the debtor or the
7 interests of the creditors, grant relief of a provisional na-
8 ture, including—

9 “(1) staying execution against the debtor’s as-
10 sets;

11 “(2) entrusting the administration or realiza-
12 tion of all or part of the debtor’s assets located in
13 the United States to the foreign representative or
14 another person authorized by the court, including an
15 examiner, in order to protect and preserve the value
16 of assets that, by their nature or because of other
17 circumstances, are perishable, susceptible to devalu-
18 ation or otherwise in jeopardy; and

19 “(3) any relief referred to in paragraph (3),
20 (4), or (7) of section 1521(a).

21 “(b) Unless extended under section 1521(a)(6), the
22 relief granted under this section terminates when the peti-
23 tion for recognition is granted.

24 “(c) It is a ground for denial of relief under this sec-
25 tion that such relief would interfere with the administra-
26 tion of a foreign main proceeding.



1 “(d) The court may not enjoin a police or regulatory
2 act of a governmental unit, including a criminal action or
3 proceeding, under this section.

4 “(e) The standards, procedures, and limitations ap-
5 plicable to an injunction shall apply to relief under this
6 section.

7 “(f) The exercise of rights not subject to the stay
8 arising under section 362(a) pursuant to paragraph (6),
9 (7), (17), or (27) of section 362(b) or pursuant to section
10 362(n) shall not be stayed by any order of a court or ad-
11 ministrative agency in any proceeding under this chapter.

12 **“§ 1520. Effects of recognition of a foreign main pro-**
13 **ceeding**

14 “(a) Upon recognition of a foreign proceeding that
15 is a foreign main proceeding—

16 “(1) sections 361 and 362 apply with respect to
17 the debtor and that property of the debtor that is
18 within the territorial jurisdiction of the United
19 States;

20 “(2) sections 363, 549, and 552 of this title
21 apply to a transfer of an interest of the debtor in
22 property that is within the territorial jurisdiction of
23 the United States to the same extent that the sec-
24 tions would apply to property of an estate;



1 “(3) unless the court orders otherwise, the for-
2 eign representative may operate the debtor’s busi-
3 ness and may exercise the rights and powers of a
4 trustee under and to the extent provided by sections
5 363 and 552; and

6 “(4) section 552 applies to property of the debt-
7 or that is within the territorial jurisdiction of the
8 United States.

9 “(b) Subsection (a) does not affect the right to com-
10 mence an individual action or proceeding in a foreign
11 country to the extent necessary to preserve a claim against
12 the debtor.

13 “(c) Subsection (a) does not affect the right of a for-
14 eign representative or an entity to file a petition com-
15 mencing a case under this title or the right of any party
16 to file claims or take other proper actions in such a case.

17 **“§ 1521. Relief that may be granted upon recognition**

18 “(a) Upon recognition of a foreign proceeding, wheth-
19 er main or nonmain, where necessary to effectuate the
20 purpose of this chapter and to protect the assets of the
21 debtor or the interests of the creditors, the court may, at
22 the request of the foreign representative, grant any appro-
23 priate relief, including—

24 “(1) staying the commencement or continuation
25 of an individual action or proceeding concerning the



1 debtor's assets, rights, obligations or liabilities to the
2 extent they have not been stayed under section
3 1520(a);

4 “(2) staying execution against the debtor's as-
5 sets to the extent it has not been stayed under sec-
6 tion 1520(a);

7 “(3) suspending the right to transfer, encumber
8 or otherwise dispose of any assets of the debtor to
9 the extent this right has not been suspended under
10 section 1520(a);

11 “(4) providing for the examination of witnesses,
12 the taking of evidence or the delivery of information
13 concerning the debtor's assets, affairs, rights, obliga-
14 tions or liabilities;

15 “(5) entrusting the administration or realiza-
16 tion of all or part of the debtor's assets within the
17 territorial jurisdiction of the United States to the
18 foreign representative or another person, including
19 an examiner, authorized by the court;

20 “(6) extending relief granted under section
21 1519(a); and

22 “(7) granting any additional relief that may be
23 available to a trustee, except for relief available
24 under sections 522, 544, 545, 547, 548, 550, and
25 724(a).



1 “(b) Upon recognition of a foreign proceeding, wheth-
2 er main or nonmain, the court may, at the request of the
3 foreign representative, entrust the distribution of all or
4 part of the debtor’s assets located in the United States
5 to the foreign representative or another person, including
6 an examiner, authorized by the court, provided that the
7 court is satisfied that the interests of creditors in the
8 United States are sufficiently protected.

9 “(c) In granting relief under this section to a rep-
10 resentative of a foreign nonmain proceeding, the court
11 must be satisfied that the relief relates to assets that,
12 under the law of the United States, should be adminis-
13 tered in the foreign nonmain proceeding or concerns infor-
14 mation required in that proceeding.

15 “(d) The court may not enjoin a police or regulatory
16 act of a governmental unit, including a criminal action or
17 proceeding, under this section.

18 “(e) The standards, procedures, and limitations ap-
19 plicable to an injunction shall apply to relief under para-
20 graphs (1), (2), (3), and (6) of subsection (a).

21 “(f) The exercise of rights not subject to the stay
22 arising under section 362(a) pursuant to paragraph (6),
23 (7), (17), or (27) of section 362(b) or pursuant to section
24 362(n) shall not be stayed by any order of a court or ad-
25 ministrative agency in any proceeding under this chapter.



1 **“§ 1522. Protection of creditors and other interested**
2 **persons**

3 “(a) The court may grant relief under section 1519
4 or 1521, or may modify or terminate relief under sub-
5 section (c), only if the interests of the creditors and other
6 interested entities, including the debtor, are sufficiently
7 protected.

8 “(b) The court may subject relief granted under sec-
9 tion 1519 or 1521, or the operation of the debtor’s busi-
10 ness under section 1520(a)(3) of this title, to conditions
11 it considers appropriate, including the giving of security
12 or the filing of a bond.

13 “(c) The court may, at the request of the foreign rep-
14 resentative or an entity affected by relief granted under
15 section 1519 or 1521, or at its own motion, modify or
16 terminate such relief.

17 “(d) Section 1104(d) shall apply to the appointment
18 of an examiner under this chapter. Any examiner shall
19 comply with the qualification requirements imposed on a
20 trustee by section 322.

21 **“§ 1523. Actions to avoid acts detrimental to creditors**

22 “(a) Upon recognition of a foreign proceeding, the
23 foreign representative has standing in a case concerning
24 the debtor pending under another chapter of this title to
25 initiate actions under sections 522, 544, 545, 547, 548,
26 550, 553, and 724(a).



1 “(b) When the foreign proceeding is a foreign
2 nonmain proceeding, the court must be satisfied that an
3 action under subsection (a) relates to assets that, under
4 United States law, should be administered in the foreign
5 nonmain proceeding.

6 **“§ 1524. Intervention by a foreign representative**

7 “Upon recognition of a foreign proceeding, the for-
8 eign representative may intervene in any proceedings in
9 a State or Federal court in the United States in which
10 the debtor is a party.

11 “SUBCHAPTER IV—COOPERATION WITH FOR-
12 EIGN COURTS AND FOREIGN REPRESENTA-
13 TIVES

14 **“§ 1525. Cooperation and direct communication be-
15 tween the court and foreign courts or for-
16 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.

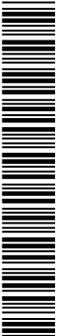


1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS
2 **“§ 1528. Commencement of a case under this title**
3 **after recognition of a foreign main pro-**
4 **ceeding**

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 section 1519
5 or 1521 must be consistent with the relief
6 granted in the case in the United States; and

7 “(B) even if the foreign proceeding is rec-
8 ognized as a foreign main proceeding, section
9 1520 does not apply.

10 “(2) If a case in the United States under this
11 title commences after recognition, or after the filing
12 of the petition for recognition, of the foreign
13 proceeding—

14 “(A) any relief in effect under section
15 1519 or 1521 shall be reviewed by the court
16 and shall be modified or terminated if incon-
17 sistent with the case in the United States; and

18 “(B) if the foreign proceeding is a foreign
19 main proceeding, the stay and suspension re-
20 ferred to in section 1520(a) shall be modified or
21 terminated if inconsistent with the relief grant-
22 ed in the case in the United States.

23 “(3) In granting, extending, or modifying relief
24 granted to a representative of a foreign nonmain
25 proceeding, the court must be satisfied that the re-



1 nated if inconsistent with the foreign main pro-
2 ceeding.

3 “(3) If, after recognition of a foreign nonmain
4 proceeding, another foreign nonmain proceeding is
5 recognized, the court shall grant, modify, or termi-
6 nate relief for the purpose of facilitating coordina-
7 tion of the proceedings.

8 **“§ 1531. Presumption of insolvency based on recogni-
9 tion of a foreign main proceeding**

10 “In the absence of evidence to the contrary, recogni-
11 tion of a foreign main proceeding is, for the purpose of
12 commencing a proceeding under section 303, proof that
13 the debtor is generally not paying its debts as such debts
14 become due.

15 **“§ 1532. Rule of payment in concurrent proceedings**

16 “Without prejudice to secured claims or rights in
17 rem, a creditor who has received payment with respect to
18 its claim in a foreign proceeding pursuant to a law relating
19 to insolvency may not receive a payment for the same
20 claim in a case under any other chapter of this title re-
21 garding the debtor, so long as the payment to other credi-
22 tors of the same class is proportionately less than the pay-
23 ment the creditor has already received.”.



1 (b) CLERICAL AMENDMENT.—The table of chapters
2 for title 11, United States Code, is amended by inserting
3 after the item relating to chapter 13 the following:

“15. Ancillary and Other Cross-Border Cases 1501”.

4 **SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28,**
5 **UNITED STATES CODE.**

6 (a) APPLICABILITY OF CHAPTERS.—Section 103 of
7 title 11, United States Code, is amended—

8 (1) in subsection (a), by inserting before the pe-
9 riod the following: “, and this chapter, sections 307,
10 362(n), 555 through 557, and 559 through 562
11 apply in a case under chapter 15”; and

12 (2) by adding at the end the following:

13 “(k) Chapter 15 applies only in a case under such
14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all
16 cases under this title; and

17 “(2) section 1509 applies whether or not a case
18 under this title is pending.”.

19 (b) DEFINITIONS.—Section 101 of title 11, United
20 States Code, is amended by striking paragraphs (23) and
21 (24) and inserting the following:

22 “(23) ‘foreign proceeding’ means a collective ju-
23 dicial or administrative proceeding in a foreign coun-
24 try, including an interim proceeding, under a law re-
25 lating to insolvency or adjustment of debt in which



1 proceeding the assets and affairs of the debtor are
2 subject to control or supervision by a foreign court,
3 for the purpose of reorganization or liquidation;

4 “(24) ‘foreign representative’ means a person
5 or body, including a person or body appointed on an
6 interim basis, authorized in a foreign proceeding to
7 administer the reorganization or the liquidation of
8 the debtor’s assets or affairs or to act as a rep-
9 resentative of the foreign proceeding;”.

10 (c) AMENDMENTS TO TITLE 28, UNITED STATES
11 CODE.—

12 (1) PROCEDURES.—Section 157(b)(2) of title
13 28, United States Code, is amended—

14 (A) in subparagraph (N), by striking
15 “and” at the end;

16 (B) in subparagraph (O), by striking the
17 period at the end and inserting “; and”; and

18 (C) by adding at the end the following:

19 “(P) recognition of foreign proceedings and
20 other matters under chapter 15 of title 11.”.

21 (2) BANKRUPTCY CASES AND PROCEEDINGS.—

22 Section 1334(c) of title 28, United States Code, is
23 amended by striking “Nothing in” and inserting
24 “Except with respect to a case under chapter 15 of
25 title 11, nothing in”.



1 (3) DUTIES OF TRUSTEES.—Section 586(a)(3)
2 of title 28, United States Code, is amended by strik-
3 ing “or 13” and inserting “13, or 15”.

4 (4) VENUE OF CASES ANCILLARY TO FOREIGN
5 PROCEEDINGS.—Section 1410 of title 28, United
6 States Code, is amended to read as follows:

7 **“§ 1410. Venue of cases ancillary to foreign pro-**
8 **ceedings**

9 “A case under chapter 15 of title 11 may be com-
10 menced in the district court of the United States for the
11 district—

12 “(1) in which the debtor has its principal place
13 of business or principal assets in the United States;

14 “(2) if the debtor does not have a place of busi-
15 ness or assets in the United States, in which there
16 is pending against the debtor an action or pro-
17 ceeding in a Federal or State court; or

18 “(3) in a case other than those specified in
19 paragraph (1) or (2), in which venue will be con-
20 sistent with the interests of justice and the conven-
21 ience of the parties, having regard to the relief
22 sought by the foreign representative.”.

23 (d) OTHER SECTIONS OF TITLE 11.—Title 11 of the
24 United States Code is amended—



1 (1) in section 109(b), by striking paragraph (3)
2 and inserting the following:

3 “(3)(A) a foreign insurance company, engaged
4 in such business in the United States; or

5 “(B) a foreign bank, savings bank, cooperative
6 bank, savings and loan association, building and
7 loan association, or credit union, that has a branch
8 or agency (as defined in section 1(b) of the Inter-
9 national Banking Act of 1978 in the United
10 States.”;

11 (2) in section 303, by striking subsection (k);

12 (3) by striking section 304;

13 (4) in the table of sections for chapter 3 by
14 striking the item relating to section 304;

15 (5) in section 306 by striking “, 304,” each
16 place it appears;

17 (6) in section 305(a) by striking paragraph (2)
18 and inserting the following:

19 “(2)(A) a petition under section 1515 of this
20 title for recognition of a foreign proceeding has been
21 granted; and

22 “(B) the purposes of chapter 15 of this title
23 would be best served by such dismissal or suspen-
24 sion.”; and

25 (7) in section 508—



- 1 (A) by striking subsection (a); and
- 2 (B) in subsection (b), by striking “(b)”.

3 **TITLE IX—FINANCIAL**
 4 **CONTRACT PROVISIONS**

5 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
 6 **SERVATORS OR RECEIVERS OF INSURED DE-**
 7 **POSITORY INSTITUTIONS.**

8 (a) DEFINITION OF QUALIFIED FINANCIAL CON-
 9 TRACT.—Section 11(e)(8)(D) of the Federal Deposit In-
 10 surance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

11 (1) by striking “subsection—” and inserting
 12 “subsection, the following definitions shall apply:”;
 13 and

14 (2) in clause (i), by inserting “, resolution, or
 15 order” after “any similar agreement that the Cor-
 16 poration determines by regulation”.

17 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-
 18 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
 19 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
 20 lows:

21 “(ii) SECURITIES CONTRACT.—The
 22 term ‘securities contract’—

23 “(I) means a contract for the
 24 purchase, sale, or loan of a security, a
 25 certificate of deposit, a mortgage loan,



1 or any interest in a mortgage loan, a
2 group or index of securities, certifi-
3 cates of deposit, or mortgage loans or
4 interests therein (including any inter-
5 est therein or based on the value
6 thereof) or any option on any of the
7 foregoing, including any option to
8 purchase or sell any such security,
9 certificate of deposit, mortgage loan,
10 interest, group or index, or option,
11 and including any repurchase or re-
12 verse repurchase transaction on any
13 such security, certificate of deposit,
14 mortgage loan, interest, group or
15 index, or option;

16 “(II) does not include any pur-
17 chase, sale, or repurchase obligation
18 under a participation in a commercial
19 mortgage loan unless the Corporation
20 determines by regulation, resolution,
21 or order to include any such agree-
22 ment within the meaning of such
23 term;



1 “(III) means any option entered
2 into on a national securities exchange
3 relating to foreign currencies;

4 “(IV) means the guarantee by or
5 to any securities clearing agency of
6 any settlement of cash, securities, cer-
7 tificates of deposit, mortgage loans or
8 interests therein, group or index of se-
9 curities, certificates of deposit, or
10 mortgage loans or interests therein
11 (including any interest therein or
12 based on the value thereof) or option
13 on any of the foregoing, including any
14 option to purchase or sell any such se-
15 curity, certificate of deposit, mortgage
16 loan, interest, group or index, or op-
17 tion;

18 “(V) means any margin loan;

19 “(VI) means any other agree-
20 ment or transaction that is similar to
21 any agreement or transaction referred
22 to in this clause;

23 “(VII) means any combination of
24 the agreements or transactions re-
25 ferred to in this clause;



1 “(VIII) means any option to
2 enter into any agreement or trans-
3 action referred to in this clause;

4 “(IX) means a master agreement
5 that provides for an agreement or
6 transaction referred to in subclause
7 (I), (III), (IV), (V), (VI), (VII), or
8 (VIII), together with all supplements
9 to any such master agreement, with-
10 out regard to whether the master
11 agreement provides for an agreement
12 or transaction that is not a securities
13 contract under this clause, except that
14 the master agreement shall be consid-
15 ered to be a securities contract under
16 this clause only with respect to each
17 agreement or transaction under the
18 master agreement that is referred to
19 in subclause (I), (III), (IV), (V), (VI),
20 (VII), or (VIII); and

21 “(X) means any security agree-
22 ment or arrangement or other credit
23 enhancement related to any agree-
24 ment or transaction referred to in this
25 clause, including any guarantee or re-



1 imbursement obligation in connection
2 with any agreement or transaction re-
3 ferred to in this clause.”.

4 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
5 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
7 lows:

8 “(iii) COMMODITY CONTRACT.—The
9 term ‘commodity contract’ means—

10 “(I) with respect to a futures
11 commission merchant, a contract for
12 the purchase or sale of a commodity
13 for future delivery on, or subject to
14 the rules of, a contract market or
15 board of trade;

16 “(II) with respect to a foreign fu-
17 tures commission merchant, a foreign
18 future;

19 “(III) with respect to a leverage
20 transaction merchant, a leverage
21 transaction;

22 “(IV) with respect to a clearing
23 organization, a contract for the pur-
24 chase or sale of a commodity for fu-
25 ture delivery on, or subject to the



1 rules of, a contract market or board
2 of trade that is cleared by such clear-
3 ing organization, or commodity option
4 traded on, or subject to the rules of,
5 a contract market or board of trade
6 that is cleared by such clearing orga-
7 nization;

8 “(V) with respect to a commodity
9 options dealer, a commodity option;

10 “(VI) any other agreement or
11 transaction that is similar to any
12 agreement or transaction referred to
13 in this clause;

14 “(VII) any combination of the
15 agreements or transactions referred to
16 in this clause;

17 “(VIII) any option to enter into
18 any agreement or transaction referred
19 to in this clause;

20 “(IX) a master agreement that
21 provides for an agreement or trans-
22 action referred to in subclause (I),
23 (II), (III), (IV), (V), (VI), (VII), or
24 (VIII), together with all supplements
25 to any such master agreement, with-



1 out regard to whether the master
2 agreement provides for an agreement
3 or transaction that is not a com-
4 modity contract under this clause, ex-
5 cept that the master agreement shall
6 be considered to be a commodity con-
7 tract under this clause only with re-
8 spect to each agreement or trans-
9 action under the master agreement
10 that is referred to in subclause (I),
11 (II), (III), (IV), (V), (VI), (VII), or
12 (VIII); or

13 “(X) any security agreement or
14 arrangement or other credit enhance-
15 ment related to any agreement or
16 transaction referred to in this clause,
17 including any guarantee or reimburse-
18 ment obligation in connection with
19 any agreement or transaction referred
20 to in this clause.”.

21 (d) DEFINITION OF FORWARD CONTRACT.—Section
22 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
23 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

24 “(iv) FORWARD CONTRACT.—The
25 term ‘forward contract’ means—



1 “(I) a contract (other than a
2 commodity contract) for the purchase,
3 sale, or transfer of a commodity or
4 any similar good, article, service,
5 right, or interest which is presently or
6 in the future becomes the subject of
7 dealing in the forward contract trade,
8 or product or byproduct thereof, with
9 a maturity date more than 2 days
10 after the date the contract is entered
11 into, including, a repurchase trans-
12 action, reverse repurchase transaction,
13 consignment, lease, swap, hedge
14 transaction, deposit, loan, option, allo-
15 cated transaction, unallocated trans-
16 action, or any other similar agree-
17 ment;

18 “(II) any combination of agree-
19 ments or transactions referred to in
20 subclauses (I) and (III);

21 “(III) any option to enter into
22 any agreement or transaction referred
23 to in subclause (I) or (II);

24 “(IV) a master agreement that
25 provides for an agreement or trans-



1 action referred to in subclauses (I),
2 (II), or (III), together with all supple-
3 ments to any such master agreement,
4 without regard to whether the master
5 agreement provides for an agreement
6 or transaction that is not a forward
7 contract under this clause, except that
8 the master agreement shall be consid-
9 ered to be a forward contract under
10 this clause only with respect to each
11 agreement or transaction under the
12 master agreement that is referred to
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or
15 arrangement or other credit enhance-
16 ment related to any agreement or
17 transaction referred to in subclause
18 (I), (II), (III), or (IV), including any
19 guarantee or reimbursement obliga-
20 tion in connection with any agreement
21 or transaction referred to in any such
22 subclause.”.

23 (e) DEFINITION OF REPURCHASE AGREEMENT.—
24 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance



1 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
2 follows:

3 “(v) REPURCHASE AGREEMENT.—The
4 term ‘repurchase agreement’ (which defini-
5 tion also applies to a reverse repurchase
6 agreement)—

7 “(I) means an agreement, includ-
8 ing related terms, which provides for
9 the transfer of one or more certifi-
10 cates of deposit, mortgage-related se-
11 curities (as such term is defined in
12 the Securities Exchange Act of 1934),
13 mortgage loans, interests in mortgage-
14 related securities or mortgage loans,
15 eligible bankers’ acceptances, qualified
16 foreign government securities or secu-
17 rities that are direct obligations of, or
18 that are fully guaranteed by, the
19 United States or any agency of the
20 United States against the transfer of
21 funds by the transferee of such certifi-
22 cates of deposit, eligible bankers’ ac-
23 ceptances, securities, mortgage loans,
24 or interests with a simultaneous
25 agreement by such transferee to



1 transfer to the transferor thereof cer-
2 tificates of deposit, eligible bankers'
3 acceptances, securities, mortgage
4 loans, or interests as described above,
5 at a date certain not later than 1 year
6 after such transfers or on demand,
7 against the transfer of funds, or any
8 other similar agreement;

9 “(II) does not include any repur-
10 chase obligation under a participation
11 in a commercial mortgage loan unless
12 the Corporation determines by regula-
13 tion, resolution, or order to include
14 any such participation within the
15 meaning of such term;

16 “(III) means any combination of
17 agreements or transactions referred to
18 in subclauses (I) and (IV);

19 “(IV) means any option to enter
20 into any agreement or transaction re-
21 ferred to in subclause (I) or (III);

22 “(V) means a master agreement
23 that provides for an agreement or
24 transaction referred to in subclause
25 (I), (III), or (IV), together with all



1 supplements to any such master
2 agreement, without regard to whether
3 the master agreement provides for an
4 agreement or transaction that is not a
5 repurchase agreement under this
6 clause, except that the master agree-
7 ment shall be considered to be a re-
8 purchase agreement under this sub-
9 clause only with respect to each agree-
10 ment or transaction under the master
11 agreement that is referred to in sub-
12 clause (I), (III), or (IV); and

13 “(VI) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in
17 subclause (I), (III), (IV), or (V), in-
18 cluding any guarantee or reimburse-
19 ment obligation in connection with
20 any agreement or transaction referred
21 to in any such subclause.

22 For purposes of this clause, the term
23 ‘qualified foreign government security’
24 means a security that is a direct obligation
25 of, or that is fully guaranteed by, the cen-



1 tral government of a member of the Orga-
2 nization for Economic Cooperation and
3 Development (as determined by regulation
4 or order adopted by the appropriate Fed-
5 eral banking authority).”.

6 (f) DEFINITION OF SWAP AGREEMENT.—Section
7 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12
8 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

9 “(vi) SWAP AGREEMENT.—The term
10 ‘swap agreement’ means—

11 “(I) any agreement, including the
12 terms and conditions incorporated by
13 reference in any such agreement,
14 which is an interest rate swap, option,
15 future, or forward agreement, includ-
16 ing a rate floor, rate cap, rate collar,
17 cross-currency rate swap, and basis
18 swap; a spot, same day-tomorrow, to-
19 morrow-next, forward, or other for-
20 eign exchange or precious metals
21 agreement; a currency swap, option,
22 future, or forward agreement; an eq-
23 uity index or equity swap, option, fu-
24 ture, or forward agreement; a debt
25 index or debt swap, option, future, or



1 forward agreement; a total return,
2 credit spread or credit swap, option,
3 future, or forward agreement; a com-
4 modity index or commodity swap, op-
5 tion, future, or forward agreement; or
6 a weather swap, weather derivative, or
7 weather option;

8 “(II) any agreement or trans-
9 action that is similar to any other
10 agreement or transaction referred to
11 in this clause and that is of a type
12 that has been, is presently, or in the
13 future becomes, the subject of recur-
14 rent dealings in the swap markets (in-
15 cluding terms and conditions incor-
16 porated by reference in such agree-
17 ment) and that is a forward, swap, fu-
18 ture, or option on one or more rates,
19 currencies, commodities, equity securi-
20 ties or other equity instruments, debt
21 securities or other debt instruments,
22 quantitative measures associated with
23 an occurrence, extent of an occur-
24 rence, or contingency associated with
25 a financial, commercial, or economic



1 consequence, or economic or financial
2 indices or measures of economic or fi-
3 nancial risk or value;

4 “(III) any combination of agree-
5 ments or transactions referred to in
6 this clause;

7 “(IV) any option to enter into
8 any agreement or transaction referred
9 to in this clause;

10 “(V) a master agreement that
11 provides for an agreement or trans-
12 action referred to in subclause (I),
13 (II), (III), or (IV), together with all
14 supplements to any such master
15 agreement, without regard to whether
16 the master agreement contains an
17 agreement or transaction that is not a
18 swap agreement under this clause, ex-
19 cept that the master agreement shall
20 be considered to be a swap agreement
21 under this clause only with respect to
22 each agreement or transaction under
23 the master agreement that is referred
24 to in subclause (I), (II), (III), or (IV);
25 and



1 “(VI) any security agreement or
2 arrangement or other credit enhance-
3 ment related to any agreements or
4 transactions referred to in subclause
5 (I), (II), (III), (IV), or (V), including
6 any guarantee or reimbursement obli-
7 gation in connection with any agree-
8 ment or transaction referred to in any
9 such subclause.

10 Such term is applicable for purposes of
11 this subsection only and shall not be con-
12 strued or applied so as to challenge or af-
13 fect the characterization, definition, or
14 treatment of any swap agreement under
15 any other statute, regulation, or rule, in-
16 cluding the Securities Act of 1933, the Se-
17 curities Exchange Act of 1934, the Public
18 Utility Holding Company Act of 1935, the
19 Trust Indenture Act of 1939, the Invest-
20 ment Company Act of 1940, the Invest-
21 ment Advisers Act of 1940, the Securities
22 Investor Protection Act of 1970, the Com-
23 modity Exchange Act, the Gramm-Leach-
24 Bliley Act, and the Legal Certainty for
25 Bank Products Act of 2000.”.



1 (g) DEFINITION OF TRANSFER.—Section
2 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
3 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

4 “(viii) TRANSFER.—The term ‘trans-
5 fer’ means every mode, direct or indirect,
6 absolute or conditional, voluntary or invol-
7 untary, of disposing of or parting with
8 property or with an interest in property,
9 including retention of title as a security in-
10 terest and foreclosure of the depository in-
11 stitution’s equity of redemption.”.

12 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
13 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
14 ance Act (12 U.S.C. 1821(e)(8)) is amended—

15 (1) in subparagraph (A)—

16 (A) by striking “paragraph (10)” and in-
17 serting “paragraphs (9) and (10)”;

18 (B) in clause (i), by striking “to cause the
19 termination or liquidation” and inserting “such
20 person has to cause the termination, liquida-
21 tion, or acceleration”; and

22 (C) by striking clause (ii) and inserting the
23 following:

24 “(ii) any right under any security
25 agreement or arrangement or other credit



1 enhancement related to one or more quali-
2 fied financial contracts described in clause
3 (i);” and

4 (2) in subparagraph (E), by striking clause (ii)
5 and inserting the following:

6 “(ii) any right under any security
7 agreement or arrangement or other credit
8 enhancement related to one or more quali-
9 fied financial contracts described in clause
10 (i);”.

11 (i) AVOIDANCE OF TRANSFERS.—Section
12 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
13 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
14 5242 of the Revised Statutes of the United States or any
15 other Federal or State law relating to the avoidance of
16 preferential or fraudulent transfers,” before “the Corpora-
17 tion”.

18 **SEC. 902. AUTHORITY OF THE CORPORATION WITH RE-**
19 **SPECT TO FAILED AND FAILING INSTITU-**
20 **TIONS.**

21 (a) IN GENERAL.—Section 11(e)(8) of the Federal
22 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is
23 amended—

24 (1) in subparagraph (E), by striking “other
25 than paragraph (12) of this subsection, subsection



1 (d)(9)” and inserting “other than subsections (d)(9)
2 and (e)(10)”;

3 (2) by adding at the end the following new sub-
4 paragraphs:

5 “(F) CLARIFICATION.—No provision of law
6 shall be construed as limiting the right or
7 power of the Corporation, or authorizing any
8 court or agency to limit or delay, in any man-
9 ner, the right or power of the Corporation to
10 transfer any qualified financial contract in ac-
11 cordance with paragraphs (9) and (10) of this
12 subsection or to disaffirm or repudiate any such
13 contract in accordance with subsection (e)(1) of
14 this section.

15 “(G) WALKAWAY CLAUSES NOT EFFEC-
16 TIVE.—

17 “(i) IN GENERAL.—Notwithstanding
18 the provisions of subparagraphs (A) and
19 (E), and sections 403 and 404 of the Fed-
20 eral Deposit Insurance Corporation Im-
21 provement Act of 1991, no walkaway
22 clause shall be enforceable in a qualified fi-
23 nancial contract of an insured depository
24 institution in default.



1 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
2 TRACTS.—

3 “(A) IN GENERAL.—In making any trans-
4 fer of assets or liabilities of a depository institu-
5 tion in default which includes any qualified fi-
6 nancial contract, the conservator or receiver for
7 such depository institution shall either—

8 “(i) transfer to one financial institu-
9 tion, other than a financial institution for
10 which a conservator, receiver, trustee in
11 bankruptcy, or other legal custodian has
12 been appointed or which is otherwise the
13 subject of a bankruptcy or insolvency
14 proceeding—

15 “(I) all qualified financial con-
16 tracts between any person or any af-
17 filiate of such person and the deposi-
18 tory institution in default;

19 “(II) all claims of such person or
20 any affiliate of such person against
21 such depository institution under any
22 such contract (other than any claim
23 which, under the terms of any such
24 contract, is subordinated to the claims



1 of general unsecured creditors of such
2 institution);

3 “(III) all claims of such deposi-
4 tory institution against such person or
5 any affiliate of such person under any
6 such contract; and

7 “(IV) all property securing or
8 any other credit enhancement for any
9 contract described in subclause (I) or
10 any claim described in subclause (II)
11 or (III) under any such contract; or

12 “(ii) transfer none of the qualified fi-
13 nancial contracts, claims, property or other
14 credit enhancement referred to in clause (i)
15 (with respect to such person and any affil-
16 iate of such person).

17 “(B) TRANSFER TO FOREIGN BANK, FOR-
18 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
19 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
20 STITUTION.—In transferring any qualified fi-
21 nancial contracts and related claims and prop-
22 erty under subparagraph (A)(i), the conservator
23 or receiver for the depository institution shall
24 not make such transfer to a foreign bank, fi-
25 nancial institution organized under the laws of



1 a foreign country, or a branch or agency of a
2 foreign bank or financial institution unless,
3 under the law applicable to such bank, financial
4 institution, branch or agency, to the qualified
5 financial contracts, and to any netting contract,
6 any security agreement or arrangement or other
7 credit enhancement related to one or more
8 qualified financial contracts, the contractual
9 rights of the parties to such qualified financial
10 contracts, netting contracts, security agree-
11 ments or arrangements, or other credit en-
12 hancements are enforceable substantially to the
13 same extent as permitted under this section.

14 “(C) TRANSFER OF CONTRACTS SUBJECT
15 TO THE RULES OF A CLEARING ORGANIZA-
16 TION.—In the event that a conservator or re-
17 ceiver transfers any qualified financial contract
18 and related claims, property, and credit en-
19 hancements pursuant to subparagraph (A)(i)
20 and such contract is cleared by or subject to the
21 rules of a clearing organization, the clearing or-
22 ganization shall not be required to accept the
23 transferee as a member by virtue of the trans-
24 fer.



1 “(D) DEFINITIONS.—For purposes of this
2 paragraph, the term ‘financial institution’
3 means a broker or dealer, a depository institu-
4 tion, a futures commission merchant, or any
5 other institution, as determined by the Corpora-
6 tion by regulation to be a financial institution,
7 and the term ‘clearing organization’ has the
8 same meaning as in section 402 of the Federal
9 Deposit Insurance Corporation Improvement
10 Act of 1991.”.

11 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
12 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
13 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
14 amended in the material immediately following clause (ii)
15 by striking “the conservator” and all that follows through
16 the period and inserting the following: “the conservator
17 or receiver shall notify any person who is a party to any
18 such contract of such transfer by 5:00 p.m. (eastern time)
19 on the business day following the date of the appointment
20 of the receiver in the case of a receivership, or the business
21 day following such transfer in the case of a conservator-
22 ship.”.

23 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
24 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-



1 posit Insurance Act (12 U.S.C. 1821(e)(10)) is
2 amended—

3 (1) by redesignating subparagraph (B) as sub-
4 paragraph (D); and

5 (2) by inserting after subparagraph (A) the fol-
6 lowing new subparagraphs:

7 “(B) CERTAIN RIGHTS NOT ENFORCE-
8 ABLE.—

9 “(i) RECEIVERSHIP.—A person who is
10 a party to a qualified financial contract
11 with an insured depository institution may
12 not exercise any right that such person has
13 to terminate, liquidate, or net such con-
14 tract under paragraph (8)(A) of this sub-
15 section or section 403 or 404 of the Fed-
16 eral Deposit Insurance Corporation Im-
17 provement Act of 1991, solely by reason of
18 or incidental to the appointment of a re-
19 ceiver for the depository institution (or the
20 insolvency or financial condition of the de-
21 pository institution for which the receiver
22 has been appointed)—

23 “(I) until 5:00 p.m. (eastern
24 time) on the business day following



1 the date of the appointment of the re-
2 ceiver; or

3 “(II) after the person has re-
4 ceived notice that the contract has
5 been transferred pursuant to para-
6 graph (9)(A).

7 “(ii) CONSERVATORSHIP.—A person
8 who is a party to a qualified financial con-
9 tract with an insured depository institution
10 may not exercise any right that such per-
11 son has to terminate, liquidate, or net such
12 contract under paragraph (8)(E) of this
13 subsection or section 403 or 404 of the
14 Federal Deposit Insurance Corporation
15 Improvement Act of 1991, solely by reason
16 of or incidental to the appointment of a
17 conservator for the depository institution
18 (or the insolvency or financial condition of
19 the depository institution for which the
20 conservator has been appointed).

21 “(iii) NOTICE.—For purposes of this
22 paragraph, the Corporation as receiver or
23 conservator of an insured depository insti-
24 tution shall be deemed to have notified a
25 person who is a party to a qualified finan-



1 cial contract with such depository institu-
2 tion if the Corporation has taken steps
3 reasonably calculated to provide notice to
4 such person by the time specified in sub-
5 paragraph (A).

6 “(C) TREATMENT OF BRIDGE BANKS.—
7 The following institutions shall not be consid-
8 ered to be a financial institution for which a
9 conservator, receiver, trustee in bankruptcy, or
10 other legal custodian has been appointed or
11 which is otherwise the subject of a bankruptcy
12 or insolvency proceeding for purposes of para-
13 graph (9):

14 “(i) A bridge bank.

15 “(ii) A depository institution orga-
16 nized by the Corporation, for which a con-
17 servator is appointed either—

18 “(I) immediately upon the orga-
19 nization of the institution; or

20 “(II) at the time of a purchase
21 and assumption transaction between
22 the depository institution and the Cor-
23 poration as receiver for a depository
24 institution in default.”.



1 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
2 **REPUDIATION OF QUALIFIED FINANCIAL**
3 **CONTRACTS.**

4 Section 11(e) of the Federal Deposit Insurance Act
5 (12 U.S.C. 1821(e)) is amended—

6 (1) by redesignating paragraphs (11) through
7 (15) as paragraphs (12) through (16), respectively;

8 (2) by inserting after paragraph (10) the fol-
9 lowing new paragraph:

10 “(11) DISAFFIRMANCE OR REPUDIATION OF
11 QUALIFIED FINANCIAL CONTRACTS.—In exercising
12 the rights of disaffirmance or repudiation of a con-
13 servator or receiver with respect to any qualified fi-
14 nancial contract to which an insured depository in-
15 stitution is a party, the conservator or receiver for
16 such institution shall either—

17 “(A) disaffirm or repudiate all qualified fi-
18 nancial contracts between—

19 “(i) any person or any affiliate of
20 such person; and

21 “(ii) the depository institution in de-
22 fault; or

23 “(B) disaffirm or repudiate none of the
24 qualified financial contracts referred to in sub-
25 paragraph (A) (with respect to such person or
26 any affiliate of such person).”; and



1 (3) by adding at the end the following new
2 paragraph:

3 “(17) SAVINGS CLAUSE.—The meanings of
4 terms used in this subsection are applicable for pur-
5 poses of this subsection only, and shall not be con-
6 strued or applied so as to challenge or affect the
7 characterization, definition, or treatment of any
8 similar terms under any other statute, regulation, or
9 rule, including the Gramm-Leach-Bliley Act, the
10 Legal Certainty for Bank Products Act of 2000, the
11 securities laws (as that term is defined in section
12 3(a)(47) of the Securities Exchange Act of 1934),
13 and the Commodity Exchange Act.”.

14 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**
15 **AGREEMENTS.**

16 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
17 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
18 read as follows:

19 “(vii) TREATMENT OF MASTER
20 AGREEMENT AS ONE AGREEMENT.—Any
21 master agreement for any contract or
22 agreement described in any preceding
23 clause of this subparagraph (or any master
24 agreement for such master agreement or
25 agreements), together with all supplements



1 to such master agreement, shall be treated
2 as a single agreement and a single quali-
3 fied financial contract. If a master agree-
4 ment contains provisions relating to agree-
5 ments or transactions that are not them-
6 selves qualified financial contracts, the
7 master agreement shall be deemed to be a
8 qualified financial contract only with re-
9 spect to those transactions that are them-
10 selves qualified financial contracts.”.

11 **SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION**
12 **IMPROVEMENT ACT OF 1991.**

13 (a) DEFINITIONS.—Section 402 of the Federal De-
14 posit Insurance Corporation Improvement Act of 1991 (12
15 U.S.C. 4402) is amended—

16 (1) in paragraph (2)—

17 (A) in subparagraph (A)(ii), by inserting
18 before the semicolon “, or is exempt from such
19 registration by order of the Securities and Ex-
20 change Commission”; and

21 (B) in subparagraph (B), by inserting be-
22 fore the period “, that has been granted an ex-
23emption under section 4(c)(1) of the Com-
24modity Exchange Act, or that is a multilateral



1 clearing organization (as defined in section 408
2 of this Act)”;

3 (2) in paragraph (6)—

4 (A) by redesignating subparagraphs (B)
5 through (D) as subparagraphs (C) through (E),
6 respectively;

7 (B) by inserting after subparagraph (A)
8 the following new subparagraph:

9 “(B) an uninsured national bank or an un-
10 insured State bank that is a member of the
11 Federal Reserve System, if the national bank or
12 State member bank is not eligible to make ap-
13 plication to become an insured bank under sec-
14 tion 5 of the Federal Deposit Insurance Act;”;
15 and

16 (C) by amending subparagraph (C), so re-
17 designated, to read as follows:

18 “(C) a branch or agency of a foreign bank,
19 a foreign bank and any branch or agency of the
20 foreign bank, or the foreign bank that estab-
21 lished the branch or agency, as those terms are
22 defined in section 1(b) of the International
23 Banking Act of 1978;”;

24 (3) in paragraph (11), by inserting before the
25 period “and any other clearing organization with



1 which such clearing organization has a netting con-
2 tract”;

3 (4) by amending paragraph (14)(A)(i) to read
4 as follows:

5 “(i) means a contract or agreement
6 between 2 or more financial institutions,
7 clearing organizations, or members that
8 provides for netting present or future pay-
9 ment obligations or payment entitlements
10 (including liquidation or close out values
11 relating to such obligations or entitle-
12 ments) among the parties to the agree-
13 ment; and”;

14 (5) by adding at the end the following new
15 paragraph:

16 “(15) PAYMENT.—The term ‘payment’ means a
17 payment of United States dollars, another currency,
18 or a composite currency, and a noncash delivery, in-
19 cluding a payment or delivery to liquidate an
20 unmatured obligation.”.

21 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
22 TRACTS.—Section 403 of the Federal Deposit Insurance
23 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
24 is amended—



1 (1) by striking subsection (a) and inserting the
2 following:

3 “(a) GENERAL RULE.—Notwithstanding any other
4 provision of State or Federal law (other than paragraphs
5 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
6 Deposit Insurance Act or any order authorized under sec-
7 tion 5(b)(2) of the Securities Investor Protection Act of
8 1970), the covered contractual payment obligations and
9 the covered contractual payment entitlements between any
10 2 financial institutions shall be netted in accordance with,
11 and subject to the conditions of, the terms of any applica-
12 ble netting contract (except as provided in section
13 561(b)(2) of title 11, United States Code).”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(f) ENFORCEABILITY OF SECURITY AGREE-
17 MENTS.—The provisions of any security agreement or ar-
18 rangement or other credit enhancement related to one or
19 more netting contracts between any 2 financial institu-
20 tions shall be enforceable in accordance with their terms
21 (except as provided in section 561(b)(2) of title 11, United
22 States Code), and shall not be stayed, avoided, or other-
23 wise limited by any State or Federal law (other than para-
24 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the



1 Federal Deposit Insurance Act and section 5(b)(2) of the
2 Securities Investor Protection Act of 1970).”.

3 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
4 NETTING CONTRACTS.—Section 404 of the Federal De-
5 posit Insurance Corporation Improvement Act of 1991 (12
6 U.S.C. 4404) is amended—

7 (1) by striking subsection (a) and inserting the
8 following:

9 “(a) GENERAL RULE.—Notwithstanding any other
10 provision of State or Federal law (other than paragraphs
11 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
12 Deposit Insurance Act and any order authorized under
13 section 5(b)(2) of the Securities Investor Protection Act
14 of 1970), the covered contractual payment obligations and
15 the covered contractual payment entitlements of a member
16 of a clearing organization to and from all other members
17 of a clearing organization shall be netted in accordance
18 with and subject to the conditions of any applicable net-
19 ting contract (except as provided in section 561(b)(2) of
20 title 11, United States Code).”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(h) ENFORCEABILITY OF SECURITY AGREE-
24 MENTS.—The provisions of any security agreement or ar-
25 rangement or other credit enhancement related to one or



1 more netting contracts between any 2 members of a clear-
2 ing organization shall be enforceable in accordance with
3 their terms (except as provided in section 561(b)(2) of
4 title 11, United States Code), and shall not be stayed,
5 avoided, or otherwise limited by any State or Federal law
6 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
7 tion 11(e) of the Federal Deposit Insurance Act and sec-
8 tion 5(b)(2) of the Securities Investor Protection Act of
9 1970).”.

10 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
11 SURED NATIONAL BANKS, UNINSURED FEDERAL
12 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE
13 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The
14 Federal Deposit Insurance Corporation Improvement Act
15 of 1991 (12 U.S.C. 4401 et seq.) is amended—

16 (1) by redesignating section 407 as section
17 407A; and

18 (2) by inserting after section 406 the following
19 new section:



1 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
2 **NATIONAL BANKS, UNINSURED FEDERAL**
3 **BRANCHES AND AGENCIES, CERTAIN UNIN-**
4 **SURED STATE MEMBER BANKS, AND EDGE**
5 **ACT CORPORATIONS.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of law, paragraphs (8), (9), (10), and (11) of section
8 11(e) of the Federal Deposit Insurance Act shall apply
9 to an uninsured national bank or uninsured Federal
10 branch or Federal agency, a corporation chartered under
11 section 25A of the Federal Reserve Act, or an uninsured
12 State member bank which operates, or operates as, a mul-
13 tilateral clearing organization pursuant to section 409 of
14 this Act, except that for such purpose—

15 “(1) any reference to the ‘Corporation as re-
16 ceiver’ or ‘the receiver or the Corporation’ shall refer
17 to the receiver appointed by the Comptroller of the
18 Currency in the case of an uninsured national bank
19 or uninsured Federal branch or agency, or to the re-
20 ceiver appointed by the Board of Governors of the
21 Federal Reserve System in the case of a corporation
22 chartered under section 25A of the Federal Reserve
23 Act or an uninsured State member bank;

24 “(2) any reference to the ‘Corporation’ (other
25 than in section 11(e)(8)(D) of such Act), the ‘Cor-
26 poration, whether acting as such or as conservator



1 or receiver', a 'receiver', or a 'conservator' shall refer
2 to the receiver or conservator appointed by the
3 Comptroller of the Currency in the case of an unin-
4 sured national bank or uninsured Federal branch or
5 agency, or to the receiver or conservator appointed
6 by the Board of Governors of the Federal Reserve
7 System in the case of a corporation chartered under
8 section 25A of the Federal Reserve Act or an unin-
9 sured State member bank; and

10 "(3) any reference to an 'insured depository in-
11 stitution' or 'depository institution' shall refer to an
12 uninsured national bank, an uninsured Federal
13 branch or Federal agency, a corporation chartered
14 under section 25A of the Federal Reserve Act, or an
15 uninsured State member bank which operates, or op-
16 erates as, a multilateral clearing organization pursu-
17 ant to section 409 of this Act.

18 "(b) LIABILITY.—The liability of a receiver or conser-
19 vator of an uninsured national bank, uninsured Federal
20 branch or agency, a corporation chartered under section
21 25A of the Federal Reserve Act, or an uninsured State
22 member bank which operates, or operates as, a multilat-
23 eral clearing organization pursuant to section 409 of this
24 Act, shall be determined in the same manner and subject
25 to the same limitations that apply to receivers and con-



1 servators of insured depository institutions under section
2 11(e) of the Federal Deposit Insurance Act.

3 “(c) REGULATORY AUTHORITY.—

4 “(1) IN GENERAL.—The Comptroller of the
5 Currency in the case of an uninsured national bank
6 or uninsured Federal branch or agency and the
7 Board of Governors of the Federal Reserve System
8 in the case of a corporation chartered under section
9 25A of the Federal Reserve Act, or an uninsured
10 State member bank that operates, or operates as, a
11 multilateral clearing organization pursuant to sec-
12 tion 409 of this Act, in consultation with the Fed-
13 eral Deposit Insurance Corporation, may each pro-
14 mulgate regulations solely to implement this section.

15 “(2) SPECIFIC REQUIREMENT.—In promul-
16 gating regulations, limited solely to implementing
17 paragraphs (8), (9), (10), and (11) of section 11(e)
18 of the Federal Deposit Insurance Act, the Comp-
19 troller of the Currency and the Board of Governors
20 of the Federal Reserve System each shall ensure
21 that the regulations generally are consistent with the
22 regulations and policies of the Federal Deposit In-
23 surance Corporation adopted pursuant to the Fed-
24 eral Deposit Insurance Act.



1 “(d) DEFINITIONS.—For purposes of this section, the
2 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
3 bank’ have the same meanings as in section 1(b) of the
4 International Banking Act of 1978.”.

5 **SEC. 907. BANKRUPTCY LAW AMENDMENTS.**

6 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-
7 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,
8 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-
9 RITIES CONTRACT.—Title 11, United States Code, is
10 amended—

11 (1) in section 101—

12 (A) in paragraph (25)—

13 (i) by striking “means a contract”
14 and inserting “means—

15 “(A) a contract”;

16 (ii) by striking “, or any combination
17 thereof or option thereon;” and inserting
18 “, or any other similar agreement;”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(B) any combination of agreements or
22 transactions referred to in subparagraphs (A)
23 and (C);



1 “(C) any option to enter into an agreement
2 or transaction referred to in subparagraph (A)
3 or (B);

4 “(D) a master agreement that provides for
5 an agreement or transaction referred to in sub-
6 paragraph (A), (B), or (C), together with all
7 supplements to any such master agreement,
8 without regard to whether such master agree-
9 ment provides for an agreement or transaction
10 that is not a forward contract under this para-
11 graph, except that such master agreement shall
12 be considered to be a forward contract under
13 this paragraph only with respect to each agree-
14 ment or transaction under such master agree-
15 ment that is referred to in subparagraph (A),
16 (B), or (C); or

17 “(E) any security agreement or arrange-
18 ment, or other credit enhancement related to
19 any agreement or transaction referred to in
20 subparagraph (A), (B), (C), or (D), including
21 any guarantee or reimbursement obligation by
22 or to a forward contract merchant or financial
23 participant in connection with any agreement or
24 transaction referred to in any such subpara-
25 graph, but not to exceed the damages in con-



1 nection with any such agreement or transaction,
2 measured in accordance with section 562 of this
3 title;”;

4 (B) in paragraph (46), by striking “on any
5 day during the period beginning 90 days before
6 the date of” and inserting “at any time before”;

7 (C) by amending paragraph (47) to read
8 as follows:

9 “(47) ‘repurchase agreement’ (which definition
10 also applies to a reverse repurchase agreement)—

11 “(A) means—

12 “(i) an agreement, including related
13 terms, which provides for the transfer of
14 one or more certificates of deposit, mort-
15 gage related securities (as defined in sec-
16 tion 3 of the Securities Exchange Act of
17 1934), mortgage loans, interests in mort-
18 gage related securities or mortgage loans,
19 eligible bankers’ acceptances, qualified for-
20 eign government securities (defined as a
21 security that is a direct obligation of, or
22 that is fully guaranteed by, the central
23 government of a member of the Organiza-
24 tion for Economic Cooperation and Devel-
25 opment), or securities that are direct obli-



1 gations of, or that are fully guaranteed by,
2 the United States or any agency of the
3 United States against the transfer of funds
4 by the transferee of such certificates of de-
5 posit, eligible bankers' acceptances, securi-
6 ties, mortgage loans, or interests, with a
7 simultaneous agreement by such transferee
8 to transfer to the transferor thereof certifi-
9 cates of deposit, eligible bankers' accept-
10 ance, securities, mortgage loans, or inter-
11 ests of the kind described in this clause, at
12 a date certain not later than 1 year after
13 such transfer or on demand, against the
14 transfer of funds;

15 “(ii) any combination of agreements
16 or transactions referred to in clauses (i)
17 and (iii);

18 “(iii) an option to enter into an agree-
19 ment or transaction referred to in clause
20 (i) or (ii);

21 “(iv) a master agreement that pro-
22 vides for an agreement or transaction re-
23 ferred to in clause (i), (ii), or (iii), together
24 with all supplements to any such master
25 agreement, without regard to whether such



1 master agreement provides for an agree-
2 ment or transaction that is not a repur-
3 chase agreement under this paragraph, ex-
4 cept that such master agreement shall be
5 considered to be a repurchase agreement
6 under this paragraph only with respect to
7 each agreement or transaction under the
8 master agreement that is referred to in
9 clause (i), (ii), or (iii); or

10 “(v) any security agreement or ar-
11 rangement or other credit enhancement re-
12 lated to any agreement or transaction re-
13 ferred to in clause (i), (ii), (iii), or (iv), in-
14 cluding any guarantee or reimbursement
15 obligation by or to a repo participant or fi-
16 nancial participant in connection with any
17 agreement or transaction referred to in
18 any such clause, but not to exceed the
19 damages in connection with any such
20 agreement or transaction, measured in ac-
21 cordance with section 562 of this title; and

22 “(B) does not include a repurchase obliga-
23 tion under a participation in a commercial
24 mortgage loan;”;



1 (D) in paragraph (48), by inserting “, or
2 exempt from such registration under such sec-
3 tion pursuant to an order of the Securities and
4 Exchange Commission,” after “1934”; and

5 (E) by amending paragraph (53B) to read
6 as follows:

7 “(53B) ‘swap agreement’—

8 “(A) means—

9 “(i) any agreement, including the
10 terms and conditions incorporated by ref-
11 erence in such agreement, which is—

12 “(I) an interest rate swap, op-
13 tion, future, or forward agreement, in-
14 cluding a rate floor, rate cap, rate col-
15 lar, cross-currency rate swap, and
16 basis swap;

17 “(II) a spot, same day-tomorrow,
18 tomorrow-next, forward, or other for-
19 eign exchange or precious metals
20 agreement;

21 “(III) a currency swap, option,
22 future, or forward agreement;

23 “(IV) an equity index or equity
24 swap, option, future, or forward
25 agreement;



1 “(V) a debt index or debt swap,
2 option, future, or forward agreement;

3 “(VI) a total return, credit
4 spread or credit swap, option, future,
5 or forward agreement;

6 “(VII) a commodity index or a
7 commodity swap, option, future, or
8 forward agreement; or

9 “(VIII) a weather swap, weather
10 derivative, or weather option;

11 “(ii) any agreement or transaction
12 that is similar to any other agreement or
13 transaction referred to in this paragraph
14 and that—

15 “(I) is of a type that has been, is
16 presently, or in the future becomes,
17 the subject of recurrent dealings in
18 the swap markets (including terms
19 and conditions incorporated by ref-
20 erence therein); and

21 “(II) is a forward, swap, future,
22 or option on one or more rates, cur-
23 rencies, commodities, equity securities,
24 or other equity instruments, debt se-
25 curities or other debt instruments,



1 quantitative measures associated with
2 an occurrence, extent of an occur-
3 rence, or contingency associated with
4 a financial, commercial, or economic
5 consequence, or economic or financial
6 indices or measures of economic or fi-
7 nancial risk or value;

8 “(iii) any combination of agreements
9 or transactions referred to in this subpara-
10 graph;

11 “(iv) any option to enter into an
12 agreement or transaction referred to in
13 this subparagraph;

14 “(v) a master agreement that provides
15 for an agreement or transaction referred to
16 in clause (i), (ii), (iii), or (iv), together
17 with all supplements to any such master
18 agreement, and without regard to whether
19 the master agreement contains an agree-
20 ment or transaction that is not a swap
21 agreement under this paragraph, except
22 that the master agreement shall be consid-
23 ered to be a swap agreement under this
24 paragraph only with respect to each agree-
25 ment or transaction under the master



1 agreement that is referred to in clause (i),
2 (ii), (iii), or (iv); or

3 “(vi) any security agreement or ar-
4 rangement or other credit enhancement re-
5 lated to any agreements or transactions re-
6 ferred to in clause (i) through (v), includ-
7 ing any guarantee or reimbursement obli-
8 gation by or to a swap participant or fi-
9 nancial participant in connection with any
10 agreement or transaction referred to in
11 any such clause, but not to exceed the
12 damages in connection with any such
13 agreement or transaction, measured in ac-
14 cordance with section 562 of this title; and

15 “(B) is applicable for purposes of this title
16 only, and shall not be construed or applied so
17 as to challenge or affect the characterization,
18 definition, or treatment of any swap agreement
19 under any other statute, regulation, or rule, in-
20 cluding the Securities Act of 1933, the Securi-
21 ties Exchange Act of 1934, the Public Utility
22 Holding Company Act of 1935, the Trust In-
23 denture Act of 1939, the Investment Company
24 Act of 1940, the Investment Advisers Act of
25 1940, the Securities Investor Protection Act of



1 1970, the Commodity Exchange Act, the
2 Gramm-Leach-Bliley Act, and the Legal Cer-
3 tainty for Bank Products Act of 2000;”;

4 (2) in section 741(7), by striking paragraph (7)
5 and inserting the following:

6 “(7) ‘securities contract’—

7 “(A) means—

8 “(i) a contract for the purchase, sale,
9 or loan of a security, a certificate of de-
10 posit, a mortgage loan or any interest in a
11 mortgage loan, a group or index of securi-
12 ties, certificates of deposit, or mortgage
13 loans or interests therein (including an in-
14 terest therein or based on the value there-
15 of), or option on any of the foregoing, in-
16 cluding an option to purchase or sell any
17 such security, certificate of deposit, mort-
18 gage loan, interest, group or index, or op-
19 tion, and including any repurchase or re-
20 verse repurchase transaction on any such
21 security, certificate of deposit, mortgage
22 loan, interest, group or index, or option;

23 “(ii) any option entered into on a na-
24 tional securities exchange relating to for-
25 eign currencies;



1 “(iii) the guarantee by or to any secu-
2 rities clearing agency of a settlement of
3 cash, securities, certificates of deposit,
4 mortgage loans or interests therein, group
5 or index of securities, or mortgage loans or
6 interests therein (including any interest
7 therein or based on the value thereof), or
8 option on any of the foregoing, including
9 an option to purchase or sell any such se-
10 curity, certificate of deposit, mortgage
11 loan, interest, group or index, or option;

12 “(iv) any margin loan;

13 “(v) any other agreement or trans-
14 action that is similar to an agreement or
15 transaction referred to in this subpara-
16 graph;

17 “(vi) any combination of the agree-
18 ments or transactions referred to in this
19 subparagraph;

20 “(vii) any option to enter into any
21 agreement or transaction referred to in
22 this subparagraph;

23 “(viii) a master agreement that pro-
24 vides for an agreement or transaction re-
25 ferred to in clause (i), (ii), (iii), (iv), (v),



1 (vi), or (vii), together with all supplements
2 to any such master agreement, without re-
3 gard to whether the master agreement pro-
4 vides for an agreement or transaction that
5 is not a securities contract under this sub-
6 paragraph, except that such master agree-
7 ment shall be considered to be a securities
8 contract under this subparagraph only with
9 respect to each agreement or transaction
10 under such master agreement that is re-
11 ferred to in clause (i), (ii), (iii), (iv), (v),
12 (vi), or (vii); or

13 “(ix) any security agreement or ar-
14 rangement or other credit enhancement re-
15 lated to any agreement or transaction re-
16 ferred to in this subparagraph, including
17 any guarantee or reimbursement obligation
18 by or to a stockbroker, securities clearing
19 agency, financial institution, or financial
20 participant in connection with any agree-
21 ment or transaction referred to in this sub-
22 paragraph, but not to exceed the damages
23 in connection with any such agreement or
24 transaction, measured in accordance with
25 section 562 of this title; and



1 “(B) does not include any purchase, sale,
2 or repurchase obligation under a participation
3 in a commercial mortgage loan;”; and
4 (3) in section 761(4)—

5 (A) by striking “or” at the end of subpara-
6 graph (D); and

7 (B) by adding at the end the following:

8 “(F) any other agreement or transaction
9 that is similar to an agreement or transaction
10 referred to in this paragraph;

11 “(G) any combination of the agreements or
12 transactions referred to in this paragraph;

13 “(H) any option to enter into an agree-
14 ment or transaction referred to in this para-
15 graph;

16 “(I) a master agreement that provides for
17 an agreement or transaction referred to in sub-
18 paragraph (A), (B), (C), (D), (E), (F), (G), or
19 (H), together with all supplements to such mas-
20 ter agreement, without regard to whether the
21 master agreement provides for an agreement or
22 transaction that is not a commodity contract
23 under this paragraph, except that the master
24 agreement shall be considered to be a com-
25 modity contract under this paragraph only with



1 respect to each agreement or transaction under
2 the master agreement that is referred to in sub-
3 paragraph (A), (B), (C), (D), (E), (F), (G), or
4 (H); or

5 “(J) any security agreement or arrange-
6 ment or other credit enhancement related to
7 any agreement or transaction referred to in this
8 paragraph, including any guarantee or reim-
9 bursement obligation by or to a commodity
10 broker or financial participant in connection
11 with any agreement or transaction referred to
12 in this paragraph, but not to exceed the dam-
13 ages in connection with any such agreement or
14 transaction, measured in accordance with sec-
15 tion 562 of this title;”.

16 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-
17 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-
18 CHANT.—Section 101 of title 11, United States Code, is
19 amended—

20 (1) by striking paragraph (22) and inserting
21 the following:

22 “(22) ‘financial institution’ means—

23 “(A) a Federal reserve bank, or an entity
24 (domestic or foreign) that is a commercial or
25 savings bank, industrial savings bank, savings



1 and loan association, trust company, or receiver
2 or conservator for such entity and, when any
3 such Federal reserve bank, receiver, conservator
4 or entity is acting as agent or custodian for a
5 customer in connection with a securities con-
6 tract (as defined in section 741) such customer;
7 or

8 “(B) in connection with a securities con-
9 tract (as defined in section 741) an investment
10 company registered under the Investment Com-
11 pany Act of 1940;”;

12 (2) by inserting after paragraph (22) the fol-
13 lowing:

14 “(22A) ‘financial participant’ means—

15 “(A) an entity that, at the time it enters
16 into a securities contract, commodity contract,
17 swap agreement, repurchase agreement, or for-
18 ward contract, or at the time of the filing of the
19 petition, has one or more agreements or trans-
20 actions described in paragraph (1), (2), (3), (4),
21 (5), or (6) of section 561(a) with the debtor or
22 any other entity (other than an affiliate) of a
23 total gross dollar value of not less than
24 \$1,000,000,000 in notional or actual principal
25 amount outstanding on any day during the pre-



1 vious 15-month period, or has gross mark-to-
2 market positions of not less than \$100,000,000
3 (aggregated across counterparties) in one or
4 more such agreements or transactions with the
5 debtor or any other entity (other than an affil-
6 iate) on any day during the previous 15-month
7 period; or

8 “(B) a clearing organization (as defined in
9 section 402 of the Federal Deposit Insurance
10 Corporation Improvement Act of 1991);”;

11 (3) by striking paragraph (26) and inserting
12 the following:

13 “(26) ‘forward contract merchant’ means a
14 Federal reserve bank, or an entity the business of
15 which consists in whole or in part of entering into
16 forward contracts as or with merchants in a com-
17 modity (as defined in section 761) or any similar
18 good, article, service, right, or interest which is pres-
19 ently or in the future becomes the subject of dealing
20 in the forward contract trade;”.

21 (c) DEFINITION OF MASTER NETTING AGREEMENT
22 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
23 tion 101 of title 11, United States Code, is amended by
24 inserting after paragraph (38) the following new para-
25 graphs:



1 “(38A) ‘master netting agreement’—

2 “(A) means an agreement providing for
3 the exercise of rights, including rights of net-
4 ting, setoff, liquidation, termination, accelera-
5 tion, or close out, under or in connection with
6 one or more contracts that are described in any
7 one or more of paragraphs (1) through (5) of
8 section 561(a), or any security agreement or ar-
9 rangement or other credit enhancement related
10 to one or more of the foregoing, including any
11 guarantee or reimbursement obligation related
12 to 1 or more of the foregoing; and

13 “(B) if the agreement contains provisions
14 relating to agreements or transactions that are
15 not contracts described in paragraphs (1)
16 through (5) of section 561(a), shall be deemed
17 to be a master netting agreement only with re-
18 spect to those agreements or transactions that
19 are described in any one or more of paragraphs
20 (1) through (5) of section 561(a);

21 “(38B) ‘master netting agreement participant’
22 means an entity that, at any time before the filing
23 of the petition, is a party to an outstanding master
24 netting agreement with the debtor;”.



1 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
2 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
3 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
4 MENTS UNDER THE AUTOMATIC-STAY.—

5 (1) IN GENERAL.—Section 362(b) of title 11,
6 United States Code, as amended by sections 224,
7 303, 311, 401, and 718, is amended—

8 (A) in paragraph (6), by inserting
9 “, pledged to, under the control of,” after “held
10 by”;

11 (B) in paragraph (7), by inserting
12 “, pledged to, under the control of,” after “held
13 by”;

14 (C) by striking paragraph (17) and insert-
15 ing the following:

16 “(17) under subsection (a), of the setoff by a
17 swap participant or financial participant of a mutual
18 debt and claim under or in connection with one or
19 more swap agreements that constitutes the setoff of
20 a claim against the debtor for any payment or other
21 transfer of property due from the debtor under or in
22 connection with any swap agreement against any
23 payment due to the debtor from the swap partici-
24 pant or financial participant under or in connection
25 with any swap agreement or against cash, securities,



1 or other property held by, pledged to, under the con-
2 trol of, or due from such swap participant or finan-
3 cial participant to margin, guarantee, secure, or set-
4 tle any swap agreement;” and

5 (D) by inserting after paragraph (26) the
6 following:

7 “(27) under subsection (a), of the setoff by a
8 master netting agreement participant of a mutual
9 debt and claim under or in connection with one or
10 more master netting agreements or any contract or
11 agreement subject to such agreements that con-
12 stitutes the setoff of a claim against the debtor for
13 any payment or other transfer of property due from
14 the debtor under or in connection with such agree-
15 ments or any contract or agreement subject to such
16 agreements against any payment due to the debtor
17 from such master netting agreement participant
18 under or in connection with such agreements or any
19 contract or agreement subject to such agreements or
20 against cash, securities, or other property held by,
21 pledged to, under the control of, or due from such
22 master netting agreement participant to margin,
23 guarantee, secure, or settle such agreements or any
24 contract or agreement subject to such agreements,
25 to the extent that such participant is eligible to exer-



1 cise such offset rights under paragraph (6), (7), or
2 (17) for each individual contract covered by the mas-
3 ter netting agreement in issue.”.

4 (2) LIMITATION.—Section 362 of title 11,
5 United States Code, as amended by sections 106,
6 305, 311, and 441, is amended by adding at the end
7 the following:

8 “(o) The exercise of rights not subject to the stay
9 arising under subsection (a) pursuant to paragraph (6),
10 (7), (17), or (27) of subsection (b) shall not be stayed
11 by any order of a court or administrative agency in any
12 proceeding under this title.”.

13 (e) LIMITATION OF AVOIDANCE POWERS UNDER
14 MASTER NETTING AGREEMENT.—Section 546 of title 11,
15 United States Code, is amended—

16 (1) in subsection (g) (as added by section 103
17 of Public Law 101–311)—

18 (A) by striking “under a swap agreement”;

19 (B) by striking “in connection with a swap
20 agreement” and inserting “under or in connec-
21 tion with any swap agreement”; and

22 (C) by inserting “or financial participant”
23 after “swap participant” each place such term
24 appears; and

25 (2) by adding at the end the following:



1 “(j) Notwithstanding sections 544, 545, 547,
2 548(a)(1)(B), and 548(b) the trustee may not avoid a
3 transfer made by or to a master netting agreement partici-
4 pant under or in connection with any master netting
5 agreement or any individual contract covered thereby that
6 is made before the commencement of the case, except
7 under section 548(a)(1)(A) and except to the extent that
8 the trustee could otherwise avoid such a transfer made
9 under an individual contract covered by such master net-
10 ting agreement.”.

11 (f) FRAUDULENT TRANSFERS OF MASTER NETTING
12 AGREEMENTS.—Section 548(d)(2) of title 11, United
13 States Code, is amended—

14 (1) in subparagraph (C), by striking “and” at
15 the end;

16 (2) in subparagraph (D), by striking the period
17 and inserting “; and”; and

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(E) a master netting agreement participant
21 that receives a transfer in connection with a master
22 netting agreement or any individual contract covered
23 thereby takes for value to the extent of such trans-
24 fer, except that, with respect to a transfer under any
25 individual contract covered thereby, to the extent



1 that such master netting agreement participant oth-
2 erwise did not take (or is otherwise not deemed to
3 have taken) such transfer for value.”.

4 (g) TERMINATION OR ACCELERATION OF SECURITIES
5 CONTRACTS.—Section 555 of title 11, United States Code,
6 is amended—

7 (1) by amending the section heading to read as
8 follows:

9 **“§ 555. Contractual right to liquidate, terminate, or**
10 **accelerate a securities contract”;**

11 and

12 (2) in the first sentence, by striking “liquida-
13 tion” and inserting “liquidation, termination, or ac-
14 celeration”.

15 (h) TERMINATION OR ACCELERATION OF COMMOD-
16 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
17 United States Code, is amended—

18 (1) by amending the section heading to read as
19 follows:

20 **“§ 556. Contractual right to liquidate, terminate, or**
21 **accelerate a commodities contract or for-**
22 **ward contract”;**

23 (2) in the first sentence, by striking “liquida-
24 tion” and inserting “liquidation, termination, or ac-
25 celeration”; and



1 (3) in the second sentence, by striking “As
2 used” and all that follows through “right,” and in-
3 serting “As used in this section, the term ‘contractual
4 right’ includes a right set forth in a rule or
5 bylaw of a derivatives clearing organization (as de-
6 fined in the Commodity Exchange Act), a multilat-
7 eral clearing organization (as defined in the Federal
8 Deposit Insurance Corporation Improvement Act of
9 1991), a national securities exchange, a national se-
10 curities association, a securities clearing agency, a
11 contract market designated under the Commodity
12 Exchange Act, a derivatives transaction execution
13 facility registered under the Commodity Exchange
14 Act, or a board of trade (as defined in the Com-
15 modity Exchange Act) or in a resolution of the gov-
16 erning board thereof and a right,”.

17 (i) TERMINATION OR ACCELERATION OF REPUR-
18 CHASE AGREEMENTS.—Section 559 of title 11, United
19 States Code, is amended—

20 (1) by amending the section heading to read as
21 follows:



1 **“§ 559. Contractual right to liquidate, terminate, or**
2 **accelerate a repurchase agreement”;**

3 (2) in the first sentence, by striking “liquida-
4 tion” and inserting “liquidation, termination, or ac-
5 celeration”; and

6 (3) in the third sentence, by striking “As used”
7 and all that follows through “right,” and inserting
8 “As used in this section, the term ‘contractual right’
9 includes a right set forth in a rule or bylaw of a de-
10 rivatives clearing organization (as defined in the
11 Commodity Exchange Act), a multilateral clearing
12 organization (as defined in the Federal Deposit In-
13 surance Corporation Improvement Act of 1991), a
14 national securities exchange, a national securities as-
15 sociation, a securities clearing agency, a contract
16 market designated under the Commodity Exchange
17 Act, a derivatives transaction execution facility reg-
18 istered under the Commodity Exchange Act, or a
19 board of trade (as defined in the Commodity Ex-
20 change Act) or in a resolution of the governing
21 board thereof and a right,”.

22 (j) LIQUIDATION, TERMINATION, OR ACCELERATION
23 OF SWAP AGREEMENTS.—Section 560 of title 11, United
24 States Code, is amended—

25 (1) by amending the section heading to read as
26 follows:



1 **“§ 560. Contractual right to liquidate, terminate, or**
2 **accelerate a swap agreement”;**

3 (2) in the first sentence, by striking “termi-
4 nation of a swap agreement” and inserting “liquida-
5 tion, termination, or acceleration of one or more
6 swap agreements”;

7 (3) by striking “in connection with any swap
8 agreement” and inserting “in connection with the
9 termination, liquidation, or acceleration of one or
10 more swap agreements”; and

11 (4) in the second sentence, by striking “As
12 used” and all that follows through “right,” and in-
13 serting “As used in this section, the term ‘contrac-
14 tual right’ includes a right set forth in a rule or
15 bylaw of a derivatives clearing organization (as de-
16 fined in the Commodity Exchange Act), a multilat-
17 eral clearing organization (as defined in the Federal
18 Deposit Insurance Corporation Improvement Act of
19 1991), a national securities exchange, a national se-
20 curities association, a securities clearing agency, a
21 contract market designated under the Commodity
22 Exchange Act, a derivatives transaction execution
23 facility registered under the Commodity Exchange
24 Act, or a board of trade (as defined in the Com-
25 modity Exchange Act) or in a resolution of the gov-
26 erning board thereof and a right,”.



1 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
2 OFFSET UNDER A MASTER NETTING AGREEMENT AND
3 ACROSS CONTRACTS.—

4 (1) IN GENERAL.—Title 11, United States
5 Code, is amended by inserting after section 560 the
6 following:

7 **“§ 561. Contractual right to terminate, liquidate, ac-**
8 **celerate, or offset under a master netting**
9 **agreement and across contracts; pro-**
10 **ceedings under chapter 15**

11 “(a) Subject to subsection (b), the exercise of any
12 contractual right, because of a condition of the kind speci-
13 fied in section 365(e)(1), to cause the termination, liquida-
14 tion, or acceleration of or to offset or net termination val-
15 ues, payment amounts, or other transfer obligations aris-
16 ing under or in connection with one or more (or the termi-
17 nation, liquidation, or acceleration of one or more)—

18 “(1) securities contracts, as defined in section
19 741(7);

20 “(2) commodity contracts, as defined in section
21 761(4);

22 “(3) forward contracts;

23 “(4) repurchase agreements;

24 “(5) swap agreements; or

25 “(6) master netting agreements,



1 shall not be stayed, avoided, or otherwise limited by oper-
2 ation of any provision of this title or by any order of a
3 court or administrative agency in any proceeding under
4 this title.

5 “(b)(1) A party may exercise a contractual right de-
6 scribed in subsection (a) to terminate, liquidate, or accel-
7 erate only to the extent that such party could exercise such
8 a right under section 555, 556, 559, or 560 for each indi-
9 vidual contract covered by the master netting agreement
10 in issue.

11 “(2) If a debtor is a commodity broker subject to sub-
12 chapter IV of chapter 7—

13 “(A) a party may not net or offset an obligation
14 to the debtor arising under, or in connection with,
15 a commodity contract traded on or subject to the
16 rules of a contract market designated under the
17 Commodity Exchange Act or a derivatives trans-
18 action execution facility registered under the Com-
19 modity Exchange Act against any claim arising
20 under, or in connection with, other instruments, con-
21 tracts, or agreements listed in subsection (a) except
22 to the extent that the party has positive net equity
23 in the commodity accounts at the debtor, as cal-
24 culated under such subchapter; and



1 “(B) another commodity broker may not net or
2 offset an obligation to the debtor arising under, or
3 in connection with, a commodity contract entered
4 into or held on behalf of a customer of the debtor
5 and traded on or subject to the rules of a contract
6 market designated under the Commodity Exchange
7 Act or a derivatives transaction execution facility
8 registered under the Commodity Exchange Act
9 against any claim arising under, or in connection
10 with, other instruments, contracts, or agreements
11 listed in subsection (a).

12 “(3) No provision of subparagraph (A) or (B) of
13 paragraph (2) shall prohibit the offset of claims and obli-
14 gations that arise under—

15 “(A) a cross-margining agreement or similar
16 arrangement that has been approved by the Com-
17 modity Futures Trading Commission or submitted
18 to the Commodity Futures Trading Commission
19 under paragraph (1) or (2) of section 5c(c) of the
20 Commodity Exchange Act and has not been abro-
21 gated or rendered ineffective by the Commodity Fu-
22 tures Trading Commission; or

23 “(B) any other netting agreement between a
24 clearing organization (as defined in section 761) and



1 another entity that has been approved by the Com-
2 modity Futures Trading Commission.

3 “(c) As used in this section, the term ‘contractual
4 right’ includes a right set forth in a rule or bylaw of a
5 derivatives clearing organization (as defined in the Com-
6 modity Exchange Act), a multilateral clearing organiza-
7 tion (as defined in the Federal Deposit Insurance Cor-
8 poration Improvement Act of 1991), a national securities
9 exchange, a national securities association, a securities
10 clearing agency, a contract market designated under the
11 Commodity Exchange Act, a derivatives transaction execu-
12 tion facility registered under the Commodity Exchange
13 Act, or a board of trade (as defined in the Commodity
14 Exchange Act) or in a resolution of the governing board
15 thereof, and a right, whether or not evidenced in writing,
16 arising under common law, under law merchant, or by rea-
17 son of normal business practice.

18 “(d) Any provisions of this title relating to securities
19 contracts, commodity contracts, forward contracts, repur-
20 chase agreements, swap agreements, or master netting
21 agreements shall apply in a case under chapter 15, so that
22 enforcement of contractual provisions of such contracts
23 and agreements in accordance with their terms will not
24 be stayed or otherwise limited by operation of any provi-
25 sion of this title or by order of a court in any case under



1 this title, and to limit avoidance powers to the same extent
2 as in a proceeding under chapter 7 or 11 of this title (such
3 enforcement not to be limited based on the presence or
4 absence of assets of the debtor in the United States).”.

5 (2) CONFORMING AMENDMENT.—The table of
6 sections for chapter 5 of title 11, United States
7 Code, is amended by inserting after the item relating
8 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a
master netting agreement and across contracts; proceedings
under chapter 15.”.

9 (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,
10 United States Code, is amended by inserting after section
11 766 the following:

12 **“§ 767. Commodity broker liquidation and forward**
13 **contract merchants, commodity brokers,**
14 **stockbrokers, financial institutions, fi-**
15 **ancial participants, securities clearing**
16 **agencies, swap participants, repo partici-**
17 **pants, and master netting agreement par-**
18 **ticipants**

19 “Notwithstanding any other provision of this title,
20 the exercise of rights by a forward contract merchant,
21 commodity broker, stockbroker, financial institution, fi-
22 nancial participant, securities clearing agency, swap par-
23 ticipant, repo participant, or master netting agreement
24 participant under this title shall not affect the priority of



1 any unsecured claim it may have after the exercise of such
2 rights.”.

3 (m) STOCKBROKER LIQUIDATIONS.—Title 11,
4 United States Code, is amended by inserting after section
5 752 the following:

6 **“§ 753. Stockbroker liquidation and forward contract**
7 **merchants, commodity brokers, stock-**
8 **brokers, financial institutions, financial**
9 **participants, securities clearing agencies,**
10 **swap participants, repo participants, and**
11 **master netting agreement participants**

12 “Notwithstanding any other provision of this title,
13 the exercise of rights by a forward contract merchant,
14 commodity broker, stockbroker, financial institution, secu-
15 rities clearing agency, swap participant, repo participant,
16 financial participant, or master netting agreement partici-
17 pant under this title shall not affect the priority of any
18 unsecured claim it may have after the exercise of such
19 rights.”.

20 (n) SETOFF.—Section 553 of title 11, United States
21 Code, is amended—

22 (1) in subsection (a)(2)(B)(ii), by inserting be-
23 fore the semicolon the following: “(except for a
24 setoff of a kind described in section 362(b)(6),



1 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559,
2 560, or 561”);

3 (2) in subsection (a)(3)(C), by inserting before
4 the period the following: “(except for a setoff of a
5 kind described in section 362(b)(6), 362(b)(7),
6 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561
7 of this title)”; and

8 (3) in subsection (b)(1), by striking
9 “362(b)(14),” and inserting “362(b)(17),
10 362(b)(27), 555, 556, 559, 560, 561.”.

11 (o) SECURITIES CONTRACTS, COMMODITY CON-
12 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
13 States Code, is amended—

14 (1) in section 362(b)(6), by striking “financial
15 institutions,” each place such term appears and in-
16 serting “financial institution, financial participant,”;

17 (2) in sections 362(b)(7) and 546(f), by insert-
18 ing “or financial participant” after “repo partici-
19 pant” each place such term appears;

20 (3) in section 546(e), by inserting “financial
21 participant,” after “financial institution,”;

22 (4) in section 548(d)(2)(B), by inserting “fi-
23 nancial participant,” after “financial institution,”;

24 (5) in section 548(d)(2)(C), by inserting “or fi-
25 nancial participant” after “repo participant”;



1 (6) in section 548(d)(2)(D), by inserting “or fi-
2 nancial participant” after “swap participant”;

3 (7) in section 555—

4 (A) by inserting “financial participant,”
5 after “financial institution,”; and

6 (B) by striking the second sentence and in-
7 serting the following: “As used in this section,
8 the term ‘contractual right’ includes a right set
9 forth in a rule or bylaw of a derivatives clearing
10 organization (as defined in the Commodity Ex-
11 change Act), a multilateral clearing organiza-
12 tion (as defined in the Federal Deposit Insur-
13 ance Corporation Improvement Act of 1991), a
14 national securities exchange, a national securi-
15 ties association, a securities clearing agency, a
16 contract market designated under the Com-
17modity Exchange Act, a derivatives transaction
18 execution facility registered under the Com-
19modity Exchange Act, or a board of trade (as
20 defined in the Commodity Exchange Act), or in
21 a resolution of the governing board thereof, and
22 a right, whether or not in writing, arising under
23 common law, under law merchant, or by reason
24 of normal business practice”;



1 (8) in section 556, by inserting “, financial par-
2 ticipant,” after “commodity broker”;

3 (9) in section 559, by inserting “or financial
4 participant” after “repo participant” each place
5 such term appears; and

6 (10) in section 560, by inserting “or financial
7 participant” after “swap participant”.

8 (p) CONFORMING AMENDMENTS.—Title 11, United
9 States Code, is amended—

10 (1) in the table of sections for chapter 5—

11 (A) by amending the items relating to sec-
12 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
tract or forward contract.”;

13 and

14 (B) by amending the items relating to sec-
15 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
ment.”;

16 and

17 (2) in the table of sections for chapter 7—

18 (A) by inserting after the item relating to
19 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-
modity brokers, stockbrokers, financial institutions, financial
participants, securities clearing agencies, swap participants,
repo participants, and master netting agreement participants.”;



1 and

2 (B) by inserting after the item relating to
3 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-
kers, stockbrokers, financial institutions, financial participants,
securities clearing agencies, swap participants, repo partici-
pants, and master netting agreement participants.”.

4 **SEC. 908. RECORDKEEPING REQUIREMENTS.**

5 Section 11(e)(8) of the Federal Deposit Insurance
6 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
7 end the following new subparagraph:

8 “(H) RECORDKEEPING REQUIREMENTS.—

9 The Corporation, in consultation with the ap-
10 propriate Federal banking agencies, may pre-
11 scribe regulations requiring more detailed rec-
12 ordkeeping by any insured depository institu-
13 tion with respect to qualified financial contracts
14 (including market valuations) only if such in-
15 sured depository institution is in a troubled
16 condition (as such term is defined by the Cor-
17 poration pursuant to section 32).”.

18 **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-
19 TION REQUIREMENT.**

20 Section 13(e)(2) of the Federal Deposit Insurance
21 Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:



1 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
2 EXECUTION REQUIREMENT.—An agreement to pro-
3 vide for the lawful collateralization of—

4 “(A) deposits of, or other credit extension
5 by, a Federal, State, or local governmental enti-
6 ty, or of any depositor referred to in section
7 11(a)(2), including an agreement to provide col-
8 lateral in lieu of a surety bond;

9 “(B) bankruptcy estate funds pursuant to
10 section 345(b)(2) of title 11, United States
11 Code;

12 “(C) extensions of credit, including any
13 overdraft, from a Federal reserve bank or Fed-
14 eral home loan bank; or

15 “(D) one or more qualified financial con-
16 tracts, as defined in section 11(e)(8)(D),

17 shall not be deemed invalid pursuant to paragraph
18 (1)(B) solely because such agreement was not exe-
19 cuted contemporaneously with the acquisition of the
20 collateral or because of pledges, delivery, or substi-
21 tution of the collateral made in accordance with such
22 agreement.”.

23 **SEC. 910. DAMAGE MEASURE.**

24 (a) IN GENERAL.—Title 11, United States Code, is
25 amended—



1 (1) by inserting after section 561, as added by
2 section 907, the following:

3 **“§ 562. Timing of damage measurement in connection**
4 **with swap agreements, securities con-**
5 **tracts, forward contracts, commodity con-**
6 **tracts, repurchase agreements, and mas-**
7 **ter netting agreements**

8 “(a) If the trustee rejects a swap agreement, securi-
9 ties contract (as defined in section 741), forward contract,
10 commodity contract (as defined in section 761), repur-
11 chase agreement, or master netting agreement pursuant
12 to section 365(a), or if a forward contract merchant,
13 stockbroker, financial institution, securities clearing agen-
14 cy, repo participant, financial participant, master netting
15 agreement participant, or swap participant liquidates, ter-
16 minates, or accelerates such contract or agreement, dam-
17 ages shall be measured as of the earlier of—

18 “(1) the date of such rejection; or

19 “(2) the date or dates of such liquidation, ter-
20 mination, or acceleration.

21 “(b) If there are not any commercially reasonable de-
22 terminants of value as of any date referred to in para-
23 graph (1) or (2) of subsection (a), damages shall be meas-
24 ured as of the earliest subsequent date or dates on which
25 there are commercially reasonable determinants of value.



1 “(c) For the purposes of subsection (b), if damages
2 are not measured as of the date or dates of rejection, liq-
3 uidation, termination, or acceleration, and the forward
4 contract merchant, stockbroker, financial institution, secu-
5 rities clearing agency, repo participant, financial partici-
6 pant, master netting agreement participant, or swap par-
7 ticipant or the trustee objects to the timing of the meas-
8 urement of damages—

9 “(1) the trustee, in the case of an objection by
10 a forward contract merchant, stockbroker, financial
11 institution, securities clearing agency, repo partici-
12 pant, financial participant, master netting agree-
13 ment participant, or swap participant; or

14 “(2) the forward contract merchant, stock-
15 broker, financial institution, securities clearing agen-
16 cy, repo participant, financial participant, master
17 netting agreement participant, or swap participant,
18 in the case of an objection by the trustee,

19 has the burden of proving that there were no commercially
20 reasonable determinants of value as of such date or
21 dates.”; and

22 (2) in the table of sections for chapter 5, by in-
23 serting after the item relating to section 561 (as
24 added by section 907) the following new item:

“562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.”.

1 (b) CLAIMS ARISING FROM REJECTION.—Section
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

4 (2) by adding at the end the following:

5 “(2) A claim for damages calculated in accordance
6 with section 562 of this title shall be allowed under sub-
7 section (a), (b), or (c), or disallowed under subsection (d)
8 or (e), as if such claim had arisen before the date of the
9 filing of the petition.”.

10 **SEC. 911. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of
16 title 11, United States Code, neither the
17 filing of an application under subsection
18 (a)(3) nor any order or decree obtained by
19 SIPC from the court shall operate as a
20 stay of any contractual rights of a creditor
21 to liquidate, terminate, or accelerate a se-
22 curities contract, commodity contract, for-
23 ward contract, repurchase agreement, swap
24 agreement, or master netting agreement,
25 as those terms are defined in sections 101,



1 741, and 761 of title 11, United States
2 Code, to offset or net termination values,
3 payment amounts, or other transfer obliga-
4 tions arising under or in connection with
5 one or more of such contracts or agree-
6 ments, or to foreclose on any cash collat-
7 eral pledged by the debtor, whether or not
8 with respect to one or more of such con-
9 tracts or agreements.

10 “(ii) Notwithstanding clause (i), such
11 application, order, or decree may operate
12 as a stay of the foreclosure on, or disposi-
13 tion of, securities collateral pledged by the
14 debtor, whether or not with respect to one
15 or more of such contracts or agreements,
16 securities sold by the debtor under a repur-
17 chase agreement, or securities lent under a
18 securities lending agreement.

19 “(iii) As used in this subparagraph,
20 the term ‘contractual right’ includes a
21 right set forth in a rule or bylaw of a na-
22 tional securities exchange, a national secu-
23 rities association, or a securities clearing
24 agency, a right set forth in a bylaw of a
25 clearing organization or contract market or



1 in a resolution of the governing board
2 thereof, and a right, whether or not in
3 writing, arising under common law, under
4 law merchant, or by reason of normal busi-
5 ness practice.”.

6 **TITLE X—PROTECTION OF FAM-**
7 **ILY FARMERS AND FAMILY**
8 **FISHERMEN**

9 **SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

10 (a) REENACTMENT.—

11 (1) IN GENERAL.—Chapter 12 of title 11,
12 United States Code, as reenacted by section 149 of
13 division C of the Omnibus Consolidated and Emer-
14 gency Supplemental Appropriations Act, 1999 (Pub-
15 lic Law 105–277), is hereby reenacted, and as here
16 reenacted is amended by this Act.

17 (2) EFFECTIVE DATE.—Subsection (a) shall
18 take effect on the date of the enactment of this Act.

19 (b) CONFORMING AMENDMENT.—Section 302 of the
20 Bankruptcy Judges, United States Trustees, and Family
21 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is
22 amended by striking subsection (f).



1 **SEC. 1002. DEBT LIMIT INCREASE.**

2 Section 104(b) of title 11, United States Code, as
3 amended by section 226, is amended by inserting
4 “101(18),” after “101(3),” each place it appears.

5 **SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL**
6 **UNITS.**

7 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title
8 11, United States Code, is amended to read as follows:

9 “(2) provide for the full payment, in deferred
10 cash payments, of all claims entitled to priority
11 under section 507, unless—

12 “(A) the claim is a claim owed to a govern-
13 mental unit that arises as a result of the sale,
14 transfer, exchange, or other disposition of any
15 farm asset used in the debtor’s farming oper-
16 ation, in which case the claim shall be treated
17 as an unsecured claim that is not entitled to
18 priority under section 507, but the debt shall be
19 treated in such manner only if the debtor re-
20 ceives a discharge; or

21 “(B) the holder of a particular claim
22 agrees to a different treatment of that claim;”.

23 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)
24 of title 11, United States Code, as so designated by section
25 719, is amended by striking “a State or local govern-
26 mental unit” and inserting “any governmental unit”.



1 (c) EFFECTIVE DATE; APPLICATION OF AMEND-
2 MENTS.—This section and the amendments made by this
3 section shall take effect on the date of the enactment of
4 this Act and shall not apply with respect to cases com-
5 menced under title 11 of the United States Code before
6 such date.

7 **SEC. 1004. DEFINITION OF FAMILY FARMER.**

8 Section 101(18) of title 11, United States Code, is
9 amended—

10 (1) in subparagraph (A)—

11 (A) by striking “\$1,500,000” and inserting
12 “\$3,237,000”; and

13 (B) by striking “80” and inserting “50”;
14 and

15 (2) in subparagraph (B)(ii)—

16 (A) by striking “\$1,500,000” and inserting
17 “\$3,237,000”; and

18 (B) by striking “80” and inserting “50”.

19 **SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY**
20 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**
21 **CENT OF INCOME FROM FARMING OPER-**
22 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

23 Section 101(18)(A) of title 11, United States Code,
24 is amended by striking “for the taxable year preceding the
25 taxable year” and inserting the following:



1 “for—
2 “(i) the taxable year preceding; or
3 “(ii) each of the 2d and 3d taxable years
4 preceding;
5 the taxable year”.

6 **SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF**
7 **DISPOSABLE INCOME.**

8 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of
9 title 11, United States Code, is amended—

10 (1) in subparagraph (A) by striking “or” at the
11 end;

12 (2) in subparagraph (B) by striking the period
13 at the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(C) the value of the property to be distributed
16 under the plan in the 3-year period, or such longer
17 period as the court may approve under section
18 1222(c), beginning on the date that the first dis-
19 tribution is due under the plan is not less than the
20 debtor’s projected disposable income for such pe-
21 riod.”.

22 (b) MODIFICATION OF PLAN.—Section 1229 of title
23 11, United States Code, is amended by adding at the end
24 the following:

25 “(d) A plan may not be modified under this section—



1 “(1) to increase the amount of any payment
2 due before the plan as modified becomes the plan;

3 “(2) by anyone except the debtor, based on an
4 increase in the debtor’s disposable income, to in-
5 crease the amount of payments to unsecured credi-
6 tors required for a particular month so that the ag-
7 gregate of such payments exceeds the debtor’s dis-
8 posable income for such month; or

9 “(3) in the last year of the plan by anyone ex-
10 cept the debtor, to require payments that would
11 leave the debtor with insufficient funds to carry on
12 the farming operation after the plan is completed.”.

13 **SEC. 1007. FAMILY FISHERMEN.**

14 (a) DEFINITIONS.—Section 101 of title 11, United
15 States Code, is amended—

16 (1) by inserting after paragraph (7) the fol-
17 lowing:

18 “(7A) ‘commercial fishing operation’ means—

19 “(A) the catching or harvesting of fish,
20 shrimp, lobsters, urchins, seaweed, shellfish, or
21 other aquatic species or products of such spe-
22 cies; or

23 “(B) for purposes of section 109 and chap-
24 ter 12, aquaculture activities consisting of rais-



1 ing for market any species or product described
2 in subparagraph (A);

3 “(7B) ‘commercial fishing vessel’ means a ves-
4 sel used by a family fisherman to carry out a com-
5 mercial fishing operation;” and

6 (2) by inserting after paragraph (19) the fol-
7 lowing:

8 “(19A) ‘family fisherman’ means—

9 “(A) an individual or individual and spouse
10 engaged in a commercial fishing operation—

11 “(i) whose aggregate debts do not ex-
12 ceed \$1,500,000 and not less than 80 per-
13 cent of whose aggregate noncontingent, liq-
14 uidated debts (excluding a debt for the
15 principal residence of such individual or
16 such individual and spouse, unless such
17 debt arises out of a commercial fishing op-
18 eration), on the date the case is filed, arise
19 out of a commercial fishing operation
20 owned or operated by such individual or
21 such individual and spouse; and

22 “(ii) who receive from such commer-
23 cial fishing operation more than 50 percent
24 of such individual’s or such individual’s
25 and spouse’s gross income for the taxable



1 year preceding the taxable year in which
2 the case concerning such individual or such
3 individual and spouse was filed; or

4 “(B) a corporation or partnership—

5 “(i) in which more than 50 percent of
6 the outstanding stock or equity is held
7 by—

8 “(I) 1 family that conducts the
9 commercial fishing operation; or

10 “(II) 1 family and the relatives
11 of the members of such family, and
12 such family or such relatives conduct
13 the commercial fishing operation; and

14 “(ii)(I) more than 80 percent of the
15 value of its assets consists of assets related
16 to the commercial fishing operation;

17 “(II) its aggregate debts do not ex-
18 ceed \$1,500,000 and not less than 80 per-
19 cent of its aggregate noncontingent, liq-
20 uidated debts (excluding a debt for 1
21 dwelling which is owned by such corpora-
22 tion or partnership and which a share-
23 holder or partner maintains as a principal
24 residence, unless such debt arises out of a
25 commercial fishing operation), on the date



1 the case is filed, arise out of a commercial
2 fishing operation owned or operated by
3 such corporation or such partnership; and
4 “(III) if such corporation issues stock,
5 such stock is not publicly traded;

6 “(19B) ‘family fisherman with regular annual
7 income’ means a family fisherman whose annual in-
8 come is sufficiently stable and regular to enable such
9 family fisherman to make payments under a plan
10 under chapter 12 of this title;”.

11 (b) WHO MAY BE A DEBTOR.—Section 109(f) of title
12 11, United States Code, is amended by inserting “or fam-
13 ily fisherman” after “family farmer”.

14 (c) CHAPTER 12.—Chapter 12 of title 11, United
15 States Code, is amended—

16 (1) in the chapter heading, by inserting “**OR**
17 **FISHERMAN**” after “**FAMILY FARMER**”;

18 (2) in section 1203, by inserting “or commer-
19 cial fishing operation” after “farm”; and

20 (3) in section 1206, by striking “if the property
21 is farmland or farm equipment” and inserting “if
22 the property is farmland, farm equipment, or prop-
23 erty used to carry out a commercial fishing oper-
24 ation (including a commercial fishing vessel)”.



1 (d) CLERICAL AMENDMENT.—In the table of chap-
2 ters for title 11, United States Code, the item relating to
3 chapter 12, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family
Fisherman with Regular Annual Income 1201”.**

4 (e) Applicability.—Nothing in this section shall
5 change, affect, or amend the Fishery Conservation and
6 Management Act of 1976 (16 U.S.C. 1801, et seq.).

7 **TITLE XI—HEALTH CARE AND**
8 **EMPLOYEE BENEFITS**

9 **SEC. 1101. DEFINITIONS.**

10 (a) HEALTH CARE BUSINESS DEFINED.—Section
11 101 of title 11, United States Code, as amended by section
12 306, is amended—

13 (1) by redesignating paragraph (27A) as para-
14 graph (27B); and

15 (2) by inserting after paragraph (27) the fol-
16 lowing:

17 “(27A) ‘health care business’—

18 “(A) means any public or private entity
19 (without regard to whether that entity is orga-
20 nized for profit or not for profit) that is pri-
21 marily engaged in offering to the general public
22 facilities and services for—

23 “(i) the diagnosis or treatment of in-
24 jury, deformity, or disease; and



1 “(ii) surgical, drug treatment, psy-
2 chiatric, or obstetric care; and
3 “(B) includes—
4 “(i) any—
5 “(I) general or specialized hos-
6 pital;
7 “(II) ancillary ambulatory, emer-
8 gency, or surgical treatment facility;
9 “(III) hospice;
10 “(IV) home health agency; and
11 “(V) other health care institution
12 that is similar to an entity referred to
13 in subclause (I), (II), (III), or (IV);
14 and
15 “(ii) any long-term care facility, in-
16 cluding any—
17 “(I) skilled nursing facility;
18 “(II) intermediate care facility;
19 “(III) assisted living facility;
20 “(IV) home for the aged;
21 “(V) domiciliary care facility; and
22 “(VI) health care institution that
23 is related to a facility referred to in
24 subclause (I), (II), (III), (IV), or (V),
25 if that institution is primarily engaged



1 in offering room, board, laundry, or
2 personal assistance with activities of
3 daily living and incidentals to activi-
4 ties of daily living;”.

5 (b) PATIENT AND PATIENT RECORDS DEFINED.—
6 Section 101 of title 11, United States Code, is amended
7 by inserting after paragraph (40) the following:

8 “(40A) ‘patient’ means any person who obtains
9 or receives services from a health care business;

10 “(40B) ‘patient records’ means any written doc-
11 ument relating to a patient or a record recorded in
12 a magnetic, optical, or other form of electronic me-
13 dium;”.

14 (c) RULE OF CONSTRUCTION.—The amendments
15 made by subsection (a) of this section shall not affect the
16 interpretation of section 109(b) of title 11, United States
17 Code.

18 **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

19 (a) IN GENERAL.—Subchapter III of chapter 3 of
20 title 11, United States Code, is amended by adding at the
21 end the following:

22 **“§ 351. Disposal of patient records**

23 “If a health care business commences a case under
24 chapter 7, 9, or 11, and the trustee does not have a suffi-
25 cient amount of funds to pay for the storage of patient



1 records in the manner required under applicable Federal
2 or State law, the following requirements shall apply:

3 “(1) The trustee shall—

4 “(A) promptly publish notice, in 1 or more
5 appropriate newspapers, that if patient records
6 are not claimed by the patient or an insurance
7 provider (if applicable law permits the insur-
8 ance provider to make that claim) by the date
9 that is 365 days after the date of that notifica-
10 tion, the trustee will destroy the patient
11 records; and

12 “(B) during the first 180 days of the 365-
13 day period described in subparagraph (A),
14 promptly attempt to notify directly each patient
15 that is the subject of the patient records and
16 appropriate insurance carrier concerning the
17 patient records by mailing to the most recent
18 known address of that patient, or a family
19 member or contact person for that patient, and
20 to the appropriate insurance carrier an appro-
21 priate notice regarding the claiming or dis-
22 posing of patient records.

23 “(2) If, after providing the notification under
24 paragraph (1), patient records are not claimed dur-
25 ing the 365-day period described under that para-



1 graph, the trustee shall mail, by certified mail, at
2 the end of such 365-day period a written request to
3 each appropriate Federal agency to request permis-
4 sion from that agency to deposit the patient records
5 with that agency, except that no Federal agency is
6 required to accept patient records under this para-
7 graph.

8 “(3) If, following the 365-day period described
9 in paragraph (2) and after providing the notification
10 under paragraph (1), patient records are not claimed
11 by a patient or insurance provider, or request is not
12 granted by a Federal agency to deposit such records
13 with that agency, the trustee shall destroy those
14 records by—

15 “(A) if the records are written, shredding
16 or burning the records; or

17 “(B) if the records are magnetic, optical,
18 or other electronic records, by otherwise de-
19 stroying those records so that those records
20 cannot be retrieved.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for subchapter III of chapter 3 of title 11, United States
23 Code, is amended by adding at the end the following:

“351. Disposal of patient records.”.



1 **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**
2 **OF CLOSING A HEALTH CARE BUSINESS AND**
3 **OTHER ADMINISTRATIVE EXPENSES.**

4 Section 503(b) of title 11, United States Code, as
5 amended by section 445, is amended by adding at the end
6 the following:

7 “(8) the actual, necessary costs and expenses of
8 closing a health care business incurred by a trustee
9 or by a Federal agency (as defined in section 551(1)
10 of title 5) or a department or agency of a State or
11 political subdivision thereof, including any cost or
12 expense incurred—

13 “(A) in disposing of patient records in ac-
14 cordance with section 351; or

15 “(B) in connection with transferring pa-
16 tients from the health care business that is in
17 the process of being closed to another health
18 care business; and”.

19 **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**
20 **TIENT ADVOCATE.**

21 (a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

22 (1) APPOINTMENT OF OMBUDSMAN.—Title 11,
23 United States Code, as amended by section 232, is
24 amended by inserting after section 332 the fol-
25 lowing:



1 **“§ 333. Appointment of patient care ombudsman**

2 “(a)(1) If the debtor in a case under chapter 7, 9,
3 or 11 is a health care business, the court shall order, not
4 later than 30 days after the commencement of the case,
5 the appointment of an ombudsman to monitor the quality
6 of patient care and to represent the interests of the pa-
7 tients of the health care business unless the court finds
8 that the appointment of such ombudsman is not necessary
9 for the protection of patients under the specific facts of
10 the case.

11 “(2)(A) If the court orders the appointment of an
12 ombudsman under paragraph (1), the United States trust-
13 ee shall appoint 1 disinterested person (other than the
14 United States trustee) to serve as such ombudsman.

15 “(B) If the debtor is a health care business that pro-
16 vides long-term care, then the United States trustee may
17 appoint the State Long-Term Care Ombudsman appointed
18 under the Older Americans Act of 1965 for the State in
19 which the case is pending to serve as the ombudsman re-
20 quired by paragraph (1).

21 “(C) If the United States trustee does not appoint
22 a State Long-Term Care Ombudsman under subpara-
23 graph (B), the court shall notify the State Long-Term
24 Care Ombudsman appointed under the Older Americans
25 Act of 1965 for the State in which the case is pending,



1 of the name and address of the person who is appointed
2 under subparagraph (A).

3 “(b) An ombudsman appointed under subsection (a)
4 shall—

5 “(1) monitor the quality of patient care pro-
6 vided to patients of the debtor, to the extent nec-
7 essary under the circumstances, including inter-
8 viewing patients and physicians;

9 “(2) not later than 60 days after the date of
10 appointment, and not less frequently than at 60-day
11 intervals thereafter, report to the court, at a hearing
12 or in writing, regarding the quality of patient care
13 provided to patients of the debtor; and

14 “(3) if such ombudsman determines that the
15 quality of patient care provided to patients of the
16 debtor is declining significantly or is otherwise being
17 materially compromised, file with the court a motion
18 or a written report, with notice to the parties in in-
19 terest immediately upon making such determination.

20 “(c)(1) An ombudsman appointed under subsection
21 (a) shall maintain any information obtained by such om-
22 budsman under this section that relates to patients (in-
23 cluding information relating to patient records) as con-
24 fidential information. Such ombudsman may not review
25 confidential patient records unless the court approves such



1 review in advance and imposes restrictions on such om-
2 budsman to protect the confidentiality of such records.

3 “(2) An ombudsman appointed under subsection
4 (a)(2)(B) shall have access to patient records consistent
5 with authority of such ombudsman under the Older Amer-
6 icans Act of 1965 and under non-Federal laws governing
7 the State Long-Term Care Ombudsman program.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions for subchapter II of chapter 3 of title 11,
10 United States Code, as amended by section 232, is
11 amended by adding at the end the following:

“333. Appointment of ombudsman.”.

12 (b) COMPENSATION OF OMBUDSMAN.—Section
13 330(a)(1) of title 11, United States Code, is amended—

14 (1) in the matter preceding subparagraph (A),
15 by inserting “an ombudsman appointed under sec-
16 tion 333, or” before “a professional person”; and

17 (2) in subparagraph (A), by inserting “ombuds-
18 man,” before “professional person”.

19 **SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**
20 **TRANSFER PATIENTS.**

21 (a) IN GENERAL.—Section 704(a) of title 11, United
22 States Code, as amended by sections 102, 219, and 446,
23 is amended by adding at the end the following:



1 or any other Federal health care program (as de-
2 fined in section 1128B(f) of the Social Security Act
3 pursuant to title XI of such Act or title XVIII of
4 such Act.”.

5 **TITLE XII—TECHNICAL**
6 **AMENDMENTS**

7 **SEC. 1201. DEFINITIONS.**

8 Section 101 of title 11, United States Code, as here-
9 inbefore amended by this Act, is amended—

10 (1) by striking “In this title—” and inserting
11 “In this title the following definitions shall apply:”;

12 (2) in each paragraph, by inserting “The term”
13 after the paragraph designation;

14 (3) in paragraph (35)(B), by striking “para-
15 graphs (21B) and (33)(A)” and inserting “para-
16 graphs (23) and (35)”;

17 (4) in each of paragraphs (35A), (38), and
18 (54A), by striking “; and” at the end and inserting
19 a period;

20 (5) in paragraph (51B)—

21 (A) by inserting “who is not a family farm-
22 er” after “debtor” the first place it appears;

23 and



1 (B) by striking “thereto having aggregate”
2 and all that follows through the end of the
3 paragraph and inserting a semicolon;

4 (6) by striking paragraph (54) and inserting
5 the following:

6 “(54) The term ‘transfer’ means—

7 “(A) the creation of a lien;

8 “(B) the retention of title as a security in-
9 terest;

10 “(C) the foreclosure of a debtor’s equity of
11 redemption; or

12 “(D) each mode, direct or indirect, abso-
13 lute or conditional, voluntary or involuntary, of
14 disposing of or parting with—

15 “(i) property; or

16 “(ii) an interest in property;”;

17 (7) by indenting the left margin of paragraph
18 (54A) 2 ems to the right; and

19 (8) in each of paragraphs (1) through (35), in
20 each of paragraphs (36), (37), (38A), (38B) and
21 (39A), and in each of paragraphs (40) through (55),
22 by striking the semicolon at the end and inserting a
23 period.



1 **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

2 Section 104 of title 11, United States Code, is
3 amended by inserting “522(f)(3),” after “522(d),” each
4 place it appears.

5 **SEC. 1203. EXTENSION OF TIME.**

6 Section 108(c)(2) of title 11, United States Code, is
7 amended by striking “922” and all that follows through
8 “or”, and inserting “922, 1201, or”.

9 **SEC. 1204. TECHNICAL AMENDMENTS.**

10 Title 11, United States Code, is amended—

11 (1) in section 109(b)(2), by striking “subsection
12 (c) or (d) of”; and

13 (2) in section 552(b)(1), by striking “product”
14 each place it appears and inserting “products”.

15 **SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**
16 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**
17 **TITIONS.**

18 Section 110(j)(4) of title 11, United States Code, as
19 so redesignated by section 221, is amended by striking
20 “attorney’s” and inserting “attorneys’ ”.

21 **SEC. 1206. LIMITATION ON COMPENSATION OF PROFES-**
22 **SIONAL PERSONS.**

23 Section 328(a) of title 11, United States Code, is
24 amended by inserting “on a fixed or percentage fee basis,”
25 after “hourly basis,”.



1 **SEC. 1207. EFFECT OF CONVERSION.**

2 Section 348(f)(2) of title 11, United States Code, is
3 amended by inserting “of the estate” after “property” the
4 first place it appears.

5 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

6 Section 503(b)(4) of title 11, United States Code, is
7 amended by inserting “subparagraph (A), (B), (C), (D),
8 or (E) of” before “paragraph (3)”.

9 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

10 Section 523, and of title 11, United States Code, as
11 amended by sections 215 and 314, is amended—

12 (1) by transferring paragraph (15), as added by
13 section 304(e) of Public Law 103–394 (108 Stat.
14 4133), so as to insert such paragraph after sub-
15 section (a)(14A);

16 (2) in subsection (a)(9), by striking “motor ve-
17 hicle” and inserting “motor vehicle, vessel, or air-
18 craft”; and

19 (3) in subsection (e), by striking “a insured”
20 and inserting “an insured”.

21 **SEC. 1210. EFFECT OF DISCHARGE.**

22 Section 524(a)(3) of title 11, United States Code, is
23 amended by striking “section 523” and all that follows
24 through “or that” and inserting “section 523, 1228(a)(1),
25 or 1328(a)(1), or that”.



1 **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**
2 **MENT.**

3 Section 525(e) of title 11, United States Code, is
4 amended—

5 (1) in paragraph (1), by inserting “student” be-
6 fore “grant” the second place it appears; and

7 (2) in paragraph (2), by striking “the program
8 operated under part B, D, or E of” and inserting
9 “any program operated under”.

10 **SEC. 1212. PROPERTY OF THE ESTATE.**

11 Section 541(b)(4)(B)(ii) of title 11, United States
12 Code, is amended by inserting “365 or” before “542”.

13 **SEC. 1213. PREFERENCES.**

14 (a) IN GENERAL.—Section 547 of title 11, United
15 States Code, as amended by section 201, is amended—

16 (1) in subsection (b), by striking “subsection
17 (c)” and inserting “subsections (c) and (i)”; and

18 (2) by adding at the end the following:

19 “(i) If the trustee avoids under subsection (b) a
20 transfer made between 90 days and 1 year before the date
21 of the filing of the petition, by the debtor to an entity
22 that is not an insider for the benefit of a creditor that
23 is an insider, such transfer shall be considered to be avoid-
24 ed under this section only with respect to the creditor that
25 is an insider.”.



1 (b) APPLICABILITY.—The amendments made by this
2 section shall apply to any case that is pending or com-
3 menced on or after the date of enactment of this Act.

4 **SEC. 1214. POSTPETITION TRANSACTIONS.**

5 Section 549(e) of title 11, United States Code, is
6 amended—

7 (1) by inserting “an interest in” after “transfer
8 of” each place it appears;

9 (2) by striking “such property” and inserting
10 “such real property”; and

11 (3) by striking “the interest” and inserting
12 “such interest”.

13 **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

14 Section 726(b) of title 11, United States Code, is
15 amended by striking “1009,”.

16 **SEC. 1216. GENERAL PROVISIONS.**

17 Section 901(a) of title 11, United States Code, is
18 amended by inserting “1123(d),” after “1123(b),”.

19 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

20 Section 1170(e)(1) of title 11, United States Code,
21 is amended by striking “section 11347” and inserting
22 “section 11326(a)”.



1 **SEC. 1218. CONTENTS OF PLAN.**

2 Section 1172(c)(1) of title 11, United States Code,
3 is amended by striking “section 11347” and inserting
4 “section 11326(a)”.

5 **SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.**

6 Section 1334(d) of title 28, United States Code, is
7 amended—

8 (1) by striking “made under this subsection”
9 and inserting “made under subsection (c)”; and

10 (2) by striking “This subsection” and inserting
11 “Subsection (c) and this subsection”.

12 **SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR**
13 **RULE.**

14 Section 156(a) of title 18, United States Code, is
15 amended—

16 (1) in the first undesignated paragraph—

17 (A) by inserting “(1) the term” before
18 “bankruptcy”; and

19 (B) by striking the period at the end and
20 inserting “; and”; and

21 (2) in the second undesignated paragraph—

22 (A) by inserting “(2) the term” before
23 “document”; and

24 (B) by striking “this title” and inserting
25 “title 11”.



1 **SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE**
2 **CORPORATIONS.**

3 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)
4 of title 11, United States Code, is amended by striking
5 “only” and all that follows through the end of the sub-
6 section and inserting “only—

7 “(1) in accordance with applicable nonbank-
8 ruptcy law that governs the transfer of property by
9 a corporation or trust that is not a moneyed, busi-
10 ness, or commercial corporation or trust; and

11 “(2) to the extent not inconsistent with any re-
12 lief granted under subsection (c), (d), (e), or (f) of
13 section 362.”.

14 (b) CONFIRMATION OF PLAN FOR REORGANIZA-
15 TION.—Section 1129(a) of title 11, United States Code,
16 as amended by sections 213, 321, and 331, is amended
17 by adding at the end the following:

18 “(17) All transfers of property of the plan shall
19 be made in accordance with any applicable provi-
20 sions of nonbankruptcy law that govern the transfer
21 of property by a corporation or trust that is not a
22 moneyed, business, or commercial corporation or
23 trust.”.

24 (c) TRANSFER OF PROPERTY.—Section 541 of title
25 11, United States Code, as amended by section 225, is
26 amended by adding at the end the following:



1 “(f) Notwithstanding any other provision of this title,
2 property that is held by a debtor that is a corporation de-
3 scribed in section 501(c)(3) of the Internal Revenue Code
4 of 1986 and exempt from tax under section 501(a) of such
5 Code may be transferred to an entity that is not such a
6 corporation, but only under the same conditions as would
7 apply if the debtor had not filed a case under this title.”.

8 (d) APPLICABILITY.—The amendments made by this
9 section shall apply to a case pending under title 11, United
10 States Code, on the date of enactment of this Act, or filed
11 under that title on or after that date of enactment, except
12 that the court shall not confirm a plan under chapter 11
13 of title 11, United States Code, without considering
14 whether this section would substantially affect the rights
15 of a party in interest who first acquired rights with respect
16 to the debtor after the date of the petition. The parties
17 who may appear and be heard in a proceeding under this
18 section include the attorney general of the State in which
19 the debtor is incorporated, was formed, or does business.

20 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
21 tion shall be construed to require the court in which a
22 case under chapter 11 of title 11, United States Code, is
23 pending to remand or refer any proceeding, issue, or con-
24 troversy to any other court or to require the approval of
25 any other court for the transfer of property.



1 **SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SE-**
2 **CURITY INTERESTS.**

3 Section 547(c)(3)(B) of title 11, United States Code,
4 is amended by striking “20” and inserting “30”.

5 **SEC. 1223. BANKRUPTCY JUDGESHIPS.**

6 (a) **SHORT TITLE.**—This section may be cited as the
7 “Bankruptcy Judgeship Act of 2002”.

8 (b) **TEMPORARY JUDGESHIPS.**—

9 (1) **APPOINTMENTS.**—The following bankruptcy
10 judges shall be appointed in the manner prescribed
11 in section 152(a)(1) of title 28, United States Code,
12 for the appointment of bankruptcy judges provided
13 for in section 152(a)(2) of such title:

14 (A) One additional bankruptcy judge for
15 the eastern district of California.

16 (B) Three additional bankruptcy judges for
17 the central district of California.

18 (C) Four additional bankruptcy judges for
19 the district of Delaware.

20 (D) Two additional bankruptcy judges for
21 the southern district of Florida.

22 (E) One additional bankruptcy judge for
23 the southern district of Georgia.

24 (F) Three additional bankruptcy judges for
25 the district of Maryland.



1 (G) One additional bankruptcy judge for
2 the eastern district of Michigan.

3 (H) One additional bankruptcy judge for
4 the southern district of Mississippi.

5 (I) One additional bankruptcy judge for
6 the district of New Jersey.

7 (J) One additional bankruptcy judge for
8 the eastern district of New York.

9 (K) One additional bankruptcy judge for
10 the northern district of New York.

11 (L) One additional bankruptcy judge for
12 the southern district of New York.

13 (M) One additional bankruptcy judge for
14 the eastern district of North Carolina.

15 (N) One additional bankruptcy judge for
16 the eastern district of Pennsylvania.

17 (O) One additional bankruptcy judge for
18 the middle district of Pennsylvania.

19 (P) One additional bankruptcy judge for
20 the district of Puerto Rico.

21 (Q) One additional bankruptcy judge for
22 the western district of Tennessee.

23 (R) One additional bankruptcy judge for
24 the eastern district of Virginia.



1 (S) One additional bankruptcy judge for
2 the district of South Carolina.

3 (T) One additional bankruptcy judge for
4 the district of Nevada.

5 (2) VACANCIES.—

6 (A) DISTRICTS WITH SINGLE APPOINT-
7 MENTS.—Except as provided in subparagraphs
8 (B), (C), (D), and (E), the first vacancy occur-
9 ring in the office of bankruptcy judge in each
10 of the judicial districts set forth in paragraph
11 (1)—

12 (i) occurring 5 years or more after the
13 appointment date of the bankruptcy judge
14 appointed under paragraph (1) to such of-
15 fice; and

16 (ii) resulting from the death, retire-
17 ment, resignation, or removal of a bank-
18 ruptcy judge;

19 shall not be filled.

20 (B) CENTRAL DISTRICT OF CALIFORNIA.—

21 The 1st, 2d, and 3d vacancies in the office of
22 bankruptcy judge in the central district of
23 California—

24 (i) occurring 5 years or more after the
25 respective 1st, 2d, and 3d appointment



1 dates of the bankruptcy judges appointed
2 under paragraph (1)(B); and

3 (ii) resulting from the death, retire-
4 ment, resignation, or removal of a bank-
5 ruptcy judge;

6 shall not be filled.

7 (C) DISTRICT OF DELAWARE.—The 1st,
8 2d, 3d, and 4th vacancies in the office of bank-
9 ruptcy judge in the district of Delaware—

10 (i) occurring 5 years or more after the
11 respective 1st, 2d, 3d, and 4th appoint-
12 ment dates of the bankruptcy judges ap-
13 pointed under paragraph (1)(F); and

14 (ii) resulting from the death, retire-
15 ment, resignation, or removal of a bank-
16 ruptcy judge;

17 shall not be filled.

18 (D) SOUTHERN DISTRICT OF FLORIDA.—
19 The 1st and 2d vacancies in the office of bank-
20 ruptcy judge in the southern district of
21 Florida—

22 (i) occurring 5 years or more after the
23 respective 1st and 2d appointment dates of
24 the bankruptcy judges appointed under
25 paragraph (1)(D); and



1 (ii) resulting from the death, retire-
2 ment, resignation, or removal of a bank-
3 ruptcy judge;
4 shall not be filled.

5 (E) DISTRICT OF MARYLAND.—The 1st,
6 2d, and 3d vacancies in the office of bankruptcy
7 judge in the district of Maryland—

8 (i) occurring 5 years or more after the
9 respective 1st, 2d, and 3d appointment
10 dates of the bankruptcy judges appointed
11 under paragraph (1)(F); and

12 (ii) resulting from the death, retire-
13 ment, resignation, or removal of a bank-
14 ruptcy judge;
15 shall not be filled.

16 (c) EXTENSIONS.—

17 (1) IN GENERAL.—The temporary office of
18 bankruptcy judges authorized for the northern dis-
19 trict of Alabama, the district of Delaware, the dis-
20 trict of Puerto Rico, and the eastern district of Ten-
21 nessee under paragraphs (1), (3), (7), and (9) of
22 section 3(a) of the Bankruptcy Judgeship Act of
23 1992 (28 U.S.C. 152 note) are extended until the
24 first vacancy occurring in the office of a bankruptcy
25 judge in the applicable district resulting from the



1 death, retirement, resignation, or removal of a bank-
2 ruptcy judge and occurring 5 years after the date of
3 the enactment of this Act.

4 (2) APPLICABILITY OF OTHER PROVISIONS.—

5 All other provisions of section 3 of the Bankruptcy
6 Judgeship Act of 1992 (28 U.S.C. 152 note) remain
7 applicable to the temporary office of bankruptcy
8 judges referred to in this subsection.

9 (d) TECHNICAL AMENDMENTS.—Section 152(a) of
10 title 28, United States Code, is amended—

11 (1) in paragraph (1), by striking the first sen-
12 tence and inserting the following: “Each bankruptcy
13 judge to be appointed for a judicial district, as pro-
14 vided in paragraph (2), shall be appointed by the
15 court of appeals of the United States for the circuit
16 in which such district is located.”; and

17 (2) in paragraph (2)—

18 (A) in the item relating to the middle dis-
19 trict of Georgia, by striking “2” and inserting
20 “3”; and

21 (B) in the collective item relating to the
22 middle and southern districts of Georgia, by
23 striking “Middle and Southern 1”.



1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 1224. COMPENSATING TRUSTEES.**

5 Section 1326 of title 11, United States Code, is
6 amended—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by striking “and”;

9 (B) in paragraph (2), by striking the pe-
10 riod at the end and inserting “; and”; and

11 (C) by adding at the end the following:

12 “(3) if a chapter 7 trustee has been allowed
13 compensation due to the conversion or dismissal of
14 the debtor’s prior case pursuant to section 707(b),
15 and some portion of that compensation remains un-
16 paid in a case converted to this chapter or in the
17 case dismissed under section 707(b) and refiled
18 under this chapter, the amount of any such unpaid
19 compensation, which shall be paid monthly—

20 “(A) by prorating such amount over the
21 remaining duration of the plan; and

22 “(B) by monthly payments not to exceed
23 the greater of—

24 “(i) \$25; or



1 “(ii) the amount payable to unsecured
2 nonpriority creditors, as provided by the
3 plan, multiplied by 5 percent, and the re-
4 sult divided by the number of months in
5 the plan.”; and

6 (2) by adding at the end the following:

7 “(d) Notwithstanding any other provision of this
8 title—

9 “(1) compensation referred to in subsection
10 (b)(3) is payable and may be collected by the trustee
11 under that paragraph, even if such amount has been
12 discharged in a prior proceeding under this title; and

13 “(2) such compensation is payable in a case
14 under this chapter only to the extent permitted by
15 subsection (b)(3).”.

16 **SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11,**
17 **UNITED STATES CODE.**

18 Section 362(b)(18) of title 11, United States Code,
19 is amended to read as follows:

20 “(18) under subsection (a) of the creation or
21 perfection of a statutory lien for an ad valorem
22 property tax, or a special tax or special assessment
23 on real property whether or not ad valorem, imposed
24 by a governmental unit, if such tax or assessment
25 comes due after the filing of the petition;”.



1 **SEC. 1226. JUDICIAL EDUCATION.**

2 The Director of the Federal Judicial Center, in con-
3 sultation with the Director of the Executive Office for
4 United States Trustees, shall develop materials and con-
5 duct such training as may be useful to courts in imple-
6 menting this Act and the amendments made by this Act,
7 including the requirements relating to the means test and
8 reaffirmations under section 707(b) of title 11, United
9 States Code, as amended by this Act.

10 **SEC. 1227. RECLAMATION.**

11 (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-
12 tion 546(c) of title 11, United States Code, is amended
13 to read as follows:

14 “(c)(1) Except as provided in subsection (d) of this
15 section and subsection (c) of section 507, and subject to
16 the prior rights of holders of security interests in such
17 goods or the proceeds thereof, the rights and powers of
18 the trustee under sections 544(a), 545, 547, and 549 are
19 subject to the right of a seller of goods that has sold goods
20 to the debtor, in the ordinary course of such seller’s busi-
21 ness, to reclaim such goods if the debtor has received such
22 goods while insolvent, within 45 days before the date of
23 the commencement of a case under this title, but such sell-
24 er may not reclaim such goods unless such seller demands
25 in writing reclamation of such goods—



1 “(A) not later than 45 days after the date of
2 receipt of such goods by the debtor; or

3 “(B) not later than 20 days after the date of
4 commencement of the case, if the 45-day period ex-
5 pires after the commencement of the case.

6 “(2) If a seller of goods fails to provide notice in the
7 manner described in paragraph (1), the seller still may
8 assert the rights contained in section 503(b)(9).”.

9 (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of
10 title 11, United States Code, as amended by sections 445
11 and 1103, is amended by adding at the end the following:

12 “(9) the value of any goods received by the
13 debtor within 20 days before the date of commence-
14 ment of a case under this title in which the goods
15 have been sold to the debtor in the ordinary course
16 of such debtor’s business.”.

17 **SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO**
18 **THE COURT.**

19 (a) CHAPTER 7 CASES.—The court shall not grant
20 a discharge in the case of an individual seeking bank-
21 ruptcy under chapter 7 of title 11, United States Code,
22 unless requested tax documents have been provided to the
23 court.

24 (b) CHAPTER 11 AND CHAPTER 13 CASES.—The
25 court shall not confirm a plan of reorganization in the case



1 of an individual under chapter 11 or 13 of title 11, United
2 States Code, unless requested tax documents have been
3 filed with the court.

4 (c) DOCUMENT RETENTION.—The court shall de-
5 stroy documents submitted in support of a bankruptcy
6 claim not sooner than 3 years after the date of the conclu-
7 sion of a bankruptcy case filed by an individual under
8 chapter 7, 11, or 13 of title 11, United States Code. In
9 the event of a pending audit or enforcement action, the
10 court may extend the time for destruction of such re-
11 quested tax documents.

12 **SEC. 1229. ENCOURAGING CREDITWORTHINESS.**

13 (a) SENSE OF THE CONGRESS.—It is the sense of the
14 Congress that—

15 (1) certain lenders may sometimes offer credit
16 to consumers indiscriminately, without taking steps
17 to ensure that consumers are capable of repaying
18 the resulting debt, and in a manner which may en-
19 courage certain consumers to accumulate additional
20 debt; and

21 (2) resulting consumer debt may increasingly be
22 a major contributing factor to consumer insolvency.

23 (b) STUDY REQUIRED.—The Board of Governors of
24 the Federal Reserve System (hereafter in this section re-
25 ferred to as the “Board”) shall conduct a study of—



1 (1) consumer credit industry practices of solici-
2 iting and extending credit—

3 (A) indiscriminately;

4 (B) without taking steps to ensure that
5 consumers are capable of repaying the resulting
6 debt; and

7 (C) in a manner that encourages con-
8 sumers to accumulate additional debt; and

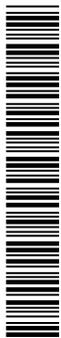
9 (2) the effects of such practices on consumer
10 debt and insolvency.

11 (c) REPORT AND REGULATIONS.—Not later than 12
12 months after the date of enactment of this Act, the
13 Board—

14 (1) shall make public a report on its findings
15 with respect to the indiscriminate solicitation and
16 extension of credit by the credit industry;

17 (2) may issue regulations that would require
18 additional disclosures to consumers; and

19 (3) may take any other actions, consistent with
20 its existing statutory authority, that the Board finds
21 necessary to ensure responsible industrywide prac-
22 tices and to prevent resulting consumer debt and in-
23 solvency.



1 **SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMP-**
2 **TION.**

3 Section 541(b) of title 11, United States Code, as
4 amended by sections 225 and 323, is amended by adding
5 at the end the following:

6 “(8) subject to subchapter III of chapter 5, any
7 interest of the debtor in property where the debtor
8 pledged or sold tangible personal property (other
9 than securities or written or printed evidences of in-
10 debtedness or title) as collateral for a loan or ad-
11 vance of money given by a person licensed under law
12 to make such loans or advances, where—

13 “(A) the tangible personal property is in
14 the possession of the pledgee or transferee;

15 “(B) the debtor has no obligation to repay
16 the money, redeem the collateral, or buy back
17 the property at a stipulated price; and

18 “(C) neither the debtor nor the trustee
19 have exercised any right to redeem provided
20 under the contract or State law, in a timely
21 manner as provided under State law and sec-
22 tion 108(b) of this title; or”.

23 **SEC. 1231. TRUSTEES.**

24 (a) **SUSPENSION AND TERMINATION OF PANEL**
25 **TRUSTEES AND STANDING TRUSTEES.**—Section 586(d) of
26 title 28, United States Code, is amended—



1 (1) by inserting “(1)” after “(d)”; and

2 (2) by adding at the end the following:

3 “(2) A trustee whose appointment under subsection
4 (a)(1) or under subsection (b) is terminated or who ceases
5 to be assigned to cases filed under title 11, United States
6 Code, may obtain judicial review of the final agency deci-
7 sion by commencing an action in the district court of the
8 United States for the district for which the panel to which
9 the trustee is appointed under subsection (a)(1), or in the
10 district court of the United States for the district in which
11 the trustee is appointed under subsection (b) resides, after
12 first exhausting all available administrative remedies,
13 which if the trustee so elects, shall also include an admin-
14 istrative hearing on the record. Unless the trustee elects
15 to have an administrative hearing on the record, the trust-
16 ee shall be deemed to have exhausted all administrative
17 remedies for purposes of this paragraph if the agency fails
18 to make a final agency decision within 90 days after the
19 trustee requests administrative remedies. The Attorney
20 General shall prescribe procedures to implement this para-
21 graph. The decision of the agency shall be affirmed by
22 the district court unless it is unreasonable and without
23 cause based on the administrative record before the agen-
24 cy.”.



1 (b) EXPENSES OF STANDING TRUSTEES.—Section
2 586(e) of title 28, United States Code, is amended by add-
3 ing at the end the following:

4 “(3) After first exhausting all available administra-
5 tive remedies, an individual appointed under subsection
6 (b) may obtain judicial review of final agency action to
7 deny a claim of actual, necessary expenses under this sub-
8 section by commencing an action in the district court of
9 the United States for the district where the individual re-
10 sides. The decision of the agency shall be affirmed by the
11 district court unless it is unreasonable and without cause
12 based upon the administrative record before the agency.

13 “(4) The Attorney General shall prescribe procedures
14 to implement this subsection.”.

15 **SEC. 1232. BANKRUPTCY FORMS.**

16 Section 2075 of title 28, United States Code, is
17 amended by adding at the end the following:

18 “The bankruptcy rules promulgated under this section
19 shall prescribe a form for the statement required under
20 section 707(b)(2)(C) of title 11 and may provide general
21 rules on the content of such statement.”.

22 **SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO**
23 **COURTS OF APPEALS.**

24 (a) APPEALS.—Section 158 of title 28, United States
25 Code, is amended—



1 (1) in subsection (c)(1), by striking “Subject to
2 subsection (b),” and inserting “Subject to sub-
3 sections (b) and (d)(2),”; and

4 (2) in subsection (d)—

5 (A) by inserting “(1)” after “(d)”; and

6 (B) by adding at the end the following:

7 “(2)(A) The appropriate court of appeals shall have
8 jurisdiction of appeals described in the first sentence of
9 subsection (a) if the bankruptcy court, the district court,
10 or the bankruptcy appellate panel involved, acting on its
11 own motion or on the request of a party to the judgment,
12 order, or decree described in such first sentence, or all the
13 appellants and appellees (if any) acting jointly, certify
14 that—

15 “(i) the judgment, order, or decree involves a
16 question of law as to which there is no controlling
17 decision of the court of appeals for the circuit or of
18 the Supreme Court of the United States, or involves
19 a matter of public importance;

20 “(ii) the judgment, order, or decree involves a
21 question of law requiring resolution of conflicting de-
22 cisions; or

23 “(iii) an immediate appeal from the judgment,
24 order, or decree may materially advance the progress



1 of the case or proceeding in which the appeal is
2 taken;
3 and if the court of appeals authorizes the direct appeal
4 of the judgment, order, or decree.

5 “(B) If the bankruptcy court, the district court, or
6 the bankruptcy appellate panel—

7 “(i) on its own motion or on the request of a
8 party, determines that a circumstance specified in
9 clause (i), (ii), or (iii) of subparagraph (A) exists; or

10 “(ii) receives a request made by a majority of
11 the appellants and a majority of appellees (if any)
12 to make the certification described in subparagraph
13 (A);

14 then the bankruptcy court, the district court, or the bank-
15 ruptcy appellate panel shall make the certification de-
16 scribed in subparagraph (A).

17 “(C) The parties may supplement the certification
18 with a short statement of the basis for the certification.

19 “(D) An appeal under this paragraph does not stay
20 any proceeding of the bankruptcy court, the district court,
21 or the bankruptcy appellate panel from which the appeal
22 is taken, unless the respective bankruptcy court, district
23 court, or bankruptcy appellate panel, or the court of ap-
24 peals in which the appeal is pending, issues a stay of such
25 proceeding pending the appeal.



1 “(E) Any request under subparagraph (B) for certifi-
2 cation shall be made not later than 60 days after the entry
3 of the judgment, order, or decree.”.

4 (b) PROCEDURAL RULES.—

5 (1) TEMPORARY APPLICATION.—A provision of
6 this subsection shall apply to appeals under section
7 158(d)(2) of title 28, United States Code, until a
8 rule of practice and procedure relating to such provi-
9 sion and such appeals is promulgated or amended
10 under chapter 131 of such title.

11 (2) CERTIFICATION.—A district court, a bank-
12 ruptcy court, or a bankruptcy appellate panel may
13 make a certification under section 158(d)(2) of title
14 28, United States Code, only with respect to matters
15 pending in the respective bankruptcy court, district
16 court, or bankruptcy appellate panel.

17 (3) PROCEDURE.—Subject to any other provi-
18 sion of this subsection, an appeal authorized by the
19 court of appeals under section 158(d)(2)(A) of title
20 28, United States Code, shall be taken in the man-
21 ner prescribed in subdivisions (a)(1), (b), (c), and
22 (d) of rule 5 of the Federal Rules of Appellate Pro-
23 cedure. For purposes of subdivision (a)(1) of rule
24 5—



1 (A) a reference in such subdivision to a
2 district court shall be deemed to include a ref-
3 erence to a bankruptcy court and a bankruptcy
4 appellate panel, as appropriate;

5 (B) a reference in such subdivision to the
6 parties requesting permission to appeal to be
7 served with the petition shall be deemed to in-
8 clude a reference to the parties to the judg-
9 ment, order, or decree from which the appeal is
10 taken.

11 (4) FILING OF PETITION WITH ATTACHMENT.—

12 A petition requesting permission to appeal, that is
13 based on a certification made under subparagraph
14 (A) or (B) of section 158(d)(2) shall—

15 (A) be filed with the circuit clerk not later
16 than 10 days after the certification is entered
17 on the docket of the bankruptcy court, the dis-
18 trict court, or the bankruptcy appellate panel
19 from which the appeal is taken; and

20 (B) have attached a copy of such certifi-
21 cation.

22 (5) REFERENCES IN RULE 5.—For purposes of
23 rule 5 of the Federal Rules of Appellate
24 Procedure—



1 (A) a reference in such rule to a district
2 court shall be deemed to include a reference to
3 a bankruptcy court and to a bankruptcy appel-
4 late panel; and

5 (B) a reference in such rule to a district
6 clerk shall be deemed to include a reference to
7 a clerk of a bankruptcy court and to a clerk of
8 a bankruptcy appellate panel.

9 (6) APPLICATION OF RULES.—The Federal
10 Rules of Appellate Procedure shall apply in the
11 courts of appeals with respect to appeals authorized
12 under section 158(d)(2)(A), to the extent relevant
13 and as if such appeals were taken from final judg-
14 ments, orders, or decrees of the district courts or
15 bankruptcy appellate panels exercising appellate ju-
16 risdiction under subsection (a) or (b) of section 158
17 of title 28, United States Code.

18 **SEC. 1234. INVOLUNTARY CASES.**

19 (a) AMENDMENTS.—Section 303 of title 11, United
20 States Code, is amended—

21 (1) in subsection (b)(1), by—

22 (A) inserting “as to liability or amount”
23 after “bona fide dispute”; and



1 (B) striking “if such claims” and inserting
2 “if such noncontingent, undisputed claims”;
3 and

4 (2) in subsection (h)(1), by inserting “as to li-
5 ability or amount” before the semicolon at the end.

6 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
7 MENTS.—This section and the amendments made by this
8 section shall take effect on the date of the enactment of
9 this Act and shall not apply with respect to cases com-
10 menced under title 11 of the United States Code before
11 such date.

12 **SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES**

13 **AS NONDISCHARGEABLE DEBT.**

14 Section 523(a) of title 11, United States Code, as
15 amended by section 314, is amended by inserting after
16 paragraph (14A) the following:

17 “(14B) incurred to pay fines or penalties im-
18 posed under Federal election law;”.

19 **TITLE XIII—CONSUMER CREDIT**
20 **DISCLOSURE**

21 **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**

22 **CREDIT PLAN.**

23 (a) MINIMUM PAYMENT DISCLOSURES.—Section
24 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))
25 is amended by adding at the end the following:



1 “(11)(A) In the case of an open end credit plan
2 that requires a minimum monthly payment of not
3 more than 4 percent of the balance on which finance
4 charges are accruing, the following statement, lo-
5 cated on the front of the billing statement, disclosed
6 clearly and conspicuously: ‘Minimum Payment
7 Warning: Making only the minimum payment will
8 increase the interest you pay and the time it takes
9 to repay your balance. For example, making only the
10 typical 2 % minimum monthly payment on a balance
11 of \$1,000 at an interest rate of 17 % would take 88
12 months to repay the balance in full. For an estimate
13 of the time it would take to repay your balance,
14 making only minimum payments, call this toll-free
15 number: _____.’ (the blank space to be
16 filled in by the creditor).

17 “(B) In the case of an open end credit plan
18 that requires a minimum monthly payment of more
19 than 4 percent of the balance on which finance
20 charges are accruing, the following statement, in a
21 prominent location on the front of the billing state-
22 ment, disclosed clearly and conspicuously: ‘Minimum
23 Payment Warning: Making only the required min-
24 imum payment will increase the interest you pay and
25 the time it takes to repay your balance. Making a



1 typical 5% minimum monthly payment on a balance
2 of \$300 at an interest rate of 17% would take 24
3 months to repay the balance in full. For an estimate
4 of the time it would take to repay your balance,
5 making only minimum monthly payments, call this
6 toll-free number: _____.’ (the blank space to
7 be filled in by the creditor).

8 “(C) Notwithstanding subparagraphs (A) and
9 (B), in the case of a creditor with respect to which
10 compliance with this title is enforced by the Federal
11 Trade Commission, the following statement, in a
12 prominent location on the front of the billing state-
13 ment, disclosed clearly and conspicuously: ‘Minimum
14 Payment Warning: Making only the required min-
15 imum payment will increase the interest you pay and
16 the time it takes to repay your balance. For exam-
17 ple, making only the typical 5% minimum monthly
18 payment on a balance of \$300 at an interest rate of
19 17% would take 24 months to repay the balance in
20 full. For an estimate of the time it would take to
21 repay your balance, making only minimum monthly
22 payments, call the Federal Trade Commission at
23 this toll-free number: _____.’ (the blank
24 space to be filled in by the creditor). A creditor who



1 is subject to this subparagraph shall not be subject
2 to subparagraph (A) or (B).

3 “(D) Notwithstanding subparagraph (A), (B),
4 or (C), in complying with any such subparagraph, a
5 creditor may substitute an example based on an in-
6 terest rate that is greater than 17 percent. Any
7 creditor that is subject to subparagraph (B) may
8 elect to provide the disclosure required under sub-
9 paragraph (A) in lieu of the disclosure required
10 under subparagraph (B).

11 “(E) The Board shall, by rule, periodically re-
12 calculate, as necessary, the interest rate and repay-
13 ment period under subparagraphs (A), (B), and (C).

14 “(F)(i) The toll-free telephone number disclosed
15 by a creditor or the Federal Trade Commission
16 under subparagraph (A), (B), or (G), as appro-
17 priate, may be a toll-free telephone number estab-
18 lished and maintained by the creditor or the Federal
19 Trade Commission, as appropriate, or may be a toll-
20 free telephone number established and maintained
21 by a third party for use by the creditor or multiple
22 creditors or the Federal Trade Commission, as ap-
23 propriate. The toll-free telephone number may con-
24 nect consumers to an automated device through
25 which consumers may obtain information described



1 in subparagraph (A), (B), or (C), by inputting infor-
2 mation using a touch-tone telephone or similar de-
3 vice, if consumers whose telephones are not equipped
4 to use such automated device are provided the op-
5 portunity to be connected to an individual from
6 whom the information described in subparagraph
7 (A), (B), or (C), as applicable, may be obtained. A
8 person that receives a request for information de-
9 scribed in subparagraph (A), (B), or (C) from an ob-
10 ligor through the toll-free telephone number dis-
11 closed under subparagraph (A), (B), or (C), as ap-
12 plicable, shall disclose in response to such request
13 only the information set forth in the table promul-
14 gated by the Board under subparagraph (H)(i).

15 “(ii)(I) The Board shall establish and maintain
16 for a period not to exceed 24 months following the
17 effective date of the Bankruptcy Abuse Prevention
18 and Consumer Protection Act of 2002, a toll-free
19 telephone number, or provide a toll-free telephone
20 number established and maintained by a third party,
21 for use by creditors that are depository institutions
22 (as defined in section 3 of the Federal Deposit In-
23 surance Act), including a Federal credit union or
24 State credit union (as defined in section 101 of the
25 Federal Credit Union Act, with total assets not ex-



1 ceeding \$250,000,000. The toll-free telephone num-
2 ber may connect consumers to an automated device
3 through which consumers may obtain information
4 described in subparagraph (A) or (B), as applicable,
5 by inputting information using a touch-tone tele-
6 phone or similar device, if consumers whose tele-
7 phones are not equipped to use such automated de-
8 vice are provided the opportunity to be connected to
9 an individual from whom the information described
10 in subparagraph (A) or (B), as applicable, may be
11 obtained. A person that receives a request for infor-
12 mation described in subparagraph (A) or (B) from
13 an obligor through the toll-free telephone number
14 disclosed under subparagraph (A) or (B), as applica-
15 ble, shall disclose in response to such request only
16 the information set forth in the table promulgated
17 by the Board under subparagraph (H)(i). The dollar
18 amount contained in this subclause shall be adjusted
19 according to an indexing mechanism established by
20 the Board.

21 “(II) Not later than 6 months prior to the expi-
22 ration of the 24-month period referenced in sub-
23 clause (I), the Board shall submit to the Committee
24 on Banking, Housing, and Urban Affairs of the Sen-
25 ate and the Committee on Financial Services of the



1 House of Representatives a report on the program
2 described in subclause (I).

3 “(G) The Federal Trade Commission shall es-
4 tablish and maintain a toll-free number for the pur-
5 pose of providing to consumers the information re-
6 quired to be disclosed under subparagraph (C).

7 “(H) The Board shall—

8 “(i) establish a detailed table illustrating
9 the approximate number of months that it
10 would take to repay an outstanding balance if
11 a consumer pays only the required minimum
12 monthly payments and if no other advances are
13 made, which table shall clearly present stand-
14 ardized information to be used to disclose the
15 information required to be disclosed under sub-
16 paragraph (A), (B), or (C), as applicable;

17 “(ii) establish the table required under
18 clause (i) by assuming—

19 “(I) a significant number of different
20 annual percentage rates;

21 “(II) a significant number of different
22 account balances;

23 “(III) a significant number of dif-
24 ferent minimum payment amounts; and



1 “(IV) that only minimum monthly
2 payments are made and no additional ex-
3 tensions of credit are obtained; and

4 “(iii) promulgate regulations that provide
5 instructional guidance regarding the manner in
6 which the information contained in the table es-
7 tablished under clause (i) should be used in re-
8 sponding to the request of an obligor for any
9 information required to be disclosed under sub-
10 paragraph (A), (B), or (C).

11 “(I) The disclosure requirements of this para-
12 graph do not apply to any charge card account, the
13 primary purpose of which is to require payment of
14 charges in full each month.

15 “(J) A creditor that maintains a toll-free tele-
16 phone number for the purpose of providing cus-
17 tomers with the actual number of months that it will
18 take to repay the customer’s outstanding balance is
19 not subject to the requirements of subparagraph (A)
20 or (B).

21 “(K) A creditor that maintains a toll-free tele-
22 phone number for the purpose of providing cus-
23 tomers with the actual number of months that it will
24 take to repay an outstanding balance shall include
25 the following statement on each billing statement:



1 ‘Making only the minimum payment will increase
2 the interest you pay and the time it takes to repay
3 your balance. For more information, call this toll-
4 free number: _____.’ (the blank space to be filled
5 in by the creditor).”.

6 (b) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board of Governors of
8 the Federal Reserve System (hereafter in this title
9 referred to as the “Board”) shall promulgate regula-
10 tions implementing the requirements of section
11 127(b)(11) of the Truth in Lending Act, as added
12 by subsection (a) of this section.

13 (2) EFFECTIVE DATE.—Section 127(b)(11) of
14 the Truth in Lending Act, as added by subsection
15 (a) of this section, and the regulations issued under
16 paragraph (1) of this subsection shall not take effect
17 until the later of—

18 (A) 18 months after the date of enactment
19 of this Act; or

20 (B) 12 months after the publication of
21 such final regulations by the Board.

22 (c) STUDY OF FINANCIAL DISCLOSURES.—

23 (1) IN GENERAL.—The Board may conduct a
24 study to determine the types of information available
25 to potential borrowers from consumer credit lending



1 institutions regarding factors qualifying potential
2 borrowers for credit, repayment requirements, and
3 the consequences of default.

4 (2) FACTORS FOR CONSIDERATION.—In con-
5 ducting a study under paragraph (1), the Board
6 should, in consultation with the other Federal bank-
7 ing agencies (as defined in section 3 of the Federal
8 Deposit Insurance Act), the National Credit Union
9 Administration, and the Federal Trade Commission,
10 consider the extent to which—

11 (A) consumers, in establishing new credit
12 arrangements, are aware of their existing pay-
13 ment obligations, the need to consider those ob-
14 ligations in deciding to take on new credit, and
15 how taking on excessive credit can result in fi-
16 nancial difficulty;

17 (B) minimum periodic payment features
18 offered in connection with open end credit plans
19 impact consumer default rates;

20 (C) consumers make only the required
21 minimum payment under open end credit plans;

22 (D) consumers are aware that making only
23 required minimum payments will increase the
24 cost and repayment period of an open end cred-
25 it obligation; and



1 (E) the availability of low minimum pay-
2 ment options is a cause of consumers experi-
3 encing financial difficulty.

4 (3) REPORT TO CONGRESS.—Findings of the
5 Board in connection with any study conducted under
6 this subsection shall be submitted to Congress. Such
7 report shall also include recommendations for legis-
8 lative initiatives, if any, of the Board, based on its
9 findings.

10 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**
11 **SIONS SECURED BY A DWELLING.**

12 (a) OPEN END CREDIT EXTENSIONS.—

13 (1) CREDIT APPLICATIONS.—Section
14 127A(a)(13) of the Truth in Lending Act (15
15 U.S.C. 1637a(a)(13)) is amended—

16 (A) by striking “CONSULTATION OF TAX
17 ADVISER.—A statement that the” and inserting
18 the following: “TAX DEDUCTIBILITY.—A state-
19 ment that—

20 “(A) the”; and

21 (B) by striking the period at the end and
22 inserting the following: “; and

23 “(B) in any case in which the extension of
24 credit exceeds the fair market value (as defined
25 under the Internal Revenue Code of 1986) of



1 the dwelling, the interest on the portion of the
2 credit extension that is greater than the fair
3 market value of the dwelling is not tax deduct-
4 ible for Federal income tax purposes.”.

5 (2) CREDIT ADVERTISEMENTS.—Section 147(b)
6 of the Truth in Lending Act (15 U.S.C. 1665b(b))
7 is amended—

8 (A) by striking “If any” and inserting the
9 following:

10 “(1) IN GENERAL.—If any”; and

11 (B) by adding at the end the following:

12 “(2) CREDIT IN EXCESS OF FAIR MARKET
13 VALUE.—Each advertisement described in subsection
14 (a) that relates to an extension of credit that may
15 exceed the fair market value of the dwelling, and
16 which advertisement is disseminated in paper form
17 to the public or through the Internet, as opposed to
18 by radio or television, shall include a clear and con-
19 spicuous statement that—

20 “(A) the interest on the portion of the
21 credit extension that is greater than the fair
22 market value of the dwelling is not tax deduct-
23 ible for Federal income tax purposes; and



1 “(B) the consumer should consult a tax
2 adviser for further information regarding the
3 deductibility of interest and charges.”.

4 (b) NON-OPEN END CREDIT EXTENSIONS.—

5 (1) CREDIT APPLICATIONS.—Section 128 of the
6 Truth in Lending Act (15 U.S.C. 1638) is
7 amended—

8 (A) in subsection (a), by adding at the end
9 the following:

10 “(15) In the case of a consumer credit trans-
11 action that is secured by the principal dwelling of
12 the consumer, in which the extension of credit may
13 exceed the fair market value of the dwelling, a clear
14 and conspicuous statement that—

15 “(A) the interest on the portion of the
16 credit extension that is greater than the fair
17 market value of the dwelling is not tax deduct-
18 ible for Federal income tax purposes; and

19 “(B) the consumer should consult a tax
20 adviser for further information regarding the
21 deductibility of interest and charges.”; and

22 (B) in subsection (b), by adding at the end
23 the following:

24 “(3) In the case of a credit transaction described in
25 paragraph (15) of subsection (a), disclosures required by



1 that paragraph shall be made to the consumer at the time
2 of application for such extension of credit.”.

3 (2) CREDIT ADVERTISEMENTS.—Section 144 of
4 the Truth in Lending Act (15 U.S.C. 1664) is
5 amended by adding at the end the following:

6 “(e) Each advertisement to which this section applies
7 that relates to a consumer credit transaction that is se-
8 cured by the principal dwelling of a consumer in which
9 the extension of credit may exceed the fair market value
10 of the dwelling, and which advertisement is disseminated
11 in paper form to the public or through the Internet, as
12 opposed to by radio or television, shall clearly and con-
13 spicuously state that—

14 “(1) the interest on the portion of the credit ex-
15 tension that is greater than the fair market value of
16 the dwelling is not tax deductible for Federal income
17 tax purposes; and

18 “(2) the consumer should consult a tax adviser
19 for further information regarding the deductibility of
20 interest and charges.”.

21 (c) REGULATORY IMPLEMENTATION.—

22 (1) IN GENERAL.—The Board shall promulgate
23 regulations implementing the amendments made by
24 this section.



1 (2) EFFECTIVE DATE.—Regulations issued
2 under paragraph (1) shall not take effect until the
3 later of—

4 (A) 12 months after the date of enactment
5 of this Act; or

6 (B) 12 months after the date of publica-
7 tion of such final regulations by the Board.

8 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**
9 **RATES”.**

10 (a) INTRODUCTORY RATE DISCLOSURES.—Section
11 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))
12 is amended by adding at the end the following:

13 “(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-
14 DUCTORY RATES’.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), an application or solicitation
17 to open a credit card account and all pro-
18 motional materials accompanying such applica-
19 tion or solicitation for which a disclosure is re-
20 quired under paragraph (1), and that offers a
21 temporary annual percentage rate of interest,
22 shall—

23 “(i) use the term ‘introductory’ in im-
24 mediate proximity to each listing of the
25 temporary annual percentage rate applica-



1 ble to such account, which term shall ap-
2 pear clearly and conspicuously;

3 “(ii) if the annual percentage rate of
4 interest that will apply after the end of the
5 temporary rate period will be a fixed rate,
6 state in a clear and conspicuous manner in
7 a prominent location closely proximate to
8 the first listing of the temporary annual
9 percentage rate (other than a listing of the
10 temporary annual percentage rate in the
11 tabular format described in section
12 122(c)), the time period in which the intro-
13 ductory period will end and the annual
14 percentage rate that will apply after the
15 end of the introductory period; and

16 “(iii) if the annual percentage rate
17 that will apply after the end of the tem-
18 porary rate period will vary in accordance
19 with an index, state in a clear and con-
20 spicuous manner in a prominent location
21 closely proximate to the first listing of the
22 temporary annual percentage rate (other
23 than a listing in the tabular format pre-
24 scribed by section 122(c)), the time period
25 in which the introductory period will end



1 and the rate that will apply after that,
2 based on an annual percentage rate that
3 was in effect within 60 days before the
4 date of mailing the application or sollicita-
5 tion.

6 “(B) EXCEPTION.—Clauses (ii) and (iii) of
7 subparagraph (A) do not apply with respect to
8 any listing of a temporary annual percentage
9 rate on an envelope or other enclosure in which
10 an application or solicitation to open a credit
11 card account is mailed.

12 “(C) CONDITIONS FOR INTRODUCTORY
13 RATES.—An application or solicitation to open
14 a credit card account for which a disclosure is
15 required under paragraph (1), and that offers a
16 temporary annual percentage rate of interest
17 shall, if that rate of interest is revocable under
18 any circumstance or upon any event, clearly
19 and conspicuously disclose, in a prominent man-
20 ner on or with such application or solicitation—

21 “(i) a general description of the cir-
22 cumstances that may result in the revoca-
23 tion of the temporary annual percentage
24 rate; and



1 “(ii) if the annual percentage rate
2 that will apply upon the revocation of the
3 temporary annual percentage rate—

4 “(I) will be a fixed rate, the an-
5 nual percentage rate that will apply
6 upon the revocation of the temporary
7 annual percentage rate; or

8 “(II) will vary in accordance with
9 an index, the rate that will apply after
10 the temporary rate, based on an an-
11 nual percentage rate that was in ef-
12 fect within 60 days before the date of
13 mailing the application or solicitation.

14 “(D) DEFINITIONS.—In this paragraph—

15 “(i) the terms ‘temporary annual per-
16 centage rate of interest’ and ‘temporary
17 annual percentage rate’ mean any rate of
18 interest applicable to a credit card account
19 for an introductory period of less than 1
20 year, if that rate is less than an annual
21 percentage rate that was in effect within
22 60 days before the date of mailing the ap-
23 plication or solicitation; and

24 “(ii) the term ‘introductory period’
25 means the maximum time period for which



1 the temporary annual percentage rate may
2 be applicable.

3 “(E) RELATION TO OTHER DISCLOSURE
4 REQUIREMENTS.—Nothing in this paragraph
5 may be construed to supersede subsection (a) of
6 section 122, or any disclosure required by para-
7 graph (1) or any other provision of this sub-
8 section.”.

9 (b) REGULATORY IMPLEMENTATION.—

10 (1) IN GENERAL.—The Board shall promulgate
11 regulations implementing the requirements of section
12 127(c)(6) of the Truth in Lending Act, as added by
13 this section.

14 (2) EFFECTIVE DATE.—Section 127(c)(6) of
15 the Truth in Lending Act, as added by this section,
16 and regulations issued under paragraph (1) of this
17 subsection shall not take effect until the later of—

18 (A) 12 months after the date of enactment
19 of this Act; or

20 (B) 12 months after the date of publica-
21 tion of such final regulations by the Board.

22 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

23 (a) INTERNET-BASED SOLICITATIONS.—Section
24 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c))
25 is amended by adding at the end the following:



1 “(7) INTERNET-BASED SOLICITATIONS.—

2 “(A) IN GENERAL.—In any solicitation to
3 open a credit card account for any person under
4 an open end consumer credit plan using the
5 Internet or other interactive computer service,
6 the person making the solicitation shall clearly
7 and conspicuously disclose—

8 “(i) the information described in sub-
9 paragraphs (A) and (B) of paragraph (1);
10 and

11 “(ii) the information described in
12 paragraph (6).

13 “(B) FORM OF DISCLOSURE.—The disclo-
14 sures required by subparagraph (A) shall be—

15 “(i) readily accessible to consumers in
16 close proximity to the solicitation to open
17 a credit card account; and

18 “(ii) updated regularly to reflect the
19 current policies, terms, and fee amounts
20 applicable to the credit card account.

21 “(C) DEFINITIONS.—For purposes of this
22 paragraph—

23 “(i) the term ‘Internet’ means the
24 international computer network of both



1 Federal and non-Federal interoperable
2 packet switched data networks; and

3 “(ii) the term ‘interactive computer
4 service’ means any information service,
5 system, or access software provider that
6 provides or enables computer access by
7 multiple users to a computer server, in-
8 cluding specifically a service or system that
9 provides access to the Internet and such
10 systems operated or services offered by li-
11 braries or educational institutions.”.

12 (b) REGULATORY IMPLEMENTATION.—

13 (1) IN GENERAL.—The Board shall promulgate
14 regulations implementing the requirements of section
15 127(c)(7) of the Truth in Lending Act, as added by
16 this section.

17 (2) EFFECTIVE DATE.—The amendment made
18 by subsection (a) and the regulations issued under
19 paragraph (1) of this subsection shall not take effect
20 until the later of—

21 (A) 12 months after the date of enactment
22 of this Act; or

23 (B) 12 months after the date of publica-
24 tion of such final regulations by the Board.



1 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**
2 **DEADLINES AND PENALTIES.**

3 (a) DISCLOSURES RELATED TO LATE PAYMENT
4 DEADLINES AND PENALTIES.—Section 127(b) of the
5 Truth in Lending Act (15 U.S.C. 1637(b)) is amended
6 by adding at the end the following:

7 “(12) If a late payment fee is to be imposed
8 due to the failure of the obligor to make payment on
9 or before a required payment due date, the following
10 shall be stated clearly and conspicuously on the bill-
11 ing statement:

12 “(A) The date on which that payment is
13 due or, if different, the earliest date on which
14 a late payment fee may be charged.

15 “(B) The amount of the late payment fee
16 to be imposed if payment is made after such
17 date.”.

18 (b) REGULATORY IMPLEMENTATION.—

19 (1) IN GENERAL.—The Board shall promulgate
20 regulations implementing the requirements of section
21 127(b)(12) of the Truth in Lending Act, as added
22 by this section.

23 (2) EFFECTIVE DATE.—The amendment made
24 by subsection (a) and regulations issued under para-
25 graph (1) of this subsection shall not take effect
26 until the later of—



1 (A) 12 months after the date of enactment
2 of this Act; or

3 (B) 12 months after the date of publica-
4 tion of such final regulations by the Board.

5 **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**
6 **URE TO INCUR FINANCE CHARGES.**

7 (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
8 URE TO INCUR FINANCE CHARGES.—Section 127 of the
9 Truth in Lending Act (15 U.S.C. 1637) is amended by
10 adding at the end the following:

11 “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-
12 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-
13 count under an open end consumer credit plan may not
14 terminate an account prior to its expiration date solely be-
15 cause the consumer has not incurred finance charges on
16 the account. Nothing in this subsection shall prohibit a
17 creditor from terminating an account for inactivity in 3
18 or more consecutive months.”.

19 (b) REGULATORY IMPLEMENTATION.—

20 (1) IN GENERAL.—The Board shall promulgate
21 regulations implementing the requirements of section
22 127(h) of the Truth in Lending Act, as added by
23 this section.

24 (2) EFFECTIVE DATE.—The amendment made
25 by subsection (a) and regulations issued under para-



1 graph (1) of this subsection shall not take effect
2 until the later of—

3 (A) 12 months after the date of enactment
4 of this Act; or

5 (B) 12 months after the date of publica-
6 tion of such final regulations by the Board.

7 **SEC. 1307. DUAL USE DEBIT CARD.**

8 (a) REPORT.—The Board may conduct a study of,
9 and present to Congress a report containing its analysis
10 of, consumer protections under existing law to limit the
11 liability of consumers for unauthorized use of a debit card
12 or similar access device. Such report, if submitted, shall
13 include recommendations for legislative initiatives, if any,
14 of the Board, based on its findings.

15 (b) CONSIDERATIONS.—In preparing a report under
16 subsection (a), the Board may include—

17 (1) the extent to which section 909 of the Elec-
18 tronic Fund Transfer Act (15 U.S.C. 1693g), as in
19 effect at the time of the report, and the imple-
20 menting regulations promulgated by the Board to
21 carry out that section provide adequate unauthorized
22 use liability protection for consumers;

23 (2) the extent to which any voluntary industry
24 rules have enhanced or may enhance the level of pro-



1 tection afforded consumers in connection with such
2 unauthorized use liability; and

3 (3) whether amendments to the Electronic
4 Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-
5 visions to regulations promulgated by the Board to
6 carry out that Act, are necessary to further address
7 adequate protection for consumers concerning unau-
8 thorized use liability.

9 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**
10 **TENDED TO DEPENDENT STUDENTS.**

11 (a) STUDY.—

12 (1) IN GENERAL.—The Board shall conduct a
13 study regarding the impact that the extension of
14 credit described in paragraph (2) has on the rate of
15 bankruptcy cases filed under title 11, United States
16 Code.

17 (2) EXTENSION OF CREDIT.—The extension of
18 credit described in this paragraph is the extension of
19 credit to individuals who are—

20 (A) claimed as dependents for purposes of
21 the Internal Revenue Code of 1986; and

22 (B) enrolled within 1 year of successfully
23 completing all required secondary education re-
24 quirements and on a full-time basis, in postsec-
25 ondary educational institutions.



1 (b) REPORT.—Not later than 1 year after the date
2 of enactment of this Act, the Board shall submit to the
3 Senate and the House of Representatives a report summa-
4 rizing the results of the study conducted under subsection
5 (a).

6 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

7 (a) REGULATIONS.—Not later than 6 months after
8 the date of enactment of this Act, the Board, in consulta-
9 tion with the other Federal banking agencies (as defined
10 in section 3 of the Federal Deposit Insurance Act), the
11 National Credit Union Administration Board, and the
12 Federal Trade Commission, shall promulgate regulations
13 to provide guidance regarding the meaning of the term
14 “clear and conspicuous”, as used in subparagraphs (A),
15 (B), and (C) of section 127(b)(11) and clauses (ii) and
16 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

17 (b) EXAMPLES.—Regulations promulgated under
18 subsection (a) shall include examples of clear and con-
19 spicuous model disclosures for the purposes of disclosures
20 required by the provisions of the Truth in Lending Act
21 referred to in subsection (a).

22 (c) STANDARDS.—In promulgating regulations under
23 this section, the Board shall ensure that the clear and con-
24 spicuous standard required for disclosures made under the
25 provisions of the Truth in Lending Act referred to in sub-



1 section (a) can be implemented in a manner which results
2 in disclosures which are reasonably understandable and
3 designed to call attention to the nature and significance
4 of the information in the notice.

5 **TITLE XIV—GENERAL EFFEC-**
6 **TIVE DATE; APPLICATION OF**
7 **AMENDMENTS**

8 **SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMEND-**
9 **MENTS.**

10 (a) EFFECTIVE DATE.—Except as otherwise provided
11 in this Act, this Act and the amendments made by this
12 Act shall take effect 180 days after the date of enactment
13 of this Act.

14 (b) APPLICATION OF AMENDMENTS.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this Act and paragraph (2), the amend-
17 ments made by this Act shall not apply with respect
18 to cases commenced under title 11, United States
19 Code, before the effective date of this Act.

20 (2) LIMITATIONS ON HOMESTEAD EXEMP-
21 TION.—The amendments made by sections 308 and
22 322 shall apply with respect to cases commenced
23 under title 11, United States Code, on or after the
24 date of the enactment of this Act.

