ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Washington, D.C.
December 8-9, 1994

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of December 8-9, 1994

Administrative Office of the U.S. Courts
Washington, D.C.

Agenda

1. Amendments to the Federal Rules of Bankruptcy Procedure relating to the Bankruptcy Reform Act of 1994. [Materials: Reporter's memorandum dated 11/7/94, and reference documents cited therein.]

2. Amendments to the Official Bankruptcy Forms relating to the Bankruptcy Reform Act of 1994. [Materials: Patricia Channon's memorandum dated 10/31/94, plus additional materials to be mailed separately.]

3. Amendments to Director's forms relating to the Bankruptcy Reform Act of 1994. [Materials: to be mailed separately.]

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Section I

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: PROPOSED RULE AMENDMENTS TO CONFORM TO THE BANKRUPTCY REFORM ACT OF 1994

DATE: NOVEMBER 7, 1994

The Bankruptcy Reform Act of 1994 (Pub. L. 103-394, 108 Stat. 4106) was signed into law by the President on October 22, 1994. With few exceptions, the amendments to the Bankruptcy Code and title 28 of the U.S. Code made by the Reform Act are effective in bankruptcy cases commenced on or after the date of enactment. Several provisions of the Reform Act have caused certain Bankruptcy Rules and Official Forms to be inconsistent with the Bankruptcy Code and title 28. In addition, there are certain Rules and Forms which -- although not inconsistent with the statutory changes -- should be amended or expanded to better implement the new law. For your convenience, a copy of the Reform Act is enclosed.

I reviewed the Reform Act for the purpose of identifying those provisions that may warrant amendments to the Bankruptcy Rules or the Official Forms. The purpose of this memorandum is to identify and discuss the Rules that should be reviewed by the Committee and to suggest specific language changes. The needed changes to the Official Forms will be discussed in a separate memorandum.

Two provisions of the new legislation directly affect the Bankruptcy Rules, but do not require any action by the Committee. First, 28 U.S.C. § 2075 has been amended to make all Bankruptcy

Rule amendments effective on December 1 of the year in which they are promulgated by the Supreme Court. This conforms to the effective date for the other federal rules. Second, Rule 7004 is amended by adding a new Rule 7004(h) that requires, with certain exceptions, service by certified mail on insured depository institutions.

In view of the time required for completing the rules amendment process, the Committee may want to consider adopting "suggested interim rules" for adoption as local court rules pending the promulgation of amendments to the Bankruptcy Rules. This was last done in 1987, when suggested interim rules and forms were adopted by the Advisory Committee to provide procedures to implement the new Chapter 12 of the Code. To assist the Committee in making this determination, I prepared a draft of suggested local rules (which are modeled after some of my proposals for amending the national rules). These proposals for suggested interim rules are attached as Appendix A to this memorandum.

The topics covered in this memorandum -- based on statutory changes -- include (1) notice to creditors, (2) election of chapter 11 trustee, (3) filing proofs of claim, (4) small business cases, (5) appeals, (6) jury trials, and (7) applicability of rules in North Carolina and Alabama.

(1) NOTICE TO CREDITORS

Section 225 of the Reform Act amends section 342 of the Code to provide that notices required to be given by a debtor to creditors must contain the name, address, and taxpayer identification number of the debtor (although failure to do so does not invalidate the notice). The new section 342(c) provides as follows:

> "(c) If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice."

The legislative history of this section found in the Congressional Record on October 4th states:

> "The Committee anticipates that the Official Bankruptcy Forms will be amended to provide that the information required by this section will become a part of the caption on every notice given in a bankruptcy case."

Rule 2002 governs notices to creditors and others. Although Rule 2002 requires "the clerk or some other person as the court may direct" to send certain notices to creditors, and the amendment to Code section 342 applies only to notices that are given "by the debtor," it is common for chapter 11 debtors to mail these notices. In addition, as mentioned above, the legislative history indicates an intent that <u>every</u> notice in a bankruptcy case contain the specified information, including the address of the debtor. Therefore, the Committee should consider whether all notices under Rule 2002 (whether given by the clerk or the debtor) should contain the information listed in section

342(c) -- rather than only those notices "given by the debtor."

I suggest that the Committee consider three alternatives for implementing the statutory change to section 342:

(1) Alternative 1: Do Not Amend the Rules. One alternative is for section 342(c) to speak for itself. The Rules are not inconsistent with section 342(c) and no change is mandated.

(2) Alternative 2: Amend Rule 2002(n) only to the extent required by section 342(c). The following amendment to Rule 2002(n) could be made to conform to the 1994 amendment to section 342:

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

* * * *

1 (n) CAPTION. The caption of every notice given under
2 this rule shall comply with Rule 1005. The caption of every
3 notice required to be given by the debtor to a creditor
4 shall include the information required to be in the notice
5 by § 342(c) of the Code.

COMMITTEE NOTE

Rule 2002(n) ~~is~~ amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

(3) Alternative 3: Amend Rule 1005 to require the information specified in section 342(c) in the caption of every notice -- whether given by the clerk or the debtor. The

Committee may want to implement the statement contained in the Congressional Record by requiring that every notice contain the information set forth in section 342(c). If so, an amendment to Rule 1005 should accomplish that.

Rule 2002(n) requires that "every notice given under this rule shall comply with Rule 1005 [caption for the petition]." Rule 1005 requires that the caption of the petition include the debtor's name, social security number, and taxpayer's identification number, but does not require that the address be included. The Committee should consider amending Rule 1005 to include the address. It is interesting to note that, although Rule 1005 does not require the address to be included in the caption, the debtor's address is currently included in Official Form 1 (voluntary petition) and Official Form 5 (involuntary petition). Therefore, by amending Rule 1005 (caption of petition), no change will be made to petitions -- only notices will be affected (which is the sole purpose of making this amendment).

The Committee should consider the following amendment to Rule 1005 [bracketed language is optional]:

Rule 1005. Caption of Petition [and Notice]

1 The caption of a petition commencing a case under the
2 Code [and of a notice given under Rule 2002] shall contain
3 the name of the court, the title of the case, and the docket
4 number. The title of the case shall include the name,
5 address, social security number and employer's tax

6 identification number of the debtor and all other names used
7 by the debtor within six years before filing the petition.
8 If the petition is not filed by the debtor, it shall include
9 all names used by the debtor which are known to petitioners.

10 COMMITTEE NOTE

11 This rule is amended to require that the caption
12 of the petition include the debtor's address. This
13 amendment is consistent with Official Form 1 (Voluntary
14 Petition) and Official Form 5 (Involuntary Petition)
15 which presently include the debtor's address.

16 Rule 2002(n) requires that the caption of a notice
17 given under Rule 2002 comply with Rule 1005.
18 [Accordingly, the title and text of this rule is
19 amended to clarify that it applies to notices under
20 Rule 2002. In addition,] The requirement that the
21 caption contain the debtor's address is consistent with
22 § 342(c) of the Code, as amended by the Bankruptcy
23 Reform Act of 1994, which provides that a notice given
24 by the debtor to a creditor shall contain the debtor's
25 address. As provided in § 342(c), the failure of a
26 notice given by the debtor to a creditor to contain the
27 information required by § 342(c) does not invalidate
28 the legal effect of the notice.

(2) ELECTION OF CHAPTER 11 TRUSTEES

Section 211 of the Reform Act amends section 1104 of the Code to permit creditors to elect a trustee in a chapter 11 case if a timely request for an election is made.

The new statutory language, which is included in section 1104(b), includes the following:

> "[O]n request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title."

The Reform Act also redesignated section 1104(b) and (c) as section 1104(c) and (d). However, these redesignated subsections were not amended, which leaves me with a little confusion. As amended, section 1104(b) provides for the election of a disinterested person to serve as trustee, and section 1104(d) provides that: "If the court orders the appointment of a trustee or an examiner... then the United States trustee, after consultation with parties in interest shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve as trustee or examiner, as the case may be, in the case." I assume (which is always dangerous) that, if there is an election under section 1104(b), the provisions of section 1104(d) do not apply to the selection of the person to serve as trustee, but that the person elected must be approved by the court to make sure that he or she is disinterested. A comparison of section 702(b) ("creditors may

elect one person") and the new section 1104(b) ("electing one disinterested person to serve as trustee") is revealing. In chapter 7 cases, any person may be elected and there is no role for the court in approving that person. But in chapter 11, the person elected should have to file the same kind of affidavit regarding connections to the debtor, creditors and other parties that must be filed by a person appointed by the Unites States trustee under section 1104(d). The legislative history does not help. I drafted the proposed amendments set forth below based on this assumption.

I also think that the statute is unclear as to what happens during the period after the court orders the appointment of a trustee and before the election. If an election is requested, does the United States trustee appoint a trustee under § 1104(d) to serve until a person is elected under § 1104(b)? There is no provision in § 1104 that is analogous to the interim trustee provisions applicable in chapter 7 cases (see § 701). However, the appointment of a trustee in a chapter 11 case is a rare event that only happens if the debtor in possession is found to be incompetent or dishonest. Thirty days may be too long to go without a trustee. If a creditor requests an election on the 29th day, and a meeting of creditors is called for 20 days later, it could be at least 7 or 8 weeks before the trustee begins to serve. Therefore, I think that the more reasonable interpretation of the statute is that the United States trustee should appoint a trustee under § 1104(d) (after consultation with

parties in interest) as soon as practicable after the court orders the appointment of a trustee, and that the trustee would serve unless and until another person is elected by the creditors. This would be analogous to the election of a chapter 7 trustee who, upon election, replaces the interim trustee.

The Committee may take the position that this question [Should the U.S. trustee appoint a trustee to serve until the election is held?] involves statutory construction and should be left to the courts. Alternatively, the Committee may take the position that the Rules should clear up any ambiguity by providing that a trustee appointed under § 1104(d) shall serve unless and until a another person is elected. I favor the second position. In any event, I drafted proposed amendments in a manner that accommodates both alternatives (with optional language in brackets).

Section 702 governs election of chapter 7 trustees. The new language in § 1104 states that the election of a chapter 11 trustee "shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title." However, the procedures regarding chapter 7 trustee elections are found in Rule 2003(b)(3) and (d), as well as in § 702(a)-(c) of the Code. The Committee should consider amending Rule 2007.1 to provide that these same procedural rules are applicable with respect to chapter 11 trustee elections. In addition, the Committee should decide whether the amended Rule 2007.1 should make Rule 2006 (Solicitation and Voting of Proxies in Chapter 7 Liquidation

Cases) applicable in chapter 11. If so, should chapter 11 committees have the right to solicit proxies for this purpose (they cannot solicit proxies to vote on a plan)?

The Committee's task in this area is more complicated than merely conforming the rules to statutory changes. I offer the following draft for discussion purposes:

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

1 (a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter
2 11 reorganization case, a motion for an order to appoint a
3 trustee or an examiner pursuant to § 1104(a) or § ~~1104(b)~~
4 1104(c) of the Code shall be made in accordance with Rule
5 9014.
6 (b) ELECTION OF TRUSTEE.
7 (1) Request for an Election. A request to convene
8 a meeting of creditors for the purpose of electing a
9 trustee in a chapter 11 reorganization case shall be
10 filed and transmitted to the United States trustee in
11 accordance with Rule 5005 within the time prescribed by
12 § 1104(b) of the Code. [Pending court approval of the
13 person elected, a person appointed trustee under
14 § 1104(d) shall serve as trustee.]
15 (2) Manner of Election and Notice. An election of
16 a trustee under § 1104(b) of the Code shall be
17 conducted in the manner provided in Rules 2003(b)(3)
18 and 2006. Notice of the meeting of creditors convened

19 under § 1104(b) shall be given as provided in Rule
20 2002. A proxy for the purpose of voting in the
21 election may be solicited by a committee appointed
22 under § 1102 of the Code and by any other party
23 entitled to solicit a proxy under Rule 2006.
24 (3) Application For Appointment and Resolution of
25 Disputes. If it is not necessary to resolve a dispute
26 regarding the election or if all disputes have been
27 resolved by the court, the United States trustee shall
28 promptly file an application for the appointment of the
29 elected person under subdivision (c) of this rule. If
30 it is necessary to resolve a dispute regarding the
31 election, the United States trustee shall promptly file
32 a report informing the court of the dispute. If no
33 motion for the resolution of the dispute is filed
34 within 10 days after the date of the creditors' meeting
35 called under § 1104(b) of the Code, a person appointed
36 by the United States trustee in accordance with
37 § 1104(d) and subdivision (c) of this rule shall serve
38 as trustee.
39 ~~(b)~~ (c) APPROVAL OF APPOINTMENT. An order approving
40 the appointment of a trustee elected under § 1104(b) or
41 appointed under § 1104(d), or the appointment of an examiner
42 ~~pursuant to § 1104(c)~~ under § 1104(d) of the Code, shall be
43 made only on application of the United States trustee~~,~~. The
44 application shall state ~~stating~~ the name of the person

45 appointed~~, the names of the parties in interest with whom~~
46 ~~the United States trustee consulted regarding the~~
47 ~~appointment,~~ and, to the best of the applicant's knowledge,
48 all the person's connections with the debtor, creditors, any
49 other parties in interest, their respective attorneys and
50 accountants, the United States trustee, and persons employed
51 in the office of the United States trustee. Unless the
52 person has been elected under § 1104(b), the application
53 shall state the names of the parties in interest with whom
54 the United States trustee consulted regarding the
55 appointment. The application shall be accompanied by a
56 verified statement of the person appointed setting forth the
57 person's connections with the debtor, creditors, any other
58 party in interest, their respective attorneys and
59 accountants, the United States trustee, and any person
60 employed in the office of the United States trustee.

COMMITTEE NOTE

This rule is added to implement the 1994 amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case.

The procedures for reporting disputes to the court and the time limit for filing a motion to resolve any disputes derive from similar provisions Rule 2003(d) applicable in chapter 7 cases. Because the person elected must be "disinterested," the United States trustee must file an application for court approval of the elected person in accordance with Rule 2007.1(c).

In addition to the above amendments to Rule 2007.1, the Committee should consider the following amendment to Rule 2002(a):

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

1 (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except
2 as provided in subdivisions (h), (i) and (l) of this rule,
3 the clerk, or some other person as the court ~~may direct~~
4 directs, shall give the debtor, the trustee, all creditors
5 and indenture trustees at least ~~not less than~~ 20 days' ~~days~~
6 notice by mail of (1) the meeting of creditors under
7 ~~pursuant to~~ § 341 or § 1104(b) of the Code; * * * *

COMMITTEE NOTE

Paragraph (a)(1) is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced under Rule 9006(c)(1).

(3) FILING PROOFS OF CLAIM

We recently published for comment proposed amendments to Rule 3002 to conform to section 726 of the Code. In view of section 213(a) of Reform Act, which amends section 502(b) of the Code, further amendments to Rule 3002 should be made. The new section 502(b)(9) of the Code provides that, upon objection to a proof of claim, the claim shall be allowed except to the extent that:

> "proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide."

Rule 3002(c), which governs the time for filing a proof of claim, should be amended to make the rule consistent with the new 180-day bar date for claims of a governmental unit. The current version of the Rule imposes an earlier bar date.

I also think that we should delete the new proposed Rule 3002(d) that was published for comment. The proposed subdivision provides as follows:

> "(d) Notwithstanding subdivision (a) of this rule, if a creditor files a proof of claim in a chapter 7 case after the expiration of the time for filing the proof of claim prescribed in subdivision (c) of this rule, the creditor, as the holder of an unsecured claim proof of which is tardily filed, is entitled to receive a distribution to the extent provided under section 726 of the Code."

This subdivision was designed to clarify that tardily filed claims may be allowed for the purpose of receiving a distribution

under section 726. This is now accomplished by the new section 502(b)(9) which provides that the holder of a tardily filed claim **is entitled to receive a distribution under section 726(a)(1)-**(3). Therefore, the published proposed new Rule 3002(d) merely duplicates the statute and should be eliminated.

I recommend that the Committee consider the following amendments to Rule 3002:

Rule 3002. Filing Proof of Claim or Interest

1 (a) NECESSITY FOR FILING. An unsecured creditor
2 or an equity security holder must file a proof of claim
3 or interest ~~in accordance with this rule~~ for the claim
4 or interest to be allowed, except as provided in Rules
5 1019(3), 3003, 3004 and 3005.
6 * * * *
7 (c) TIME FOR FILING. In a chapter 7 liquidation,
8 chapter 12 family farmer's debt adjustment, or chapter
9 13 individual's debt adjustment case, a proof of claim
10 ~~shall be filed within~~ is timely filed if it is filed no
11 later than 90 days after the first date set for ~~the~~
12 meeting of creditors called pursuant to § 341(a) of the
13 Code, except as follows:
14 (1) A proof of claim filed by a governmental
15 unit is timely filed if it is filed before
16 180 days after the date of the order for
17 relief. On motion of the United States, a
18 state, or subdivision thereof before the

19 expiration of such period and for cause
20 shown, the court may extend the time for
21 **filing of a claim by the United States, state**
22 or subdivision thereof.
23 * * * *
24 ~~(6) In a chapter 7 liquidation case, if a~~
25 ~~surplus remains after all claims allowed have~~
26 ~~been paid in full, the court may grant an~~
27 ~~extension of time for the filing of claims~~
28 ~~against the surplus not filed within the time~~
29 ~~herein above prescribed.~~

COMMITTEE NOTE

1 The amendments are designed to conform to
2 §§ 502(b)(9) and 726(a)of the Code as amended by the
3 Bankruptcy Reform Act of 1994.

4 The Reform Act amended § 726(a)(1) and added
5 § 502(b)(9) to the Code to govern the effects of a
6 tardily filed claim. Under § 502(b)(9), a tardily
7 filed claim must be disallowed if an objection to the
8 proof of claim is filed, except to the extent that
9 holder of a tardily filed claim is entitled to
10 distribution under § 726(a)(1), (2), or (3).

11 The phrase "in accordance with this rule" is
12 deleted from Rule 3002(a) to clarify that the effect of
13 filing a proof of claim after the expiration of the
14 time prescribed in Rule 3002(c) is governed by
15 § 502(b)(9) of the Code, rather than by this rule.

(4) SMALL BUSINESS CASES

Section 217 of the Reform Act amends the Code by adding a new definition of "small business" (business with noncontingent liquidated debts not exceeding $ 2 million, excluding real estate operators). It also contains the following special provisions for chapter 11 cases in which the debtor is a small business:

(1) The Reform Act amends section 1102(a) to give the court discretion to order that a creditors' committee not be appointed. Apparently, this provision applies whether or not the small business "elects" to be treated as a small business (although the legislative history in the Congressional Record indicates that this applies only if the debtor so "elects"). I do not think that this provision requires any rule amendments.

(2) The Reform Act amends section 1121 by adding a new section 1121(e) that applies special time limits for filing a plan if "the debtor is a small business and elects to be considered a small business." In such a case, only the debtor may file a plan until after 100 days after the order for relief (the exclusivity period is 120 days for other debtors). It also provides that "all plans shall be filed within 160 days" after the order for relief (in other cases, there is no time limit for filing a plan after the exclusivity period expires). Both of these periods may be reduced or increased by the court. I do not think that any rule

amendments are required with respect to this provision.

(3) Section 1125 is amended to provide special provisions governing disclosure statements -- but only if "the debtor has elected under section 1121(e) to be considered a small business." These provisions, which I believe do require rule amendments, are:

(a) "The court may conditionally approve a disclosure statement subject to final approval after notice and a hearing." Because the new statute uses the phrase "after notice and a hearing," any new rules or amendments governing final approval of a disclosure statement should not require an actual hearing unless an objection is filed. See section 102 of the Code.

(b) Votes may be solicited based on the conditionally approved disclosure statement as long as the debtor provides adequate information to the entities solicited and the conditionally approved disclosure statement is mailed at least 10 days prior to the confirmation hearing.

(c) A hearing on the disclosure statement may be combined with the hearing on confirmation of the plan.

In view of these statutory changes, the Committee should consider whether a new rule should be added to provide the procedure for making the small business election, including time

limits for making the election. It appears that a rule on small business elections should be in Part I of the Rules (Commencement of Case; Proceedings Relating to Petition and Order for Relief). In addition, Rule 3017 on disclosure statement approval and distribution should be amended to provide for the new concept of "conditional approval."

At the September 1994 meeting of the Committee, proposed amendments to Rule 3017(d) and 3018(a) were approved to give the court discretion to fix a record date for the purposes of distributing solicitation materials and voting. Since I am proposing amendments to Rule 3017 to implement the new small business provisions, I thought it would be helpful to include in the draft below proposed language to implement the changes to Rule 3017 (as well as to Rule 3018) that the Committee already approved. If any proposed amendments to Rule 3017 are published, all changes to Rules 3017 and 3018 (which are closely related) should be published together.

For discussion purposes, I offer the following new Rule 1020 on "small business cases" and amendments to Rule 3017.

Rule 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case

1 In a chapter 11 reorganization case, a debtor
2 that is a small business may elect to be
3 considered a small business by filing a written
4 statement of election no later than 100 days after
5 the date of the order for relief or by another

6 date as the court may fix.

COMMITTEE NOTE

1 This rule is designed to implement
2 §§ 1121(e) and 1125(f) that were added to the Code
3 by the Bankruptcy Reform Act of 1994.

4 Under § 1121(e)(1), a small business debtor
5 that elects to be considered a small business has
6 the exclusive right to file a plan within 100 days
7 after the order for relief. The 100-day period
8 may be reduced or increased by the court under
9 § 1121(a)(3). Delaying the small business
10 election during that period does not prejudice the
11 rights of creditors or other parties in interest.
12 Creditors and other parties in interest may be
13 prejudiced unfairly, however, if the debtor is
14 permitted to make the election after the
15 expiration of the period in which only the debtor
16 may file a plan.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

1 (a) HEARING ON DISCLOSURE STATEMENT AND
2 OBJECTIONS ~~THERETO~~. Except as provided in
3 subdivision (f) of this rule, after a disclosure
4 statement is filed in accordance with Rule 3016(b)
5 ~~Following the filing of a disclosure statement as~~
6 ~~provided in Rule 3016(c)~~, the court shall hold a
7 hearing on ~~not less than~~ at least 25 ~~days~~ days'
8 notice to the debtor, creditors, equity security
9 holders and other parties in interest as provided
10 in Rule 2002 to consider ~~such~~ the disclosure
11 statement and any objections or modifications
12 thereto. The plan and the disclosure statement

13 shall be mailed with the notice of the hearing
14 only to the debtor, any trustee or committee
15 appointed under the Code, the Securities and
16 Exchange Commission, and any party in interest who
17 requests in writing a copy of the statement or
18 plan. Objections to the disclosure statement
19 shall be filed and served on the debtor, the
20 trustee, any committee appointed under the Code
21 and any ~~such~~ other entity ~~as may be~~ designated by
22 the court, at any time before the disclosure
23 statement is approved ~~prior to approval of the~~
24 ~~disclosure statement~~ or by ~~such~~ an earlier date as
25 the court may fix. In a chapter 11 reorganization
26 case, every notice, plan, disclosure statement,
27 and objection required to be served or mailed
28 ~~pursuant to~~ under this subdivision shall be
29 transmitted to the United States trustee within
30 the time provided in this subdivision.
31 (b) DETERMINATION ON DISCLOSURE STATEMENT.
32 Following the hearing the court shall determine
33 whether the disclosure statement should be
34 approved.
35 (c) DATES FIXED FOR VOTING ON PLAN AND
36 CONFIRMATION. On or before approval of the
37 disclosure statement, the court shall fix a time
38 within which the holders of claims and interests

39 may accept or reject the plan and may fix a date
40 for the hearing on confirmation.
41 (d) TRANSMISSION AND NOTICE TO UNITED STATES
42 TRUSTEE, CREDITORS AND EQUITY SECURITY HOLDERS.
43 On approval of a disclosure statement, ~~unless~~ --
44 except to the extent that the court orders
45 otherwise with respect to one or more unimpaired
46 classes of creditors or equity security holders~~,~~
47 -- the debtor in possession, trustee, proponent of
48 the plan, or clerk as ~~ordered by~~ the court orders
49 shall mail to all creditors and equity security
50 holders, and in a chapter 11 reorganization case
51 shall transmit to the United States trustee,
52 (1) the plan~~,~~ or a court approved summary of the
53 plan;
54 (2) the disclosure statement approved by the
55 court;
56 (3) notice of the time within which acceptances
57 and rejections of ~~such~~ the plan may be filed;
58 and
59 (4) any ~~such~~ other information as the court may
60 direct including any court opinion ~~of the court~~
61 approving the disclosure statement or a court
62 approved summary of the opinion.
63 In addition, notice of the time fixed for filing
64 objections and the hearing on confirmation shall

65 be mailed to all creditors and equity security
66 holders in accordance with ~~pursuant to~~ Rule
67 2002(b), and a form of ballot conforming to the
68 appropriate Official Form shall be mailed to
69 creditors and equity security holders entitled to
70 vote on the plan. In the event the ~~opinion of the~~
71 court opinion is not transmitted or only a summary
72 of the plan is transmitted, the ~~opinion of the~~
73 court opinion or the plan shall be provided on
74 request of a party in interest at the plan
75 proponent's expense ~~of the proponent of the plan~~.
76 If the court orders that the disclosure statement
77 and the plan or a summary of the plan shall not be
78 mailed to any unimpaired class, notice that the
79 class is designated in the plan as unimpaired and
80 notice of the name and address of the person from
81 whom the plan or summary of the plan and
82 disclosure statement may be obtained upon request
83 and at the plan proponent's expense ~~of the~~
84 ~~proponent of the plan~~, shall be mailed to members
85 of the unimpaired class together with the notice
86 of the time fixed for filing objections to and the
87 hearing on confirmation. For the purposes of this
88 subdivision, creditors and equity security holders
89 shall include holders of stock, bonds, debentures,
90 notes, and other securities of record on ~~at~~ the

91 date the order approving the disclosure statement
92 is ~~was~~ entered or another date as the court may,
93 **after notice and a hearing, for cause fix**.
94 (e) TRANSMISSION TO BENEFICIAL HOLDERS OF
95 SECURITIES. At the hearing held under ~~pursuant to~~
96 subdivision (a) of this rule, the court shall
97 consider the procedures for transmitting the
98 documents and information required by subdivision
99 (d) of this rule to beneficial holders of stock,
100 bonds, debentures, notes and other securities, ~~and~~
101 determine the adequacy of the ~~such~~ procedures, and
102 enter any ~~such~~ orders ~~as~~ the court deems
103 appropriate.
104 (f) SMALL BUSINESS CASES
105 (1) Conditional Approval of Disclosure
106 Statement. If the debtor is a small business and
107 has made a timely election to be considered a
108 small business in a chapter 11 case, the court
109 may, on application of the plan proponent,
110 conditionally approve a disclosure statement filed
111 in accordance with Rule 3016(b). On or before
112 conditional approval of the disclosure statement,
113 the court shall
114 (a) fix a time within which the holders of
115 claims and interests may accept or reject
116 the plan;

117 (b) fix a time for filing objections to the
118 disclosure statement;
119 (c) fix a date for the hearing on final
120 approval of the disclosure statement to be
121 held if a timely objection is filed; and
122 (d) fix a date for the hearing on
123 confirmation.
124 (2) Application of Rule 3017. If the disclosure
125 statement is conditionally approved, Rule 3017(a),
126 (b), (c), and (e) do not apply. Conditional
127 approval of the disclosure statement is considered
128 approval of the disclosure statement for the
129 purpose of applying Rule 3017(d).
130 (3) Objections and Hearing on Final Approval.
131 Notice of the time fixed for filing objections and
132 the hearing to consider final approval of the
133 disclosure statement shall be given in accordance
134 with Rule 2002 and may be combined with notice of
135 the hearing on confirmation of the plan.
136 Objections to the disclosure statement shall be
137 filed, transmitted to the United States trustee,
138 and served on the debtor, the trustee, any
139 committee appointed under the Code and any other
140 entity designated by the court at any time before
141 final approval of the disclosure statement or by
142 an earlier date as the court may fix. If a timely

143 objection to the disclosure statement is filed,
144 the court shall hold a hearing to consider final
145 approval before or combined with the hearing on
146 confirmation of the plan. If no timely objection
147 is filed, conditional approval of the disclosure
148 statement shall become final.

149 COMMITTEE NOTE

1 Subdivision (d) is amended to provide
2 flexibility in fixing the record date for the
3 purpose of determining the holders of securities
4 who are entitled to receive documents under this
5 subdivision. For example, if there may be a delay
6 between the oral announcement of the judge's
7 order approving the disclosure statement and entry
8 of the order on the court docket, the court may
9 fix the date on which the judge orally approves
10 the disclosure statement as the record date so
11 that the parties may expedite preparation of the
12 lists necessary to facilitate the distribution of
13 the plan, disclosure statement, ballots, and other
14 related documents.

15 The court may set a record date under
16 subdivision (d) only after notice and a hearing as
17 provided in § 102(1) of the Code. Notice of a
18 request for an order fixing the record date may be
19 included in the notice of the hearing to consider
20 approval of the disclosure statement mailed under
21 Rule 2002(b).

22 If the court fixes a record date under
23 subdivision (d) with respect to the holders of
24 securities, and the holders are impaired by the
25 plan, the judge also should order that the same
26 record date applies for the purpose of determining
27 eligibility for voting pursuant to Rule 3018(a).

28 Subdivision (f) is added to implement
29 § 1125(f) of the Code that was added by the
30 Bankruptcy Reform Act of 1994. The procedures for
31 electing to be considered a small business are set
32 forth in Rule 1020. If the debtor is a small
33 business and has elected to be considered a small
34 business, § 1125(f) permits the court to
35 conditionally approve a disclosure statement

36 subject to final approval after notice and a
37 hearing. If a disclosure statement is
38 conditionally approved, and no timely objection to
39 the disclosure statement is filed, it is not
40 necessary for the court to hold a hearing on final
41 approval.

Other amendments to this rule are stylistic.

Rule 3018. Acceptance or Rejection of Plans

1 (a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME
2 FOR ACCEPTANCE OR REJECTION. A plan may be accepted or
3 rejected in accordance with § 1126 of the Code within the
4 time fixed by the court <u>under</u> ~~pursuant to~~ Rule 3017.
5 Subject to subdivision (b) of this rule, an equity security
6 holder or creditor whose claim is based on a security of
7 record shall not be entitled to accept or reject a plan
8 unless the equity security holder or creditor is the holder
9 of record of the security on the date the order approving
10 the disclosure statement is entered <u>or another date as the</u>
11 <u>court may, after notice and a hearing, fix for cause</u>. For
12 cause shown, the court after notice and hearing may permit a
13 creditor or equity security holder to change or withdraw an
14 acceptance or rejection. Notwithstanding objection to a
15 claim or interest, the court after notice and hearing may
16 temporarily allow the claim or interest in an amount which
17 the court deems proper for the purpose of accepting or
18 rejecting a plan.
19 * * * *

20 COMMITTEE NOTE

21 Subdivision (a) is amended to provide flexibility
22 in fixing the record date for the purpose of
23 **determining the holders of securities who are entitled**
24 to vote on the plan. For example, if there may be a
25 delay between the oral announcement of the judge's
26 order approving the disclosure statement and entry of
27 the order on the court docket, the court may fix the
28 date on which the judge orally approves the disclosure
29 statement as the record date for voting purposes so
30 that the parties may expedite preparation of the lists
31 necessary to facilitate the distribution of the plan,
32 disclosure statement, ballots, and other related
33 documents in connection with the solicitation of votes.

34 The court may set a record date for voting
35 purposes that is different than the date of entry of
36 the order approving the disclosure statement only after
37 notice and a hearing as provided in § 102(1) of the
38 Code. Notice of a request for an order fixing the
39 record date may be included in the notice of the
40 hearing to consider approval of the disclosure
41 statement mailed under Rule 2002(b).

42 If the court fixes the record date for voting
43 purposes, the judge also should order that the same
44 record date applies for the purpose of distributing the
45 documents required to be distributed under Rule
46 3017(d).

(5) APPEALS

The Committee should consider amending Rule 8001(a), (b) and (e) to conform to two statutory changes regarding appeals:

(a) Appeals from Exclusivity Orders. Section 102 of the Reform Act amends section 157, title 28, to give parties the right to appeal interlocutory orders reducing or extending the exclusivity period in chapter 11 cases. The Reform Act creates three subdivisions of section 158. This amendment necessitates changes to Rule 8001(a) (appeal as of right) to include appeals of exclusivity orders, and to Rule 8001(b) (appeal by leave) to exclude appeals of exclusivity orders.

(b) Bankruptcy Appellate Panels. Section 104(d) of the Reform Act amends section 158, title 28, to provide that the BAP shall hear an appeal from a bankruptcy court order unless the appellant "elects at the time of filing the appeal," or "any other party elects, not later than 30 days after service of notice of the appeal," to have the appeal heard by the district court. The Committee may want to amend Rule 8001(a) to provide that the notice of appeal may contain the election. If so, Official Form 17 (Notice of Appeal) should be amended to include a place for making the election. Alternatively, Rule 8001(e) could be amended to require a party electing to appeal to the district court to file a separate writing. In any event, Rule 8001(e) (Consent to Appeal to Bankruptcy Appellate Panel) must be amended (the last sentence of subdivision (e) is

inconsistent with the amended statute).

I recommend that the Committee consider the following amendments:

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal

1 (a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a
2 ~~final~~ judgment, order, or decree of a bankruptcy judge to
3 a district court or bankruptcy appellate panel as permitted
4 by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing
5 a notice of appeal with the clerk within the time allowed by
6 Rule 8002. An Appellant's failure ~~Failure of an appellant~~
7 to take any step other than ~~the~~ timely filing ~~of~~ a notice of
8 appeal does not affect the validity of the appeal, but is
9 ground only for such action as the district court or
10 bankruptcy appellate panel deems appropriate, which may
11 include dismissal of the appeal. The notice of appeal shall
12 (1) conform substantially to the appropriate Official Form,
13 (2) ~~shall~~ contain the names of all parties to the judgment,
14 order, or decree appealed from and the names, addresses and
15 telephone numbers of their respective attorneys, and (3) be
16 accompanied by the prescribed fee. Each appellant shall
17 file a sufficient number of copies of the notice of appeal
18 to enable the clerk to comply promptly with Rule 8004.
19 (b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an
20 interlocutory judgment, order or decree of a bankruptcy
21 judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken
22 by filing a notice of appeal, as prescribed in subdivision

23 (a) of this rule, accompanied by a motion for leave to
24 appeal prepared in accordance with Rule 8003 and with proof
25 of service in accordance with Rule 8008.
26 * * * *
27 (e) ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT
28 ~~CONSENT TO APPEAL TO BANKRUPTCY APPELLATE PANEL~~. ~~Unless~~
29 ~~otherwise provided by a rule promulgated pursuant to Rule~~
30 ~~8018, consent to have an appeal heard by a bankruptcy~~
31 ~~appellate panel may be given in a separate statement of~~
32 ~~consent executed by a party or contained in the notice of~~
33 ~~appeal or cross appeal. The statement of consent shall be~~
34 ~~filed before the transmittal of the record pursuant to Rule~~
35 ~~8007(b) or within 30 days of the filing of the notice of~~
36 ~~appeal, whichever is later.~~ An election to have an appeal
37 heard by the district court under 28 U.S.C. § 158(c)(1) may
38 be made only by a statement of election contained [in a
39 notice of appeal or cross-appeal or] in a separate writing
40 filed within the time prescribed by 28 U.S.C. § 158(c)(1).

41 COMMITTEE NOTE

42 This rule is amended to conform to the Bankruptcy
43 Reform Act of 1994 which amended 28 U.S.C. § 158. As
44 amended, a party may -- without obtaining leave of the
45 court -- appeal from an interlocutory order or decree
46 of the bankruptcy court issued under § 1121(d) of the
47 Code increasing or reducing the time periods referred
48 to in § 1121.

49 Subdivision (e) is amended to provide the
50 procedure for electing under 28 U.S.C. § 158(c)(1) to
51 have an appeal heard by the district court.

Because of the time provisions in 28 U.S.C. § 158(c)(1), a clerk may not know whether an appeal will be heard by a district court or the bankruptcy appellate panel until either a party makes a timely election or the time to make an election expires. It does not make sense, therefore, to require the clerk to send a copy of the record to the appellate court until he or she knows which court will hear the appeal.

Therefore, I recommend that Rule 8007(b) be amended as follows:

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

* * * *

1 (b) DUTY OF CLERK TO TRANSMIT COPY OF RECORD;
2 DOCKETING OF APPEAL. When the record is complete for
3 purposes of appeal <u>and an election to have the appeal heard</u>
4 <u>by the district court has been filed or the right to file an</u>
5 <u>election, if any, has expired</u>, the clerk shall transmit a
6 copy thereof forthwith to the clerk of the district court or
7 the clerk of the bankruptcy appellate panel. On receipt of
8 the transmission, the clerk of ~~the district~~ court or the
9 clerk of the bankruptcy appellate panel shall enter the
10 appeal in the docket and give notice promptly to all parties
11 to the judgment, order, or decree appealed from of the date
12 on which the appeal was docketed. If the bankruptcy
13 appellate panel directs that additional copies of the record
14 be furnished, the clerk of the bankruptcy appellate panel
15 shall notify the appellant and, if the appellant fails to

16 provide the copies, the clerk shall prepare the copies at

17 the appellant's expense ~~of the appellant~~.

18 * * * *

19 COMMITTEE NOTE

20 This rule is amended to conform to the Bankruptcy
21 Reform Act of 1994 which amended 28 U.S.C. § 158(c)(1)
22 to give a party the right to elect, within a specified
23 time period, to have an appeal heard by the district
24 court rather than a bankruptcy appellate panel. As
25 amended, Rule 8007(b) permits the clerk to refrain from
26 transmitting a copy of the record to the district court
27 or bankruptcy appellate panel until either a party has
28 made the election under 28 U.S.C. § 158(c)(1) or the
29 right to make the election, if any, has expired.

(6) JURY TRIALS

In 1984, the statutory provisions governing jury trials in bankruptcy cases were changed and, according to 28 U.S.C. § 1411, the statute became limited to preserving the right to trial by jury in personal injury and wrongful death claims which have to be tried in the district court. In response to the 1984 legislation, Bankruptcy Rule 9015 on jury trials was abrogated in 1987. The Committee Note to the repeal of Rule 9015 indicates that, despite the statutory restrictions on the right to a jury trial in bankruptcy,

> "Rule 9015 has been cited as conferring a right to jury trial on other matters before bankruptcy judges. In light of the clear mandate of [the Rules Enabling Act] that the 'rules may not abridge, enlarge, or modify any substantive right,' Rule 9015 is abrogated. In the event the courts of appeals or the Supreme Court define a right to jury trial in any bankruptcy matters, a local rule in substantially the form of Rule 9015 can be adopted pending amendment of these rules."

Two developments have occurred since the abrogation of Rule 9015. First, court decisions, including those of the Supreme Court, have recognized that the Seventh Amendment right to trial by jury may be applicable to proceedings in connection with a bankruptcy case. In the most significant case, Granfinanciera, S.A. v. Nordberg, 109 S.Ct. 2782 (1989), the Supreme Court held that a person who has not filed a proof of claim in the bankruptcy case has the right to trial by jury under the Seventh Amendment when sued by the trustee to recover a money judgment based on an alleged fraudulent transfer.

Second, the Bankruptcy Reform Act of 1994 has resolved the

dispute among the circuits over a bankruptcy judge's power to conduct a jury trial. Most courts of appeals that have addressed this issue have held that a bankruptcy judge may not conduct the trial, but the Second Circuit held that the bankruptcy judge may conduct a jury trial if it is a core matter. The Reform Act amends 28 U.S.C. § 157 to provide that a bankruptcy judge may conduct a jury trial (whether the matter is core or non-core) if so designated by the district court and with the express consent of the parties.

In view of these developments, I recommend that the Advisory Committee consider a new Rule 9015 on jury trials.

In preparing a draft of proposed Rule 9015, I used Civil Rule 38 as a model. Because the Civil Rules are in the process of being "re-styled", I obtained and used as my model the latest re-styled draft of Rule 38. However, I departed from that draft in the following respects:

(1) Rule 38(a) provides that "The right of trial by jury as declared by the Seventh Amendment to the Constitution -- or as given by a federal statute -- must be preserved to the parties inviolate." I do not think that this provision adds anything because the Rules could not supersede the Constitution or federal statutes in any event. In addition, I am concerned that this language (if included in Bankruptcy Rule 9015) might be taken as preserving the right to a jury trial where certain acts, such as filing a proof of claim, otherwise deprives a person of a right to

trial by jury under current case law. I did not include this provision in the draft of proposed Rule 9015 set forth below.

(2) Civil Rule 38(e) provides that the rules do not create a right to a jury trial of issues in an admiralty or maritime claim. I do not think that such a provision is needed in the Bankruptcy Rules. It also can have a negative inference that the rules can otherwise create a right to trial by jury. I think it is important to make it clear that the rules do not create any right to trial by jury where one would not otherwise exist.

(3) I also added a subdivision to deal with removed actions. There is no comparable provision in Civil Rule 38.

The following draft is offered for discussion purposes. I also attach to this memorandum a copy of Civil Rules 38 (current and re-styled versions), and of Civil Rules 47-51 that are incorporated by reference in the draft below. Also for your convenience, I attach a copy of former Rule 9015 that was abrogated in 1987.

Rule 9015. Jury Trials

1 (a) DEMAND. A party may demand a trial by jury of any issue
2 triable of right by a jury by:
3 (1) serving the other parties with a written demand --
4 which may be contained in a pleading -- no later than 10
5 days after the last pleading directed to the issue is

6 served; and

7 (2) filing the demand in accordance with Rule 5005.

8 (b) REMOVED ACTION. If a claim or cause of action has been
9 removed from another court under 28 U.S.C. § 1452, a demand for
10 trial by jury previously made under the rules of that court
11 constitutes a demand for trial by jury under this rule.

12 (c) SPECIFYING ISSUES. In its demand a party may specify
13 the issues that it wishes to have so tried; otherwise, it is
14 deemed to have demanded trial by jury for all issues so triable.
15 If the party has demanded trial by jury for only some issues, any
16 other party may -- within 10 days of being served the demand or
17 within any lesser time ordered by the court -- serve a demand
18 for jury trial of any other or all factual issues triable by
19 jury.

20 (d) WAIVER; WITHDRAWAL. A party waives trial by jury unless
21 its demand is served and filed as required by this rule. A jury
22 demand may not be withdrawn without the parties' consent.

23 (e) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. A
24 party may consent to have a jury trial conducted by a bankruptcy
25 judge under 28 U.S.C. § 157(e) only by filing and serving the
26 other parties with a written statement of consent before the
27 commencement of the trial or by an earlier date as the court may
28 fix. The statement of consent may be contained in the demand for
29 a jury trial, a pleading, or a separate writing.

30 (f) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL
31 PROCEDURE. Rules 47-51 F.R.Civ.P. apply when a jury trial is

32 conducted.

COMMITTEE NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

(7) APPLICABILITY OF RULES IN NORTH CAROLINA AND ALABAMA

The Bankruptcy Rules were amended in 1991 to, among other things, implement the national United States trustee program that was created by legislation in 1986. In general, the Rules assume that a United States trustee is serving in the region. However, the six judicial districts located in North Carolina and Alabama have bankruptcy administrators rather than United States trustees. To assure that the Rules relating to United States trustees do not conflict with the statutory provisions dealing with bankruptcy administrators in North Carolina and Alabama, Bankruptcy Rule 9035 was added. Rule 9035 provides that the Bankruptcy Rules apply in North Carolina and Alabama only to the extent that they are not inconsistent with "title 11 and title 28 of the United States Code effective in the case."

The Bankruptcy Reform Act of 1994 contains provisions relating to bankruptcy administrators in North Carolina and Alabama that are not codified in either title 11 or title 28. For example, section 105 of the Reform Act gives the bankruptcy administrator or the bankruptcy administrator's designee the power to preside at the meeting of creditors under section 341 of the Code. This provision is not included in either title 11 or title 28.

For this reason, I recommend the following change to Rule 9035:

Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina

In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with <u>any federal statute</u> ~~the provisions of title 11 and title 28 of the United States Code~~ effective in the case.

COMMITTEE NOTE

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as § 105 of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

APPENDIX A

SUGGESTED INTERIM RULES

Rule 1. Election of Trustee in a Chapter 11 Reorganization Case

1 (a) REQUEST FOR AN ELECTION. A request to convene a
2 meeting of creditors for the purpose of electing a trustee
3 in a chapter 11 reorganization case shall be filed and
4 transmitted to the United States trustee in accordance with
5 Bankruptcy Rule 5005 within the time prescribed by § 1104(b)
6 of the Code. [Pending court approval of the person elected,
7 a person appointed trustee under § 1104(d) shall serve as
8 trustee.]

9 (b) MANNER OF ELECTION AND NOTICE. An election of a
10 trustee under § 1104(b) of the Code shall be conducted in
11 the manner provided in Bankruptcy Rules 2003(b)(3) and 2006.
12 Notice of the meeting of creditors convened under § 1104(b)
13 shall be given in the manner and within the time provided
14 for notices under Bankruptcy Rule 2002(a). A proxy for the
15 purpose of voting in the election may be solicited by a
16 committee appointed under § 1102 of the Code and by any
17 other party entitled to solicit a proxy under Bankruptcy
18 Rule 2006.

19 (c) APPLICATION FOR APPOINTMENT AND RESOLUTION OF
20 DISPUTES. If it is not necessary to resolve a dispute
21 regarding the election of the trustee or if all disputes
22 have been resolved by the court, the United States trustee

23 shall promptly file an application for the appointment of
24 the elected person under Bankruptcy Rule 2007.1(b), except
25 that the application does not have to contain names of
26 parties in interest with whom the United States trustee has
27 consulted. If it is necessary to resolve a dispute
28 regarding the election, the United States trustee shall
29 promptly file a report informing the court of the dispute.
30 If no motion for the resolution of the dispute is filed
31 within 10 days after the date of the creditors' meeting
32 called under § 1104(b), a person appointed by the United
33 States trustee in accordance with § 1104(d) of the Code and
34 Bankruptcy Rule 2007.1(b) shall serve as trustee.

NOTE

1 This rule implements the amendments to § 1104 of
2 the Code regarding the election of a trustee in a
3 chapter 11 case. The requirement that creditors
4 receive at least 20-days' notice of the meeting may be
5 reduced to a shorter period under Bankruptcy Rule
6 9006(c)(1).

7 The procedures for reporting disputes to the court
8 and the time limit for filing a motion to resolve any
9 disputes derive from Bankruptcy Rule 2003(d). Because
10 the person elected must be "disinterested," the United
11 States trustee must file an application for court
12 approval of the elected person in accordance with
13 Bankruptcy Rule 2007.1(b).

Rule 2. Small Business Chapter 11 Reorganization Cases

1 (a) ELECTION TO BE CONSIDERED A SMALL BUSINESS IN A
2 CHAPTER 11 REORGANIZATION CASE. In a chapter 11
3 reorganization case, a debtor that is a small business may

4 elect to be considered a small business by filing a written
5 statement of election no later than 100 days after the date
6 of the order for relief or by such other date as the court
7 may fix.

8 (b) APPROVAL OF DISCLOSURE STATEMENT.

9 (1) Conditional Approval. If the debtor is a
10 small business and has made a timely election to be
11 considered a small business in a chapter 11 case, the
12 court may, on application of the plan proponent,
13 conditionally approve a disclosure statement filed in
14 accordance with Bankruptcy Rule 3016(b). On or before
15 conditional approval of the disclosure statement, the
16 court shall

17 (a) fix a time within which the holders of
18 claims and interests may accept or reject
19 the plan;

20 (b) fix a time for filing objections to the
21 disclosure statement;

22 (c) fix a date for the hearing on final
23 approval of the disclosure statement to be
24 held if a timely objection is filed; and

25 (d) fix a date for the hearing on
26 confirmation.

27 (2) Application of Bankruptcy Rule 3017. If the
28 disclosure statement is conditionally approved,
29 Bankruptcy Rule 3017(a), (b), (c), and (e) do not

30 apply. Conditional approval of the disclosure
31 statement is considered approval of the disclosure
32 statement for the purpose of applying Bankruptcy Rule
33 3017(d).
34 (3) Objections and Hearing on Final Approval.
35 Notice of the time fixed for filing objections and the
36 hearing to consider final approval of the disclosure
37 statement shall be given in accordance with Bankruptcy
38 Rule 2002 and may be combined with notice of the
39 hearing on confirmation of the plan. Objections to the
40 disclosure statement shall be filed, transmitted to the
41 United States trustee, and served on the debtor, the
42 trustee, any committee appointed under the Code and any
43 other entity designated by the court at any time before
44 final approval of the disclosure statement or by an
45 earlier date as the court may fix. If a timely
46 objection to the disclosure statement is filed, the
47 court shall hold a hearing to consider final approval
48 before or combined with the hearing on confirmation of
49 the plan. If no timely objection is filed, conditional
50 approval of the disclosure statement shall become
51 final.

NOTE

1 This rule is designed to implement
2 §§ 1121(e) and 1125(f) that were added to the Code
3 by the Bankruptcy Reform Act of 1994.

4 Under § 1121(e)(1), a small business debtor
5 that elects to be considered a small business has

the exclusive right to file a plan within 100 days after the order for relief. The 100-day period may be reduced or increased by the court under § 1121(a)(3). Delaying the small business election during that period does not prejudice the rights of creditors or other parties in interest. Creditors and other parties in interest may be prejudiced unfairly, however, if the debtor is permitted to make the election after the expiration of the period in which only the debtor may file a plan.

If the debtor is a small business and has elected to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

Rule 3. Appeals to the District Court or Bankruptcy Appellate Panel

(a) APPEAL FROM BANKRUPTCY COURT ORDER INCREASING OR REDUCING TIME PERIOD FOR FILING PLAN. An appeal from an interlocutory order or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(2) shall be taken in the manner provided in Bankruptcy Rule 8002(a).

(b) ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT. A election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained [in a notice of appeal or cross-appeal or] in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

NOTE

Subdivision (a) implements 28 U.S.C. § 158(a) as amended by the Bankruptcy Reform Act of 1994. As amended, a party may -- without obtaining leave of the court -- appeal from an interlocutory order or decree of the bankruptcy court issued under § 1121(d) of the Code increasing or reducing the time periods referred to in § 1121.

Subdivision (b) is amended to provide the procedure for electing under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court.

Rule 4. Jury Trials

1 (a) DEMAND. A party may demand a trial by jury of any
2 issue triable of right by a jury by:
3 (1) serving the other parties with a written
4 demand -- which may be contained in a pleading -- no
5 later than 10 days after the last pleading directed to
6 the issue is served; and
7 (2) filing the demand in accordance with
8 Bankruptcy Rule 5005.
9 (b) REMOVED ACTION. If a claim or cause of action has
10 been removed from another court under 28 U.S.C. § 1452, a
11 demand for trial by jury previously made under the rules of
12 that court constitutes a demand for trial by jury under this
13 rule.
14 (c) SPECIFYING ISSUES. In its demand a party may
15 specify the issues that it wishes to have so tried;
16 otherwise, it is deemed to have demanded trial by jury for
17 all issues so triable. If the party has demanded trial by

18 jury for only some issues, any other party may -- within 10
19 days of being served the demand or within any lesser time
20 ordered by the court -- **serve a demand for jury trial of**
21 any other or all factual issues triable by jury.
22 (d) WAIVER; WITHDRAWAL. A party waives trial by jury
23 unless its demand is served and filed as required by this
24 rule. A jury demand may not be withdrawn without the
25 parties' consent.
26 (e) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY
27 JUDGE. A party may consent to have a jury trial conducted
28 by a bankruptcy judge under 28 U.S.C. § 157(e) only by
29 filing and serving the other parties with a written
30 statement of consent before the commencement of the trial or
31 by an earlier date as the court may fix. The statement of
32 consent may be contained in the demand for a jury trial, a
33 pleading, or a separate writing.
34 (f) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL
35 PROCEDURE. Rules 47-51 F.R.Civ.P. apply when a jury trial
36 is conducted.

NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

Present Rule

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserve to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(e) Admiralty and Maritime Claims. These rules shall not be construed to create a right to trial by jury of the issues in an admiralty or maritime claim within the meaning of Rule 9(h).

Re-Styled Rule

RULE 38. JURY TRIAL OF RIGHT

(a) **Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution — or as given by a federal statute — must be preserved to the parties inviolate.

(b) **Demand.** A party may demand a trial by jury on any issue triable of right by a jury by:

(1) serving the other parties with a written demand — which may be contained in a pleading — no later than 10 days after the last pleading directed to the issue is served; and

(2) filing the demand as required by Rule 5(d).

(c) **Specifying Issues.** In its demand a party may specify the issues that it wishes to have so tried; otherwise, it is deemed to have demanded trial by jury for all issues so triable. If the party has demanded trial by jury for only some issues, any other party may — within 10 days of being served the demand or within any lesser time ordered by the court — serve a demand for jury trial of any other or all factual issues triable by jury.

(d) **Waiver; Withdrawal.** A party waives trial by jury unless its demand is served and filed as required by this rule. A jury demand may not be withdrawn without the parties' consent.

(e) **Admiralty and Maritime Claims.** These rules do not create a right to a jury trial of issues in an admiralty or maritime claim within the meaning of Rule 9(h).

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991.)

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987.)

Rule 47. Selection of Jurors

(a) EXAMINATION OF JURORS. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) PEREMPTORY CHALLENGES. The court shall allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) EXCUSE. The court may for good cause excuse a juror from service during trial or deliberation.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1991, eff. Dec. 1, 1991.)

Rule 48. Number of Jurors—Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule

47(c). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

(As amended Apr. 30, 1991, eff. Dec. 1, 1991.)

Rule 49. Special Verdicts and Interrogatories

(a) SPECIAL VERDICTS. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) GENERAL VERDICT ACCOMPANIED BY ANSWER TO INTERROGATORIES. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987.)

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) JUDGMENT AS A MATTER OF LAW.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for

a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) RENEWAL OF MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION FOR NEW TRIAL. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) SAME: CONDITIONAL RULINGS ON GRANT OF MOTION FOR JUDGMENT AS A MATTER OF LAW.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment.

(d) SAME: DENIAL OF MOTION FOR JUDGMENT AS A MATTER OF LAW. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judg-

ment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993.)

Rule 51. Instructions to Jury: Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987.)

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) AMENDMENT. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

reference in the Part VII rules to adversary proceedings is to be read as a reference to a contested matter. See Rule 9002(1).

Rule 9015.

JURY TRIAL

(a) Trial by Jury. Issues triable of right by jury shall, if timely demanded, be by jury, unless the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury.

(b) Demand.

(1) Time; Form. Any party may demand a trial by jury of any issue triable by a jury by serving on the other parties a demand therefor in writing not later than 10 days after service of the last pleading directed to such issue. The demand may be indorsed on a pleading of the party. When a jury trial is demanded it shall be designated by the clerk in the docket as a jury matter.

(2) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury of all the issues so triable. If he has demanded trial by jury of only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues.

(3) Determination by Court. On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition shall be granted.

(c) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5005 constitutes a waiver of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(d) Trial by the Court. Issues not demanded for trial by jury shall be tried by the court. Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.

(e) Advisory Jury and Trial by Consent. In all actions not triable of right by jury the court on motion or on its own initiative may try and issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(f) Applicability of Certain of the Federal Rules of Civil Procedure. Rules 47–51 of F.R.Civ.P. apply when a jury trial is conducted.

Advisory Committee Note

Subdivisions (a)-(f) of this rule are adaptations of subdivisions of Rules 38 and 39 F.R.Civ.P.

Whether a party is entitled to a jury trial is governed by 28 U.S.C. § 1480(a). Subsection (b) of § 1480 empowers the court to dispense with a jury trial on issues presented by a contested involuntary petition, even when a jury trial is properly demanded. The purpose of § 1480(b) is to insure that contested petitions are decided promptly. The court may under § 1480(b) and subdivision (b)(3) act sua sponte and direct that a contested petition be tried by the court instead of to a jury.

Rule 9027(i) governs the procedure for requesting trial by jury in a matter removed to a bankruptcy court.

Rule 9016.

SUBPOENA

Rule 45 F.R.Civ.P. applies in bankruptcy cases under the Code.

Advisory Committee Note

Although Rule 7004(d) authorizes nationwide service of process,

39 ~~initiative may try any issue with an advisory jury or, except in~~
40 ~~actions against the United States when a statute of the United~~
41 ~~States provides for trial without a jury, the court, with the consent~~
42 ~~of both parties, may order a trial with a jury whose verdict has the~~
43 ~~same effect as if trial by jury had been a matter of right.~~
44 ~~(f) APPLICABILITY OF CERTAIN OF THE FEDERAL RULES~~
45 ~~OF CIVIL PROCEDURE. Rules 47-51 of F. R. Civ. P. apply when a~~
46 ~~jury trial is conducted.~~

Rule 9015. [Abrogated]

COMMITTEE NOTE

Former section 1480 of title 28 preserved a right to trial by jury in any case or proceeding under title 11 in which jury trial was provided by statute. Rule 9015 provided the procedure for jury trials in bankruptcy courts. Section 1480 was repealed. Section 1411 added by the 1984 amendments affords a jury trial only for personal injury or wrongful death claims, which 28 U.S.C. § 157(b)(5) requires be tried in the district court. Nevertheless, Rule 9015 has been cited as conferring a right to jury trial in other matters before bankruptcy judges. In light of the clear mandate of 28 U.S.C. § 2075 that the "rules shall not abridge, enlarge, or modify any substantive right," Rule 9015 is abrogated. In the event the courts of appeals or the Supreme Court define a right to jury trial in any bankruptcy matters, a local rule in substantially the form of Rule 9015 can be adopted pending amendment of these rules.

Rule 9016. Subpoena

1 Rule 45 F. R. Civ. P. applies in ~~bankruptcy~~ cases under the
2 Code.

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

To amend title 11 of the United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Reform Act of 1994".

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

Sec. 1. Short title.

TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION

Sec. 101. Expedited hearing on automatic stay.
Sec. 102. Jurisdiction to review interlocutory orders increasing or reducing certain time periods for filing plan.
Sec. 103. Expedited procedure for reaffirmation of debts.
Sec. 104. Powers of bankruptcy courts.
Sec. 105. Participation by bankruptcy administrator at meetings of creditors and equity security holders.
Sec. 106. Definition relating to eligibility to serve on chapter 11 committees.
Sec. 107. Increased incentive compensation for trustees.
Sec. 108. Dollar adjustments.
Sec. 109. Premerger notification.
Sec. 110. Allowance of creditor committee expenses.
Sec. 111. Supplemental injunctions.
Sec. 112. Authority of bankruptcy judges to conduct jury trials in civil proceedings.
Sec. 113. Sovereign immunity.
Sec. 114. Service of process in bankruptcy proceedings on an insured depository institution.
Sec. 115. Meetings of creditors and equity security holders.
Sec. 116. Tax assessment.
Sec. 117. Additional trustee compensation.

TITLE II—COMMERCIAL BANKRUPTCY ISSUES

Sec. 201. Aircraft equipment and vessels; rolling stock equipment.
Sec. 202. Limitation on liability of non-insider transferee for avoided transfer.
Sec. 203. Perfection of purchase-money security interest.
Sec. 204. Continued perfection.
Sec. 205. Rejection of unexpired leases of real property or timeshare interests.
Sec. 206. Contents of plan.
Sec. 207. Priority for independent sales representatives.
Sec. 208. Exclusion from the estate of interests in liquid and gaseous hydrocarbons transferred by the debtor pursuant to production payment agreements.
Sec. 209. Seller's right to reclaim goods.
Sec. 210. Investment of money of the estate.
Sec. 211. Election of trustee under chapter 11.
Sec. 212. Rights of partnership trustee against general partners.
Sec. 213. Impairment of claims and interests.
Sec. 214. Protection of security interest in post-petition rents and lodging payments.
Sec. 215. Amendment to definition of swap agreement.
Sec. 216. Limitation on avoiding powers.
Sec. 217. Small businesses.

Sec. 218. Single asset real estate.
Sec. 219. Leases of personal property.
Sec. 220. Exemption for small business investment companies.
Sec. 221. Payment of taxes with borrowed funds.
Sec. 222. Return of goods.
Sec. 223. Proceeds of money order agreements.
Sec. 224. Trustee duties; professional fees.
Sec. 225. Notices to creditors.

TITLE III—CONSUMER BANKRUPTCY ISSUES

Sec. 301. Period for curing default relating to principal residence.
Sec. 302. Nondischargeability of fine under chapter 13.
Sec. 303. Impairment of exemptions.
Sec. 304. Protection of child support and alimony.
Sec. 305. Interest on interest.
Sec. 306. Exception to discharge.
Sec. 307. Payments under chapter 13.
Sec. 308. Bankruptcy petition preparers.
Sec. 309. Fairness to condominium and cooperative owners.
Sec. 310. Nonavoidability of fixing of lien on tools and implements of trade, animals, and crops.
Sec. 311. Conversion of case under chapter 13.
Sec. 312. Bankruptcy fraud.
Sec. 313. Protection against discriminatory treatment of applications for student loans.

TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

Sec. 401. Exception from automatic stay for post-petition property taxes.
Sec. 402. Municipal bankruptcy.

TITLE V—TECHNICAL CORRECTIONS

Sec. 501. Amendments to bankruptcy definitions, necessitated by enactment of Public Law 101–647.
Sec. 502. Title 28 of the United States Code.

TITLE VI—BANKRUPTCY REVIEW COMMISSION

Sec. 601. Short title.
Sec. 602. Establishment.
Sec. 603. Duties of the Commission.
Sec. 604. Membership.
Sec. 605. Compensation of the Commission.
Sec. 606. Staff of Commission; experts and consultants.
Sec. 607. Powers of the Commission.
Sec. 608. Report.
Sec. 609. Termination.
Sec. 610. Authorization of appropriations.

TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

Sec. 701. Severability.
Sec. 702. Effective date; application of amendments.

TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION

SEC. 101. EXPEDITED HEARING ON AUTOMATIC STAY.

The last sentence of section 362(e) of title 11, United States Code, is amended—

(1) by striking "commenced" and inserting "concluded", and

(2) by inserting before the period at the end the following: ", unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances".

SEC. 102. JURISDICTION TO REVIEW INTERLOCUTORY ORDERS INCREASING OR REDUCING CERTAIN TIME PERIODS FOR FILING PLAN.

Section 158(a) of title 28, United States Code, is amended by striking "from" the first place it appears and all that follows through "decrees,", and inserting the following:

"(1) from final judgments, orders, and decrees;

"(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

"(3) with leave of the court, from other interlocutory orders and decrees;".

SEC. 103. EXPEDITED PROCEDURE FOR REAFFIRMATION OF DEBTS.

(a) REAFFIRMATION.—Section 524(c) of title 11, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting "(A)" after "(2)",

(B) by adding "and" at the end, and

(C) by inserting after subparagraph (A), as so designated, the following:

"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;", and

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A) by striking "such agreement" the last place it appears,

(B) in subparagraph (A)—

(i) by inserting "such agreement" after "(A)", and

(ii) by striking "and" at the end,

(C) in subparagraph (B)—

(i) by inserting "such agreement" after "(B)", and

(ii) by adding "and" at the end, and

(3) by adding at the end the following:

"(C) the attorney fully advised the debtor of the legal effect and consequences of—

"(i) an agreement of the kind specified in this subsection; and

"(ii) any default under such an agreement;".

(b) EFFECT OF DISCHARGE.—The third sentence of section 524(d) of title 11, United States Code, is amended in the matter preceding paragraph (1) by inserting "and was not represented by an attorney during the course of negotiating such agreement" after "this section".

SEC. 104. POWERS OF BANKRUPTCY COURTS.

(a) STATUS CONFERENCES.—Section 105 of title 11, United States Code, is amended by adding at the end the following:

"(d) The court, on its own motion or on the request of a party in interest, may—

"(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

"(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,

issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

"(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

"(B) in a case under chapter 11 of this title—

"(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

"(iii) sets the date by which a party in interest other than a debtor may file a plan;

"(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

"(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

"(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.".

(b) ABSTENTION.—Section 1334 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e), and

(2) in the second sentence of subsection (c)(2)—

(A) by inserting "(other than a decision not to abstain in a proceeding described in subsection (c)(2))" after "subsection", and

(B) by striking "Any" and inserting the following:

"(d) Any".

(c) ESTABLISHMENT, OPERATION, AND TERMINATION OF BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158(b) of title 28, United States Code, is amended—

(1) by striking paragraphs (3) and (4),

(2) by redesignating paragraph (2) as paragraph (4),

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

"(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

"(A) there are insufficient judicial resources available in the circuit; or

"(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

"(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

"(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the

1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

"(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

"(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

"(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.", and

(4) by inserting after paragraph (4), as so redesignated, the following:

"(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

"(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.".

(d) APPEALS TO BE HEARD BY BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c) by striking "(c)" and inserting "(2)", and

(2) by inserting after subsection (b) the following:

"(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

"(A) the appellant elects at the time of filing the appeal; or

"(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.".

(e) RULES OF PROCEDURE AND EVIDENCE; METHOD OF PRESCRIBING.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2) by striking "section 2072" and inserting "sections 2072 and 2075", and

(2) in subsections (d) and (e) by inserting "or 2075" after "2072" each place it appears.

(f) EFFECTIVE DATE OF BANKRUPTCY RULES.—The third undesignated paragraph of section 2075 of title 28, United States Code, is amended to read as follows:

"The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.".

SEC. 105. PARTICIPATION BY BANKRUPTCY ADMINISTRATOR AT MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note; Public Law 99–554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101–650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

SEC. 106. DEFINITION RELATING TO ELIGIBILITY TO SERVE ON CHAPTER 11 COMMITTEES.

Section 101(41) of title 11, United States Code, is amended to read as follows:

"(41) 'person' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

"(A) acquires an asset from a person—

"(i) as a result of the operation of a loan guarantee agreement; or

"(ii) as receiver or liquidating agent of a person;

"(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

"(C) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;".

SEC. 107. INCREASED INCENTIVE COMPENSATION FOR TRUSTEES.

Section 326(a) of title 11, United States Code, is amended by striking "fifteen" and all that follows through "$3,000" the last place it appears, and inserting the following:

"25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000".

SEC. 108. DOLLAR ADJUSTMENTS.

(a) WHO MAY BE A DEBTOR UNDER CHAPTER 13.—Section 109(e) of title 11, United States Code, is amended—

(1) by striking "$100,000" each place it appears and inserting "$250,000", and

(2) by striking "$350,000" each place it appears and inserting "$750,000".

(b) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000", and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

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

(1) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000",

(2) in paragraph (5) by striking "$2,000" and inserting "$4,000", and

(3) in paragraph (6) by striking "$900" and inserting "$1,800".

(d) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000",

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400",

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400", and

(B) by striking "$4,000" and inserting "$8,000",

(4) in paragraph (4) by striking "$500" and inserting "$1,000",

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800", and

(B) by striking "$3,750" and inserting "$7,500",

(6) in paragraph (6) by striking "$750" and inserting "$1,500",

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000", and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(e) FUTURE ADJUSTMENTS.—Section 104 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The", and

(2) by adding at the end the following:

"(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

"(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

"(B) to round to the nearest $25 the dollar amount that represents such change.

"(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) of this title.

"(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.".

SEC. 109. PREMERGER NOTIFICATION.

Subparagraphs (A) and (B) of section 363(b)(2) of title 11, United States Code, are amended to read as follows:

"(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended—

"(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

"(ii) pursuant to subsection (g)(2) of such section; or

"(iii) by the court after notice and a hearing.".

SEC. 110. ALLOWANCE OF CREDITOR COMMITTEE EXPENSES.

Section 503(b)(3) of title 11, United States Code, is amended—

(1) in subparagraph (D) by striking "or" at the end,

(2) in subparagraph (E) by inserting "or" at the end, and

(3) by adding at the end the following:

"(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;".

SEC. 111. SUPPLEMENTAL INJUNCTIONS.

(a) SUPPLEMENTAL INJUNCTIONS.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

"(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

"(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

"(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

"(B) The requirements of this subparagraph are that—

"(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

"(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

"(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

"(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

"(aa) each such debtor;

"(bb) the parent corporation of each such debtor; or

"(cc) a subsidiary of each such debtor that is also a debtor; and

"(IV) is to use its assets or income to pay claims and demands; and

"(ii) subject to subsection (h), the court determines that—

"(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

"(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

"(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

"(IV) as part of the process of seeking confirmation of such plan—

"(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

"(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

"(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

"(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorga-

nization case, then after the time for appeal of the order that issues or affirms the plan—

"(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

"(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

"(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

"(B) Subparagraph (A) shall not be construed to—

"(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

"(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

"(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

"(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

"(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

"(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

"(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

"(III) the third party's provision of insurance to the debtor or a related party; or

"(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

"(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

"(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

"(iii) As used in this subparagraph, the term 'related party' means—

"(I) a past or present affiliate of the debtor;

"(II) a predecessor in interest of the debtor; or

"(III) any entity that owned a financial interest in—

"(aa) the debtor;

"(bb) a past or present affiliate of the debtor; or

"(cc) a predecessor in interest of the debtor.

"(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

"(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

"(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

"(5) In this subsection, the term 'demand' means a demand for payment, present or future, that—

"(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

"(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

"(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

"(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

"(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

"(h) APPLICATION TO EXISTING INJUNCTIONS.—For purposes of subsection (g)—

"(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

"(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

"(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

"(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

"(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

"(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

"(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.".

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a), or in the amendments made by subsection (a), shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization.

SEC. 112. AUTHORITY OF BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS IN CIVIL PROCEEDINGS.

Section 157 of title 28, United States Code, is amended by adding at the end the following:

"(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.".

SEC. 113. SOVEREIGN IMMUNITY.

Section 106 of title 11, United States Code, is amended to read as follows:

"§ 106. Waiver of sovereign immunity

"(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

"(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

"(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

"(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment

awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

"(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

"(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

"(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

"(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.".

SEC. 114. SERVICE OF PROCESS IN BANKRUPTCY PROCEEDINGS ON AN INSURED DEPOSITORY INSTITUTION.

Rule 7004 of the Federal Rules of Bankruptcy Procedure is amended—

(1) in subdivision (b) by striking "In addition" and inserting "Except as provided in subdivision (h), in addition", and

(2) by adding at the end the following:

"(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION.—Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

"(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

"(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

"(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.".

SEC. 115. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

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

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title; and

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.".

SEC. 116. TAX ASSESSMENT.

Section 362(b)(9) of title 11, United States Code, is amended to read as follows:

"(9) under subsection (a), of—

"(A) an audit by a governmental unit to determine tax liability;

"(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

"(C) a demand for tax returns; or

"(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).".

SEC. 117. ADDITIONAL TRUSTEE COMPENSATION.

Section 330(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)", and

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

"(2) The Judicial Conference of the United States—

"(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

"(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay $15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such $15 shall be paid in addition to the amount paid under paragraph (1).".

TITLE II—COMMERCIAL BANKRUPTCY ISSUES

SEC. 201. AIRCRAFT EQUIPMENT AND VESSELS; ROLLING STOCK EQUIPMENT.

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order

under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 40102 of title 49) holding an air carrier operating certificate issued by the Secretary of Transportation pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

"(B) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of

the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.

"(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.".

SEC. 202. LIMITATION ON LIABILITY OF NON-INSIDER TRANSFEREE FOR AVOIDED TRANSFER.

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following:

"(c) If a transfer made between 90 days and one year before the filing of the petition—

"(1) is avoided under section 547(b) of this title; and

"(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.".

SEC. 203. PERFECTION OF PURCHASE-MONEY SECURITY INTEREST.

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

(1) in subsection (c)(3)(B) by striking "10" and inserting "20", and

(2) in subsection (e)(2)(A) by inserting ", except as provided in subsection (c)(3)(B)" before the semicolon at the end.

SEC. 204. CONTINUED PERFECTION.

(a) AUTOMATIC STAY.—Section 362(b)(3) of title 11, United States Code, is amended by inserting ", or to maintain or continue the perfection of," after "to perfect".

(b) LIMITATIONS ON AVOIDING POWERS.—Section 546(b) of title 11, United States Code, is amended to read as follows:

"(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—

"(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

"(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

"(2) If—

"(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

"(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.".

SEC. 205. REJECTION OF UNEXPIRED LEASES OF REAL PROPERTY OR TIMESHARE INTERESTS.

(a) AMENDMENT TO SECTION 365.—Section 365(h) of title 11, United States Code, is amended to read as follows:

"(h)(1)(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and—

"(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

"(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

"(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such

lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

"(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

"(D) In this paragraph, 'lessee' includes any successor, assign, or mortgagee permitted under the terms of such lease.

"(2)(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and—

"(i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

"(ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

"(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.".

(b) TECHNICAL AMENDMENT.—Section 553(b)(1) of title 11, United States Code, is amended by striking "365(h)(2)" and inserting "365(h)".

SEC. 206. CONTENTS OF PLAN.

Section 1123(b) of title 11, United States Code, is amended—

(1) in paragraph (4) by striking "and" at the end,

(2) by redesignating paragraph (5) as paragraph (6), and

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

"(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and".

SEC. 207. PRIORITY FOR INDEPENDENT SALES REPRESENTATIVES.

Section 507(a)(3) of title 11, United States Code, is amended to read as follows:

"(3) Third, allowed unsecured claims, but only to the extent of $4,000 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

"(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

"(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor;".

SEC. 208. EXCLUSION FROM THE ESTATE OF INTERESTS IN LIQUID AND GASEOUS HYDROCARBONS TRANSFERRED BY THE DEBTOR PURSUANT TO PRODUCTION PAYMENT AGREEMENTS.

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

(1) by inserting after paragraph (42) the following:

"(42A) 'production payment' means a term overriding royalty satisfiable in cash or in kind—

"(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

"(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs;", and

(2) by inserting after the first paragraph (56) the following:

"(56A) 'term overriding royalty' means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized;".

(b) PROPERTY OF THE ESTATE.—Section 541(b)(4) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking "(A)" and inserting "(A)(i)",

(2) in subparagraph (B)—

(A) by striking "(B)" and inserting "(ii)",

(B) by striking "such interest" and inserting "the interest referred to in clause (i)", and

(C) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

"(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 542 of this title;".

SEC. 209. SELLER'S RIGHT TO RECLAIM GOODS.

Section 546(c)(1) of title 11, United States Code, is amended to read as follows:

"(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—

"(A) before 10 days after receipt of such goods by the debtor; or

"(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor; and".

SEC. 210. INVESTMENT OF MONEY OF THE ESTATE.

Section 345(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

"unless the court for cause orders otherwise.".

SEC. 211. ELECTION OF TRUSTEE UNDER CHAPTER 11.

(a) ELECTION AUTHORIZED.—Section 1104 of title 11 of the United States Code is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) by inserting after subsection (a) the following:

"(b) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.".

(b) CONFORMING AMENDMENT.—Section 1106(b) of title 11, United States Code, is amended by striking "1104(c)" and inserting "1104(d)".

SEC. 212. RIGHTS OF PARTNERSHIP TRUSTEE AGAINST GENERAL PARTNERS.

Section 723(a) of title 11, United States Code, is amended by striking "for the full amount of the deficiency" and inserting "to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency".

SEC. 213. IMPAIRMENT OF CLAIMS AND INTERESTS.

(a) OBJECTION TO CLAIMS FILED UNTIMELY.—Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (7) by striking "or" at the end,

(2) in paragraph (8) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental

unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.".

(b) TARDILY FILED PRIORITY CLAIMS.—Section 726(a)(1) of title 11, United States Code, is amended by adding before the semicolon the following: ", proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commences distribution under this section".

(c) FILING OF REQUEST FOR ADMINISTRATIVE EXPENSES.—Section 503(a) of title 11, United States Code, is amended—

(1) by inserting "timely" after "may", and

(2) by inserting ", or may tardily file such request if permitted by the court for cause" before the period at the end.

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

(1) in paragraph (1) by inserting "or" at the end,

(2) in paragraph (2) by striking "; or" at the end and inserting a period, and

(3) by striking paragraph (3).

SEC. 214. PROTECTION OF SECURITY INTEREST IN POST-PETITION RENTS AND LODGING PAYMENTS.

(a) POSTPETITION EFFECT OF SECURITY INTEREST.—Section 552(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "rents," each place it appears, and

(3) by adding at the end the following:

"(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.".

(b) USE SALE, OR LEASE OF PROPERTY.—Section 363(a) of title 11, United States Code, is amended by inserting: "and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties" after "property".

SEC. 215. AMENDMENT TO DEFINITION OF SWAP AGREEMENT.

Subparagraph (A) of the first paragraph (55) of section 101 of title 11, United States Code, is amended by inserting "spot foreign exchange agreement," after "forward foreign exchange agreement,".

SEC. 216. LIMITATION ON AVOIDING POWERS.

Section 546(a)(1) of title 11, United States Code, is amended to read as follows:

"(1) the later of—

"(A) 2 years after the entry of the order for relief; or

"(B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or".

SEC. 217. SMALL BUSINESSES.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (51) the following:

"(51C) 'small business' means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed $2,000,000;".

(b) CREDITORS' COMMITTEES.—Section 1102(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "As" and inserting "Except as provided in paragraph (3), as"; and

(2) by adding at the end the following:

"(3) On request of a party in interest in a case in which the debtor is a small business and for cause, the court may order that a committee of creditors not be appointed.".

(c) CONVERSION OR DISMISSAL.—Section 1112(b) of title 11, United States Code, is amended by inserting "or bankruptcy administrator" after "United States trustee".

(d) WHO MAY FILE A PLAN.—Section 1121 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a case in which the debtor is a small business and elects to be considered a small business—

"(1) only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;

"(2) all plans shall be filed within 160 days after the date of the order for relief; and

"(3) on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—

"(A) reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and

"(B) increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable.".

(e) POSTPETITION DISCLOSURE.—Section 1125 of title 11, United States Code, is amended by adding at the end the following:

"(f) Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

"(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as 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 at least 10 days

prior to the date of the hearing on confirmation of the plan; and

"(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.".

SEC. 218. SINGLE ASSET REAL ESTATE.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (51) the following:

"(51B) 'single asset real estate' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000;".

(b) AUTOMATIC STAY.—Section 362(d) 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) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)—

"(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

"(B) the debtor has commenced monthly payments 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 a current fair market rate on the value of the creditor's interest in the real estate.".

SEC. 219. LEASES OF PERSONAL PROPERTY.

(a) ASSUMPTION.—Section 365(b)(2) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking "or" at the end,

(2) in subparagraph (C) by striking the period and inserting "; or",

(3) by adding at the end the following:

"(D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.".

(b) PERFORMANCE.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following:

"(10) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household pur-

poses), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.".

(c) LIMITATION.—Section 363(e) of title 11, United States Code is amended by adding at the end the following:

"This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).".

SEC. 220. EXEMPTION FOR SMALL BUSINESS INVESTMENT COMPANIES.

Section 109(b)(2) of title 11, United States Code, is amended by inserting after "homestead association," the following: "a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958,".

SEC. 221. PAYMENT OF TAXES WITH BORROWED FUNDS.

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

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

(2) by adding at the end the following:

"(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);".

SEC. 222. RETURN OF GOODS.

(a) LIMITATION ON AVOIDING POWERS.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

(b) SETOFF.—Section 553(b)(1) is amended by inserting "546(h)," after "365(h),".

SEC. 223. PROCEEDS OF MONEY ORDER AGREEMENTS.

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

(1) in paragraph (3) by striking "or" at the end and inserting a semicolon,

(2) in paragraph (4) by striking the period at the end and inserting "; or", and

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

"(5) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

"(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

"(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.".

SEC. 224. TRUSTEE DUTIES; PROFESSIONAL FEES.

(a) TRUSTEE'S DUTIES.—Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

"(ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.".

(b) PROFESSIONAL FEES.—Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

"(3)(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(A) the time spent on such services;

"(B) the rates charged for such services;

"(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

"(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

"(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

"(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

"(i) unnecessary duplication of services; or

"(ii) services that were not—

"(I) reasonably likely to benefit the debtor's estate; or

"(II) necessary to the administration of the case.

"(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

"(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

"(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.".

SEC. 225. NOTICES TO CREDITORS.

Section 342 of title 11, United States Code, is amended by adding at the end the following:

"(c) If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice.".

TITLE III—CONSUMER BANKRUPTCY ISSUES

SEC. 301. PERIOD FOR CURING DEFAULT RELATING TO PRINCIPAL RESIDENCE.

Section 1322 of title 11, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d), and

(2) by inserting after subsection (b) the following:

"(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

"(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

"(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.".

SEC. 302. NONDISCHARGEABILITY OF FINE UNDER CHAPTER 13.

Section 1328(a)(3) of title 11, United States Code, is amended by inserting ", or a criminal fine," after "restitution".

SEC. 303. IMPAIRMENT OF EXEMPTIONS.

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

(1) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and

(B) by striking "(2)" and inserting "(B)",

(2) by redesignating paragraph (1) as subparagraph (A),

(3) by inserting "(1)" before "Notwithstanding", and

(4) by adding at the end the following:

"(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

"(i) the lien;

"(ii) all other liens on the property; and

"(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

"(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

"(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.".

SEC. 304. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (12) the following:

"(12A) 'debt for child support' means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;".

(b) RELIEF FROM AUTOMATIC STAY.—Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;".

(c) PRIORITY OF CLAIMS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

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

"(7) Seventh, 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 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—

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

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

(d) PROTECTION OF LIENS.—Section 522(f)(1)(A) of title 11, United States Code, as amended by section 303, is amended by inserting after "lien" the following:

", other than a judicial lien that secures a debt—

"(i) 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 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; and

"(ii) to the extent that such debt—

"(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

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

(e) EXCEPTION TO DISCHARGE.—Section 523 of title 11, United States Code, as amended by section 221, is amended by adding at the end the following:

"(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

"(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

"(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;", and

(2) in subsection (c)(1) by striking "or (6)" each place it appears and inserting "(6), or (15)".

(f) PROTECTION AGAINST TRUSTEE AVOIDANCE.—Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking "or" at the end,

(2) by redesignating paragraph (7) as paragraph (8), and

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

"(7) to the extent such transfer was a bona fide payment of a debt 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 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—

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

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or".

(g) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(h) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(2) in section 503(b)(1)(B)(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(3) in section 523(a)(1)(A) by striking "507(a)(7)" and inserting "507(a)(8)",

(4) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(5) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)",

(6) in section 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

SEC. 305. INTEREST ON INTEREST.

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

"(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.".

(b) CHAPTER 12.—Section 1222 of title 11, United States Code, is amended by adding at the end the following:

"(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.".

(c) CHAPTER 13.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.".

SEC. 306. EXCEPTION TO DISCHARGE.

Section 523(a)(2)(C) of title 11, United States Code, is amended—

(1) by striking "$500" and inserting "$1,000",
(2) by striking "forty" and inserting "60", and
(3) by striking "twenty" and inserting "60".

SEC. 307. PAYMENTS UNDER CHAPTER 13.

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

SEC. 308. BANKRUPTCY PETITION PREPARERS.

(a) AMENDMENT OF CHAPTER 1.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

"(a) In this section—

"(1) 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

"(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

"(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

"(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).

"(f)(1) A bankruptcy petition preparer shall not use the word 'legal' or any similar term in any advertisements, or advertise

under any category that includes the word 'legal' or any similar term.

"(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).

"(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

"(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).

"(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

"(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

"(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

"(4) A bankruptcy petition preparer shall be fined not more than $500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

"(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

"(A) the debtor's actual damages;

"(B) the greater of—

"(i) $2,000; or

"(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

"(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

"(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of $1,000 plus reasonable attorneys' fees and costs incurred.

"(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

"(2)(A) In an action under paragraph (1), if the court finds that—

"(i) a bankruptcy petition preparer has—

"(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

"(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

"(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

"(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

"(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

"(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's fees and costs of the action, to be paid by the bankruptcy petition preparer.

"(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.".

(b) The chapter analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following new item:

"110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.".

SEC. 309. FAIRNESS TO CONDOMINIUM AND COOPERATIVE OWNERS.

Section 523(a) of title 11, United States Code, as amended by sections 221 and 304, is amended by adding at the end the following:

"(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a dwelling unit that has condominium ownership or in a share of a cooperative housing corporation, but only if such fee or assessment is payable for a period during which—

"(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

"(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.".

SEC. 310. NONAVOIDABILITY OF FIXING OF LIEN ON TOOLS AND IMPLEMENTS OF TRADE, ANIMALS, AND CROPS.

Section 522(f) of title 11, United States Code, as amended by sections 303 and 304, is amended—

(1) in paragraph (1) by inserting "but subject to paragraph (3)" after "waiver of exemptions", and

(2) by adding at the end the following:

"(3) In a case in which State law that is applicable to the debtor—

"(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

"(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $5,000.".

SEC. 311. CONVERSION OF CASE UNDER CHAPTER 13.

Section 348 of title 11, United States Code, is amended by adding at the end the following:

"(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

"(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; and

"(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

"(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.".

SEC. 312. BANKRUPTCY FRAUD.

(a) IN GENERAL.—

(1) OFFENSES.—Chapter 9 of title 18, United States Code, is amended—

(A) by amending sections 152, 153, and 154 to read as follows:

"§ 152. Concealment of assets; false oaths and claims; bribery

"A person who—

"(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

"(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

"(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

"(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such

claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

"(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

"(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

"(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

"(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

"(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined not more than $5,000, imprisoned not more than 5 years, or both.

"§ 153. Embezzlement against estate

"(a) OFFENSE.—A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined not more than $5,000, imprisoned not more than 5 years, or both.

"(b) PERSON TO WHOM SECTION APPLIES.—A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

"§ 154. Adverse interest and conduct of officers

"A person who, being a custodian, trustee, marshal, or other officer of the court—

"(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

"(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

"(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the docu-

ments and accounts relating to the affairs of an estate in the person's charge,

shall be fined not more than $5,000 and shall forfeit the person's office, which shall thereupon become vacant."; and

(B) by adding at the end the following:

"§ 156. Knowing disregard of bankruptcy law or rule

"(a) DEFINITIONS.—In this section—

"'bankruptcy petition preparer' means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing.

"'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) OFFENSE.—If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

"§ 157. Bankruptcy fraud

"A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

"(1) files a petition under title 11;

"(2) files a document in a proceeding under title 11; or

"(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.".

(2) TECHNICAL AMENDMENTS.—The chapter analysis for chapter 9 of title 18, United States Code, is amended—

(A) by amending the item relating to section 153 to read as follows:

"Sec. 153. Embezzlement against estate.";

and

(B) by adding at the end the following new items:

"Sec. 156. Knowing disregard of bankruptcy law or rule.
"Sec. 157. Bankruptcy fraud.".

(b) RICO.—Section 1961(1)(D) of title 18, United States Code, is amended by inserting "(except a case under section 157 of that title)" after "title 11".

SEC. 313. PROTECTION AGAINST DISCRIMINATORY TREATMENT OF APPLICATIONS FOR STUDENT LOANS.

Section 525 of title 11, United States Code, is amended by adding at the end the following:

"(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title

or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

"(2) In this section, 'student loan program' means the program operated under part B, D, or E of title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.".

TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

SEC. 401. EXCEPTION FROM AUTOMATIC STAY FOR POST-PETITION PROPERTY TAXES.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (16) the following:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.".

SEC. 402. MUNICIPAL BANKRUPTCY.

Section 109(c)(2) of title 11, United States Code, is amended by striking "generally authorized" and inserting "specifically authorized, in its capacity as a municipality or by name,".

TITLE V—TECHNICAL CORRECTIONS

SEC. 501. AMENDMENTS TO BANKRUPTCY DEFINITIONS, NECESSITATED BY ENACTMENT OF PUBLIC LAW 101-647.

(a) ALPHABETIZING AND REDESIGNATING DEFINITIONS.—Section 101 of title 11 of the United States Code, as amended by sections 208, 217, 218, and 304, is amended—

(1) by redesignating paragraph (3) as paragraph (21B) and transferring such paragraph so as to insert it after paragraph (21A),

(2) by redesignating paragraph (39) as paragraph (51A) and transferring such paragraph so as to insert it after paragraph (51),

(3) by redesignating paragraphs (54) through (57), as so redesignated by section 2522(e) of Public Law 101-647, as paragraphs (53A) through (53D), respectively,

(4) by redesignating paragraph (56) as in effect immediately before the enactment of Public Law 101-647, as paragraph (35A) and transferring such paragraph so as to insert it after paragraph (35), and

(5) by redesignating paragraph (57), as in effect immediately before the enactment of Public Law 101-647, as paragraph (39) and transferring such paragraph so as to insert it after paragraph (38).

(b) CONFORMING AND RELATED AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE, BASED ON REDESIGNATED DEFINITIONS.—(1) Section 101 of title 11 of the United States Code, as amended by subsection (a), is amended—

(A) in paragraph (6) by striking "section 761(9)" and inserting "section 761",

(B) in paragraph (22) by striking "section 741(7)" and inserting "section 741",

(C) in paragraph (35)(B) by striking "paragraphs (3)" and inserting "paragraphs (21B)",

(D) in paragraph (49)(B)(ii) by striking "section 761(13)" and inserting "section 761", and

(E) in paragraph (53A)(A), as so redesignated, by striking "section 741(2)" and inserting "section 741".

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

(A) in paragraph (6)—

(i) by striking "section 761(4)" and inserting "section 761",

(ii) by striking "section 741(7)" and inserting "section 741",

(iii) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(iv) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in paragraph (7)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(3) Section 507(a)(5) of title 11, United States Code, is amended—

(A) by striking "section 557(b)(1)" and inserting "section 557(b)", and

(B) by striking "section 557(b)(2)" and inserting "section 557(b)".

(4) Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subsection (f)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(5) Section 548(d)(2) of title 11, United States Code, is amended—

(A) in subparagraph (B)—

(i) by striking "section 101(34), 741(5) or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subparagraph (C)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(6) Section 555 of title 11, United States Code, is amended by striking "section 741(7)" and inserting "section 741 of this title".

(7) Section 556 of title 11, United States Code, is amended by striking "section 761(4)" and inserting "section 761 of this title".

(c) CONFORMING AMENDMENTS TO OTHER LAWS BASED ON REDESIGNATED DEFINITIONS.—(1) Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 101(24)" and inserting "section 101",

(C) in clause (iv)(I) by striking "section 101(41)" and inserting "section 101", and

(D) in clause (v) by striking "section 101(50)" and inserting "section 101".

(2) Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 761(4)" and inserting "section 761",

(C) in clause (iv) by striking "section 101(24)" and inserting "section 101",

(D) in clause (v)(I) by striking "section 101(41)" and inserting "section 101", and

(E) in clause (viii) by striking "section 101(50)" and inserting "section 101".

(d) OTHER TECHNICAL AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 101—

(A) in paragraph (33)—

(i) in subparagraph (A) by striking "(12 U.S.C. 1813(u))", and

(ii) in subparagraph (B) by striking "(12 U.S.C. 1786(r))",

(B) in paragraph (34) by striking "(12 U.S.C. 1752(7))",

(C) in paragraph (35)(A) by striking "(12 U.S.C. 1813(c)(2))",

(D) in paragraph (48)—

(i) by striking "(15 U.S.C. 78q-1)", and

(ii) by striking "(15 U.S.C. 78c(12))",

(E) in paragraph (49)—

(i) in subparagraph (A)(xii)—

(I) by striking "(15 U.S.C. 77a et seq.)", and

(II) by striking "(15 U.S.C. 77c(b))", and

(ii) in subparagraph (B)(vi) by striking "(15 U.S.C. 77c(b))", and

(F) in paragraph (53D), as so redesignated by subsection (a), by striking the period at the end and inserting a semicolon,

(2) in section 109(b)(2) by striking "(12 U.S.C. 1813(h))",

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302",

(4) in section 346—

(A) in subsection (a) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986", and

(B) in subsection (g)(1)(C) by striking "Internal Revenue Code of 1954 (26 U.S.C. 371)" and inserting "Internal Revenue Code of 1986",

(5) in section 348—

(A) in subsection (b) by striking "1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "1201(a), 1221, 1228(a), 1301(a), and 1305(a)", and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(6) in section 349(a) by striking "109(f)" and inserting "109(g)",

(7) in section 362—

(A) in subsection (a) by striking "(15 U.S.C. 78eee(a)(3))", and

(B) in subsection (b)—

(i) by striking "(15 U.S.C. 78eee(a)(3))",

(ii) in paragraph (10) by striking "or" at the end,

(iii) in paragraph (12)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" and inserting "section 31325 of title 46", and

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(iv) in paragraph (13)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46",

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)", and

(III) by striking "or" at the end,

(v) in paragraph (15), as added by Public Law 101–508, by striking "or" at the end,

(vi) in paragraph (16), as added by Public Law 101–508—

(I) by striking "(20 U.S.C. 1001 et seq.)", and

(II) by striking the period at the end and inserting a semicolon, and

(vii) in paragraph (14), as added by Public Law 101–311—

(I) by striking the period at the end and inserting "; or",

(II) by redesignating such paragraph as paragraph (17), and

(III) by transferring such paragraph so as to insert such paragraph after paragraph (16),

(8) in section 363—

(A) in subsection (b)(2) by striking "(15 U.S.C. 18a)", and

(B) in subsection (c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304",

(9) in section 364—

(A) in subsection (a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304", and

(B) in subsection (f)—

(i) by striking "(15 U.S.C. 77e)", and

(ii) by striking "(15 U.S.C. 77aaa et seq.)",

(10) in section 365—

(A) in subsection (d)(6)(C) by striking "the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and inserting "section 40102 of title 49",

(B) in subparagraphs (A) and (B) of subsection (g)(2) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(C) in subsection (n)(1)(B) by striking "to to" and inserting "to",

(D) in subsection (o) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and

(E) by striking subsection (p),

(11) in section 507, as amended by section 304—

(A) in subsection (a)(9) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and

(B) in subsection (d) by striking "or (a)(6)" and inserting "(a)(6), (a)(7), (a)(8), or (a)(9)",

(12) in section 522—

(A) in subsection (b) by striking "Bankruptcy Rules" and inserting "Federal Rules of Bankruptcy Procedure", and

(B) in subsection (d)(10)(E)(iii)—

(i) by striking "408, or 409" the first place it appears and inserting "or 408", and

(ii) by striking "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)" and inserting "Internal Revenue Code of 1986",

(13) in section 523—

(A) in subsection (a)—

(i) by striking "1141,," and inserting "1141,", and

(ii) in paragraph (2)(C) by striking "(15 U.S.C. 1601 et seq.)",

(B) in subsection (b)—

(i) by striking "(20 U.S.C. 1087–3)", and

(ii) by striking "(42 U.S.C. 294f)", and

(C) in subsection (e) by striking "depository institution or insured credit union" and inserting "insured depository institution",

(14) in section 524—

(A) in subsection (a)(3) by striking "1328(c)(1)" and inserting "1328(a)(1)",

(B) in subsection (c)(4) by striking "recission" and inserting "rescission", and

(C) in subsection (d)(1)(B)(ii) by adding "and" at the end,

(15) in section 525(a)—

(A) by striking "(7 U.S.C. 499a–499s)",

(B) by striking "(7 U.S.C. 181–229)", and

(C) by striking "(57 Stat. 422; 7 U.S.C. 204)",

(16) in section 542(e) by striking "to to" and inserting "to",

(17) in section 543(d)(1) by striking "section," and inserting "section",

(18) in section 549(b) inserting "the trustee may not avoid under subsection (a) of this section" after "involuntary case,",

(19) in section 553—

(A) in subsection (a)(1) by striking "other than under section 502(b)(3) of this title", and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),",

(20) in section 555 by striking "(15 U.S.C. 78aaa et seq.)",

(21) in section 559 by striking "(15 U.S.C. 78aaa et seq.)",

(22) in section 706(a) by striking "1307, or 1208" and inserting ". 208, or 1307",

(23) in section 724(d) by striking "Internal Revenue Code of 1954 (26 U.S.C. 6323)" and inserting "Internal Revenue Code of 1986",

(24) in section 726(b)—

(A) inserting a comma after "section 1112", and

(B) by inserting "1009," after "chapter under section",

(25) in section 741(4)(A)(iii) by striking "(15 U.S.C. 78a et seq.)",

(26) in section 742 by striking "(15 U.S.C. 78aaa et seq.)",

(27) in section 743 by striking "342(a)" and inserting "342",

(28) in section 745(c) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986",

(29) in section 761—

(A) in paragraph (1) by striking "(7 U.S.C. 1 et seq.)",

(B) in paragraph (5) by striking "(7 U.S.C. 6c(b))", and

(C) in paragraph (13) by striking "(7 U.S.C. 23)",

(30) in section 1104(d), as redesignated by section 211, inserting a comma after "interest",

(31) in section 1123(a)(1) inserting a comma after "title" the last place it appears,

(32) in section 1129—

(A) in subsection (a)—

(i) in paragraph (4) by striking the semicolon at the end and inserting a period, and

(ii) in paragraph (12) inserting "of title 28" after "section 1930", and

(B) in subsection (d) by striking "(15 U.S.C. 77e)",

(33) in section 1145—

(A) in subsection (a)—

(i) by striking "does" and inserting "do",

(ii) by striking "(15 U.S.C. 77e)", and

(iii) in paragraph (3)(B)(i) by striking "(15 U.S.C. 78m or 78o(d))",

(B) in subsection (b)(1) by striking "(15 U.S.C. 77b(11))", and

(C) in subsection (d) by striking "(15 U.S.C. 77aaa et seq.)",

(34) in section 1166(2) by striking "(45 U.S.C. 791(b))",

(35) in section 1167—

(A) by striking "(45 U.S.C. 151 et seq.)", and

(B) by striking "(45 U.S.C. 156)",

(36) in section 1226(b)(2)—

(A) by striking "1202(d)" and inserting "1202(c)", and

(B) by striking "1202(e)" and inserting "1202(d)",

(37) in section 1302(b)(3) by striking "and" at the end,

(38) in section 1328(a)—

(A) in paragraph (2) by striking "(5) or (8)" and inserting "(5), (8), or (9)", and

(B) by striking the last paragraph (3), and

(39) in the table of chapters by striking the item relating to chapter 15.

SEC. 502. TITLE 28 OF THE UNITED STATES CODE.

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

TITLE VI—BANKRUPTCY REVIEW COMMISSION

SEC. 601. SHORT TITLE.

This title may be cited as the "National Bankruptcy Review Commission Act".

SEC. 602. ESTABLISHMENT.

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

SEC. 603. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 608; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

SEC. 604. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) One member shall be appointed by the President pro tempore of the Senate.

(3) One member shall be appointed by the Minority Leader of the Senate.

(4) One member shall be appointed by the Speaker of the House of Representatives.

(5) One member shall be appointed by the Minority Leader of the House of Representatives.

(6) Two members appointed by the Chief Justice.

Members of Congress, and officers and employees of the executive branch, shall be ineligible for appointment to the Commission.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 210 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as an officer or employee of a government leaves that office, or if any member of the Commission who was not appointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

SEC. 605. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 606. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other person-

nel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 607. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 608. REPORT.

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 609. TERMINATION.

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 608.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 to carry out this title.

TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

SEC. 701. SEVERABILITY.

If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

SEC. 702. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

(2)(A) Paragraph (1) shall not apply with respect to the amendment made by section 111.

(B) The amendments made by sections 113 and 117 shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after the date of the enactment of this Act.

(C) Section 1110 of title 11, United States Code, as amended by section 201 of this Act, shall apply with respect to any lease, as defined in such section 1110(c) as so amended, entered into in connection with a settlement of any proceeding in any case pending under title 11 of the United States Code on the date of the enactment of this Act.

(D) The amendments made by section 305 shall apply only to agreements entered into after the date of enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

AN OVERVIEW OF THE BANKRUPTCY REFORM ACT OF 1994

Prepared by the Bankruptcy Judges Division

I. SUMMARY OF PROVISIONS OF SPECIFIC INTEREST TO THE FEDERAL JUDICIARY

Authorization for Bankruptcy Judges to Conduct Jury Trials

Section 157 of title 28 is amended to provide explicitly that, if a right to a jury trial exists in a section 157 proceeding before a bankruptcy judge, then the bankruptcy judge may conduct the jury trial if specifically designated to do so by the district court and with the express consent of all the parties. This provision appears to be in response to the case law in a majority of the circuits which has held that, absent statutory authorization, bankruptcy judges are not authorized to conduct jury trials.

Creation of Bankruptcy Appellate Panels

Section 158 of title 28 is amended to provide that, unless certain specific conditions exist, the judicial councils "shall" create a bankruptcy appellate panel. These conditions are insufficient judicial resources available within the circuit or that the establishment of such a service would result in undue delay or increased cost to the parties.

Review Commission

A two-year, nine-member National Bankruptcy Review Commission is created to investigate and study issues and problems with the Bankruptcy Code. Members of Congress and officers and employees of the executive branch are prohibited from serving on this commission. The Chief Justice appoints two of the nine members.

Small Business

Originally, the legislation called for the creation of an eight-court, two-year pilot chapter 10 for small businesses. This provision was controversial, strongly opposed by the credit community as being too debtor oriented and strongly objected to by the Department of Justice as violating the Constitution's mandate for uniform bankruptcy laws. The separate chapter and pilot language were dropped and numerous changes were made to chapter 11 in lieu thereof.

Increased Chapter 7 Trustee Compensation

The compensation paid to chapter 7 trustees is increased from $45 to $60 per case. This additional $15 is estimated to cost $8 to $10 million annually. It is specifically provided that this increase is not effective until one year after the bill's enactment to allow the judiciary time to impose new fees to pay for this increase. In addition to "miscellaneous fees," the Judicial Conference is authorized in the bill, in its discretion, to prescribe appearance fees in bankruptcy cases and to impose fees against distributions. The new fees will apply to pending cases to enable the collection of the necessary funds, and the legislation provides for such application.

Sovereign Immunity No Longer Defense for Violating Automatic Stay

Sovereign immunity is abrogated in connection with numerous Code provisions. For example, sovereign immunity no longer constitutes a defense for violating the automatic stay in tax cases. Two Supreme Court decisions, Hoffman v. Connecticut Department of Income Maintenance and United States v. Nordic Village, Inc., are effectively overruled by this bill. In addition, the bill explicitly authorizes the court to issue a money judgment against a governmental unit.

Supplemental Injunctions

Bankruptcy judges are specifically authorized to issue injunctions binding present and future claimants and to set up trusts to handle mass tort claims in asbestos cases.

Uniform Effective Date for all Federal Rules

Corrective language provides that the Federal Rules of Bankruptcy Procedure will have an effective date of December 1, consistent with all other federal rules.

Immediate Appeal to District Court

Appeals from bankruptcy court orders enlarging or reducing the exclusivity period in chapter 11 cases are now immediately appealable to the district court and not subject to leave of the district court.

* *

II. DETAILED ANALYSIS OF EACH SECTION

The Bankruptcy Reform Act of 1994 is the first major, comprehensive bankruptcy reform legislation since 1984. Areas involving judicial administration, governmental, commercial, and consumer issues are all addressed in this Act. Each provision is discussed below.

Title I - IMPROVED BANKRUPTCY ADMINISTRATION

Section 101, "Expedited Hearing On Automatic Stay," provides that the final hearing on a motion for relief from the automatic stay as provided for in section 362(e) of the Bankruptcy Code must now be concluded, as opposed to commenced, within 30 days after the conclusion of the preliminary hearing. The 30-day period may be extended if all parties in interest consent or for a specific time due to a court finding of "compelling circumstances." The section by section analysis prepared by the House Judiciary Committee states that this language should prevent an extension when the debtor is seeking to delay the proceeding or has neglected to consummate a pending contract. A bona fide illness is given as an example of why an extension should be granted. Even so, the courts are urged to balance the need for such an extension with the property rights involved, on a case by case basis. The House Judiciary Committee stated a belief that quick conclusions of these hearings will reduce the time and cost of bankruptcy proceedings by preventing "unjustified or unwarranted" delays.

"Jurisdiction to Review Interlocutory Orders Increasing or Reducing Certain Time Periods for Filing Plans" is addressed in section 102 of the bill. This provision amends section 158(a) of title 28 to provide that interlocutory orders and decrees issued under section 1121(d) of title 11 (increasing or reducing the time in which to file a plan) may be appealed to the district court as a matter of right, and leave of court is no longer required. Other interlocutory orders and decrees may be appealed with leave of the district court. Virtually all versions of a bankruptcy bill addressed the exclusivity period. However, most past versions set certain time limits.

The topic of reaffirmation agreements pursuant to the advice of an attorney had been an area of concern in both houses during the last two congresses. This issue is addressed, in part, in section 103, "Expedited Procedure for Reaffirmation of Debts." This section amends the discharge provision of the Code, specifically section 524(c), by adding new subsections which require the reaffirmation agreement to contain an explicit statement advising the debtor that the agreement is not required by either bankruptcy or non-bankruptcy law, and require the attorney to advise the debtor of the legal effect and

consequences of such an agreement, including a default under such an agreement. Subsection (d) of section 524 would also be amended to require the court to hold a reaffirmation hearing and to advise the debtor of the consequences and effects of such a reaffirmation agreement only if the debtor has not been represented by an attorney during the negotiating of the agreement.

Section 104, "Powers of Bankruptcy Courts," is of considerable interest to the federal judiciary. First, in subsection (a), section 105 of the Bankruptcy Code is amended to provide that bankruptcy courts are specifically authorized to initiate and hold status conferences, essentially as a case management device, and to issue appropriate orders.

Specifically, a new subsection (d) is added to 11 U.S.C. § 105 which provides that the court may hold a status conference and issue any orders that may be necessary

> to ensure that a case is handled expeditiously and economically, including an order that—
>
> (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
>
> (B) in a case under chapter 11 [of title 11], an order that:
>
> (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
>
> (ii) sets a date by which the debtor, or trustee . . . shall solicit acceptances of a plan;
>
> (iii) sets the date by which a party in interest other than a debtor may file a plan;
>
> (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
>
> (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

The new subsection requires that these orders must be consistent with other title 11 provisions and applicable Federal Rules of Bankruptcy Procedure.

The section by section analysis states that many recommendations from the Federal Courts Study Committee were incorporated into this section. This analysis also noted that notwithstanding the adoption of Fed. R. Bankr. P. 7016 there appeared to be some judicial reluctance to use pretrial conferences as a docket management tool without clear and explicit statutory authorization to do so. The analysis for this section states that this provision clarifies the existence of such authority in both adversary and nonadversary proceedings.

Another area frequently addressed by bankruptcy bills is abstention. Section 104(b) amends section 1334 of title 28 by providing that a decision not to abstain from hearing certain state law causes of action related to but not arising under a title 11 case filed after the effective date of the Act is reviewable by the court of appeals and by the Supreme Court. The causes of action concerning when a refusal to abstain is appealable are those which could not have been commenced in a court of the United States absent jurisdiction under section 1334(c)(2) and which are commenced in an appropriate state forum where they can be timely adjudicated. Abstention from hearing these claims is mandatory under section 1334(c)(2). A decision not to abstain made in any case filed prior to the effective date of this Act is not affected by this provision and cannot be appealed beyond the district court.

Subsection (c) of section 104 addresses the creation of bankruptcy appellate panel services (BAPS). The subsection will require the establishment of a BAP unless the judicial council finds that 1) there are insufficient judicial resources available within the circuit, or 2) establishment of such a service would result in undue delay or increased cost to parties in title 11 cases. A judicial council may reconsider its decision to create or not to create a BAP at any time.

One year after the creation of a BAP, a majority of the district judges may request review of the situation by the judicial council to determine if, under the statutory criteria, the BAP is still required. Three years after a BAP is created, a judicial council may, on its own motion, review the situation to determine if the BAP is still statutorily required. If a judicial council determines that a BAP is no longer required, it shall arrange for completion

of pending appeals and the termination of the panel service.

It is further provided that bankruptcy judges appointed to serve on a BAP may also be reappointed to the BAP. An appellant is permitted to "opt-out" of having an appeal heard by the BAP by electing at the time of filing the notice of appeal to have the appeal heard by the district court. Any other party to the proceeding may also "opt out" of having the appeal reviewed by the BAP by so electing, within 30 days after service of the notice of appeal. As is presently provided, appeals are to be heard by a panel of three, and no judge may hear an appeal originating from the district in which that judge is appointed or designated. Also as presently provided, the district judges for the district in which the appeals occur, must authorize, by majority vote, the BAP to hear and determine appeals within that district.

The section by section analysis states that this subsection "provides for the establishment in each judicial circuit of a bankruptcy appellate panels [sic], composed of sitting bankruptcy judges, to serve in place of the district court in reviewing bankruptcy court decisions."

Section 104(e) addresses bankruptcy rulemaking. Specifically, it amends section 2073 of title 28 to include authorization for a committee on bankruptcy rules and to make all procedures under the Rules Enabling Act applicable to the committee and its activities. The second change is directed to the effective date of the Federal Rules of Bankruptcy Procedure and amends section 2075 of title 28 to conform that date to the effective date of the other federal procedural rules which is "no earlier than December 1 of the year" in which the rules are transmitted. 28 U.S.C. § 2074(a).

Section 105 of the bill is of particular interest to the six judicial districts in Alabama and North Carolina that are served by the bankruptcy administrator program. This section explicitly authorizes a bankruptcy administrator or designee to preside at the section 341 meeting of creditors and to examine the debtor under oath. Additionally, the bankruptcy administrator is authorized to administer the oath required by section 343 of the Code. The administrator is also authorized to preside at any meeting of equity security holders.

The Pension Benefit Guarantee Corporation and state pension funds are authorized, pursuant to section 106 of the bill, to serve on creditor committees when employee pension fund assets are at issue in a case. The bill accomplishes this authorization by expanding the definition of "person" in section 101 of the Code to include pension funds and guarantors of pension funds.

Trustee compensation is addressed by section 107 which amends section 326(a) of title 11 to increase the percentage compensation rate in accordance with a graduated scale. Compensation will be allowed as follows: "25 percent on the first $5,000 or less, 10 percent

on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000, but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000." (The present compensation rate is "fifteen percent on the first $1,000 or less, six percent on any amount in excess of $1,000 but not in excess of $3,000, and three percent on any amount in excess of $3,000.")

Section 108 is titled "Dollar Adjustments" and covers many areas. First, it amends section 109(e) of the Code to increase the chapter 13 eligibility levels to persons who owe noncontingent, liquidated, unsecured debts of less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000. (Currently, the unsecured and secured limits are $100,000 and $350,000, respectively.)

Dollar amounts in involuntary cases as prescribed in section 303 of title 11 also are increased to require that involuntary petitions by three or more creditors must aggregate claims of at least $10,000 more than the value of any lien (present language provides for $5,000), and if there are fewer than 12 creditors, by one or more creditors holding a claim in the aggregate of at least $10,000 of such claims (present language provides for $5,000 of such claims).

The dollar amounts with respect to priorities as established in section 507(a) of the Code are also amended, with dollar amounts being doubled. The limits are doubled for amounts in the third priority (unsecured claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay), the fourth priority (unsecured claims for contributions to an employee benefit plan), the fifth priority ("unsecured claims of persons engaged in the production or raising of grain...against a debtor who owns or operates a grain storage facility" or "engaged as a United States fisherman against a debtor who...is engaged in operating a fish produce storage or processing facility"), and the sixth priority (unsecured claims for money deposited for purchase, lease, or rental of property or purchase of services for personal, household, or family use). (The Senate had included language in past versions which had "clarified" that the sixth priority (consumer deposits) was intended for one household. This language is not in the final version.)

An interesting new provision, not contained in any past House or Senate version, is section 108(e), entitled "Future Adjustments." This language amends section 104 of title 11 to provide that on April 1, 1998, and at each three-year interval ending on April 1 thereafter, each of these dollar amounts shall be adjusted to reflect the change in the Consumer Price Index (CPI), rounded to the nearest $25. Currently, pursuant to 11 U.S.C. § 104, every six years the Judicial Conference transmits to Congress recommendations for these dollar adjustments. The Conference will still be required to recommend such adjustments. Additionally, the Conference will be required to implement the CPI adjustment by publishing the automatic CPI increase in the Federal Register on March 1, 1998, and at each three-year interval ending on March 1 thereafter.

Section 109, entitled "Premerger Notification," amends section 363 of the Code. Section 363(b)(2) now provides that any Clayton Act notifications required to be given by the debtor are to be given by the trustee. Additionally, the amendment provides that the waiting period required following the notification, which is shorter for parties in bankruptcy cases than for other entities seeking to merge, is extended from 10 days to 15 days after the Department of Justice and the Federal Trade Commission receive the notification. The waiting time after notification may be extended either under the terms of the Clayton Act or by the court, after notice and a hearing. This amendment is said to clarify the relationship between bankruptcy proceedings and antitrust procedures under the Clayton Act for the review of proposed transactions by federal antitrust authorities. The section by section analysis also states that the amendment clarifies that the waiting period can be extended but not shortened.

The allowance of creditor committee expenses is covered by section 110 of the bill. Specifically, section 503 of the Code is amended by the addition of a new paragraph which permits creditor committee members to receive reimbursement for actual and necessary expenses incurred in the performance of their duties. The section by section analysis explicitly states that this provision will not allow compensation for services rendered by or to the committee members.

"Supplemental Injunctions" is the title of section 111 which amends section 524 of the Code to authorize bankruptcy courts to issue injunctions barring claims against the debtor by present and future claimants with asbestos-related claims in chapter 11 cases and instead requiring these claims to be handled by a trust, funded by the plan of reorganization. Bankruptcy courts may enjoin persons and governmental units from taking legal action to collect claims, except as provided by the injunction, the confirmation order, or the confirmed plan.

The section by section analysis for this provision states that its purpose is to resolve any possible uncertainty as to a bankruptcy court's authority to issue these "Manville-type" injunctions. The amendment states, and the section by section analysis reiterates, that the inclusion of this explicit authorization is not to be construed as indicating that the bankruptcy courts may not already possess the authority to issue injunctions in connection with a plan of reorganization. The House Judiciary Committee noted that this provision may help the committee decide whether the concept should be extended into areas other than asbestos. These amendments to section 524 apply to pending cases.

Another new section not contained in any previous versions of a bankruptcy bill is section 112, titled "Authority of Bankruptcy Judges to Conduct Jury Trials in Civil Proceedings." Specifically, section 157 of title 28 is amended to provide that in any proceeding heard by a bankruptcy judge under that section in which the cause of action contains the right to a jury trial, the bankruptcy judge may conduct the jury trial if

specifically designated to exercise such jurisdiction by the district court and if the parties give their express consent. The section by section analysis makes clear that the purpose of this explicit statutory authorization is twofold: 1) to resolve the question left unanswered by the Supreme Court in the Granfinanciera case as to whether bankruptcy judges may conduct jury trials, and 2) to resolve that same question for the circuits.

Yet another new provision is section 113, "Sovereign Immunity." Very strong language was used in the section by section analysis to make clear that this provision's purpose is to override two recent Supreme Court cases, i.e., Hoffman v. Connecticut Department of Income Maintenance and United States v. Nordic Village, Inc. According to the House Judiciary Committee, these two cases have held that the federal government and the states have not waived their sovereign immunity by virtue of the enactment of section 106(c) of the Bankruptcy Code. Consequently, the section by section analysis explains that the purpose of the amendment is to make section 106 conform to the congressional intent of the 1978 Act by waiving the sovereign immunity of the federal government and the states.

Specifically, the bill rewrites section 106 entirely to provide that sovereign immunity is abrogated, as detailed below, for the following Code provisions:

1) section 105 -- Power of the Court;
2) section 106 -- Waiver of Sovereign Immunity;
3) section 107 -- Public Access to Papers;
4) section 108 -- Extension of Time;
5) section 303 -- Involuntary Cases;
6) section 346 -- Special Tax Provisions;
7) section 362 -- Automatic Stay;
8) section 363 -- Use, Sale, or Lease of Property;
9) section 364 -- Obtaining Credit;
10) section 365 -- Executory Contracts and Unexpired Leases;
11) section 366 -- Utility Service;
12) section 502 -- Allowance of Claims or Interests;
13) section 503 -- Allowance of Administrative Expenses;
14) section 505 -- Determination of Tax Liability;
15) section 506 -- Determination of Secured Status;
16) section 510 -- Subordination;
17) section 522 -- Exemptions;
18) section 523 -- Exceptions to Discharge;
19) section 524 -- Effect of Discharge;
20) section 525 -- Protection Against Discriminatory Treatment;
21) section 542 -- Turnover of Property to the Estate;
22) section 543 -- Turnover of Property by a Custodian;

23) section 544 -- Trustee as Lien Creditor and as Successor to Certain Creditors and Purchasers;
24) section 545 -- Statutory Liens;
25) section 546 -- Limitations on Avoiding Powers;
26) section 547 -- Preferences;
27) section 548 -- Fraudulent Transfers and Obligations;
28) section 549 -- Postpetition Transactions;
29) section 550 -- Liability of Transferee of Avoided Transfer;
30) section 551 -- Automatic Preservation of Avoided Transfer;
31) section 552 -- Postpetition Effect of Security Interest;
32) section 553 -- Setoff;
33) section 722 -- Redemption;
34) section 724 -- Treatment of Certain Liens;
35) section 726 -- Distribution of Property of the Estate;
36) section 728 -- Special Tax Provisions;
37) section 744 -- Executory Contracts;
38) section 749 -- Voidable Transfers (Stockbrokers);
39) section 764 -- also Voidable Transfers (Commodity Brokers);
40) section 901 -- Applicability of Other Sections of this Title;
41) section 922 -- Automatic Stay of Enforcement of Claims Against the Debtor;
42) section 926 -- Avoiding Powers;
43) section 928 -- Post Petition Effect of Security Interest;
44) section 929 -- Municipal Leases;
45) section 944 -- Effect of Confirmation;
46) section 1107 -- Rights, Powers, and Duties of Debtor in Possession;
47) section 1141 -- Effect of Confirmation;
48) section 1142 -- Implementation of Plan;
49) section 1143 -- Distribution;
50) section 1146 -- Special Tax Provisions;
51) section 1201 -- Stay of Action against Codebtor;
52) section 1203 -- Rights and Powers of Debtor;
53) section 1205 -- Adequate Protection;
54) section 1206 -- Sales Free of Interests;
55) section 1227 -- Effect of Confirmation;
56) section 1231 -- Special Tax Provisions;
57) section 1301 -- Stay of Action against Codebtor;
58) section 1303 -- Rights and Powers of Debtor;
59) section 1305 -- Filing and Allowance of Postpetition Claims; and
60) section 1327 -- Effect of Confirmation.

The new section 106 provides that the court may hear and determine any issue arising with respect to the application of the cited sections of the Code to governmental units. The amendments also authorize the court to issue an order, process, or judgment against a governmental unit under the sections cited above or under the Federal Rules of Bankruptcy Procedure including a money recovery order or judgment. Awards of punitive damages may not be made. Orders and judgments for costs or fees are allowed against a governmental unit, but such an award must be consistent with the provisions and limitations of 28 U.S.C. § 2412(d)(2)(A) (fees and expenses allowed under the Equal Access to Justice Act).

Two further provisions of this section are noteworthy. In particular, a governmental unit which has filed a proof of claim is deemed to have waived sovereign immunity with respect to any claim against the governmental unit that arose out of the same transaction or occurrence. Further, notwithstanding any assertion of sovereign immunity, there shall be offset against a claim or interest of the governmental unit any claim against the governmental unit that is property of the estate.

The amendments to section 106 of the Code apply to pending cases.

Service of process is addressed by section 114 of the bill. This provision would amend Rule 7004 of the Federal Rules of Bankruptcy Procedure, adding a new subdivision (h) titled "Service of Process On An Insured Depository Institution." This subdivision provides that service on an insured depository institution (as defined by the Federal Deposit Insurance Act - 12 U.S.C. § 1813) shall be made by certified mail addressed to a designated officer of the institution unless: 1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; 2) the court orders otherwise, after service upon the institution by certified mail of notice of an application to permit service by first class mail sent to a designated officer of the institution; or 3) the institution has waived, in writing, its entitlement to service by certified mail by designating an officer to receive service of process.

The federal judiciary objected to the amendment to Rule 7004 as violative of the Rules Enabling Act, unnecessary, and an added expense of administering the estate.

Section 115 of the bill is titled "Meetings of Creditors and Equity Security Holders." This provision amends section 341 of the Bankruptcy Code to add a new subsection which would require the trustee to examine the debtor orally at the section 341 meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history, the ability to file a petition under a different chapter of the Code, the effect of receiving a discharge of debts, and the effect of reaffirming a debt, including the debtor's knowledge of potential rights under

subsection (d) of section 524.

Earlier versions of this section had called for the trustee to make recommendations on a preserved record regarding the debtor's knowledge. Also deleted were provisions requiring the trustee to ensure the debtor's knowledge of his or her duties under section 521 of title 11 and the potential penalties for committing fraud or other abuses. The section by section analysis states that this provision is purely informational and is not intended to be an interrogation. Rather, its purpose is to ensure that the debtor understands the positive and negative aspects of filing for bankruptcy. The section by section analysis continues by noting that it "is important that trustees explain not only the procedures for reaffirmation, but also the risks." Further, the trustee is to advise the debtor that he or she may choose to repay any creditor without reaffirming the debt.

Trustees and court personnel have expressed concern over this provision and the time that could be consumed attempting to comply with it, especially at crowded section 341 meetings. The final paragraph of the section by section analysis, in its entirety, reads as follows:

> In view of the amount of information involved and the limits on the time available for meetings of creditors, trustees or courts may provide written information on these topics at or in advance of the meeting and the trustee may then ask questions to ensure that the debtor is aware of the information.

Section 116, titled "Tax Assessment," amends section 362 of the Code to provide that an audit, a demand for tax returns, or an issuance of a notice of tax deficiency is not prevented or stopped by the automatic stay provisions. Additionally, the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment is not prevented or stopped by the automatic stay provision. The section by section analysis explains that this provision is only intended to apply to sales or transfers to the debtor, and has no application to sales or transfers to third parties.

Section 117, titled "Additional Trustee Compensation," will have a significant effect upon the judiciary and the parties. Specifically, this section amends 11 U.S.C. § 330(b) to increase the compensation of chapter 7 trustees by $15, from $45 to $60 per case. However, this increase is estimated to cost $8 to $10 million dollars annually. The section by section analysis states that the House Judiciary Committee intends that this increase not be funded out of the Federal Treasury or by debtors in chapter 7 or 13 cases. Instead, this new section directs the Judicial Conference to prescribe additional fees "payable by parties" pursuant to 28 U.S.C. § 1914(b), (see 28 U.S.C. § 1930(b)), i.e., the Miscellaneous Fee

Schedule. In addition to being directed to prescribe additional miscellaneous fees, the Judicial Conference is "authorized" to 1) prescribe notice of appearance fees, which according to the section by section analysis are "filed by parties-in-interest after a bankruptcy case is filed"; and 2) prescribe fees to be charged against distributions to creditors. These fees, according to the section by section analysis, would be deducted by the trustee, or other person making distributions, from the monies payable to the creditors. According to the House Judiciary Committee analysis, such fees constitute user fees on those who participate in the bankruptcy process by receiving distributions. Since these fees come from distributions, their deduction will not affect the application of the best interests of creditors test or other tests for confirmation in chapters 11, 12, or 13, according to the section by section analysis. Finally, the section by section analysis states that no higher payment from the debtor is necessary to meet these tests.

To enable the judiciary to begin the process of prescribing, implementing and collecting these new fees before disbursement begins, the $15 increase will not be effective until one year after enactment. However, also to ensure that the judiciary has adequate funds to meet this new directive, the newly prescribed fees will apply to pending cases.

TITLE II - COMMERCIAL BANKRUPTCY ISSUES

Aircraft equipment, vessels, and rolling stock equipment are addressed in section 201. The amendments made by this provision appear to be in the nature of clarifying and updating existing sections 1110 and 1168 of the Code, and also somewhat expanding their scope. Language has also been inserted to ensure that secured loans are included as well as leases and lease financing or conditional sales contracts. The definition of the type of airline covered also is amended to ensure that small carriers receive the same treatment as large carriers.

A special "application" section states that these amendments will not apply to cases commenced under title 11 prior to enactment, except that the definition of lease in the newly enacted section 1110 (c) of the Code will apply to any settlement reached in a proceeding in a pending case.

The section by section analysis advises that the phrase "purchase-money equipment" has been deleted from sections 1110 and 1168 to clarify that all lease financing agreements and debt financing that involve a security interest are covered, not just security interests obtained at the time the equipment is acquired. This change is to be phased in, affecting new equipment first. Eventually, the section by section analysis advises, there will be no relevant distinction between leases and loans for purposes of sections 1110 and 1168.

During the transition period, a so-called "safe harbor" definition of the term "lease" will apply for equipment first placed in service prior to the date of enactment. Under this definition, a lease would be protected under these sections if the lessor and the debtor have expressed in the agreement that the agreement is to be treated as a lease for federal tax purposes.

The so-called Deprizio case is overruled by section 202, which is titled "Limitation on Liability of Non-Insider Transferee for Avoided Transfer." Specifically, this provision amends section 550 of the Bankruptcy Code to provide that the trustee may not recover from a transferee that was not an insider if the transfer was made between 90 days and 1 year before the petition was filed and was avoided under section 547(b) even if it benefitted a creditor that was an insider at the time of the transfer.

Section 203, "Perfection of Purchase-Money Security Interest," extends from 10 days to 20 days the time in which a secured creditor must have perfected a security interest to prevent avoidance of the interest by the trustee in a preference action under section 547 of the Code.

Section 204, "Continued Perfection," amends sections 362 and 546 of the Code to provide that actions taken to perfect, maintain, or continue the perfection of a security interest do not violate the automatic stay and are explicitly covered under the trustee's rights and powers. The section by section analysis notes that the steps taken by a secured creditor to continue perfection merely maintain the status quo and do not improve the secured creditor's position.

The "Rejection of Unexpired Leases of Real Property or Timeshare Interests" is covered by section 205 of the Act. This section makes numerous changes to section 365(h) of the Code to clarify the rights of the lessee if the trustee rejects an unexpired lease of real property. Specifically, the lessee is permitted to either treat the lease or timeshare interest as terminated or to continue the present terms of the lease or timeshare interest, including provisions regarding payments and use or enjoyment of the property, etc., against damages caused by the trustees's nonperformance. The section also contains provisions permitting the lessee to offset payments, under certain circumstances.

Section 206, "Contents of Plan," amends section 1123(b) of the Code to extend the Supreme Court's Nobelman ruling against lien stripping in chapter 13 cases to chapter 11, by preventing modification of the rights of a holder of a claim secured only by a security interest in the debtor's principal residence. According to the section by section analysis, this provision is intended to apply only to home mortgages, not to commercial property, and not to any transaction in which the creditor acquired a lien on property other than real property used as the debtor's residence.

Section 207 grants "Priority for Independent Sales Representatives." Section 507(a)(3) of the Code is amended to provide a priority of up to $4,000 for both employees and independent sales representatives for wages, salaries, or commissions earned within 90 days before the date the petition was filed or the date the business ceased operations. It is also provided that the independent sales representative must have earned at least 75% of his or her income during the previous year from the debtor firm.

The "Exclusion From the Estate of Interests in Liquid and Gaseous Hydrocarbons Transferred by the Debtor Pursuant to Product Payment Agreements" is the title of section 208. The goal of this section is to exclude from the debtor's estate production payments sold by the debtor prior to a bankruptcy filing. To do so, the bill amends the definitional section of the Code, section 101, to define "production payment" and also amends section 541 to exclude these same production payments.

A "Seller's Rights to Reclaim Goods" is extended by section 209. Specifically, section 546(c) of the Code is amended by extending the reclamation period. If the original 10 days expires after commencement of the case, then the seller can exercise the right to reclaim before 20 days after receipt of the goods by the debtor.

A new provision is section 210, "Investment of Money of the Estate." According to the section by section analysis, the amendment seeks to overrule the recent Third Circuit decision In re Columbia Gas Systems, Inc., 33 F.3d ___(3rd Cir. 1994). The amendment affects section 345 of the Code, which requires all investments to be FDIC-insured, collaterized, or bonded, a necessary requirement, the House Judiciary Committee notes, especially with smaller debtors. The provision amends section 345 to allow the court to order slightly different investments, "for cause." The section by section analysis states that the amendment will permit more flexibility for larger, more sophisticated cases which otherwise might be "needlessly handcuff[ed]."

Yet another new section is 211, "Election of Trustee Under Chapter 11." Section 1104 of the Code is amended to provide that the selection of trustees in chapter 11 cases can now be conducted under the same procedures used to elect trustees in chapter 7 cases, e.g., the U.S. trustee shall convene a meeting of creditors at which qualified creditors can elect a trustee. The election procedure must be triggered by "the request of a party in interest" made within 30 days after the court orders the appointment of a trustee. Otherwise, the U.S. trustee will make the appointment under section 1104(c), which is redesignated as section 1104(d).

Continuing the wave of new provisions is section 212, "Rights of Partnership Trustee Against General Partners." This provision amends section 723(a) of the Code to provide that the trustee may go against a general partner only to the extent that the general partner would be liable under nonbankruptcy law instead of the present "full amount of the

deficiency." The section by section analysis states that it is not clear, without this amendment, how registered limited liability partnerships would be treated in chapter 7 cases, since they have evolved in the period following enactment of the 1978 Act.

The "Impairment of Claims and Interests" is the caption of section 213. The section deals, in part, with the voting rights in chapter 11 cases and award of postpetition interest. To resolve the issue, the bill deletes subsection (3) of section 1124 of the Code. This section of the new bill, however, contains much more. It amends section 502(b) of the Code to add late filing of a proof of claim as a ground for objecting to the allowance of a claim, thus effectively overruling In re Hausladen, 146 B.R. 557 (Bankr. D. Minn. 1992). It also extends the period for the filing of a proof of claim by a governmental unit to "before 180 days after the date of the order for relief."

Section 214 directs its attention to the "Protection of Security Interest In Post Petition Rents and Lodging Payments." The goal of this amendment is to ensure that real estate lenders are able to claim a valid security interest in postpetition rents, and to clarify the treatment of hotel revenues which have been used to secure loans to hotels and other lodging accommodations. The section by section analysis advises that with respect to hotel revenues there are two competing interests and these revenues are therefore given two different treatments--1) they are included in the category of collateral in which postpetition revenues are subject to prepetition security interests, and 2) they are included in the category of "cash collateral" as defined in section 363 of the Code. This amendment changes section 552 of the Code (post-petition effect of security interest) to provide that if the debtor entered into a security agreement before the case was filed, and, if the security interest that was created by the agreement extends to property of the debtor which was acquired before the commencement of the case and to rents or fees, charges, accounts, or other payments for the use or occupancy of rooms or other public facilities in hotels, motels, or other lodging property, then the security interest is to extend to the rents, fees, etc., acquired by the estate after the commencement of the case to the extent provided in the security agreement, except to the extent that the court, after a notice and a hearing, and based on the equities of the case, orders otherwise. As noted in the section by section analysis, the court must balance competing interests in determining "the equities" in any given case. These will include adequate protection under section 363 of the Code and operational expenses, including employee compensation and benefits, under section 506(c).

"Amendment to Definition of Swap Agreement" is the title of section 215, which seeks to make what appears to be a technical correction to the swap agreement definition. Specifically, clarifying language is added which provides that "spot foreign exchange contracts" are included in the definition of swap agreement. This change is said in the section by section analysis to conform to the market understanding of what constitutes a swap agreement. The section by section analysis states that contracts that mature in a period of time equalling 2 days or less will fall under this definition.

Section 216 is entitled "Limitation on Avoiding Powers" and clarifies section 546(a)(1) of title 11 which imposes a statute of limitations within which an appointed or elected trustee must bring an avoidance action. A two-year period commences with the entry of an order for relief or a one-year period commences after the appointment or election of the first trustee, if such appointment or election occurs before the expiration of the two-year period.

An area of considerable interest throughout this legislative process has been the subject of "Small Businesses," as now covered by section 217 of the bill. Specifically, this provision amends the definitional section of the Code, adding a new paragraph (51C) which defines "small business" as

> a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed $2,000,000.

The benefits of being defined as a small business are as follows: 1) the court may order that a committee of creditors not be appointed, per an amendment to section 1102(a); 2) only the debtor may file a plan for 100 days after the date of the order for relief (all plans to be filed within 160 days after the date of the order for relief and the court being authorized to reduce these times - "for cause" or increase them for "circumstances for which the debtor should not be held accountable;" and 3) the debtor is eligible for more liberal provisions for disclosure and solicitation of acceptances for a proposed plan under section 1125.

An interesting insertion in this "small business" section is subsection (c) "Conversion or Dismissal" which amends section 1112(b) to include bankruptcy administrators among those who may request the conversion or dismissal of a chapter 11 case.

"Single Asset Real Estate" is the subject of section 218 of the Act. This section amends section 101 of the Code to include a definition of "single asset real estate" to mean real property constituting a single property or project, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000.

Section 362 of the Code also is amended to provide that the stay may be lifted unless the debtor, within 90 days after the order for relief, has either filed a confirmable plan or has commenced monthly payments 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). The court, within the 90 days, can order an extension of the 90-day period "for cause."

Section 219 covers the issue of "Leases of Personal Property" and amends section 365(d) of title 11 to require the trustee to perform all of the obligations of the debtor under a lease of personal property starting 60 days after the order for relief, pending assumption or rejection or the lease. After notice and a hearing, the court may order otherwise. The section by section analysis advises that this provision also amends section 362(e) "to clarify that the lessor's interest is subject to 'adequate protection.'" That protection, the House Judiciary Committee states, prevents the lessor from being able to seek to lift the automatic stay. Additionally, section 365(b) is clarified "to provide that when sought by a debtor, a lease can be cured at a nondefault rate (i.e., it would not need to pay penalty rates)."

Lastly, the section amends section 503(a) of the Code to add a timeliness requirement for the filing of a request for payment of an administrative expense.

Small Business Investment Companies will now be prohibited from filing for bankruptcy by section 220, captioned "Exemption for Small Business Investment Companies." This is accomplished by amending section 109 of the Code. The section by section analysis states that this provision will prevent the interests of the Small Business Administration from being subordinated to those of other creditors.

The subject of the "Payment of Taxes with Borrowed Funds" is covered by section 221. It amends section 523(a) of the Code by adding a new paragraph (14) which provides that a debt incurred to pay a tax to the United States is not dischargeable. The section by section analysis advises that this provision will facilitate an individual's ability to use a credit card to pay federal taxes. (The use of credit cards for such a purpose and the nondischargeability language discussed above where both recommended in the report by the Vice President on "Reinventing Government.")

Section 222, entitled "Return of Goods," amends section 546 of the Code to permit the court, on a motion by the trustee made not later than 120 days after the date of the order for relief, and after notice and a hearing, to authorize the return of goods, with the consent of the creditor, if it is in the best interests of the estate. The purchase price of returned goods would be offset against any prepetition claim by the creditor. (Earlier versions of this provision had used the term "value" instead of "purchase price.")

"Proceeds of Money Order Agreements" is the subject of section 223. The goal of this amendment is to solve a problem that exists when a business that sells money orders files a petition under the Bankruptcy Code. When this happens, often the money for the money orders has not been transferred to the money order issuer by the money order seller, yet the money order issuer is still required to pay the outstanding money order. This bill would amend section 541(b) of title 11 to provide that the monies from the sale of money orders collected within 14 days of the filing of the petition are not property of the estate and can be forwarded to the money order issuer, if there is a prepetition agreement between the issuer and the debtor/seller that prohibits commingling of money order "proceeds" with property of the debtor, unless the issuer failed to take action, prior to the filing of the petition, to require compliance with the agreement. The section by section analysis notes that, as indicated above, to benefit from this provision, the money order issuer must have acted prior to the filing to require compliance with the prohibition against commingling.

Under section 227 of the bill, titled "Trustee Duties; Professional Fees," section 586 of title 28 would be amended to authorize the Executive Office for U.S. Trustees to promulgate procedural guidelines concerning professional fee applications and to require the U.S. trustee to review applications for compensation and reimbursement of expenses filed by trustees and professionals employed in a case in accordance with those guidelines, to file comments with respect to applications, and if appropriate, to file objections to an application.

Section 330(a) of the Code also is amended to modify the statutory standards governing the allowance of compensation to officers and professionals in a case and to state that the court may award less than the amount requested, regardless of whether any party objects.

Specifically, the court is authorized, after notice to the parties in interest and to the U.S. trustee, to award reasonable compensation for the actual and necessary services rendered by a trustee, examiner, attorney, or professional person, or para-professional, and reimbursement for actual and necessary expenses. In determining the amount of compensation, the court on its own motion or on motion of the U.S. trustee or a party in interest, may award less than the amount requested. Additionally, in considering the amount to be awarded, the court "shall" consider the nature of the services, and their extent and value, taking into account all relevant factors, including the time spent on the services, the rates charged, whether the services were necessary to the administration, or beneficial at the time rendered, in the completion of the case. The court is also required to consider whether the tasks were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem or issue. The court is also to consider whether the compensation is reasonable based on the customary compensation charged by similarly skilled practitioners in non-bankruptcy cases. The court "shall not"

allow compensation for duplicate services or for services that are not reasonably likely to benefit the case or are not necessary in the administration of the case. However, an exception is made for a chapter 12 or 13 case in which the debtor is an individual, where the court may allow reasonable compensation for services by the debtor's attorney without regard to the benefit of such services to the estate.

If interim compensation was awarded, the court, in making the final award, is to consider the amount and timing of such payments. Any interim compensation that exceeds the final amount awarded by the court may be ordered to be returned to the trustee or other entity that paid such amount.

Finally, the court, when determining the amount to be awarded for the preparation of fee applications, is instructed to recognize the difference between the value of professional services and the value of services rendered in preparing fee applications. Awards for preparation of fee applications are to be reasonable and based on the level of skill required to prepare the application.

An interesting deletion from past versions is language which, in considering the amount to be awarded, allowed the court to consider the total value of the estate and the amount of funds or other property available for distribution to secured and unsecured creditors.

The final section of title II is section 225, titled "Notices to Creditors." Section 342 of title 11 is amended to add a new subsection which requires that if notice is required to be given "by the debtor" then the notice "shall" contain the name, address, and taxpayer identification number of the debtor. However, it is specially provided that the failure to include this information "shall not invalidate the legal effect of such notice." Additionally, the section by section analysis contains the comments set forth below:

> The Committee anticipates that the Official Bankruptcy Forms will be amended to provide that the information required by this section will become a part of the caption on every notice given in a bankruptcy case. As with other similar requirements, the court retains the authority to waive this requirement in compelling circumstances, such as those of a domestic violence victim who must conceal her residence for her own safety.

The "Period for Curing Default Relating to Principal Residence" provisions in section 301 of the bill permit the debtor to cure a default up until the completion of a foreclosure sale under state law. It is provided that a debtor may cure a default and maintain payments while the case is pending; or, in a case in which the last payment (on the original payment schedule) is due before the date on which the final payment under the plan is due, may provide for the payment of the claim pursuant to section 1325(a)(5) of the Code (which protects a secured creditor that agrees to modification of its claim or whose allowed claim the plan will pay in full).

Section 302, entitled "Nondischargeability of Fine Under Chapter 13" amends section 1328(a)(3) of the Code to provide that in addition to "restitution" not being dischargeable, neither is a criminal fine.

"Impairment of Exemptions" is the heading of section 303 which amends section 522(f) of the Code to allow debtors to avoid judicial liens on their exempt property to the extent that the lien, along with senior liens, and the exemption, exceed the value of the debtor's interest in the property (if there were no liens).

The House Judiciary Committee's analysis explains that the phrase "impair an exemption" is currently not defined in the Code. Consequently, several court decisions have reached results that, according to the analysis, were not intended by Congress. Therefore, the purpose of the present change is to clarify this intent by providing "a simple arithmetic test" to determine whether a lien impairs an exemption. The test to determine whether the exemption is impaired is if the sum of 1) the lien, 2) all other liens on the property, and 3) the amount of the exemption that the debtor could claim if there were no liens on the property exceeds the value that the debtor's interest in the property would have in the absence of any liens. However, the amendment specifies that if the property is subject to more than one lien, then any lien which has been avoided shall not be considered in the above calculation.

It is also specifically held that these provisions do not apply with respect to a judgment arising out of a mortgage foreclosure.

Section 304 is a child support and alimony provision. First, section 101 of the Bankruptcy Code is amended to define the term "debt for child support" to mean a debt for child maintenance or support within the meaning of section 523(a)(5) of the Code.

Presently, the automatic stay provided by section 362(a) of the Code does not prevent the continued collection of alimony, maintenance, or support from property that is not property of the estate. This amendment expands that provision to include paternity

actions or proceedings and the commencement of actions or proceedings to establish or modify an order for alimony, maintenance, or support from property that is not property of the estate. In order to fulfill the goals of alimony and support payments, a debt for these obligations now is afforded seventh priority under section 507(a) of the Code, and the priority section is rearranged with the present seventh priority bumped down to eighth and so on, consecutively.

The new seventh priority pertains to claims for debts to a spouse, former spouse, or child of the debtor, for alimony, maintenance or support payments for support of a spouse or child in connection with a separation agreement, divorce decree, or other court order or determination by an appropriate state or governmental body, or pursuant to a property settlement agreement. The following debts are not included: a debt that is assigned, voluntarily, by operation of law, or otherwise, to another entity or a debt that includes a liability "designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support." This language is borrowed in large part from the current section 523(a)(5) of the Code.

To further effectuate the purpose of preventing avoidance of alimony and child support payments, the bill amends section 522(f) of title 11, to provide that liens based on debts for spousal or child maintenance payments arising from a separation agreement, divorce decree or other court or governmental entity's order or determination, or from a property settlement agreement are not avoidable, except as outlined above in the discussion concerning the priority section.

Amendments also are made to section 523(a) of the Code. Specifically, a new paragraph (15) is added making a debt arising from a property settlement agreement nondischargeable. The new paragraph (15) provides that a debt not of the kind specified in paragraph (5) of section 523(a) (alimony, maintenance, child support) that is incurred by the debtor during or in connection with a divorce or separation, or in connection with a separation agreement or divorce decree or other determination made in accordance with state law by a governmental unit will not be discharged unless 1) the debtor does not have the ability to pay the debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or 2) if discharging the debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

Subsection(c) of 523(a) is also amended to include a debt described in paragraph (15) among those concerning which the creditor must timely initiate a court proceeding requesting an exception to discharge. In other words, if the spouse, former spouse, or child does not prevail on a complaint to determine the dischargeability of the debt, the

obligation will discharged.

Section 547(c) is also amended to create a new paragraph (c)(7), (with the present (7) being designated as (8)), which provides that the trustee may not avoid as preferential a transfer which was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor for alimony or support payments under the same conditions, and with the same exceptions as are provided in the amendments to sections 362, 507 and 522.

Subsection (g), entitled "Appearance Before Court," provides that a "child support creditor, or its representative shall be permitted to appear and intervene without charge" in any bankruptcy proceeding in any bankruptcy or district court of the United States if such representative or creditor files a form in the court that contains information detailing the child support debt, its status, and "other characteristics." This provision has the potential to permit these claimants to litigate in the bankruptcy courts without payment of fees. The provision also permits these "creditors or their representatives" to appear without regard to "any special local court rule requirement for attorney appearances."

"Interest on Interest" is the subject of section 305. It amends the sections governing contents of a plan under chapters 11, 12, and 13 of the Code by adding new subsections providing that notwithstanding various specified sections of the Code pertaining to secured claims and holders of claims, i.e., sections 506(b), 1129(a)(7), and 1129(b) 1225(a)(5), and 1325(a)(5), and if it is proposed in a plan to cure a default, the amount necessary to cure a default under a plan shall be determined by the underlying agreement and any applicable nonbankruptcy law. The section by section analysis states that the intent of this provision is effectively to overrule the decision of the Supreme Court in Rake v. Wade. This amendment applies only to agreements entered into after enactment.

Section 306, Exception to Discharge," amends section 523(a)(2) of title 11 to extend the time during which debts incurred for "luxury goods" are not dischargeable from the present 40 days prior to filing to 60 days, increases the maximum amount not dischargeable from $500 to $1,000; and increases from 20 days to 60 days the time during which cash advances obtained under an open end credit plan may be nondischargeable.

Section 307 entitled "Payments Under Chapter 13," amends section 1326(a)(2) of the Code to require the standing chapter 13 trustee to distribute payments "as soon as practicable" after the plan is confirmed. The section by section analysis states that there are varied times throughout the courts when these payments begin and that this section clarifies the intent of Congress that these payments be made promptly, even prior to the bar date for filing claims, but only if the trustee can provide adequate protection against any prejudice to a later filing claimant caused by distributions prior to the bar date.

"Bankruptcy Petition Preparers" is the title of section 308. It creates a new section 110 of the Bankruptcy Code which seeks to address the "bankruptcy mills" problem (presently being felt so acutely by the Central District of California). The bill provides that bankruptcy petition preparers are not authorized to execute documents on behalf of the debtor and shall not do so. Bankruptcy petition preparers also are prohibited from using the term "legal" or similar terms in advertisements and must not advertise under any category that uses the word "legal" or similar terms.

Bankruptcy petition preparers are not permitted to collect or receive payment from or on behalf of the debtor for court fees. Within ten days after a petition has been filed, a bankruptcy petition preparer will be required to file, under penalty of perjury, a declaration which discloses any fee received from or on behalf of the debtor within the 12 months prior to the filing of the petition, and any unpaid fee charged to the debtor. It is further provided that the court shall disallow and order the immediate turnover to the trustee of any fee referred to above which the court finds to be in excess of the value of the services for the documents which were prepared. A debtor, the trustee, a creditor, or the U. S. trustee may file a motion seeking such an order. An individual debtor may exempt any funds so recovered under section 522(b) of the Code.

Each of the above-referenced provisions provides for a fine of up to $500 for a violation.

The amendments provide a cause of action for damages arising from the negligence or disregard of the bankruptcy petition preparer and the failure of the preparer to file bankruptcy papers, specifically including the papers listed in section 521(1) of the Code. Additionally, if a bankruptcy petition preparer is found liable for damages, such preparer shall be required to pay a trustee or a creditor reasonable attorneys' fees and costs. An action for injunctive relief also can be filed by a debtor, the U.S. trustee, a creditor, or the trustee. Attorney's fees also may be awarded to a debtor, a trustee, or a creditor who is successful in obtaining an injunction. The provision also explicitly states that such an award is to be paid by the bankruptcy petition preparer.

A petition preparer is required to show the preparer's name, address, and social security number on the petition. A preparer is required to sign the document and furnish a copy of the petition to the debtor when the petition is filed. Titles 11 and 18 are amended to provide criminal penalties for willful disregard of bankruptcy rules or laws. Past versions of this amendment have permitted fees only for "typing" service. The reference to typing has been deleted and the reference is now simply to services.

Section 309, "Fairness to Condominium and Cooperative Owners," amends section 523(a) of the Code to provide that post bankruptcy condominium or cooperative housing owners' association fees, payable for a time in which the debtor occupied the unit, or

received rental payments, are not dischargeable.

Section 310 is titled "Nonavoidability of Fixing of Lien on Tools and Implements of Trade, Animals, and Crops." This amendment seeks to substantially modify the Owen v. Owen decision issued last term by the Supreme Court regarding lien avoidance. The provision would amend section 522(f) of title 11 to provide that the fixing of a lien cannot be avoided if the lien is a nonpossessory, nonpurchase money security interest in tools of the trade or farm animals or crops and state law either permits a debtor to claim exemptions without limitation in amount or prohibits avoidance of the lien. This provision affects only the value exceeding $5,000.

"Conversion of Case Under Chapter 13" is the title of section 311 of the bill. It amends section 348 of the Code to provide that when a chapter 13 case is converted to another chapter, the property of the estate consists of property of the estate as of the date of the filing of the petition and remaining in the possession or control of the debtor, and that valuations of property and allowed secured claims will apply in the converted case, with the allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan. It is also provided that if the debtor converts a chapter 13 case in bad faith, then the property in the converted case shall consist of the property of the estate as of the date of the conversion.

Section 312 is entitled "Bankruptcy Fraud" and occupies a section of this Act instead of an entire title as in the earlier versions of the bill. This section amends chapter 9 of title 18, United States Code (the criminal code), the chapter labeled "Bankruptcy." The amendments to section 152 of title 18, entitled "Concealment of assets; false oaths and claims; bribery," are relatively minor and include listing the U.S. trustee among those from whom assets cannot be concealed. The bill also takes the present restrictions, generally, and sets them up in a numbered paragraph system.

Section 153 of title 18, pertaining to "Embezzlement" against the estate is amended to clarify and enlarge the categories and persons covered by this section. Specifically, the section applies to a person whose participation in the administration of the estate, as a trustee, custodian, marshal, attorney, or other officer or agent, employee "or other person engaged by such an officer to perform a service" affords that person access to property or documents belonging to the estate.

"Adverse interest and conduct of officers" is the title of section 154 of title 18, and the amendments to this section include establishing violations for refusing to permit the U.S. trustee to have a reasonable opportunity to inspect documents and accounts.

A new section 156 is added, titled, "Knowing disregard of bankruptcy law or rule"

which defines a "bankruptcy petition preparer" as someone other than the debtor's attorney, or an employee of the attorney, who prepares for compensation a document for filing. A "document for filing" is defined as a petition or any other document prepared for filing by a debtor in a bankruptcy court or in a district court. The amendment further provides that if a case is dismissed because of a knowing attempt by the bankruptcy petition preparer to disregard any title 11 or bankruptcy rule requirement, then the preparer "shall be fined under this title, imprisoned not more than 1 year, or both." This section does not specify the amount of the fine.

The final amendment to chapter 9 of title 18 is the addition of a new section 157 entitled "Bankruptcy fraud." Briefly, the section provides that anyone who, having devised or intending to devise a scheme or artifice to defraud, files a bankruptcy petition or any document in a bankruptcy proceeding, or makes a false or fraudulent representation or promise concerning a bankruptcy case, before or after the filing of a petition, shall be fined or imprisoned for 5 years or less, or both. Again, no specific fine amount is given. Language pertaining to "intent" which had been opposed by the Department of Justice was deleted.

Section 313, is titled "Protection Against Discriminatory Treatment of Applications for Student Loans," and amends section 525 of the Bankruptcy Code to add a new subsection prohibiting denial of a student loan, grant, guarantee, or loan insurance because the applicant is or has been a debtor or has been in bankruptcy, or has been associated with a debtor or person in bankruptcy, or was insolvent, or has not paid a debt that is dischargeable under title 11 or that was discharged "under the Bankruptcy Act."

TITLE IV - GOVERNMENTAL BANKRUPTCY ISSUES

Section 401, "Exception From Automatic Stay for Post-Petition Property Taxes," provides an exception to the automatic stay for postpetition property taxes. Specifically, the automatic stay would no longer prevent the creation or perfection of a statutory lien for such taxes by a locality.

To effect this change, this section amends section 362(b) of the Code to create a new paragraph 18. This is not correct. To create the correct paragraph number, this section needs to rectify incorrect numbering created by the Omnibus Budget Reconciliation Act of 1990, Pub. Law No. 101-508. Title III of the above-referenced Act, entitled the "Student Loan Default Prevention Initiative Act of 1990," amended section 362(b) by creating new paragraphs (14), (15), and (16), concerning swap agreements. Thus, the present bill should redesignate the paragraphs added by the Omnibus Budget Reconciliation Act of 1990 as paragraphs (15), (16), and (17), respectively, before adding the new paragraph (18). If left

as is, we will have two (14)'s, one (15), one (16), no (17), and one(18).

Section 402 is entitled "Municipal Bankruptcy," and seems to stem from the dispute that arose over the chapter 9 filing by the City of Bridgeport, Connecticut, and other proposed filings by major cities. This section amends section 109 to require a municipality to be "specifically authorized, in its capacity as a municipality or by name," as opposed to the present requirement of being "generally authorized" to be a debtor under chapter 9 of the Bankruptcy Code.

TITLE V - TECHNICAL CORRECTIONS

There are 16 pages of technical corrections which will be reviewed at a later date.

TITLE VI - BANKRUPTCY REVIEW COMMISSION

Entitled the "National Bankruptcy Review Commission Act," this title establishes a nine-member National Bankruptcy Review Commission, with a two-year mandate to 1) study and investigate issues and problems relating to the Bankruptcy Code; 2) evaluate the advisability of proposals and current arrangements regarding such issues and problems; 3) prepare and submit a report to the Congress, the Chief Justice, and the President, in accordance with the above-referenced directives; and 4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system. An interesting insertion made at the last minute is a provision which prohibits Members of Congress and officers and employees of the executive branch from serving on the Commission.

The members of the Commission are to be appointed as follows: three by the President, one to be designated by the President as the chairman; one by the President pro tempore of the Senate; one by the Minority Leader of the Senate; one by the Speaker of the House of Representatives; one by the Minority Leader of the House of Representatives; (prior versions had called for 2 appointments by the President pro tempore of the Senate, with one from each political party); and two by the Chief Justice.

The first appointments shall be made within 60 days after enactment, and the first meeting of the Commission shall be held 210 days after enactment.

The Commission is authorized to hold hearings, take testimony, and receive evidence. The Commission is also authorized to secure "directly from any Federal department, agency, or court" information it deems necessary to carry out its function. Upon the request of the chairman of the Commission, a chief judge of a federal court shall furnish information to the Commission.

The Commission's report is to be submitted not later than two years after the date of the Commission's its first meeting. The report is required to contain a detailed statement of the Commission's findings and conclusions, as well as its recommendations for legislative or administrative action. The Commission ceases to exist 30 days after submitting its report. An appropriation of $1,500,000 is provided for the Commission.

TITLE VII - SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Section 701 is the severability section.

Section 702 is titled "Severability; Effective Date; Application of Amendments" and states that except as otherwise provided, the Act shall take effect on the date of enactment, i.e., the day the President signs the bill.

The specific exceptions to the effective date are: section 111 (supplemental, "Manville-type," injunctions) which contains a detailed effective date subsection; section 113 (sovereign immunity) and section 117 (additional trustee compensation) which are specifically stated to apply to cases commenced under title 11 "before, on, and after the date of the enactment." (NOTE: Section 117 itself explicitly provides that the $15 increase shall NOT take effect until one year after enactment. The applicability referred to above concerns the imposition of new fees). Additionally, certain lease provisions affected by section 201 (Aircraft Equipment and Vessels; Rolling Stock Equipment) shall apply to pending cases. Finally, the provisions of section 305 (interest on interest) are held to apply only to agreements entered into after the date of enactment.

section 2

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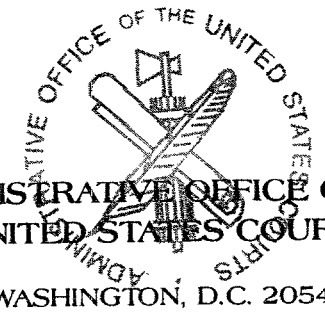

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

FRANCIS F. SZCZEBAK
CHIEF
BANKRUPTCY JUDGES DIVISION

October 31, 1994

MEMORANDUM TO: SUBCOMMITTEE ON FORMS, ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: Revisions to Bankruptcy Forms Required by 1994 Act

The Bankruptcy Reform Act of 1994, enacted on October 22, 1994, contains many provisions that require amendments to the Official Bankruptcy Forms as well as to the Federal Rules of Bankruptcy Procedure. Accordingly, there will be a special meeting of the Subcommittee on Forms preceding the special meeting of the Advisory Committee on Bankruptcy Rules that is scheduled for December 8 and 9 in Washington, D.C. The forms subcommittee will meet on the afternoon of December 7.

Several forms seem to need amending most urgently:

- Form 10, Proof of Claim, to add the new priority for alimony and child support, renumber the tax priority, and increase the stated maximums for the wages and customer deposit priorities;

- Form 6, Schedule E, Creditors Holding Unsecured Priority Claims, to add the new priority and renumber the existing seventh and eighth priorities;

- Forms 16A-C, the captions, to ensure that the debtor's address and taxpayer identification number appear on all notices;

- Forms 9A-I, the meeting of creditors notices, to add the extended claims filing period afforded to "a governmental unit," and consider whether changes are needed to the information provided about the claims filing deadlines;

- Form 17, the Notice of Appeal, to provide for appeal to a bankruptcy appellate panel, for the appealability of exclusivity orders, and for an election concerning the hearing of an appeal by a district court rather than a bankruptcy appellate panel;

- Form 1, Voluntary Petition, to add a signature box for a "bankruptcy petition preparer" and, possibly, to provide for the identification of a "small business" in a chapter 11 case and, once identified, for election of special small business treatment by the debtor, and

- Form 18, Discharge, to add new paragraph (15) to those debts that are discharged unless determined otherwise by the court.

In addition, there may be further amendments the subcommittee will want to consider, such as adding signature boxes for a "bankruptcy petition preparer" to Form 3 (application to pay filing fee in installments), Form 6 (schedules), Form 7 (statement of financial affairs), and Form 8 (statement of intention). The subcommittee also may want to consider whether a debtor in a "single asset real estate" case should be required to disclose its status in either the petition, the statement of financial affairs, or both.

The subcommittee also may need to review statutorily required changes to the Director's (unofficial) form for a reaffirmation agreement and the discharge orders for joint cases under chapter 7 and for chapter 12 and chapter 13 cases. The subcommittee also will need to consider an "appearance" form to be filed by a child support creditor or such creditor's representative under section 304(g) of the 1994 Act.

There may be additional forms affected by the new law that are not mentioned. I am sending this memo also to every member of the Advisory Committee so that the subcommittee can have the benefit of any suggestions of other forms an Advisory Committee member may see as needing amendment. As you review the 1994 Act, please keep the forms in mind and let me know of any that should be added to the list of forms to be amended.

In order to afford the Advisory Committee a reasonable opportunity to review the proposed amendments to the forms, the package of proposed forms amendments will be included in the agenda materials for the Advisory Committee meeting and mailed to the members in advance. Changes made to this package by the subcommittee on December 7 will be described and "corrected" copies of forms made overnight for distribution at the Advisory Committee meeting.

Lastly, although there may not be time at the special meeting to address the ongoing work of the subcommittee, members who have completed previously assigned drafting work may want to circulate their drafts as soon as possible. I would be happy to collect, copy, and forward your drafts to all subcommittee members along with the material for the special meeting.

Pat

Patricia S. Channon
Senior Attorney
Bankruptcy Judges Division

cc: All members of the Advisory Committee on Bankruptcy Rules

Section 3

MATERIALS TO BE DISTRIBUTED

MATERIALS TO BE DISTRIBUTED