

PROVIDING FOR THE CONSIDERATION OF H.R. 3150,  
BANKRUPTCY REFORM ACT OF 1998

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JUNE 9, 1998.—Referred to the House Calendar and ordered to be printed

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Mr. LINDER, from the Committee on Rules,  
submitted the following

REPORT

[To accompany H. Res. 462]

The Committee on Rules, having had under consideration House Resolution 462, by a record vote of 9 to 4, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 3150, the “Bankruptcy Reform Act of 1998” under a structured rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives section 303(a) of the Congressional Budget Act (prohibiting consideration of legislation, as reported, providing new budget authority, changes in revenues, or changes in the public debt for a fiscal year until the budget resolution for that year has been agreed to) against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill be considered as an original bill for the purpose of amendment. The rule provides that the committee amendment in the nature of a substitute shall be considered by title and that each title shall be considered as read. The rule waives all points of order against the committee amendment in the nature of a substitute.

The rule provides that no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in this report, which may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the

proponent and an opponent, and shall not be subject to amendment. The rule waives all points of order against the amendments printed in this report.

The rule allows the chairman of the Committee of the Whole to postpone recorded votes and to reduce to five minutes the voting time on any postponed question, provided voting time on the first in any series of questions is not less than 15 minutes. Finally, the rule provides for one motion to recommit with or without instructions.

#### COMMITTEE VOTES

Pursuant to clause 2(1)(2)(B) of House Rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee Rollcall No. 92*

Date: June 9, 1998.

Measure: Resolution providing for the consideration of H.R. 3150, the "Bankruptcy Reform Act of 1998".

Motion by: Mr. Moakley.

Summary of motion: Open rule for the consideration of H.R. 3150, the Bankruptcy Reform Act of 1998.

Results: Defeated 2 to 7.

Vote by Members: Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Hastings—Nay; Myrick—Nay; Moakley—Yea; Frost—Yea; Solomon—Nay.

##### *Rules Committee Rollcall No. 93*

Date: June 9, 1998.

Measure: Resolution providing for the consideration of H.R. 3150, the "Bankruptcy Reform Act of 1998".

Motion by: Mr. Moakley.

Summary of motion: To make in order amendment numbered 36 by Representatives Jackson-Lee, Slaughter, Nadler and Blumenauer which clarifies status of child support and alimony payments under the means test; insures that child support and alimony are paid before unsecured debts; protects against abusive reaffirmation agreements that adversely impact support obligations; protects children's toys in bankruptcy; prevents new creditor entitlements from competing against child support, alimony and other priority payments; protects property settlements and other debts owing to a spouse or child in chapter 13; acknowledges the bankruptcy rights of creditors who are drunk driving victims or victims of crimes or willful or malicious injury; and enforces the bill's protections for child support and alimony.

Results: Defeated 3 to 7.

Vote by Members: Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Hastings—Nay; Myrick—Nay; Moakley—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

##### *Rules Committee Rollcall No. 94*

Date: June 9, 1998.

Measure: Resolution providing for the consideration of H.R. 3150, the "Bankruptcy Reform Act of 1998".

Motion by: Mr. Frost.

Summary of motion: To make in order amendment numbered 40 by Representatives Edwards and Bentsen which Strikes provisions in the bill that limit the amount that may be exempted under the Texas Homestead Exemption Law by individuals who file for bankruptcy.

Results: Defeated 4 to 9.

Vote by Members: Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Hastings—Nay; Myrick—Nay; Moakley—Yea; Frost—Yea; Hall—Yea; Slaughter—Yea; Solomon—Nay.

*Rules Committee Rollcall No. 95*

Date: June 9, 1998.

Measure: Resolution providing for the consideration of H.R. 3150, the “Bankruptcy Reform Act of 1998”.

Motion by: Mr. Dreier.

Summary of motion: Order the rule reported.

Results: Adopted 9 to 4.

Vote by Members: Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Hastings—Yea; Myrick—Yea; Moakley—Nay; Frost—Nay; Hall—Nay; Slaughter—Nay; Solomon—Yea.

AMENDMENTS MADE IN ORDER UNDER THE RULE FOR H.R. 3150  
BANKRUPTCY REFORM ACT OF 1998

(Listed in the order in which they will be considered)

(Numbers correspond to the numbered amendments filed with the Rules Committee)

37. Hyde (10 Minutes): *Manager’s Amendment*. Ensures that a debtor who is disqualified from obtaining relief under chapter 7 of the Bankruptcy Code by virtue of the bill’s needs-based formula is also not disqualified from obtaining relief under chapter 11. Accords a higher priority to child and spousal support obligations in bankruptcy cases. Adds a provision regarding the treatment of non-monetary defaults under executory contracts and unexpired leases. Makes substantive revisions relating to the debt counseling service and financial management provisions contained in Sections 111 through 116. Clarifies language regarding procedural aspects of bad faith repeat filings and prompt relief from the automatic stay. Deletes Section 145, regarding credit extensions obtained without a reasonable expectation of repayment. Amends Section 182, which limits the amount of a debtor’s homestead, to prevent manipulation of this provision to the disadvantage of homeowners through the use of involuntary bankruptcy proceedings. Adds administrative safeguards to Section 201 (appointment of fee examiners) and Section 205 (creditor’s committee membership). Revises Section 212 to accord more protection to recording artists. Amendment to Section 235 clarifies that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States will establish uniform rules and forms for small business debtors.

29. Nadler (10 minutes): Modifies the small business subtitle: Restores the right of an individual debtor to count debt as “disposable income” if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation and operation of such business; restores the current definition of “small business debtor”; strikes onerous and burdensome paperwork and other paperwork and other bureaucratic burdens, and excessively rigid and short deadlines which are not otherwise imposed on larger businesses in Chapter 11; strikes a provision which would allow a creditor to violate the automatic stay if the creditor had a “good faith belief” that it was exempt from the automatic stay; strikes a provision that would prohibit a small business from filing a new petition for two years after a case was dismissed or ended; and strikes a provision which would require a successor entity to a previously bankruptcy entity to bring forward a plan capable of confirmation in order to file the case in the first place.

6. Delahunt (10 minutes): Adds a new section 105 to the bill authorizing the Judicial Conference of the United States to reduce disbursements to unsecured nonpriority creditors payable in Chapter 13 cases to cover the increased costs to the courts and the U.S. Trustees Office of implementing and administering the means testing system provided for under the bill.

18. Boucher, Gekas (10 minutes): Expands the definition of “household goods” to include any personal property that is reasonable, necessary for the maintenance or support of a dependent child, thereby ensuring that exempt household possessions used in childbearing will not be taken away from the parent filing bankruptcy by a secured creditor who did not finance the purchase of those possessions. Rewrites the provision which makes debts incurred to pay nondischargeable debt nondischargeable—such debts continue to be nondischargeable in many cases. If the debtor is a single parent with dependent children or a person obligated to pay child support, the debt will not be dischargeable unless the creditor shows that the debtor intentionally used the borrowed funds to pay the debt which is involved. Moves child support, alimony and marital dissolution obligations from 7th priority to 1st priority during bankruptcy proceedings. Requires that a chapter 13 debtor obligated to pay child support, alimony or marital dissolution obligations do so before paying any other priority debt.

32. Gekas (10 minutes): Provides that a prevailing party must be awarded the cost of any filing fees incurred in connection with the filing of a nondischargeability proceeding in a case where the debtor is an individual.

39. Shaw, Camp (10 minutes): If credit card companies obtain payments from parents who owe past-due child support, the companies are required to hold the payments in trust and distribute the payments to parents and children who are entitled to priority under the committee bill.

38. Paul (10 minutes): Reorders the tax priorities for debt repayment (U.S.C. title 11 Chapter 5 Subchapter I Section 507) to put repayment to governmental units as the last priority with local governmental units before state governmental units which would be repaid before Federal governmental units.

24. Gekas, McCollum, Smith (TX) (10 minutes): Prohibits the conversion of non-exempt assets into exempt homestead property within 1 year of filing for bankruptcy. Prevents abuses such as using bankruptcy exemptions as a means of hiding assets.

13. Scott (10 minutes): Eliminates Section 212 of the bill. The effect is to maintain current law by eliminating the provisions of the bill which would prevent a recording artist from discharging their obligations under service contract agreements with recording companies.

16. Velázquez (10 minutes): Requires a study of the causes of small business bankruptcies. The study would examine how the bankruptcy system can be improved in order to help viable small businesses reorganize.

11. Baldacci (10 minutes): Directs the Comptroller General to conduct a study of the impact on the nation's bankruptcy rate due to the extension of credit to students enrolled in post-secondary education programs who are claimed as dependents for tax purposes by their parents or legal guardians.

27. Nadler, Meehan, Berman, Jackson-Lee (1 hour): *Democratic Amendment in the Nature of a Substitute*. Deletes one size fits all means test. Strengthens procedure under current law for dismissal of a case for abuse of Chapter 7. Restores existing priorities among creditors. Protects alimony and child support. Revises the small business subtitle to be consistent with the recommendations of the National Bankruptcy Conference and the Small Business Administration. Reduces administrative costs and paperwork burdens. Ensures that governments, including the IRS cannot harass debtors. Retains International and Miscellaneous titles.

The amendments made in order by the rule are as follows:

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HYDE OF ILLINOIS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, line 8, strike "spouse" and insert "spouse,".

Page 8, line 13, insert ", issued by the Internal Revenue Service," after "debts").

Page 8, line 16, strike "under" and insert "by".

Page 8, beginning on line 16, strike "financial analysis for expenses" and insert "allowance for such expenses".

Page 9, line 10, insert "total" after "monthly".

Page 9, line 20, insert "total" after "monthly".

Page 9, line 21, strike "what income" and insert "any income that".

Page 12, line 15, insert "CHAPTER 13" after "A" (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 13, line 1, insert ", issued by the Internal Revenue Service," after "debts").

Page 13, line 4, strike "under" and insert "by".

Page 13, beginning on line 5, strike "financial analysis for expenses" and insert "allowance for such expenses".

Page 13, line 15, strike "of" and insert "under".

Page 13, line 22, strike "of" and insert "under".

Page 14, line 3, insert "and" at the end.

Page 14, beginning on line 14, strike “, in a case in which a trustee has been appointed,”.

Page 14, beginning on line 21, strike “what income” and inserting “any income that”.

Page 18, line 1, strike “total current monthly” and insert “current monthly total”.

Page 18, beginning on line 7, strike “total current monthly” and insert “current monthly total”.

Page 20, line 24, strike “and” at the end and insert a comma.

Page 21, line 1, strike “its schedules” and insert “schedules,”.

Page 21, beginning on line 3, strike “and its schedules” and insert “schedules,”.

Page 22, beginning on line 6, strike “outside” and all that follows through “system)” on line 7.

Page 24, line 21, insert “by the debtor” after “statement”.

Page 25, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 105. WHO MAY BE A DEBTOR UNDER CHAPTER 11.**

Section 109(d) of title 11, United States Code, is amended by inserting “, or a person described in subsection (b)(4),” after “chapter 7”.

Page 25, line 19, strike “12” and insert “12,”.

Page 26, line 3, strike “(i)” and insert “(i)(I)”.

Page 26, line 5, strike “(ii)” and insert “(II)”.

Page 26, line 6, strike the period at the end and insert “; and”.

Page 26, after line 6, insert the following:

“(ii) that offers its services to debtors without charge, or at an appropriately reduced charge if payment of any regular charge would impose a hardship on the debtor or a dependent of the debtor.”

Page 26, line 10, insert “or on the motion of the United States trustee and” after “district”.

Page 26, beginning on line 11, strike “the United States trustee and”.

Page 27, line 21, strike “60” and insert “180”.

Page 33, line 22, strike “select a chapter 7 proceeding” and insert “choose to file a chapter 7 case”.

Page 34, line 1, strike “select a chapter 13 proceeding” and insert “choose to file a chapter 13 case”.

Page 34, line 6, strike “proceeding” and insert “relief”.

Page 34, line 9, strike “proceeding” and insert “relief”.

Page 34, line 10, strike “proceeding” and insert “case”.

Page 34, beginning on line 13, strike “represent you in litigation” and insert “give you legal advice”.

Page 34, line 21, insert “, to the extent permitted by nonbankruptcy law,”.

Page 38, line 4, strike “or” and insert “and”.

Page 41, after line 12, insert the following:

“(5) Notwithstanding any other provision of Federal law, if the court, on its own motion or on the motion of the United States trustee, finds that a person intentionally violated section 526 or 527 of this title, or engaged in a clear and consistent pattern or practice of violating section 526 or 527 of this title, the court may—

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

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

Page 43, line 17, insert “, together with any other such contribution,” after “contribution”.

Page 46, line 12, strike “2002bb” and insert “2000bb”.

Page 49, beginning on line 8, strike “If a party in interest requests” and insert “Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing”.

Page 55, line 9, strike “reaffirmation”.

Page 56, line 1, insert “THE AUTOMATIC” after “FROM” (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 59, line 7, insert “THE AUTOMATIC” after “FROM” (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 59, line 20, insert “as described in findings made by the court” after “circumstances”.

Page 60, line 12, strike “cases” and insert “a case”.

Page 64, line 3, strike “case”.

Page 66, line 19, insert “, excluding debts incurred for necessities that do not exceed \$250 in the aggregate,” after “creditor”.

Page 66, beginning on line 22, strike “, except” and all that follows through “less” on line 25.

Page 67, line 23, strike “or divorce or dissolution decree” and insert “divorce decree, or other order of a court of record”.

Page 68, strike lines 8 through 23 (and make such technical and conforming changes as may be appropriate).

Page 74, strike lines 13 through 15, and insert the following:

(2) in subsection (a)(7) by inserting “an order of disgorgement or restitution obtained by a governmental unit,” after “such debt is for”; and

Page 75, line 20, strike “the”.

Page 76, line 14, strike “(14)” and insert “(19)”.

Page 76, in the matter after line 21, insert “payments after discharge” after “alimony”.

Page 78, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 152. HIGHER PRIORITY FOR DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

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

(1) by striking paragraph (7);

(2) in paragraph (6) by striking “(6) Sixth” and inserting “(7) Seventh”;

(3) in paragraph (5) by striking “(5) Fifth” and inserting “(6) Sixth”;

(4) in paragraph (4) by striking “(4) Fourth” and inserting “(5) Fifth”;

(5) in paragraph (3) by striking “(3) Third” and inserting “(4) Fourth”; and

(6) by inserting after paragraph (2) the following:

“(3) Third, allowed claims for debts to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, in connection with a separa-

tion agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

“(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

“(B) includes a liability designed as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.”.

Page 83, strike lines 17 through 19, and insert the following: apply to—

“(A) an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer; or

“(B) an involuntary case.”.

Page 84, strike lines 8 through 10, and insert the following:

“(e) A person appointed to examine a request for compensation or reimbursement payable under this section may not be paid on the basis of the amount of any reduction recommended by such person in the amount or rate of such compensation or such reimbursement.”.

Page 85, line 16, strike “(3)” and insert “(3)(A)”.

Page 85, line 16, insert “, subject to subparagraph (B),” after “or”.

Page 85, line 20, strike the close quotation marks and the period at the end.

Page 85, after line 20, insert the following:

“(B) A request to change the membership of a committee appointed under subsection (a) may be made under subparagraph (A) by a party in interest only after such request is submitted to and denied by the United States trustee.”.

Beginning on page 90, strike line 24 and all that follows through line 10 on page 91, and insert the following:

“(5) Where the court finds that a personal services contract is property of the estate, the trustee may not reject an executory contract for personal services in which advances are paid for the creation of copyrighted sound recordings in the future if a material purpose for commencing a case under this title is to reject such contract, unless, absent such rejection, economic rehabilitation of the debtor’s finances, including such contract, cannot be achieved.”.

Page 91, beginning on line 24, strike “debtor’s motion” and insert “motion of the trustee”.

Page 92, line 4, insert “the” after “provided”.

Page 92, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.**

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following:

“other than a default that is a breach of a provision relating to—

“(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising



from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

“(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;”, and

(B) by amending paragraph (2)(D) to read as follows:

“(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract or under an unexpired lease of real or personal property.”,

(2) in subsection (c)—

(A) in paragraph (2) by adding “or” at the end,

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

(C) by striking paragraph (4),

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9), and

(B) by redesignating paragraph (10) as paragraph (5).

(4) in subsection (f)(1) by striking “; except that” and all that follows through the end of the paragraph and inserting a period.

(b) **IMPAIRMENT OF CLAIMS OR INTERESTS.**—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting “or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured” before the semicolon at the end,

(2) in subparagraph (C) by striking “and” at the end,

(3) by redesignating subparagraph (D) as subparagraph (E), and

(4) by inserting after subparagraph (C) the following:

“(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and”.

Page 95, beginning on line 14, strike “STATEMENTS AND PLANS” and insert “STATEMENT AND PLAN” (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Beginning on page 97, strike line 17 and all that follows through line 6 on page 98, and insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 235. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.**

(a) **PROPOSAL OF RULES AND FORMS.**—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bank-

ruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

- (1) the debtor's profitability;
- (2) the debtor's cash receipts and disbursements; and
- (3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance between—

- (1) the reasonable needs of the bankruptcy court, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information;
- (2) the small business debtor's interest that required reports be easy and inexpensive to complete; and
- (3) the interest of all parties that the required reports help the small business debtor to understand its financial condition and plan its future.

Page 103, line 22, insert “and” at the end.

Page 104, strike lines 3 through 6, and insert the following:

“(9) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.”

Page 105, line 15, strike “(i)” and insert “(j)”.

Page 106, line 5, strike “(C) un-” and insert “(C);”.

Page 106, strike lines 6 through 12, and insert the following:

unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.”

Page 108, line 24, strike “, and” and all that follows through line 2 on page 109, and insert a semicolon.

Page 112, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 302. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.**

Section 901 of title 11, United States Code, is amended—

- (1) by inserting “555, 556,” after “553,”; and
- (2) by inserting “559, 560,” after “557.”

Page 125, line 8, strike “total current monthly” and insert “current monthly total”.

Page 125, line 17, strike “total current monthly” and insert “current monthly total”.

Page 126, beginning on line 11, strike “total current monthly” and insert “current monthly total”.

Page 126, line 18, strike “total current monthly” and insert “current monthly total”.

Page 131, line 3, strike “or dismissed” and insert “, dismissed, or closed”.

Page 131, beginning on line 17, strike “Such” and all that follows through “Courts.” on line 19.

Page 131, line 20, insert “in such form as shall be determined by such Office, in consultation with the Administrative Office of the United States Courts,” after “tics,”

Page 131, line 19, strike “Office” and insert “Executive Office for United States Trustees”.

Page 132, line 5, strike “total current monthly” and insert “current monthly total”.

Page 133, line 16, insert “UNIFORM RULES FOR THE COLLECTION OF” after “SEC. 442.” (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 140, strike lines 6 through 10, and insert the following:  
amended to read as follows:

“(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) of this title, and such property shall be liable for a debt of a kind specified in such paragraph (5) notwithstanding any State law to the contrary;”

Page 161, line 16, strike “or” at the end.

Page 161, line 21, strike the period at the end and insert “; or”.

Page 161, after line 21, insert the following:

“(3) an entity subject to a proceeding under the Securities Investor Protection Act, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

Page 164, line 2, strike “Nothing in this chapter limits the power of” and insert “Subject to the specific limitations stated elsewhere in this chapter”.

Page 165, after line 15, insert the following:

“(c) Subject to section 610 of this title, a foreign representative is subject to laws of general application.

Page 165, line 16, strike “(c)” and insert “(d)”.

Page 165, beginning on line 17, strike “proceeding” and insert “representative”.

Page 165, line 19, insert “by a foreign representative” after “cooperation”.

Page 166, line 5, strike “sections” and insert “section”.

Page 166, line 10, strike “filing a petition for”.

Page 166, strike lines 22 and 23.

Page 170, line 24, insert “after notice and a hearing” after “606,”.

Page 177, strike lines 11 through 17, and insert the following:

“(a) The court may grant relief under section 619 or 621, or may modify or terminate relief under subsection (c) of this section, only if the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

“(b) The court may subject relief granted under section 619 or 621, or the operation of the debtor’s business under section 620(a)(2) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

Page 177, after line 21, insert the following:

“(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

Page 178, line 19, strike “In all matters included within” and insert “Consistent with”.

Page 179, line 6, strike “In all matters included within” and insert “Consistent with”.

Page 179, line 12, strike “designated” and insert “authorized”.

Page 179, strike lines 15 through 18.

Page 181, line 8, insert “the relief granted in” after “with”.

Page 181, line 24, insert “the relief granted in” after “with”.

Page 186, line 11, strike “The” and insert “Except as otherwise provided in this Act, the”.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 13, strike line 23 and insert the following:

plan; and

“(D) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of such business;”;

Beginning on page 93, strike line 5 and all that follows through line 2 on page 94, and insert the following:

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

(1) by redesignating paragraph (51C) as paragraph (51D); and

(2) by inserting after paragraph (51B) the following:

“(51C) ‘small business case’ means a case filed under chapter 11 of this title in which the debtor is a small business debtor;”.

Beginning on page 98, strike line 7 and all that follows through the matter preceding line 15 on page 100 (and make such technical and conforming changes as may be appropriate).

Beginning on page 100, strike line 15 and all that follows through line 11 on page 104 (and make such technical and conforming changes as may be appropriate).

Beginning on page 105, strike line 1 and all that follows through line 12 on page 106 (and make such technical and conforming changes as may be appropriate).

Beginning on page 106, strike line 13 and all that follows through line 16 on page 109, and insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 243. ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.**

Section 1104(a) of title 11, United States Code,

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DELAHUNT OF MASSACHUSETTS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 25, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 105. AUTHORITY TO IMPOSE FEES PAYABLE FOR COSTS INCURRED TO ADMINISTER THE AMENDMENTS MADE BY SECTIONS 101 AND 102.**

Section 1930(b) of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

“(2) The Judicial Conference of the United States may prescribe additional fees that are both—

“(A) payable from disbursements to unsecured, nonpriority creditors in cases under chapter 13 of title 11; and

“(B) based on the estimated increased costs incurred in cases under chapters 7 and 13 of title 11 of the United States Code, by the Government to carry out the amendments made by title I and subtitle A of IV of the Bankruptcy Reform Act of 1998.”.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOUCHER OF VIRGINIA, OR REPRESENTATIVE GEKAS OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 54, line 15, before the semicolon insert the following:

“, except that the term shall also include any tangible personal property reasonably necessary for the maintenance and support of a dependent child”.

Page 66, strike lines 11 through 13 and insert the following:

“(19) incurred to pay a debt that is nondischargeable by reason of any other provision of this subsection or section 727, 1141, 1228(a), 1228(b), or 1328(b), except for any debt incurred to pay such a nondischargeable debt in any case in which—

“(A)(i) the debtor who paid the nondischargeable debt is a single custodial parent who has 1 or more dependent children at the time of the order for relief, or

“(ii) there is an allowed claim for alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor payable under a judicial or administrative order to such spouse or child (but not to any other person) which was unpaid as of the date of the petition; and

“(B) the creditor is unable to demonstrate that the debtor intentionally incurred the debt to pay the debt which is nondischargeable;”.

Page 70, after line 12, insert the following (and make such technical and conforming changes as may be appropriate):

(1) in the matter preceding paragraph (1) by inserting before the colon the following:

“, except that, notwithstanding any other provision of this title, any expense or claim entitled to priority under paragraph (7) shall have first priority over any other expense or claim that has priority under any other provision of this subsection”;

Page 70, after line 22, insert the following (and make such technical and conforming changes as may be appropriate):

(e) CONTENTS OF PLANS.—Section 1322(b)(1) of title 11, United States Code, is amended by striking the semicolon at the end and inserting the following:

“and provide for the payment of any claim entitled to priority under section 507(a)(7) of this title before the payment of any other claim entitled to priority under section 507(a), notwithstanding the priorities established under section 507(a);”.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GEKAS OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 74, strike lines 16 and 17, and insert the following:

(3) in subsection (c)—

(A) in paragraph (1) by striking “(6), or (15)” and inserting “or (6)”; and

(B) by adding at the end the following:

“(3) In any proceeding under paragraph (1) in a case concerning an individual debtor, the court shall award to the prevailing party (other than the debtor) who is a party as defined in section 2412(d)(2)(B) of title 28, any filing fee paid by such party to commence such proceeding. The debt for such fee shall be treated as a nondischargeable debt under the respective paragraph (2), (4), or (6) of subsection (a) applicable to the debt that is the subject of such proceeding.”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHAW OF FLORIDA, OR REPRESENTATIVE CAMP OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 76, line 17, insert the following before the 1st period: except with respect to any property of the debtor acquired after the date of the filing of the petition. A creditor that receives a payment, or collects money or property, in satisfaction of all or part of any debt excepted from discharge under paragraph (2), (4), or (14) of section 523(a) of this title shall hold such payment, such money, or such property in trust and, not later than 20 days after receiving such payment or collecting such money or property, shall distribute such payment, such money, or such property ratably to individuals who then hold debts entitled to priority under this section. Not later than 5 years after receiving such payment or collecting such money or property, such creditor shall make the distribution required by this section to all individuals whose identity is known to such creditor, or is reasonably ascertainable by such creditor, at the time of distribution.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PAUL OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 78, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 152. PRIORITIES.**

Section 507(a) of title 11, United States Code, as amended by any other provision of this Act, is amended—

(1) in paragraph (9), as so redesignated and amended by any other provision of this Act—

(A) by inserting “firstly of local governmental units, secondly of State governmental units, and thirdly of all other governmental units,” after “claims”;

(B) by striking “(9) Ninth” and inserting “(11) Eleventh”; and

(C) by transferring such paragraph so as to insert such paragraph at the end of subsection (a) of section 507;

(2) in paragraph (10), as so redesignated and amended by any other provision of this Act, by striking “(10) Tenth” and inserting “(9) Ninth”;

(3) in paragraph (11), as so redesignated and amended by any other provision of this Act, by striking “(11) Eleventh” and inserting “(10) Tenth”.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GEKAS OF PENNSYLVANIA, OR REPRESENTATIVE MCCOLLUM OF FLORIDA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Beginning on page 82, strike line 23 and all that follows through line 19 on page 83, and insert the following:

**SEC. 182. LIMITATION.**

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

(1) in subsection (b)(2)(A) by inserting “subject to subsection (n),” before “any property”; and

(2) by adding at the end the following:

“(n) For purposes of subsection(b)(2)(A) and notwithstanding subsection (a), the value of an interest in—

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

“(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

“(3) a burial plot for the debtor or a dependent of the debtor;

shall be reduced to the extent such value is attributable to any portion of any property that the debtor disposed of in the 365-day period ending of the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b) if on such date the debtor had held the property so disposed of.”.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCOTT OF VIRGINIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Beginning on page 90, strike line 19 and all that follows through line 10 on page 91 (and make such technical and conforming changes as may be appropriate).

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 110, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

**SEC. 244. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.**

Not later than 2 years after the date of the enactment of this Act, the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy can be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report summarizing such study.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BALDACCI OF MAINE, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 131, after line 7, insert the following:

**SEC. 414. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.**

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study regarding the impact that the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in post-secondary educational institutions;

has on the rate of cases filed under title II of the United States Code; and

(2) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report summarizing such study.

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF NEW YORK, OR REPRESENTATIVE MEEHAN OF MASSACHUSETTS, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

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

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

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

Sec. 1. Short title; table of contents.

**TITLE I—CONSUMER BANKRUPTCY PROVISIONS**

**Subtitle A—Needs-Based Bankruptcy**

Sec. 101. Dismissal or conversion of a chapter 7 case.

Sec. 102. Debtor participation in credit counseling program.

**Subtitle B—Adequate Protections for Consumers**

Sec. 111. Notice of alternatives.

Sec. 112. Debtor financial management training test program.

Sec. 113. Definitions.

Sec. 114. Disclosures.



- Sec. 115. Debtor's bill of rights.
- Sec. 116. Enforcement.
- Sec. 117. Sense of the Congress.
- Sec. 118. Charitable contributions.
- Sec. 119. Reinforce the fresh start.
- Sec. 119A. Chapter 11 discharge of debts arising from tobacco-related debts.

#### Subtitle C—Adequate Protections for Secured Creditors

- Sec. 121. Discouraging bad faith repeat filings.
- Sec. 122. Definition of household goods.
- Sec. 123. Debtor retention of personal property security.
- Sec. 124. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec. 125. Giving secured creditors fair treatment in chapter 13.
- Sec. 126. Prompt relief from stay in individual cases.
- Sec. 127. Stopping abusive conversions from chapter 13.
- Sec. 128. Restraining abusive purchases on secured credit.
- Sec. 129. Fair valuation of collateral.
- Sec. 130. Protection of holders of claims secured by debtor's principal residence.
- Sec. 131. Aircraft equipment and vessels.

#### Subtitle D—Adequate Protections for Unsecured Creditors

- Sec. 141. Fraudulent debts are nondischargeable in chapter 13 cases.
- Sec. 142. Applying the codebtor stay only when it protects the debtor.
- Sec. 143. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 144. Other exceptions to discharge.
- Sec. 145. Fees arising from certain ownership interests.
- Sec. 146. Adequate protection for investors.
- Sec. 147. Super-priority for child and spousal support claims.
- Sec. 148. Debts for alimony, maintenance, and support.
- Sec. 149. Protection of child support and alimony.

#### Subtitle E—Adequate Protections for Lessors

- Sec. 161. Giving debtors the ability to keep leased personal property by assumption.

#### Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

- Sec. 171. Extend period between bankruptcy discharges.

#### Subtitle G—Exemptions

- Sec. 181. Exemptions.
- Sec. 182. Limitation.
- Sec. 183. Provide fair property exemptions and prevent high-rollers from abusing the system.

### TITLE II—BUSINESS BANKRUPTCY PROVISIONS

#### Subtitle A—General Provisions

- Sec. 201. Limitation relating to the use of fee examiners.
- Sec. 202. Sharing of compensation.
- Sec. 203. Chapter 12 made permanent law.
- Sec. 204. Meetings of creditors and equity security holders.
- Sec. 205. Creditors' and equity security holders' committees.
- Sec. 206. Postpetition disclosure and solicitation.
- Sec. 207. Preferences.
- Sec. 208. Venue of certain proceedings.
- Sec. 209. Cases ancillary to foreign proceedings involving foreign insurance companies that are engaged in the business of insurance or reinsurance in the United States.
- Sec. 210. Period for filing plan under chapter 11.
- Sec. 211. Unexpired leases of nonresidential real property.
- Sec. 212. Definition of disinterested person.

#### CHAPTER 1—SMALL BUSINESS BANKRUPTCY

- Sec. 231. Definitions.

- Sec. 232. Flexible rules for disclosure statement and plan.
- Sec. 233. Standard form disclosure statements and plans.
- Sec. 234. Uniform national reporting requirements.
- Sec. 235. Uniform reporting rules and forms.
- Sec. 236. Duties in small business cases.
- Sec. 237. Plan filing and confirmation deadlines.
- Sec. 238. Plan confirmation deadline.
- Sec. 239. Prohibition against extension of time.
- Sec. 240. Duties of the United States trustee and bankruptcy administrator.
- Sec. 241. Scheduling conferences.
- Sec. 242. Serial filer provisions.
- Sec. 243. Expanded grounds for dismissal or conversion and appointment of trustee.

#### CHAPTER 2—SINGLE ASSET REAL ESTATE

- Sec. 251. Single asset real estate defined.
- Sec. 252. Payment of interest.

#### CHAPTER 3—CONDITIONAL APPLICATION OF AMENDMENTS

- Sec. 291. Loss of jobs.

#### TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 301. Petition and proceedings related to petition.
- Sec. 302. Applicability of other sections to chapter 9.

#### TITLE IV—BANKRUPTCY ADMINISTRATION

##### Subtitle A—General Provisions

- Sec. 401. Adequate preparation time for creditors before the meeting of creditors in individual cases.
- Sec. 402. Creditor representation at first meeting of creditors.
- Sec. 403. Filing proofs of claim.
- Sec. 404. Audit procedures.
- Sec. 405. Giving creditors fair notice in chapter 7 and 13 cases.
- Sec. 406. Debtor to provide tax returns and other information.
- Sec. 407. Dismissal for failure to file schedules timely or provide required information.
- Sec. 408. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 409. Sense of the Congress regarding expansion of rule 9011 of the Federal rules of bankruptcy procedure.
- Sec. 410. Jurisdiction of courts of appeals.
- Sec. 411. Establishment of official forms.
- Sec. 412. Elimination of certain fees payable in chapter 11 bankruptcy cases.

##### Subtitle B—Data Provisions

- Sec. 441. Improved bankruptcy statistics.
- Sec. 442. Bankruptcy data.
- Sec. 443. Sense of the Congress regarding availability of bankruptcy data.

#### TITLE V—TAX PROVISIONS

- Sec. 501. Treatment of certain liens.
- Sec. 502. Enforcement of child and spousal support.
- Sec. 503. Effective notice to Government.
- Sec. 504. Notice of request for a determination of taxes.
- Sec. 505. Rate of interest on tax claims.
- Sec. 506. Tolling of priority of tax claim time periods.
- Sec. 507. Assessment defined.
- Sec. 508. Chapter 13 discharge of fraudulent and other taxes.
- Sec. 509. Chapter 11 discharge of fraudulent taxes.
- Sec. 510. The stay of tax proceedings.
- Sec. 511. Periodic payment of taxes in chapter 11 cases.
- Sec. 512. The avoidance of statutory tax liens prohibited.
- Sec. 513. Payment of taxes in the conduct of business.
- Sec. 514. Tardily filed priority tax claims.
- Sec. 515. Income tax returns prepared by tax authorities.
- Sec. 516. The discharge of the estate's liability for unpaid taxes.
- Sec. 517. Requirement to file tax returns to confirm chapter 13 plans.

Sec. 518. Standards for tax disclosure.  
Sec. 519. Setoff of tax refunds.

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 601. Amendment to add a chapter 6 to title 11, United States Code.  
Sec. 602. Amendments to other chapters in title 11, United States Code.

TITLE VII—MISCELLANEOUS

Sec. 701. Technical amendments.  
Sec. 702. Application of amendments.

## **TITLE I—CONSUMER BANKRUPTCY PROVISIONS**

### **Subtitle A—Needs-Based Bankruptcy**

#### **SEC. 101. DISMISSAL OR CONVERSION OF A CHAPTER 7 CASE.**

(a) AMENDMENTS TO CHAPTER 7.—Section 707 of title 11, United States Code, is amended—

(1) by amending the heading to read as follows:

**“§ 707 Dismissal or conversion of case”;**

(2) by amending subsection (b) to read as follows:

“(b)(1) In a case filed by an individual debtor who has regular income and whose debts are primarily consumer debts, the court—

“(A) on its own motion, or on a motion by the United States trustee or the trustee; or

“(B) on a motion filed by a party in interest, if the household income with respect to the debtor during the 1-year period ending on the date the case is commenced exceeds the sum of \$60,000 and \$5,000 for each household member exceeding 4, adjusted to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the period beginning on the 1st January 1 occurring after the effective date of this subparagraph and ending immediately before the most recent January 1 occurring before the commencement of the case;

and after notice and a hearing, shall dismiss the case, or convert the case with the consent of the debtor to a case under another chapter of this title, if the court finds that granting relief would be an abuse of the provisions of this chapter.

“(2) For purposes of paragraph (1)—

“(A) ‘an abuse of the provisions of this chapter’ means that—

“(i)(I) the debtor has, and is expected to have, disposable income that is sufficient, after paying allowed claims (whether secured or unsecured) for a debt secured only by the principal residence of the debtor, allowed secured claims, claims that have priority under section 507 of this title, allowed unsecured claims arising under not more than 1 motor vehicle lease in effect on the date the case is commenced, and debts arising in the 3-year period beginning on such date under not more than 1 motor vehicle lease in effect on the such date, to pay during such 3-year

period not less than 30 percent of the aggregate amount of the remaining allowed unsecured claims; and

“(II) household income received with respect to the debtor during the 1-year period ending on the date the case is commenced exceeds the sum of \$40,000 and \$5,000 for each household member exceeding 2, adjusted to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the period beginning on the 1st January 1 occurring after the effective date of this subparagraph and ending immediately before the most recent January 1 occurring before the commencement of the case; or

“(ii) the debtor commenced a case under this chapter, or converted a case to a case under this chapter, in bad faith; “(B) ‘disposable income’ means income that is received by the debtor and that is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor;

“(C) ‘household income’ means—

“(i) in an individual case, the sum of—

“(I) the debtor’s income; and

“(II) the income of any other household member of the debtor; and

“(ii) in a joint case, the sum of—

“(I) the debtor’s income;

“(II) the income of the debtor’s spouse; and

“(III) the income of any other household member of the debtor or of the debtor’s spouse;

“(D) ‘household member’ means—

“(i) the debtor;

“(ii) the debtor’s spouse if the debtor’s spouse maintains a common principal residence with the debtor on the date the case is commenced; or

“(iii) a relative (by affinity, consanguinity, or adoption) of the debtor or the debtor’s spouse who—

“(I) maintains a common principal residence with the debtor on the date the case is commenced; and

“(II) is dependent on the debtor, or on the debtors’ spouse if the debtor’s spouse maintains a common principal residence with the debtor on the date the case is commenced, for substantially all financial support during the 180-day period ending on the date the case is commenced.

“(3) Except as provided in paragraph (2)(C), this subsection shall apply jointly to debtors in a joint case.”; and

(3) by adding at the end the following:

“(c) If the court denies a motion filed under this section by a party in interest, the court shall award to the debtor—

“(1) costs and a reasonable attorney’s fee incurred by the debtor to oppose the motion; and

“(2) damages of not less than \$5000;

unless the position of such party in interest is substantially justified.”.

**SEC. 102. DEBTOR PARTICIPATION IN CREDIT COUNSELING PROGRAM.**

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

“(i)(1) Subject to paragraph (2) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 90-day period preceding the date of filing of the petition, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the ‘bankruptcy system’), through a credit counseling program offered through credit counseling services described in section 342(b)(2) that has been approved by—

“(A) the United States trustee; or

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

“(2) The United States trustee or bankruptcy administrator may not approve a program for inclusion on the list under paragraph (1) unless the counseling service offering the program offers the program without charge, or at an appropriately reduced charge, if payment of the regular charge would impose a hardship on the debtor or the debtor’s dependents.

“(3) The United States trustee or bankruptcy administrator shall designate any geographical areas in the United States trustee region or judicial district, as the case may be, as to which the United States trustee or bankruptcy administrator has determined that credit counseling services needed to comply with this subsection are not available or are too geographically remote for debtors residing within the designated geographical areas. The clerk of the bankruptcy court for each judicial district shall maintain a list of the designated areas within the district.

“(4) The clerk shall exclude a particular counseling service from the list maintained under section 342(b)(2) of this title if the United States trustee or bankruptcy administrator orders that the counseling service not be included in the list.

“(5) The court may waive the requirement specified in paragraph (1) if—

“(A) no credit counseling services are available as designated under paragraphs (2) and (3);

“(B) the providers of credit counseling services available in the district are unable or unwilling to provide such services to the debtor in a timely manner; or

“(C) foreclosure, garnishment, attachment, eviction, levy of execution, utility termination, repossession, or similar claim enforcement procedure that would have deprived the individual of property had commenced or threatened to commence before the debtor could complete a good-faith attempt to create such a repayment plan.

“(6) A debtor who is subject to the exemption under paragraph (5)(C) shall be required to make a good-faith attempt to create a debt repayment plan outside the judicial system in the manner prescribed in paragraph (1) during the 30-day period beginning on the date of filing of the petition of that debtor.

“(7) A debtor shall be exempted from the bad faith presumption for repeat filing under section 362(c) of title 11 if the case is dismissed due to the creation of a debt repayment plan.

“(8) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.”

(b) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 406 and 407, is amended by adding at the end the following:

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

“(A) a certificate from the credit counseling services that provided the debtor services under section 109(i), or a verified statement as to why such attempt was not required under section 109(i) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(i); and

“(B) a copy of the debt repayment plan, if any, developed under section 109(i) through the credit counseling service referred to in paragraph (1).

“(2) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.”

## **Subtitle B—Adequate Protections for Consumers**

### **SEC. 111. NOTICE OF ALTERNATIVES.**

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

“(b)(1) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the individual shall be given or obtain (as required to be certified under section 521(a)(1)(B)(viii)) a written notice that is prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28 and that contains the following:

“(A) A brief description of chapters 7, 11, 12 and 13 of this title and the general purpose, benefits, and costs of proceeding under each of such chapters.

“(B) A brief description of services that may be available to the individual from an independent nonprofit debt counselling service.

“(C) The name, address, and telephone number of each nonprofit debt counselling service (if any)—

“(i)(I) with an office located in the district in which the petition is filed; or

“(ii)(II) that offers toll-free telephone communication to debtors in such district; and

“(ii) that provides such service without charge or on an appropriate reduced fee basis.

“(2) Any such nonprofit debt counselling service that registers with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in such list unless the chief

bankruptcy judge of the district, after notice to the debt counselling service and the United States trustee and opportunity for a hearing, for good cause, orders that such debt counselling service shall not be so listed.

“(3) The clerk shall make such notice available to individuals whose debts are primarily consumer debts.

“(4) The United States trustee may file a motion with the bankruptcy court to request the removal of any debt counseling service from such list.”.

(b) Section 586(a) of title 28, United States Code, is amended—

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

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

(3) by adding at the end the following:

“(7) on or before January 1 of each calendar year, and also within 30 days of any change in the nonprofit debt counselling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(1) of title 11 for each district included in the region.”.

**SEC. 112. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.**

(a) **DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.**—The Director of the Executive Office for United States Trustees (in this section referred to as the “Director”) shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11 of the United States Code and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) **TEST.**—(1) The Director shall select 3 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) For a 1-year period beginning not later than 180 days after the date of the enactment of this Act, such curriculum and materials shall be made available by the Director, directly or indirectly, on request to individual debtors in cases filed in such 1-year period under chapter 7 or 13 of title 11 of the United States Code.

(3) The bankruptcy courts in each of such districts may require individual debtors in such cases to undergo such financial management training as a condition to receiving a discharge in such case.

(c) **EVALUATION.**—(1) During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11 of the United States Code, and by consumer counselling groups.

(2) Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs.

**SEC. 113. DEFINITIONS.**

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

(1) by inserting after paragraph (3) the following:

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

(2) by inserting after paragraph (4) the following:

“(4A) ‘bankruptcy assistance’ means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing, or attendance at a creditors’ meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a proceeding under this title;”;

(3) by inserting after paragraph (12A) the following:

“(12B) ‘debt relief counselling agency’ means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

“(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

“(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

“(C) any depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union;”.

(b) CONFORMING AMENDMENT.—In section 104(b)(1) by inserting “101(3),” after “sections”.

**SEC. 114. DISCLOSURES.**

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

**“§ 526. Disclosures**

“(a) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

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



“(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief counselling agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

“(A) all information the assisted person is required to provide with a petition and thereafter during a case under this title must be complete, accurate and truthful;

“(B) all assets and all liabilities must be completely and accurately disclosed in the documents filed to commence the case, and the value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

“(C) household income, and, in a chapter 13 case, disposable income, must be stated after reasonable inquiry; and

“(D) that information an assisted person provides during their case may be audited pursuant to this title and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

“(b) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

**“IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER**

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

“The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

“Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of credi-

tors where you may be questioned by a court official called a “trustee” and by creditors.

“If you select a chapter 7 proceeding, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so.

“If you select a chapter 13 proceeding in which you repay your creditors what you can afford over three to seven years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.’

“If you select another type of proceeding under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of proceeding.

“Your bankruptcy proceeding may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in litigation.’

“(c) Except to the extent the debt relief counselling agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief counselling agency providing bankruptcy assistance to an assisted person, to the extent authorized by applicable nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

“(1) how to value assets at replacement value, determine household income and, in a chapter 13 case, disposable income, and related calculations;

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

“(3) how to determine what property is exempt and how to value exempt property as defined in section 506 of this title; and

“(4) a clear and conspicuous statement that an employee of such service may not provide legal advice unless such employee is an attorney.

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

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

“526. Disclosures.”.

**SEC. 115. DEBTOR'S BILL OF RIGHTS.**

(a) DEBTOR'S BILL OF RIGHTS.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 114, is amended by adding at the end the following:

**“§ 527. Debtor’s bill of rights**

“(a) A debt relief counselling agency shall—

“(1) no later than three business days after the first date on which a debt relief counselling agency provides any bankruptcy assistance services to an assisted person, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

“(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: ‘We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.’ or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

“(3) if an advertisement directed to the general public indicates that the debt relief counselling agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: “We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.” or a substantially similar statement.

“(b) A debt relief counselling agency shall not—

“(1) fail to perform any service which the debt relief counselling agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

“(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue or misleading and which upon the exercise of reasonable care, should be known

by the debt relief counselling agency to be untrue or misleading;

“(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief counselling agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

“(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of that person filing a proceeding under this title or in order to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a proceeding under this title.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 114, is amended by inserting after the item relating to section 526, the following:

“527. Debtor’s bill of rights.”.

**SEC. 116. ENFORCEMENT.**

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by adding at the end the following:

**“§ 528. Debt relief counselling agency enforcement**

“(a) ASSISTED PERSON WAIVERS INVALID.—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

“(b) NONCOMPLIANCE.—

“(1) Any contract between a debt relief counselling agency and an assisted person for bankruptcy assistance which does not comply with the requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

“(2) Any debt relief counselling agency which has been found, after notice and hearing, to have—

“(A) failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person; or

“(B) negligently or intentionally disregarded the requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief counselling agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief counselling agency has already been paid on account of that proceeding and if the case has not been closed, the court may in addition require the debt relief counselling agency to continue to provide bankruptcy assistance services in the pending case to the assisted person without further fee or charge or upon such other terms as the court may order.

“(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 526 or 527 of this title, the State—

“(A) may bring an action to enjoin such violation;

“(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

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

“(5) The rights and remedies provided in this section are in addition to any rights and remedies provided under any other provision of Federal law.

“(c) RELATION TO STATE LAW.—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by inserting after the item relating to section 527, the following:

“528. Debt relief counselling agency enforcement.”.

**SEC. 117. SENSE OF THE CONGRESS.**

It is the sense of the Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

**SEC. 118. CHARITABLE CONTRIBUTIONS.**

(a) DEFINITIONS.—Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

“(3) In this section, the term ‘charitable contribution’ means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

“(A) is made by a natural person; and

“(B) consists of—

“(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986);

or

“(ii) cash.

“(4) In this section, the term ‘qualified religious or charitable entity or organization’ means—

“(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

“(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.”.

(b) TREATMENT OF PREPETITION QUALIFIED CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

- (A) by inserting “(1)” after “(a)”;
- (B) by striking “(1) made” and inserting “(A) made”;
- (C) by striking “(2)(A)” and inserting “(B)(i)”;
- (D) by striking “(B)(i)” and inserting “(ii)(I)”;
- (E) by striking “(ii) was” and inserting “(II) was”;
- (F) by striking “(iii)” and inserting “(III)”;
- (G) by adding at the end the following:

“(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

“(A) the aggregate annual amount of all contributions to qualified religious or charitable entities or organizations does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

“(B) the contribution made by a debtor exceeded the maximum amount specified in subparagraph (A), but the transfer was consistent with the practices of the debtor in making charitable contributions.”.

(2) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(A) by striking “(b) The trustee” and inserting “(b)(1) Except as provided in paragraph (2), the trustee”; and

(B) by adding at the end the following:

“(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.”.

(3) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking “548(a)(2)” and inserting “548(a)(1)(B)”; and

(ii) by striking “548(a)(1)” and inserting “548(a)(1)(A)”; and

(B) in subsection (f)—

(i) by striking “548(a)(2)” and inserting “548(a)(1)(B)”; and

(ii) by striking “548(a)(1)” and inserting “548(a)(1)(A)”; and

(C) in subsection (g)—

(i) by striking “section 548(a)(1)” each place it appears and inserting “section 548(a)(1)(A)”; and

(ii) by striking “548(a)(2)” and inserting “548(a)(1)(B)”.

(d) TREATMENT OF POSTPETITION CHARITABLE CONTRIBUTIONS.—

(1) CONFIRMATION OF CHAPTER 13 PLAN.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting before the semicolon the following: “, including charitable contributions (that meet the definition of ‘charitable con-

tribution’ under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made”.

(2) DISMISSAL OF CHAPTER 7 CASE.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following: “In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of ‘charitable contribution’ under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).”.

(3) CONTENTS OF CHAPTER 11 PLAN.—Section 1123 of title 11, United States Code, is amended by adding at the end the following:

“(e) In a case concerning an individual, the plan may provide for charitable contributions (as defined in section 548(d)(3) of this title) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4) of this title) in an aggregate annual amount not to exceed 15 percent of the gross income of the debtor for the year in which such contributions are made.”.

(4) CONFIRMATION OF CHAPTER 12 PLAN.—Section 1225(b)(2) of title 11, United States Code, is amended—

(A) in subparagraph (A) by striking “or” at the end;

(B) in subparagraph (B) by striking the period at the end and inserting “; or”; and

(C) by inserting adding at the end the following

“(C) for charitable contributions (as defined in section 548(d)(3) of this title) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4) of this title) in an aggregate annual amount not to exceed 15 percent of the gross income of the debtor for the year in which such contributions are made.”.

(e) APPLICABILITY.—

This section and the amendments made by this section shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act.

(f) RULE OF CONSTRUCTION.—

Nothing in the amendments made by this section is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

**SEC. 119. REINFORCE THE FRESH START.**

(a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking “by a court” and inserting “on a prisoner by any court”,

(2) by striking “section 1915(b) or (f)” and inserting “subsection (b) or (f)(2) of section 1915”, and

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

(b) PROTECTION OF RETIREMENT FUNDS IN BANKRUPTCY.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A) by striking “and” at the end;

(B) in subparagraph (B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) retirement funds to the extent exempt from taxation under section 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”; and

(2) in subsection (d) by adding at the end the following:

“(12) Retirement funds to the extent exempt from taxation under 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”.

(c) EFFECTIVE PROTECTION FOR UTILITY SERVICE IN THE WAKE OF DEREGULATION.—Section 366 of title 11, United States Code, is amended by adding at the end the following:

“(c) For the purposes of this section, the term ‘utility’ includes any provider of gas, electric, telephone, telecommunication, cable television, satellite communication, water, or sewer service, whether or not such service is a regulated monopoly.”.

**SEC. 119A. CHAPTER 11 DISCHARGE OF DEBTS ARISING FROM TOBACCO-RELATED DEBTS.**

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

“(5) The confirmation of a plan does not discharge a debtor that is a corporation from any debt arising from a judicial, administrative, or other action or proceeding that is—

“(A) related to the consumption or consumer purchase of a tobacco product; and

“(B) based in whole or in part on false pretenses, a false representation, or actual fraud.”.

## **Subtitle C—Adequate Protections for Secured Creditors**

**SEC. 121. DISCOURAGING BAD FAITH REPEAT FILINGS.**

Section 362(c) of title 11, United States Code, is amended—

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

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

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

“(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of that debtor was pending within the previous 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. If a party in interest requests, the court may extend the stay in particular cases as to any or all creditors (subject to such



conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

“(A) as to all creditors if—

“(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending within such 1-year period;

“(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

“(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chapter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;

“(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of that creditor.

“(4) If a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of that debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b) of this title, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

“(A) as to all creditors if—

“(i) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

“(ii) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

“(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

“(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of that creditor.

“(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and such request is granted in whole or in part, the court may order in addition that the relief so granted shall be in rem either for a definite period not less than 1 year or indefinitely. After the issuance of such an order, the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor under this title. If such an order so provides, such stay shall also not apply in any pending or later-filed case of any entity under this title that claims or has an interest in the subject property other than those entities identified in the court’s order.

“(B) The court shall cause any order entered pursuant to this paragraph with respect to real property to be recorded in the applicable real property records, which recording shall constitute notice to all parties having or claiming an interest in such real property for purpose of this section.

“(6) For the purposes of this section, a case is pending from the time of the order for relief until the case is closed.”.

**SEC. 122. DEFINITION OF HOUSEHOLD GOODS.**

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

“(27A) ‘household goods’ has the meaning given such term in the Trade Regulation Rule on Credit Practices promulgated by the Federal Trade Commission (16 C.F.R. 444.1(i)), as in effect on the effective date of this paragraph, but includes any tan-

gible personal property reasonably necessary for the maintenance or support of a dependent child, including children's toys;”.

**SEC. 123. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.**

Title 11, United States Code, is amended—

(1) in section 521—

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

(B) in paragraph (5) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(6) in an individual case under chapter 7 of this title, not retain possession of personal property having a value exceeding \$5,000 as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 30 days after the first meeting of creditors under section 341(a)—

“(A) enters into a reaffirmation agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

“(B) redeems such property from the security interest pursuant to section 722 of this title.

“If the debtor fails to so act within the 30-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”; and

(2) in section 722 by inserting “in full at the time of redemption” before the period at the end.

**SEC. 124. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.**

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking “(e), and (f)” in subsection (c) and inserting in lieu thereof “(e), (f), and (h)”;

(B) by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

“(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate having a value exceeding \$5000 and securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—

“(1) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate therein that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; or

“(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms;

unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”;

(2) in section 521, as amended by sections 104, 406, and 407—

(A) in paragraph (2) by striking “consumer”;

(B) in paragraph (2)(B)—

(i) by striking “forty-five days after the filing of a notice of intent under this section” and inserting “30 days after the first date set for the meeting of creditors under section 341(a)”;

(ii) by striking “forty-five day” the second place it appears and inserting “30-day”;

(C) in paragraph (2)(C) by inserting “except as provided in section 362(h)” before the semicolon; and

(D) by adding at the end the following:

“(h) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.”.

**SEC. 125. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.**

Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

“(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and”.

**SEC. 126. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.**

Section 362(e) of title 11, United States Code, is amended by inserting at the end the following:

“Notwithstanding the foregoing, in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate 60 days after a request under subsection (d) of this section, unless—

“(1) a final decision is rendered by the court within such 60-day period; or

“(2) such 60-day period is extended either by agreement of all parties in interest or by the court for a specific time which the court finds is required by compelling circumstances.”.

**SEC. 127. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.**

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

(1) by striking in subparagraph (B) “in the converted case, with allowed secured claims” and inserting in lieu thereof “only in a case converted to chapter 11 or 12 but not in one converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12”; and

(2) in subparagraph (A) by striking “and” at the end;

(3) in subparagraph (B) by striking the period and inserting “; and”; and

(4) by adding at the end the following:

“(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable non-bankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter of this title. Unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”.

**SEC. 128. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.**

Section 506 of title 11, United States Code, is amended by adding at the end the following:

“(e) In an individual case under chapter 7, 11, 12, or 13—

“(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 90 days of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

“(2) if such allowed claim attributable to the purchase price is secured only by the personal property so acquired, the value of the personal property and the amount of the allowed secured claim shall be the sum of the unpaid principal balance of the purchase price and accrued and unpaid interest and charges at the contract rate;

“(3) if such allowed claim attributable to the purchase price is secured by the personal property so acquired and other property, the value of the security may be determined under subsection (a), but the value of the security and the amount of the allowed secured claim shall be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate; and

“(4) in any subsequent case under this title that is filed by or against the debtor in the 2-year period beginning on the

date the petition is filed in the original case, the value of the personal property and the amount of the allowed secured claim shall be deemed to be not less than the amount provided under paragraphs (2) and (3).”.

**SEC. 129. FAIR VALUATION OF COLLATERAL.**

The last sentence of section 506(a) of title 11, United States Code, is amended to read as follows:

“Such value shall be the liquidation value of the property which shall be not more than the cash wholesale value of the property and shall be determined in conjunction with any hearing on a plan or after notice and a hearing pursuant to any other provision of this title when they are paid in full.”.

**SEC. 130. PROTECTION OF HOLDERS OF CLAIMS SECURED BY DEBTOR'S PRINCIPAL RESIDENCE.**

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (13) the following:

“(13A) ‘debtor’s principal residence’ means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;

“(13B) ‘incidental property’ means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;”;

(2) in section 362(b)—

(A) in paragraph (17) by striking “or” at the end thereof;

(B) in paragraph (18) by striking the period at the end and inserting “; or”; and

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

“(19) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title case by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable non-bankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).”; and

(3) by amending section 1322(b)(2) to read as follows:

“(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor’s principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;”.

**SEC. 131. AIRCRAFT EQUIPMENT AND VESSELS.**

Section 1110(a)(1) of title 11, United States Code, is amended—

- (1) in subparagraph (A) by striking “that become due on or after the date of the order”;
- (2) in subparagraph (B)—
  - (A) in clause (i) by striking “and” at the end; and
  - (B) in clause (ii)—
    - (i) by inserting “and within such 60-day period” after “order”; and
    - (ii) in subclause (II) by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:
  - “(iii) that occurs after the date of the order and such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract.”.

## **Subtitle D—Adequate Protections for Unsecured Creditors**

### **SEC. 141. FRAUDULENT DEBTS ARE NONDISCHARGEABLE IN CHAPTER 13 CASES.**

Section 1328(a)(2) of title 11, United States Code, is amended—

- (1) by inserting “(2), (3)(B), (4),” after “paragraph”; and
- (2) by inserting “(6),” after “(5),”.

### **SEC. 142. APPLYING THE CODEBTOR STAY ONLY WHEN IT PROTECTS THE DEBTOR.**

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

- (1) by inserting “(1)” after “(b)”; and
- (2) by adding at the end the following:

“(2) When the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) does not apply to such creditor, notwithstanding subsection (c), to the extent the creditor proceeds against the individual which received such consideration or against property not in the possession of the debtor which secures such claim, after notice and a hearing to the person in possession of such property, but this subsection shall not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to such individual or the person who has possession of such property.

“(3) When the debtor’s plan provides that the debtor’s interest in personal property subject to a lease as to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor’s obligations under the lease, the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan notwithstanding subsection (c).”.

### **SEC. 143. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

Section 523(a)(5) of title 11, United States Code, is amended to read as follows:

- “(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the ex-

tent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney);”.

**SEC. 144. OTHER EXCEPTIONS TO DISCHARGE.**

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

- (1) by striking subsection (a)(15), as added by section 304(e)(1) of Public Law 103-394;
- (2) in subsection (a)(7) by inserting “an order of disgorgement or restitution obtained by a governmental unit” after “such debt is for”; and
- (3) in subsection (c)(1) by striking “(6), or (15)” and inserting “or (6)”.

**SEC. 145. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.**

(a) EXCEPTION TO DISCHARGE.—Section 523(a)(16) of title 11, United States Code, is amended—

- (1) by striking “dwelling” the 1st place it appears;
- (2) by striking “ownership or” and inserting “ownership,”;
- (3) by striking “housing” the 1st place it appears; and
- (4) by striking “but only” and all that follows through “such period,” and inserting “or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot.”.

(b) EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, as amended by section 161, is amended by adding at the end the following:

“(q) A debt of a kind described in section 523(a)(16) of this title shall not be considered to be a debt arising from an executory contract.”

**SEC. 146. ADEQUATE PROTECTION FOR INVESTORS.**

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

“(48A) ‘securities self regulatory organization’ means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934.”.

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

- (1) in paragraph (17) by striking “or” at the end;
- (2) in paragraph (18) by striking the period at the end and inserting “; or”; and



(3) by adding at the end the following:

“(19) under subsection (a) of this section, of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization’s regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization’s regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.”.

**SEC. 147. SUPER-PRIORITY FOR CHILD AND SPOUSAL SUPPORT CLAIMS.**

Section 507 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding any other provision of this title, a claim entitled to priority under subsection (a)(7) shall have first priority over any expense or claim that has priority under any other provision of this title, except that administrative expenses may be paid under the priority provided in subsection (a)(1) if the failure to do so would result in less property being distributed to the holder of a claim of a kind specified in subsection (a)(7).”.

**SEC. 148. DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

(a) NONDISCHARGEABILITY.—Section 523(a)(18) of title 11, United States Code, is amended—

- (1) by inserting “(including interest)” after “law”; and
- (2) in subparagraph (A) by striking “and” at the end and inserting “or”.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 130, is amended—

- (1) in paragraph (19) by striking “or” at the end;
- (2) in paragraph (19) by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:

“(20) under subsection (a) with respect to the withholding of income pursuant to an order for support that is owed to a spouse, former spouse, or child of the debtor; or

“(21) under subsection (a) with respect to the withholding, suspension, or restriction of drivers’ licenses, professional and occupational licenses, and recreational licenses pursuant to State law as specified in section 466(a)(15) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act.”.

(c) CONTINUED LIABILITY OF PROPERTY.—Section 522(c) of title 11, United States Code, is amended by striking “section 523(a)(1) or 523(a)(5)” and inserting “paragraph (1) or (5) of section 523(a)”.

(d) CONFIRMATION OF PLANS.—Title 11 of the United States Code is amended—

- (1) in section 1129(a) by adding at the end the following:
 

“(14) If the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has

paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.”;

(2) in section 1225(a)—

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

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

(C) by adding at the end the following:

“(7) the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.”; and

(3) in section 1325(a)—

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

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

(C) by adding at the end the following:

“(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.”.

(f) DISCHARGE.—Title 11 United States Code is amended—

(1) in section 1228(a) by inserting “and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid unless such spouse, former spouse, or child waives the operation of this paragraph,” after “this title,”; and

(2) in section 1328(a) by inserting “and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid unless such spouse, former spouse, or child waives the operation of this paragraph,” after “plan,” the 1st place it appears.

(g) CONFORMING AMENDMENTS.—Section 456(b) of the Social Security Act (42 U.S.C. 656(b)) is amended—

(1) by inserting “, including interest,” after “Code”;

(2) by striking “and” and inserting “or”; and

(3) by striking “released by a discharge” and inserting “dischargeable”.

**SEC. 149. PROTECTION OF CHILD SUPPORT AND ALIMONY.**

(a) AMENDMENT.—Title 11 of the United States Code, as amended by section 116, is amended by inserting after section 528 the following:

**“§ 529. Protection of child support and alimony payments after the discharge**

“Notwithstanding the provisions of the constitution or law of any State providing a different priority, any debts of the individual who has received a discharge under this title to a spouse, former spouse, or child for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

“(1) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

“(2) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support,

and any debt of a kind specified in paragraph (6), (9), or (13) of section 523(a) of this title, shall have priority in payment and collection over a creditor’s claim which is not discharged in the individual’s case pursuant to paragraph (2) or (4) of section 523(a) of this title, but such priority shall not affect the priority of any consensual lien, mortgage, or security interest securing such creditor’s claim.”.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, as amended by section 116, is amended by inserting after the item relating to section 528 the following:

“529. Protection of child support and alimony.”.

## **Subtitle E—Adequate Protections for Lessors**

**SEC. 161. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.**

Section 365 of title 11, United States Code, is amended by adding at the end the following:

“(p)(1) If a lease of personal property with an aggregate value of not less than \$5,000 leased by the debtor is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) of this title is automatically terminated.

“(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the lessor. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed,

the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.

“(3) In a case under chapter 11 of this title in which the debtor is an individual and in a case under chapter 13 of this title, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 of this title and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.”.

## **Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers**

### **SEC. 171. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.**

Section 727(a)(8) of title 11, United States Code, is amended by striking “six” and inserting “7”.

## **Subtitle G—Exemptions**

### **SEC. 181. EXEMPTIONS.**

Section 522(b)(2)(A) of title 11, United States Code, is amended—

(1) by striking “180” and inserting “365”; and

(2) by striking “, or for a longer portion of such 180-day period than in any other place”.

### **SEC. 182. LIMITATION.**

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

(1) in subsection (b)(2)(A) by inserting “subject to subsection (n),” before “any property”; and

(2) by adding at the end the following:

“(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any interest to the extent that such interest exceeds \$100,000 in value, in the aggregate, in—

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

“(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

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

“(2) The limitation under paragraph (1) shall not apply to—

“(A) an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer; or

“(B) a case commenced under section 303 of this title.”.

### **SEC. 183. PROVIDE FAIR PROPERTY EXEMPTIONS AND PREVENT HIGH-ROLLERS FROM ABUSING THE SYSTEM.**

Section 522 of title 11, United States Code, is amended by adding at the end the following:

“(n) If, in the 1-year period ending on the date of the filing of the petition and while the debtor was insolvent, the debtor makes

property exempt under subsection (b) by converting property to a form of property that is exempt in an unlimited amount, such property shall not be exempt under this section to the extent that the value of the debtor's interest in the property that is converted exceeds \$100,000. Such conversion shall not otherwise be a basis for denying an exemption and shall not be the basis for denying the debtor other relief under this title.”.

## **TITLE II—BUSINESS BANKRUPTCY PROVISIONS**

### **Subtitle A—General Provisions**

#### **SEC. 201. LIMITATION RELATING TO THE USE OF FEE EXAMINERS.**

Section 330 of title 11, United States Code, is amended by adding at the end the following:

“(e) The court may not appoint any person to examine any request for compensation or reimbursement payable under this section.”.

#### **SEC. 202. SHARING OF COMPENSATION.**

Section 504 of title 11, United States Code, is amended by adding at the end the following:

“(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.”.

#### **SEC. 203. CHAPTER 12 MADE PERMANENT LAW.**

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note) is repealed.

#### **SEC. 204. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

Section 341 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.”.

#### **SEC. 205. CREDITORS' AND EQUITY SECURITY HOLDERS' COMMITTEES.**

Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

“(3) The court on its own motion or on request of a party in interest, and after notice and a hearing, may order a change in membership of a committee appointed under subsection (a) if necessary to ensure adequate representation of creditors or of equity security holders.”.

**SEC. 206. POSTPETITION DISCLOSURE AND SOLICITATION.**

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

“(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.”.

**SEC. 207. PREFERENCES.**

Section 547(c) of title 11, United States Code, is amended—

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

“(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

“(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

“(B) made according to ordinary business terms;”;

(2) in paragraph (7) by striking “or” at the end;

(3) in paragraph (8) by striking the period at the end and inserting “, or”; and

(4) by adding at the end the following:

“(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5000.”.

**SEC. 208. VENUE OF CERTAIN PROCEEDINGS.**

Section 1409(b) of title 28, United States Code, is amended by inserting “, or a nonconsumer debt against a noninsider of less than \$10,000,” after “\$5,000”.

**SEC. 209. CASES ANCILLARY TO FOREIGN PROCEEDINGS INVOLVING FOREIGN INSURANCE COMPANIES THAT ARE ENGAGED IN THE BUSINESS OF INSURANCE OR REINSURANCE IN THE UNITED STATES.**

Section 304 of title 11, United States Code, is amended—

(1) in subsection (b) by striking “provisions of subsection (c)” and inserting “subsections (c) and (d)”; and

(2) by adding at the end the following:

“(d) The court may not grant to a foreign representative of the estate of an insurance company that is not organized under the law of a State and that is engaged in the business of insurance, or reinsurance, in the United States relief under subsection (b) with respect to property that is—

“(1) a deposit required by a State law relating to insurance or reinsurance;

“(2) a multibeneficiary trust required by a State law relating to insurance or reinsurance to protect holders of insurance policies issued in the United States or to protect holders or claimants against such policies; or

“(3) a multibeneficiary trust authorized by a State law relating to insurance or reinsurance to allow a person engaged in the business of insurance in the United States—

“(A) to cede reinsurance to such an insurance company;

and

“(B) to treat so ceded reinsurance as an asset, or deduction from liability, in financial statements of such person.”.

**SEC. 210. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking “On” and inserting “(1) Subject to paragraph (1), on”; and

(2) by adding at the end the following:

“(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor’s business.

“(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor’s business.”.

**SEC. 211. UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY.**

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

“(4) In a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee before the earlier of (A) 120 days after the date of the order for relief, or (B) the entry of an order confirming a plan, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor but in no event shall such time period exceed 120 days unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor’s business. Notwithstanding the immediately preceding sentence, and provided no plan has been confirmed, upon debtor’s motion, and after notice and a hearing, the court may within such 120-day period extend the 120-day period by a period not to exceed 150 days, contingent upon written consent of the affected lessor or with the approval of the court, and provided trustee has timely performed all post-petition lease obligations, but in no circumstance shall such period extend beyond the earlier of (i) 270 days from the date of the order for relief or (ii) the entry of an order approving a disclosure statement, without the consent of the lessor unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor’s business.”.

**SEC. 212. DEFINITION OF DISINTERESTED PERSON.**

Section 101(14) of title 11, United States Code, is amended to read as follows:

“(14) ‘disinterested person’ means a person that—

“(A) is not a creditor, an equity security holder, or an insider;

“(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

“(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity

security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;”.

## **Subtitle B—Specific Provisions**

### **CHAPTER 1—SMALL BUSINESS BANKRUPTCY**

#### **SEC. 231. DEFINITIONS.**

(a) **DEFINITIONS.**—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

“(51C) ‘small business case’ means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

“(51D) ‘small business debtor’ means—

“(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$5,000,000 (excluding debts owed to 1 or more affiliates or insiders); or

“(B) a debtor of the kind described in paragraph (51B) but without regard to the amount of such debtor’s debts; except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than \$5,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;”.

(b) **CONFORMING AMENDMENT.**—Section 1102(a)(3) of title 11, United States Code, is amended by inserting “debtor” after “small business”.

#### **SEC. 232. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

Section 1125(f) of title 11, United States Code, is amended to read as follows:

“(f) Notwithstanding subsection (b), in a small business case—

“(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

“(2) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

“(3) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

“(4)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

“(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and



“(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.”.

**SEC. 233. STANDARD FORM DISCLOSURE STATEMENTS AND PLANS.**

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

- (1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and
- (2) economy and simplicity for debtors.

**SEC. 234. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) REPORTING REQUIRED.—(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

**“§ 308. Debtor reporting requirements**

“A small business debtor shall file periodic financial and other reports containing information including—

“(1) the debtor’s profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

“(2) reasonable approximations of the debtor’s projected cash receipts and cash disbursements over a reasonable period;

“(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

“(4) whether the debtor is—

“(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

“(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

“(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.”.

(2) The table of sections of chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

“308. Debtor reporting requirements.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

**SEC. 235. UNIFORM REPORTING RULES AND FORMS.**

After consultation with the Director of the Executive for United States Trustees and with the Judicial Conference of the United States, the Attorney General of the United States shall propose for

adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with section 308 of title 11, United States Code, as added by section 234 of this Act to achieve a practical balance between—

- (1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and
- (2) economy and simplicity for debtors in cases under such title.

**SEC. 236. DUTIES IN SMALL BUSINESS CASES.**

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

**“§ 1115. Duties of trustee or debtor in possession in small business cases**

“In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

“(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

“(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

“(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

“(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title;

“(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

“(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

“(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

“(6)(A) timely file tax returns;

“(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

“(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units; and

“(7) allow the United States trustee or bankruptcy administrator, or its designated representative, to inspect the debtor’s business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.”.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

“1115. Duties of trustee or debtor in possession in small business cases.”.

**SEC. 237. PLAN FILING AND CONFIRMATION DEADLINES.**

Section 1121(e) of title 11, United States Code, is amended to read as follows:

“(e) In a small business case—

“(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;

“(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

“(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

“(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

“(B) a new deadline is imposed at the time the extension is granted; and

“(C) the order extending time is signed before the existing deadline has expired.”.

**SEC. 238. PLAN CONFIRMATION DEADLINE.**

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

“(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.”.

**SEC. 239. PROHIBITION AGAINST EXTENSION OF TIME.**

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting “; and”; and

(2) by adding at the end the following:

“(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.”.

**SEC. 240. DUTIES OF THE UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR.**

(a) DUTIES OF THE UNITED STATES TRUSTEE.—Section 586(a) of title 28, United States Code, as amended by section 111, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking “and” at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

“(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;”

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

(3) in paragraph (7) by striking the period at the end and inserting “; and”, and

(4) by inserting after paragraph (7) the following:

“(8) in each of such small business cases—

“(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor’s viability, inquire about the debtor’s business plan, explain the debtor’s obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

“(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor’s books and records and verify that the debtor has filed its tax returns;

“(C) review and monitor diligently the debtor’s activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

“(D) in cases where the United States trustee finds material grounds for any relief under section 1112 of title 11 move the court promptly for relief.”

(b) DUTIES OF THE BANKRUPTCY ADMINISTRATOR.—In a small business case (as defined in section 101 of title 11 of the United States Code), the bankruptcy administrator shall perform the duties specified in section 586(a)(6) of title 28 of the United States Code.

**SEC. 241. SCHEDULING CONFERENCES.**

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking “, may”;

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

“(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and”;

(3) in paragraph (2) by striking “unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,” and inserting “may”.

**SEC. 242. SERIAL FILER PROVISIONS.**

Section 362 of title 11, United States Code, is amended—

(1) in subsection (i) as so redesignated by section 124—

(A) by striking “An” and inserting “(1) Except as provided in paragraph (2), an”; and

(B) by adding at the end the following:

“(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.”; and

(2) by inserting after subsection (i), as redesignated by section 124, the following:

“(1) The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—

“(1) is a debtor in a small business case pending at the time the petition is filed;

“(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

“(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

“(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C) unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.”.

**SEC. 243. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.**

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

“(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

“(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—

“(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

“(B) if the reason is an act or omission of the debtor that—  
“(i) there exists a reasonable justification for the act or omission; and

“(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

“(3) For purposes of this subsection, cause includes—

“(A) substantial or continuing loss to or diminution of the estate;

“(B) gross mismanagement of the estate;

“(C) failure to maintain appropriate insurance;

“(D) unauthorized use of cash collateral harmful to 1 or more creditors;

“(E) failure to comply with an order of the court;

“(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

“(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

“(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

“(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

“(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

“(K) failure to pay any fees or charges required under chapter 123 of title 28;

“(L) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or of a modified plan under section 1129 of this title;

“(M) inability to effectuate substantial consummation of a confirmed plan;

“(N) material default by the debtor with respect to a confirmed plan; and

“(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

“(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.”.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

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

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

(3) by adding at the end the following:

“(3) if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the ap-

pointment of a trustee is in the best interests of creditors and the estate.”.

## **CHAPTER 2—SINGLE ASSET REAL ESTATE**

### **SEC. 251. SINGLE ASSET REAL ESTATE DEFINED.**

Section 101(51B) of title 11, United States Code, is amended to read as follows:

“(51B) ‘single asset real estate’ means undeveloped real property or other real property constituting a single property or project, other than residential real property with fewer than 4 residential units, on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities all of which are concurrently debtors in a case under chapter 11 of this title, other than the business of operating the real property and activities incidental thereto;”.

### **SEC. 252. PAYMENT OF INTEREST.**

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting “or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later” after “90-day period”; and

(2) by amending subparagraph (B) to read as follows:

“(B) the debtor has commenced monthly payments (which payments may, in the debtor’s sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor’s interest in the real estate; or”.

## **CHAPTER 3—CONDITIONAL APPLICATION OF AMENDMENTS**

### **SEC. 291. LOSS OF JOBS.**

The amendments made by this subtitle shall not apply in a case under title 11 of the United States Code if the court determines that there is a substantial likelihood that the application of such amendments in such case would result in a loss of jobs in the operation of the debtor’s business in such case.

## **TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS**

### **SEC. 301. PETITION AND PROCEEDINGS RELATED TO PETITION.**

(a) **TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.**—Section 921(d) of title 11, United States Code, is amended by inserting “notwithstanding section 301(b)” before the period at the end.

(b) **CONFORMING AMENDMENT.**—Section 301 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “A voluntary”; and

(2) by amending the last sentence to read as follows:

“(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”.

### **SEC. 302. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.**

Section 901 of title 11, United States Code, is amended—

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

(2) by inserting “559, 560,” after “557.”.

## **TITLE IV—BANKRUPTCY ADMINISTRATION**

### **Subtitle A—General Provisions**

#### **SEC. 401. ADEQUATE PREPARATION TIME FOR CREDITORS BEFORE THE MEETING OF CREDITORS IN INDIVIDUAL CASES.**

Section 341(a) of title 11, United States Code, is amended by inserting after the first sentence the following: “If the debtor is an individual in a voluntary case under chapter 7, 11, or 13, the meeting of creditors shall not be convened earlier than 60 days (or later than 90 days) after the date of the order for relief, unless the court, after notice and hearing, determines unusual circumstances justify an earlier meeting.”.

#### **SEC. 402. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.**

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: “Notwithstanding any local court rule, provision of a State constitution, any other State or Federal nonbankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or its representatives (which representatives may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

#### **SEC. 403. FILING PROOFS OF CLAIM.**

Section 501 of title 11, United States Code, is amended by adding at the end the following:



“(e) In a case under chapter 7 or 13, a proof of claim or interest is deemed filed under this section for any claim or interest that appears in the schedules filed under section 521(a)(1) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.”.

**SEC. 404. AUDIT PROCEDURES.**

(a) AMENDMENT.—Section 586 of title 28, United States Code, as amended by sections 111 and 240, is amended—

(1) by amending subsection (a)(6) to read as follows:

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

(2) by inserting at the end the following:

“(f)(1) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322, and, if applicable, section 111, of title 11 in individual cases filed under chapter 7 or 13 of such title. Such procedures shall—

“(A) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform such audits;

“(B) establish a method of randomly selecting cases to be audited according to generally accepted audit standards, provided that no less than 1 out of every 1000 cases in each Federal judicial district shall be selected for audit and provided that such procedures shall ensure that the United States trustee may select such cases in which there is a high likelihood of fraud;

“(C) require audits for schedules of income and expenses which reflect higher than average variances from the statistical norm of the district in which the schedules were filed;

“(D) establish procedures for reporting the results of such audits and any material misstatement of income, expenditures or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate, and for providing public information no less than annually on the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

“(E) establish procedures for fully funding such audits.

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

“(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things or property belonging to the debtor as the auditor requests and which are reasonably necessary to facilitate an audit to be made available for inspection and copying.

“(4) The report of each such audit shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1). If a material misstatement of income or expenditures or of assets is reported, a statement specifying such misstatement

shall be filed with the court and the United States trustee shall give notice thereof to the creditors in the case and, in an appropriate case, in the opinion of the United States trustee, requires investigation with respect to possible criminal violations, the United States Attorney for the district.”.

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

**SEC. 405. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.**

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

(1) in subsection (c)—

(A) by striking “, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice”; and

(B) by adding the following at the end:

“If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall make a good faith effort to include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor’s account, the debtor shall make a good faith effort to provide any notice required to be given under this title by the debtor to the creditor at such address. For the purposes of this section, ‘notice’ shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor’s intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324.”;

(2) by adding at the end the following:

“(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

“(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

“(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor unless the creditor knew or should have known of such notice. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to

such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section unless the creditor knew or should have known of such notice.”.

**SEC. 406. DEBTOR TO PROVIDE TAX RETURNS AND OTHER INFORMATION.**

Section 521 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “The”;

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

“(1) file—

“(A) a list of creditors, and

“(B) unless the court orders otherwise—

“(i) a schedule of assets and liabilities;

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

“(iii) a statement of the debtor’s financial affairs;

“(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

“(v) a statement of the amount of disposable income, itemized to show how calculated;

“(vi) if applicable, any statement under paragraphs (3) and (4) of section 109(h);

“(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12 months; and

“(viii) a certificate, if applicable—

“(I) of an attorney whose name is on the petition as the attorney for the debtor, or of any bankruptcy petition preparer who signed the petition pursuant to section 110(b)(1) of this title, indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b)(1) of this title; or

“(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition of the debtor, that such notice was obtained and read by the debtor;”;

and

(3) by adding at the end the following:

“(b) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor notice that the creditor requests the petition, schedules, and statement of financial affairs filed by the debtor in the case. At any time, a creditor in a case under chapter 13 of this title may file with the court and serve on the debtor notice that the creditor requests the plan filed by the debtor in the case. Within 10 days of the first such request in a case under this subsection for the petition, schedules, and statement of financial affairs and the first such

request for the plan under this subsection, the debtor shall serve on that creditor a conformed copy of the requested documents or plan and any amendments thereto as of that date, and shall thereafter promptly serve on that creditor at the time filed with the court—

“(1) any requested document or plan which is not filed with the court at the time requested; and

“(2) any amendment to any requested document or plan.

“(c) An individual debtor in a case under chapter 7 or 13 shall provide to the United States trustee, on the request of the United States trustee—

“(1) copies of all Federal tax returns (including any schedules and attachments) filed by the debtor for the 3 most recent tax years preceding the order for relief;

“(2) at the time the debtor files them with the Commissioner of Internal Revenue, all Federal tax returns (including any schedules and attachments) for the debtor’s tax years ending while such case is pending; and

“(3) at the time the debtor files them with the Commissioner of Internal Revenue, all amendments to the tax returns (including schedules and attachments) described in subparagraphs (A) and (B).

“(d) A debtor in a case under chapter 13 of this title shall file, from a time which is the later of 90 days after the close of the debtor’s tax year or 1 year after the order for relief unless a plan has then been confirmed, and thereafter on or before 45 days before each anniversary of the confirmation of the plan until the case is closed, a statement subject to the penalties of perjury by the debtor of the debtor’s income and expenditures in the preceding tax year and monthly net income, showing how calculated. Such statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor, and any persons who contributed and the amount contributed to the household in which the debtor resides. Such tax returns, amendments and statement of income and expenditures shall be available to the United States trustee, any bankruptcy administrator, any trustee and any party in interest for inspection and copying.”

**SEC. 407. DISMISSAL FOR FAILURE TO FILE SCHEDULES TIMELY OR PROVIDE REQUIRED INFORMATION.**

Section 521 of title 11, United States Code, as amended by section 406, is amended by adding at the end the following:

“(e) Notwithstanding section 707(a) of this title, if an individual debtor in a voluntary case under chapter 7 or 13 fails to provide all of the information required under subsections (a)(1) and (c)(1)(A) within 45 days after the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the filing of the petition without the need for any order of court unless the court for good cause beyond the debtor’s control orders otherwise, but any party in interest may request the court to enter an order dismissing the case and the court shall, if so requested, enter an order of dismissal within 5 days of such request if the court finds compelling justification for doing so.

“(f) If an individual debtor in a case under chapter 7 or 13 fails to perform any of the duties imposed by subsections (b), (c)(1)(B), (c)(1)(C), and (d), any party in interest may request that the court order the debtor to comply. Within 10 days of such request the court shall order that the debtor do so within a period of time set by the court no longer than 30 days unless the court for good cause beyond the debtor’s control orders otherwise. If the debtor does not comply with that order within the period of time set by the court, the court shall, on request of any party in interest certifying that the debtor has not so complied, enter an order dismissing the case within 5 days of such request.”.

**SEC. 408. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.**

Section 1324 of title 11, United States Code, is amended—

(1) by striking “After” and inserting the following:

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

(2) by adding at the end the following:

“(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.”.

**SEC. 409. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.**

It is the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor’s attorney has made reasonable inquiry to verify that the information contained in such documents is well grounded in fact, and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

**SEC. 410. JURISDICTION OF COURTS OF APPEALS.**

(a) JURISDICTION.—Title 28 of the United States Code is amended—

(1) by striking section 158;

(2) by inserting after section 1292 the following:

**“§ 1293. Bankruptcy appeals**

“The courts of appeals (other the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

“(1) Final orders and judgments of bankruptcy courts entered under—

“(A) section 157(b) of this title in core proceedings arising under title 11, or arising in or related to a case under title 11; or

“(B) section 157(c)(2) of this title in proceedings referred to such courts.

“(2) Final orders and judgments of district courts entered under section 157 of this title in—

- “(A) core proceedings arising under title 11, or arising in or related to a case under title 11; or
- “(B) proceedings that are not core proceedings, but that are otherwise related to a case under title 11.
- “(3) Orders and judgments of bankruptcy courts or district courts entered under section 105 of title 11, or the refusal to enter an order or judgment under such section.
- “(4) Orders of bankruptcy courts or district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.
- “(5) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if—
  - “(A) such court is of the opinion that—
    - “(i) such order involves a controlling question of law as to which there is substantial ground for difference of opinion; and
    - “(ii) an immediate appeal from such order may materially advance the ultimate termination of such case or such proceeding; or
  - “(B) the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.”; and
- (3) in—
  - (A) the table of sections for chapter 6 by striking the item relating to section 158; and
  - (B) the table of sections for chapter 83 by inserting after the item relating to section 1292 the following:

“1293. Bankruptcy appeals.”.

(b) CONFORMING AMENDMENTS.—(1) Section 305(c) of title 11, the United States Code, is amended by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”.

(2) Title 28, United States Code, is amended—

(A) in subsections (b)(1) and (c)(2) of section 157 by striking “section 158” and inserting “section 1293”;

(B) in section 1334(d) by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”; and

(C) in section 1452(b) by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”.

**SEC. 411. ESTABLISHMENT OF OFFICIAL FORMS.**

The Judicial Conference of the United States shall establish official forms to facilitate compliance with the amendments made by sections 101 and 102.

**SEC. 412. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.**

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking “until the case is converted or dismissed, whichever occurs first”, and

(2) in the 2d sentence—

(A) by striking “The” and inserting “Until the plan is confirmed or the case is converted (whichever occurs first) the”, and

(B) by striking “less than \$300,000;” and inserting “less than \$300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be”.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

## Subtitle B—Data Provisions

### SEC. 441. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Title 28, United States Code, is amended by adding after section 158 the following new section:

#### “§ 159. Bankruptcy statistics

“The Director of the Executive Office for United States Trustees shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Such statistics shall be in a form prescribed by the Executive Office for United States Trustees in consultation with the Administrative Office of the United States Courts. The Office shall compile such statistics, and make them public, and report annually to the Congress on the information collected, and on its analysis thereof, no later than October 31 of each year. Such compilation shall be itemized by chapter of title 11, shall be presented in the aggregate and for each district, and shall include the following:

“(1) Total assets and total liabilities of such debtors, and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by such debtors.

“(2) The current total monthly income, projected monthly net income, and average income and average expenses of such debtors as reported on the schedules and statements the debtor has filed under sections 111, 521, and 1322 of title 11.

“(3) The aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.

“(4) The average time between the filing of the petition and the closing of the case.

“(5) The number of cases in the reporting period in which a reaffirmation was filed and the total number of reaffirmations filed in that period, and of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney, and of those the number of cases in which the reaffirmation was approved by the court.

“(6) With respect to cases filed under chapter 13 of title 11—  
“(A) the number of cases in which a final order was entered determining the value of property securing a claim

less than the claim, and the total number of such orders in the reporting period; and

“(B) the number of cases dismissed for failure to make payments under the plan.

“(7) The number of cases in which the debtor filed another case within the 6 years previous to the filing.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 18 months after the date of the enactment of this Act.

**SEC. 442. BANKRUPTCY DATA.**

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

**“§ 589b. Bankruptcy data**

“(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

“(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

“(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

“(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

“(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

“(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

“(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

“(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

“(1) information about the length of time the case was pending;

“(2) assets abandoned;

“(3) assets exempted;

“(4) receipts and disbursements of the estate;

“(5) expenses of administration;

“(6) claims asserted;

“(7) claims allowed; and



“(8) distributions to claimants and claims discharged without payment; in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

“(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

“(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

“(2) length of time the case has been pending;

“(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

“(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

“(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

“(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

“(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.”.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

“589b. Bankruptcy data.”.

**SEC. 443. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.**

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the United States Code), should be released in a usable electronic form in bulk to the public subject to such appropriate privacy concerns and safeguards as the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

## TITLE V—TAX PROVISIONS

### SEC. 501. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting “(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)” after “under this title”;

(2) in subsection (b)(2), after “507(a)(1)”, insert “(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)”; and

(3) by adding at the end the following:

“(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

“(1) exhaust the unencumbered assets of the estate; and

“(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

“(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

“(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

“(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.”.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “or” at the end;

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

(3) by adding at the end the following:

“(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.”.

### SEC. 502. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 522(c)(1) of title 11, United States Code, is amended by inserting “, except that, notwithstanding any other Federal law or State law relating to exempted property, exempt property shall be liable for debts of a kind specified in section 507(a)(7) of this title” before the semicolon at the end.

**SEC. 503. EFFECTIVE NOTICE TO GOVERNMENT.**

(a) **EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.**—Section 342 of title 11, United States Code, as amended by section 405, is amended by adding at the end the following:

“(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit’s claim. If the debtor’s liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

“(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.”

(b) **ADOPTION OF RULES PROVIDING NOTICE.**—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor’s case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) **EFFECT OF FAILURE OF NOTICE.**—Section 342 of title 11, United States Code, as amended by subsection (a) and section 405, is amended by adding at the end the following:

“(i)(1) A notice that does not comply with subsections (d) and (e) shall have no effect unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

“(A) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the matter or proceeding with respect to which the notice was provided was pending for such purposes; or

“(B) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act or the taxpayer made a good faith effort to provide the required notice under subsections (d) and (e).

“(2) No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed unless the action takes place after notice of the commencement of the case as required by this section has been received.”.

**SEC. 504. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.**

Section 505(b) of title 11, United States Code, is amended by striking “Unless” at the beginning of the second sentence thereof and inserting “If the request is made in the manner designated by the governmental unit and the taxing authority has place in file with the clerk of the court a description of the manner in which the governmental unit requires such request and unless”.

**SEC. 505. RATE OF INTEREST ON TAX CLAIMS.**

Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**“§ 511. Rate of interest on tax claims**

“Notwithstanding any provision of this title that requires the payment of interest on a claim, if interest is required to be paid on a tax claim, the rate of interest shall be as follows:

“(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title and secured tax claims the rate shall be determined under applicable nonbankruptcy law.

“(2) In the case of unsecured claims for taxes arising before the date of the order for relief and paid under a plan of reorganization, the minimum rate of interest to be applied during the period after the filing of the petition shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, for the calendar month in which the plan is confirmed, plus 3 percentage points.”.

**SEC. 506. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.**

Section 507(a)(9)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after “petition” and before the semicolon “, plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title”; and

(2) amend clause (ii) to read as follows:

“(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

“(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

“(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

“(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.”.

**SEC. 507. ASSESSMENT DEFINED.**

(a) ASSESSMENT DEFINED FOR PRIORITY PURPOSES.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (2) the following:

“(3) ‘assessment’—

“(A) for purposes of State and local taxes, means that point in time when all actions required have been taken so that thereafter a taxing authority may commence an action to collect the tax, and

“(B) for Federal tax purposes has the meaning given such term in the Internal Revenue Code of 1986; and ‘assessed’ and ‘assessable’ shall be interpreted in light of the definition of assessment in this paragraph.”.

(b) ASSESSMENT DEFINED FOR THE STAY OF PROCEEDINGS.—Section 362(b)(9)(D) of title 11, United States Code, is amended by inserting after “the making of an assessment” the following: “as defined by applicable nonbankruptcy law notwithstanding the definition of an ‘assessment’ elsewhere in this title”.

**SEC. 508. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.**

Section 1328(a)(2) of title 11, United States Code, is amended by inserting “(1) to the extent that the debtor made a fraudulent return or fraudulently attempted in any manner to evade such taxes,” after “paragraph”.

**SEC. 509. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

Section 1141(d) of title 11, United States Code, as amended by section 119A, is amended by adding at the end the following:

“(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.”.

**SEC. 510. THE STAY OF TAX PROCEEDINGS.**

(a) THE SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by strik-

ing the period at the end and inserting “, in respect of a tax liability for a taxable period ending before the order for relief.”

(b) **THE APPEAL OF TAX COURT DECISIONS PERMITTED.**—Section 362(b)(9) of title 11, United States Code, is amended—

- (1) in subparagraph (C) by striking “or” at the end,
- (2) in subparagraph (D) by striking the period at the end and inserting “; or”, and
- (3) by adding at the end the following:

“(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.”

**SEC. 511. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.**

Section 1129(a)(9) of title 11, United States Code, is amended—

- (1) in subparagraph (B) by striking “and” at the end; and
- (2) in subparagraph (C)—

(A) by striking “deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,” and inserting “regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,”;

- (B) by striking the period at the end and inserting “; and”;
- (3) by adding at the end the following:

“(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.”

**SEC. 512. THE AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.**

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting “, except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;”.

**SEC. 513. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.**

(a) **PAYMENT OF TAXES REQUIRED.**—Section 960 of title 28, United States Code, is amended—

- (1) by inserting “(a)” before “Any”; and
- (2) by adding at the end the following:

“(b) Such taxes shall be paid when due in the conduct of such business unless—

“(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

“(2) payment of the tax is excused under a specific provision of title 11.

“(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

“(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

“(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.”.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after “estate,” and before “except” the following: “whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both.”.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

“(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);”.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “or State statute” after “agreement”; and

(2) in subsection (c) by inserting “, including the payment of all ad valorem property taxes in respect of the property” before the period at the end.

**SEC. 514. TARDILY FILED PRIORITY TAX CLAIMS.**

Section 726(a)(1) of title 11, United States Code, is amended by striking “before the date on which the trustee commences distribution under this section” and inserting “on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee’s final report or the date on which the trustee commences final distribution under this section”.

**SEC. 515. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.**

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting “or equivalent report or notice,” after “a return,”;

(2) in clause (i)—

(A) by inserting “or given” after “filed”; and

(B) by striking “or” at the end;

(3) in clause (ii)

(A) by inserting “or given” after “filed”;

(B) by inserting “, report, or notice” after “return”; and

(4) by adding at the end the following:

“(iii) for purposes of this subsection, a return—

“(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment en-

tered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law, and

“(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or”.

**SEC. 516. THE DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.**

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting “the estate,” after “misrepresentation,”.

**SEC. 517. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.**

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 146, is amended—

(1) in paragraph (6) by striking “and” at the end;

(2) in paragraph (7) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.”.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, is amended by adding at the end the following:

**“§ 1308. Filing of prepetition tax returns**

“(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 6-year period ending on the date of filing of the petition which the debtor had been required to file under applicable nonbankruptcy law.

“(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

“(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date,

“(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law, and

“(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—



“(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection, and

“(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

“(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.”

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

(2) by inserting after subsection (d) the following:

“(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.”

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting “, and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.”

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

#### **SEC. 518. STANDARDS FOR TAX DISCLOSURE.**

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after “records,” the following: “including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the

State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,”

(2) by inserting “such” after “enable”, and

(3) by striking “reasonable” where it appears after “hypothetical” and by striking “typical of holders of claims or interests” after “investor”.

**SEC. 519. SETOFF OF TAX REFUNDS.**

Section 362(b) of title 11, United States Code, as amended by sections 130, 146, and 150 is amended—

(1) in paragraph (17) by striking “or”,

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

(3) by inserting after paragraph (18) the following:

“(19) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless prior to such setoff the debt is listed by the debtor as disputed, contingent, or unliquidated.”.

## **TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES**

**SEC. 601. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.**

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

### **“CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES**

“Sec.

“601. Purpose and scope of application.

#### “SUBCHAPTER I—GENERAL PROVISIONS

“602. Definitions.

“603. International obligations of the United States.

“604. Commencement of ancillary case.

“605. Authorization to act in a foreign country.

“606. Public policy exception.

“607. Additional assistance.

“608. Interpretation.

#### “SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

“609. Right of direct access.

“610. Limited jurisdiction.

“611. Commencement of bankruptcy case under section 301 or 303.

“612. Participation of a foreign representative in a case under this title.

“613. Access of foreign creditors to a case under this title.

“614. Notification to foreign creditors concerning a case under this title.

#### “SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

“615. Application for recognition of a foreign proceeding.

“616. Presumptions concerning recognition.

“617. Order recognizing a foreign proceeding.

- “618. Subsequent information.
- “619. Relief that may be granted upon petition for recognition of a foreign proceeding.
- “620. Effects of recognition of a foreign main proceeding.
- “621. Relief that may be granted upon recognition of a foreign proceeding.
- “622. Protection of creditors and other interested persons.
- “623. Actions to avoid acts detrimental to creditors.
- “624. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

- “625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
- “626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- “627. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

- “628. Commencement of a case under this title after recognition of a foreign main proceeding.
- “629. Coordination of a case under this title and a foreign proceeding.
- “630. Coordination of more than 1 foreign proceeding.
- “631. Presumption of insolvency based on recognition of a foreign main proceeding.
- “632. Rule of payment in concurrent proceedings.

**“§ 601. Purpose and scope of application**

“(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

“(1) cooperation between—

“(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

“(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

“(2) greater legal certainty for trade and investment;

“(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

“(4) protection and maximization of the value of the debtor’s assets; and

“(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

“(b) This chapter applies where—

“(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

“(2) assistance is sought in a foreign country in connection with a case under this title;

“(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

“(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

“(c) This chapter does not apply to—

“(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

“(2) an individual, or to an individual and such individual’s spouse, who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

#### “SUBCHAPTER I—GENERAL PROVISIONS

##### “§ 602. Definitions

“For the purposes of this chapter, the term—

“(1) ‘debtor’ means an entity that is the subject of a foreign proceeding;

“(2) ‘establishment’ means any place of operations where the debtor carries out a nontransitory economic activity;

“(3) ‘foreign court’ means a judicial or other authority competent to control or supervise a foreign proceeding;

“(4) ‘foreign main proceeding’ means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

“(5) ‘foreign nonmain proceeding’ means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

“(6) ‘trustee’ includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

“(7) ‘within the territorial jurisdiction of the United States’ when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

##### “§ 603. International obligations of the United States

“To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

##### “§ 604. Commencement of ancillary case

“A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

##### “§ 605. Authorization to act in a foreign country

“A trustee or another entity (including an examiner) authorized by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**“§ 606. Public policy exception**

“Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**“§ 607. Additional assistance**

“(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

“(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

“(1) just treatment of all holders of claims against or interests in the debtor’s property;

“(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

“(3) prevention of preferential or fraudulent dispositions of property of the debtor;

“(4) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and

“(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**“§ 608. Interpretation**

“In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

**“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT****“§ 609. Right of direct access**

“(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

“(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

“(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

“(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

**“§ 610. Limited jurisdiction**

“The sole fact that a foreign representative files a petition under sections 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**“§ 611. Commencement of case under section 301 or 303**

“(a) Upon filing a petition for recognition, a foreign representative may commence—

“(1) an involuntary case under section 303; or

“(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

“(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative’s intent to commence a case under subsection (a) of this section prior to such commencement.

“(c) A case under subsection (a) shall be dismissed unless recognition is granted.

**“§ 612. Participation of a foreign representative in a case under this title**

“Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

**“§ 613. Access of foreign creditors to a case under this title**

“(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

“(b)(1) Subsection (a) of this section does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

“(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

“(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

**“§ 614. Notification to foreign creditors concerning a case under this title**

“(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

“(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

“(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

“(1) indicate the time period for filing proofs of claim and specify the place for their filing;

“(2) indicate whether secured creditors need to file their proofs of claim; and

“(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

“(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

### “SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

#### “§ 615. Application for recognition of a foreign proceeding

“(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

“(b) A petition for recognition shall be accompanied by—

“(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

“(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

“(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

“(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

“(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

#### “§ 616. Presumptions concerning recognition

“(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.

“(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

“(c) In the absence of evidence to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor’s main interests.

**“§ 617. Order recognizing a foreign proceeding**

“(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

“(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602;

“(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

“(3) the petition meets the requirements of section 615.

“(b) The foreign proceeding shall be recognized—

“(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

“(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

“(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

“(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

**“§ 618. Subsequent information**

“From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

“(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative’s appointment; and

“(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**“§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding**

“(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

“(1) staying execution against the debtor’s assets;

“(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

“(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).



“(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

“(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

**“§ 620. Effects of recognition of a foreign main proceeding**

“(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

“(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

“(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

“(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

“(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

“(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

**“§ 621. Relief that may be granted upon recognition of a foreign proceeding**

“(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

“(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

“(2) staying execution against the debtor’s assets to the extent it has not been stayed under section 620(a);

“(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

“(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;

“(5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

“(6) extending relief granted under section 619(a); and

“(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

“(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

“(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

#### **“§ 622. Protection of creditors and other interested persons**

“(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

“(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

“(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

#### **“§ 623. Actions to avoid acts detrimental to creditors**

“(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

“(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

**“§ 624. Intervention by a foreign representative**

“Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

**“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES****“§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives**

“(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

“(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

**“§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

“(a) In all matters included in section 601, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

“(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

“(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

**“§ 627. Forms of cooperation**

“Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

“(1) appointment of a person or body, including an examiner, to act at the direction of the court;

“(2) communication of information by any means considered appropriate by the court;

“(3) coordination of the administration and supervision of the debtor’s assets and affairs;

“(4) approval or implementation of agreements concerning the coordination of proceedings; and

“(5) coordination of concurrent proceedings regarding the same debtor.

**“SUBCHAPTER V—CONCURRENT PROCEEDINGS****“§ 628. Commencement of a case under this title after recognition of a foreign main proceeding**

“After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be re-

stricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**“§ 629. Coordination of a case under this title and a foreign proceeding**

“Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

“(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

“(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

“(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

“(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

“(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

“(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

“(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

**“§ 630. Coordination of more than 1 foreign proceeding**

“In matters referred to in section 601, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

“(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

“(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign

nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

“(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**“§ 631. Presumption of insolvency based on recognition of a foreign main proceeding**

“In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

**“§ 632. Rule of payment in concurrent proceedings**

“Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.”.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 5 the following:

**“6. Ancillary and Other Cross-Border Cases ..... 601”.**  
**SEC. 602. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.**

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: “and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6”; and

(2) by adding at the end the following:

“(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity authorized by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.”.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

“(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

“(24) ‘foreign representative’ means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the

liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;”.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking “and” at the end;

(B) in subparagraph (O), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(P) recognition of foreign proceedings and other matters under chapter 6 of title 11.”.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c)(1) of title 28, United States Code, is amended by striking “Nothing in” and inserting “Except with respect to a case under chapter 6 of title 11, nothing in”.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by inserting “6,” after “chapter”.

## TITLE VII—MISCELLANEOUS

### SEC. 701. TECHNICAL AMENDMENTS.

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking “subsection (c) or (d) of”;

(2) in section 541(b)(4) by adding “or” at the end; and

(3) in section 552(b)(1) by striking “product” each place it appears and inserting “products”.

### SEC. 702. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code after the date of the enactment of this Act.