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WITHDRAWAL SHEET

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Date: 3/1/99

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Fred Fielding to John Herrington re prospective appointment to National Science Board 1 p. <i>Quintia redacted</i>	7/27/84	B6, F6 B6 C03 10/5/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

WITHDRAWAL SHEET

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THE WHITE HOUSE



WASHINGTON

July 27, 1984

MEMORANDUM FOR JOHN S. HERRINGTON
ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Prospective Appointment of 
as a Member of the National Science Board

, a prospective nominee to become a member of the National Science Board indicated to me and subsequently to a member of my staff on Friday, July 20, 1984, that he felt he could not serve as a member of the National Science Board without subjecting the President to the potential of damaging allegations of conflicts of interest. Accordingly, , advised that he desires to withdraw from further consideration for this position.

I would urge that he be considered for another board that does not present such problems, as he obviously has the President's best interests in mind.

bcc: James A. Baker III

THE WHITE HOUSE
WASHINGTON

July 19, 1984

Personal

MEMORANDUM FOR PETER TEELEY

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

JAB III has discussed with me your memo of July 17.

Although you have not made a specific request for Jim's approval, you should know that I have advised him that he cannot approve this if asked by the RNC for his opinion.

Please give me a call if you wish to discuss further.

bcc: JAB III

FFF/pah
Subj.
Chron. (2)

THE WHITE HOUSE

WASHINGTON

July 11, 1984

MEMORANDUM FOR THE ATTORNEY GENERAL

EDWIN MEESE III

JAMES A. BAKER, III ←

DEPUTY ATTORNEY GENERAL CAROL E. DINKINS

JOHN S. HERRINGTON

D. LOWELL JENSEN

TEX LEZAR

M. B. OGLESBY

MARGARET TUTWILER

FROM:

FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT:

Summary of Decisions -- July 10, 1984
Meeting of the President's Federal
Judicial Selections Committee

Summarized below are the decisions made in our meeting of July 10, 1984. The next meeting of our Committee will be on Thursday, July 19, 1984 at 5:00 p.m. in the Roosevelt Room.

I. NEW JUDGESHIPS ON THE U.S. COURTS OF APPEAL

A. First Circuit

U.S. District Court Judge Juan R. Torruella, II was selected as a candidate to fill one of the two vacancies on the First Circuit; the necessary background investigations will be initiated on Judge Torruella.

B. Third Circuit

U.S. District Court Judge Carol Los Mansmann was selected as a candidate to fill one of the two vacancies on the Third Circuit; the necessary background investigations will be initiated on Mansmann.

C. Fourth Circuit

Emory R. Sneed was selected as the candidate to fill the vacancy on the Fourth Circuit; the necessary background investigations will be initiated on Sneed.

D. Fifth Circuit

Edith Jones was selected as a candidate to fill one of the two vacancies on the Fifth Circuit; the necessary background investigations will be initiated on Jones. DOJ is to review the qualifications of Daniel K. Hennessey who was also mentioned as a candidate for this court.

E. Ninth Circuit

U.S. District Court Judge Cynthia Holcomb Hall and former U.S. Congressman Charles Wiggins were selected as candidates to fill 2 of the 5 vacancies on this court; the necessary background investigations will be initiated on Hall and Wiggins. California Federal District Judges Pamela Rymer and Samuel Conti may be considered as candidates for this court next year.

F. D.C. Circuit

Deputy Solicitor General Paul Bator was selected as the candidate for nomination to the one vacancy on the D.C. Circuit; the necessary background investigations will be initiated on Bator.

G. Other Judgeships

Frank Easterbrook was selected as a candidate to fill one of the two vacancies on the Seventh Circuit; the necessary background investigations on Easterbrook will be initiated.

Senator Abdnor has recommended two individuals as candidates to fill the vacancy on the Eighth Circuit; as these individuals were previously recommended by Abdnor for this court, my office will review the files on those individuals and report at our next meeting.

II. DISTRICT COURTS

The Justice Department is to present its views on candidates for the new District Court judgeships, with special emphasis on candidates for Tennessee, Florida and Michigan, at our next meeting.

7/13 RChen
saw

THE WHITE HOUSE
WASHINGTON

July 11, 1984

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Re: CBS Report - Mexican Family Wins House
in Lottery and Faces Deportation

As you are aware, the Carlotta family, living in Kansas City, Missouri, won a house in a church lottery. When this event was written up in the newspapers, Immigration officials discovered that members of the family were illegal aliens. At first the Lutheran church that sponsored the lottery would not award the prize; now the church has agreed to turn it over to the Carlottas with a remainder interest in the event of deportation.

The Carlottas first entered the U.S. illegally through El Paso in 1977. They were apprehended in 1980 and permitted voluntary departure.

Most recently they entered the U.S. on January 15, 1982 and remained undetected until this June. The earliest date for a hearing in Kansas City is August 13; more likely this case will not be heard until October. At that time, if found to be in an illegal status (which seems very likely), they will have the option of voluntary departure, deportation, or appeal.

Please note: The family would not qualify under the terms of the pending immigration bill.

: The father is working as a roofer, earning \$12.00/hour, which is the type of situation these immigration laws are designed to prevent (foreign workers taking jobs from local labor).

Please let me know if you need further information.

7/13 *RR has seen*

THE WHITE HOUSE
WASHINGTON

July 5, 1984

(1) *Check
prior reg.
w/FF*
(2) *To RR*

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER *RAH*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Good Morning America Report (7/5/85)
Concerning the Government's Efforts to Deport a
Mentally Retarded Mexican Boy and His Family.

As requested, this office contacted the Department of Justice to ascertain the facts and status of this proceeding. The Department of Justice advises that the Velasco family arrived in the United States in 1976 and was apprehended in 1977. Proceedings were initiated against the Velascos in 1979, and a deportation order was upheld by the United States Court of Appeals for the 10th Circuit. I'm advised, however, that deportation is not imminent.

The reported cost of \$40,000 a year to maintain the child is essentially correct, with the financial burden falling primarily on the State of Colorado. The Velascos apparently live some distance from the institution and they rarely visit their son. Four additional children have been born to the Velascos since 1979.

The Velasco family is represented by Counsel, who has now turned to the media (quite successfully) to gather support for their case.

Please let me know if you need additional information.

7/5/84

THE WHITE HOUSE
WASHINGTON

TO:

JAB EU

FROM:

RICHARD A. HAUSER *RAH*
Deputy Counsel to the President

☒ FYI

R: Gilbert BOZIER

☐ COMMENT

☐ ACTION

✓




U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

July 5, 1984

MEMORANDUM FOR: Richard A. Hauser
Deputy Counsel to the President
The White House

FROM: William R. McGuinness 
Deputy Associate Attorney General

Attached is a copy of press guidance material utilized by the Department of Justice with respect to the Gilbert L. Dozier Executive clemency action.

Attachment

Gilbert L. Dozier was convicted in the United States District Court for the Middle District of Louisiana in 1980 for violations of the RICO and Hobbs Acts involving extortion and bribery in soliciting money from individuals and businesses that were, or might have been, affected by actions of the Louisiana Department of Agriculture while he was Commissioner of Agriculture. In 1982 he was determined to have committed criminal acts, including obstruction of justice, and to have thereby violated the conditions of a court ordered probationary term. On June 24, 1982, he commenced service of an aggregate sentence of from 58 months' to 18 years' imprisonment, followed by five years' probation, and was fined \$25,000. In January 1983, by way of application received in the Office of the Pardon Attorney, Dozier applied for Executive clemency in the form of a commutation of sentence.

In accordance with standard procedures, the Office of the Pardon Attorney, headed and staffed by experienced career attorneys, obtained and evaluated relevant information, reports, and advice and made a favorable recommendation with respect to the application. The original recommendation was reviewed and enhanced to reflect more completely the full range of Dozier's conduct, including both the offenses for which he was originally

convicted and the post-conviction revocation of his probation, as well as the expressed view of the sentencing court as to the serious nature of his criminal activities. On March 20, 1984, the Department of Justice recommended to the President that he modify the sentence of imprisonment and probation to six years' imprisonment. The recommendation considered the disparity of the original prison sentence as compared to sentences imposed in similar circumstances on like offenders for similar offenses. The disparity of Dozier's sentence was demonstrated by a comparison with relevant sentencing data on sentences imposed in Federal courts and compiled by the Administrative Office of United States Courts. It was noted that the RICO and extortion violations which made up the statistics analyzed generally involved more severe offense behavior than the acts of extortion and bribery committed by Dozier. Generally, they included offenders with serious prior criminal records and whose offenses involved violence. Sentencing statistics pertaining to defendants convicted of bribery suggest an even greater disparity of sentence. In addition, sentences imposed in comparable cases in recent years upon a number of public figures in the Federal criminal justice system were reviewed. Also taken into consideration were additional factors including: cooperation with law enforcement, the guidelines of the United States Parole Commission, the length of incarceration to date, payment of fine, institutional adjustment, and the deterrent effect to be achieved by completion of the original sentence. The President granted the commutation of sentence as recommended by the Department of Justice on

June 22, 1984. This action in no way constitutes a pardon of Dozier for the conduct which resulted in his conviction and incarceration.

While the recommended sentence of six years' imprisonment would permit Dozier to become eligible for parole consideration after 24 months' imprisonment, any actual release will be determined by the United States Parole Commission in its discretion and in accordance with its applicable guidelines. Unless the Parole Commission releases him sooner, Dozier will remain incarcerated until the expiration of his six-year sentence subject to statutory release procedures applicable to all Federal prisoners.

THE WHITE HOUSE
WASHINGTON

July 3, 1984

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER *RHS*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Conference Report on H.R.5174, Bankruptcy
Amendments of 1984.

Attached for your information is a copy of the Conference Report on the amendments to the Bankruptcy Act. The sections creating the new circuit and district judgeships appear at H7475 - 7476.

NAYS—169

Anderson	Hightower	Petri
Archer	Hillier	Porter
Badham	Hillis	Pursell
Bedell	Holt	Rahall
Bereuter	Hopkins	Ray
Bethune	Horton	Regula
Bilbrakis	Hubbard	Rinaldo
Billey	Hunter	Ritter
Boehlert	Hyde	Roberts
Boyer	Ireland	Robinson
Broomfield	Jacobs	Roemer
Brown (CO)	Jeffords	Rogers
Campbell	Johnson	Roukema
Carney	Jones (NC)	Sawyer
Carper	Jones (TN)	Schaefer
Chandler	Kaptur	Schulze
Chapple	Kasich	Seiberling
Cheney	Kemp	Sharp
Clinger	Kindness	Shaw
Coats	Kramer	Shumway
Cokeman (MO)	Lagomarsino	Shuster
Conable	Latza	Sithander
Conte	Leach	Skeen
Courter	Leah	Smith (IA)
Crane, Daniel	Levitas	Smith (NE)
Crane, Philip	Lewis (FL)	Smith (NJ)
Daniel	Lloyd	Smith, Denny
Dannemeyer	Lujan	Smith, Robert
Daub	Lungren	Snowe
Davis	Mack	Snyder
Derrick	Marienne	Solomon
Dickinson	Mariotti	Spence
Dreier	Martin (IL)	St Germain
Duncan	Mazoli	Staggers
Dyson	McCaIn	Stangeland
Edgar	McCandless	Stump
Edwards (OK)	McCollum	Sundquist
Emerson	McDade	Taffin
Erdreich	McEwen	Tauke
Evans (IA)	McGrath	Taylor
Evans (IL)	McKernan	Torricelli
Fields	Michel	Vandergriff
Gaydos	Müller (OH)	Volkmer
Gekas	Mollinari	Walker
Gilman	Moorhead	Watkins
Gingrich	Morrison (WA)	Weaver
Goodling	Mrazek	Weber
Gore	Myers	Whitehurst
Gradison	Nielson	Whittaker
Gramm	O'Brien	Williams (MT)
Gunderson	Olin	Winn
Hall, Ralph	Ottlinger	Wolf
Hammerschmidt	Oxley	Wortley
Hansen (UT)	Packard	Wylie
Harkin	Parris	Young (AK)
Hartnett	Pashayan	
Hefel	Patman	

NOT VOTING—38

Berman	Dymally	Paul
Bevill	Early	Ridge
Boland	Erlenborn	Roth
Bonior	Fiedler	Rudd
Boucher	Foglietta	Russo
Breaux	Frank	Sensenbrenner
Burton (IN)	Gregg	Shannon
Byron	Hansen (ID)	Simon
Craig	Luken	Stark
D'Amours	Martin (NC)	Udall
de la Garza	McCurdy	Williams (OH)
Dingell	McKinney	Yatron
Downey	Oberstar	

□ 1350

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 5604, MILITARY CONSTRUCTION AUTHORIZATION ACT, 1985

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5604) to authorize certain construction at military installations for fiscal year 1985, and for other purposes, with a Senate amendment thereto, disagree to the

Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from California? The Chair hears none, and appoints the following conferees: MESSRS. PRICE, DELLUMS, MONTGOMERY, KAZEN, WONG PAT, DICKINSON, KRAMER, and WHITEHURST.

CONFERENCE REPORT ON H.R. 5174, BANKRUPTCY AMENDMENTS OF 1984

Mr. RODINO submitted the following conference report on the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 98-862)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5174) to provide for the appointment of United States Bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984".

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

"§ 1334. Bankruptcy cases and proceedings

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or

State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate."

"(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings."

Sec. 102. (a) Chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1405. Venue of cases under title 11

"Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

"(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one hundred and eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

"(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

"§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

"(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

"(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than \$1,000 or a consumer debt of less than \$5,000 only in the district court for the district in which the defendant resides.

"(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

"(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of

the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

"(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

"§ 1410. Venue of cases ancillary to foreign proceedings

"(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

"(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

"(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

"§ 1411. Jury trials

"(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

"(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

"§ 1412. Change of venue

"A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."

(b) The table of sections of chapter 87 of title 28, United States Code, is amended by adding at the end thereof the following new items:

"1408. Venue of cases under title 11.

"1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.

"1410. Venue of cases ancillary to foreign proceedings.

"1411. Jury trials.

"1412. Change of venue."

SEC. 103. (a) Chapter 89 of title 28, United States Code, is amended by inserting at the end thereof the following new section:

"§ 1452. Removal of claims related to bankruptcy cases

"(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

"(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise."

(b) The table of sections of chapter 89 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1452. Removal of claims related to bankruptcy cases."

SEC. 104. (a) Title 28 of the United States Code is amended by inserting after chapter 5 the following new chapter:

"CHAPTER 6—BANKRUPTCY JUDGES

"Sec.

"151. Designation of bankruptcy courts.

"152. Appointment of bankruptcy judges.

"153. Salaries; character of service.

"154. Division of business; chief judge.

"155. Temporary transfer of bankruptcy judges.

"156. Staff; expenses.

"157. Procedures.

"158. Appeals.

"§ 151. Designation of bankruptcy courts

"In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

"§ 152. Appointment of bankruptcy judges

"(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

"(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

"Districts	Judges
Alabama:	
Northern.....	5
Middle.....	2
Southern.....	2
Alaska.....	1
Arizona.....	4
Arkansas:	
Eastern and Western.....	2
California:	
Northern.....	7
Eastern.....	4
Central.....	12
Southern.....	3
Colorado.....	4
Connecticut.....	2
Delaware.....	1
District of Columbia.....	1
Florida:	
Northern.....	1
Middle.....	2
Southern.....	3
Georgia:	
Northern.....	4
Middle.....	2
Southern.....	1
Hawaii.....	1

Idaho.....	1
Illinois:	
Northern.....	8
Central.....	2
Southern.....	1
Indiana:	
Northern.....	2
Southern.....	4
Iowa:	
Northern.....	1
Southern.....	1
Kansas.....	3
Kentucky:	
Eastern.....	1
Western.....	2
Louisiana:	
Eastern.....	2
Middle.....	1
Western.....	2
Maine.....	2
Maryland.....	2
Massachusetts.....	4
Michigan:	
Eastern.....	4
Western.....	2
Minnesota.....	4
Mississippi:	
Northern.....	1
Southern.....	2
Missouri:	
Eastern.....	3
Western.....	3
Montana.....	1
Nebraska.....	1
Nevada.....	2
New Hampshire.....	1
New Jersey.....	5
New Mexico.....	2
New York:	
Northern.....	2
Southern.....	7
Eastern.....	6
Western.....	3
North Carolina:	
Eastern.....	2
Middle.....	2
Western.....	1
North Dakota.....	1
Ohio:	
Northern.....	8
Southern.....	7
Oklahoma:	
Northern.....	1
Eastern.....	1
Western.....	2
Oregon.....	4
Pennsylvania:	
Eastern.....	3
Middle.....	2
Western.....	3
Puerto Rico.....	2
Rhode Island.....	1
South Carolina.....	1
South Dakota.....	1
Tennessee:	
Eastern.....	2
Middle.....	2
Western.....	2
Texas:	
Northern.....	4
Eastern.....	1
Southern.....	3
Western.....	2
Utah.....	2
Vermont.....	1
Virginia:	
Eastern.....	3
Western.....	3
Washington:	
Eastern.....	1
Western.....	4
West Virginia:	
Northern.....	1
Southern.....	1
Wisconsin:	
Eastern.....	3
Western.....	2

Wyoming..... 1."

"(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

"(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

"(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

"(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

"(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

"(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

"(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

"§ 153. Salaries; character of service

"(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title, to be paid at such times as the Judicial Conference of the United States determines.

"(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

"(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

"§ 154. Division of businesses; chief judge

"(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

"(b) In each district court having more than one bankruptcy judge the district court

shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

"§ 155. Temporary transfer of bankruptcy judges

"(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

"(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in subchapter III of chapter 83 of title 5.

"§ 156. Staff; expenses

"(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary.

"(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

"(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

"§ 157. Procedures

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

"(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

"(2) Core proceedings include, but are not limited to—

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims

or interest for the purposes of confirming a plan under chapter 11 or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

"(C) counterclaims by the estate against persons filing claims against the estate;

"(D) orders in respect to obtaining credit;

"(E) orders to turn over property of the estate;

"(F) proceedings to determine, avoid, or recover preferences;

"(G) motions to terminate, annul or modify the automatic stay;

"(H) proceedings to determine, avoid, or recover fraudulent conveyances;

"(I) determinations as to the dischargeability of particular debts;

"(J) objections to discharges;

"(K) determinations of the validity, extent, or priority of liens;

"(L) confirmations of plans;

"(M) orders approving the use or lease of property, including the use of cash collateral;

"(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

"(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

"(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

"(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

"(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States

regulating organizations or activities affecting interstate commerce.

§ 158. Appeals.

"(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

"(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

"(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

"(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section."

"(b) The table of chapters of part I of title 28, United States Code, is amended by inserting after the item relating to chapter 5, the following new item:

"6. Bankruptcy judges 151."

SEC. 105. (a) The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act.

SEC. 106. (a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act.

(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph.

SEC. 107. Section 372(c)(6)(B)(viii) of title 28, United States Code, is amended by striking out "section 152" and inserting in lieu thereof "section 152".

SEC. 108. (a) Section 634(a) of title 28, United States Code, is amended by striking

out "the rates now or hereafter provided for full-time or part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended," and inserting in lieu thereof "rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title".

(b) The maximum rates for salary of full-time and part-time United States magistrates in effect on June 27, 1984, shall remain in effect until changed as a result of a determination made under section 634(a) of title 28, United States Code, as amended by this Act.

SEC. 109. Section 957 of title 28, United States Code, is amended by striking out "district".

SEC. 110. Section 1360 of title 28, United States Code, is amended—

(1) by striking out "or Territories";

(2) by striking out "or Territory" each place it appears; and

(3) by striking out "within the Territory" and inserting in lieu thereof "within the State".

SEC. 111. (a) Section 1930 of title 28, United States Code, is amended by striking out "clerk of the bankruptcy court" each place it appears and inserting in lieu thereof "clerk of the court".

(b) The heading for section 1930 of title 28, United States Code, is amended to read as follows:

"§ 1930. Bankruptcy fees."

(c) The table of sections for chapter 125 of title 28, United States Code, is amended by striking out "Bankruptcy courts" and inserting in lieu thereof "Bankruptcy fees".

SEC. 112. Subsections (f), (j), (k), (l), and (m) of section 8339, subsections (b)(1) and (d) of section 8341, and section 8344(a)(A) of title 5, United States Code, are each amended by striking out "and (o)" and inserting in lieu thereof "and (n)".

SEC. 113. Section 402(b) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682), is amended by striking out "shall take effect on June 28, 1984" and inserting in lieu thereof "shall not be effective".

SEC. 114. Sections 404, 405(a), 405(b), 405(c), 406, 407, and 409 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2683), are repealed.

SEC. 115. (a) On the date of the enactment of this Act the appropriate district court of the United States shall have jurisdiction of—

(1) cases, and matters and proceedings in cases, under the Bankruptcy Act that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), and

(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687).

(b) On the date of the enactment of this Act, there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2685).

SEC. 116. (a) Section 8331(22) of title 5, United States Code, is amended—

(1) by striking out "adding this paragraph" and inserting in lieu thereof "of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)";

(2) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;"

(3) in subparagraph (B)—

(A) by striking out "transition period" and inserting in lieu thereof "period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984";

(B) by striking out the period at the end thereof and inserting in lieu thereof "; or", and

(C) by adding at the end thereof the following new subparagraph:

"(C) who is appointed as a bankruptcy judge under section 152 of title 28."

(b)(1) The first sentence of section 8334(a)(1) of title 5, United States Code, is amended by inserting "and a bankruptcy judge" before the period.

(2) The matter relating to bankruptcy judges in the table set out in section 8334(c) of title 5, United States Code, is amended—

(A) by striking out the following item:

"7..... After January 1, 1970."

and

(B) by inserting in lieu of the item stricken by subparagraph (A) the following new items:

"7..... January 1, 1970, to December 31, 1983.

"8..... After December 31, 1983."

(c) Section 8336 of title 5, United States Code, is amended—

(1) by redesignating subsection (k) as subsection (l), and

(2) by inserting after subsection (j) the following new subsection:

"(k) A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity."

(d) Section 8339 of title 5, United States Code, is amended by—

(1) inserting "or (n)" after "(c)" in subsection (g)(2);

(2) striking out "or (c)" each place it appears in subsection (g) and inserting in lieu thereof "(c), or (n)"; and

(3) striking out "March 31, 1979, and before June 27, 1984," in subsection (n) and inserting in lieu thereof "as a referee in bankruptcy and".

(e) The amendments made by this section shall take effect on the date of enactment and shall apply to bankruptcy judges who retire on or after such date.

SEC. 117. The adjustments in the retirement provisions made by this Act shall not be construed to be a "new government retirement system" for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168).

SEC. 118. Section 105 of title 11, United States Code, is amended—

(1) by deleting the word "bankruptcy" wherever it appears therein; and

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

"(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the

provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation."

SEC. 119. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

SEC. 120. (a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position.

(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

(2) such persons are members in good standing of at least one State bar, or the District of Columbia bar, and members in good standing of every other bar of which they are members,

(3) such persons possess, and have a reputation for, integrity and good character,

(4) such persons are of sound physical and mental health,

(5) such persons possess and have demonstrated commitment to equal justice under law,

(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.

SEC. 121. (a) section 402 of the Act entitled "An Act to establish a uniform Law on the

Subject of Bankruptcies" (Public Law 95-598) is amended in subsections (b) and (c) by striking out "June 28, 1984" each place it appears and inserting in lieu thereof "the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

(b) Section 404 of such Act is amended in subsections (a) and (b) by striking out "June 27, 1984" each place it appears and inserting in lieu thereof "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

(c) Section 406 of such Act is amended by striking out "June 27, 1984" each place it appears and inserting in lieu thereof "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

(d) Section 409 of such Act is amended by—

(1) striking out "June 28, 1984" each place it appears and inserting in lieu thereof "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984"; and

(2) striking out "June 27, 1984" each place it appears and inserting in lieu thereof "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

(e) The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act.

(f) Section 8339(n) of title 5, United States Code, is amended by striking out "June 28, 1984" and inserting in lieu thereof "the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

(g) Section 8331(22) of title 5, United States Code, is amended by striking out "June 27, 1984" and inserting in lieu thereof "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

SEC. 122. (a) Except as otherwise provided in this section, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as added by this Act, shall not apply with respect to cases under title 11 of the United States Code that are pending on the date of enactment of this Act, or to proceedings arising in or related to such cases.

(c) Sections 108(b), 113, and 121(e) shall take effect on June 27, 1984.

TITLE II—JUDGESHIPS

SEC. 201. (a)(1) Subject to the provisions of paragraph (2), the President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

(2) The President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985.

(b) In order that the table contained in section 44(a) of title 28, United States Code,

will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	12
Fourth	11
Fifth	16
Sixth	15
Seventh	11
Eighth	10
Ninth	28
Tenth	10
Eleventh	12
Federal	12

SEC. 202. (a) Subject to the provisions of subsection (c), the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Alabama, one additional district judge for the district of Alaska, five additional district judges for the central district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the district of Delaware, three additional district judges for the southern district of Florida, one additional district judge for the middle district of Georgia, one additional district judge for the district of Hawaii, four additional district judges for the northern district of Illinois, one additional district judge for the southern district of Illinois, one additional district judge for the western district of Kentucky, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the southern district of Mississippi, one additional district judge for the eastern district of Missouri, one additional district judge for the district of Montana, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the northern district of New York, two additional district judges for the eastern district of New York, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the district of Rhode Island, one additional district judge for the eastern district of Tennessee, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, two additional district judges for the eastern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, and one additional district judge for the district of Wyoming.

(b) Subject to the provisions of subsection (c) the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional dis-

trict judge for the district of Massachusetts, one additional district judge for the western district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the northern district of Ohio, and one additional district judge for the western district of Washington. The first vacancy in each of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act, shall not be filled.

(c) For the judgeships created in subsections (a) and (b), the President shall appoint, by and with the advice and consent of the Senate, no more than twenty-nine of such judges prior to January 21, 1985.

(d) The existing district judgeship for the district of Minnesota and the existing district judgeship for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1978 (Public Law 95-486, 92 Stat. 1631), shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act.

(e) In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (c) of this section, such table is amended to read as follows:

"Districts	Judges
Alabama:	
Northern.....	7
Middle.....	3
Southern.....	3
Alaska.....	3
Arizona.....	8
Arkansas:	
Eastern.....	3
Western.....	1
Eastern and Western.....	2
California:	
Northern.....	12
Eastern.....	6
Central.....	22
Southern.....	7
Colorado.....	7
Connecticut.....	6
Delaware.....	4
District of Columbia.....	15
Florida:	
Northern.....	3
Middle.....	9
Southern.....	15
Georgia:	
Northern.....	11
Middle.....	3
Southern.....	3
Hawaii.....	3
Idaho.....	2
Illinois:	
Northern.....	20
Central.....	3
Southern.....	3
Indiana:	
Northern.....	4
Southern.....	5
Iowa:	
Northern.....	1
Southern.....	2
Northern and Southern.....	1
Kansas.....	5
Kentucky:	
Eastern.....	4
Western.....	4
Eastern and Western.....	1
Louisiana:	
Eastern.....	13
Middle.....	2
Western.....	6
Maine.....	2

Maryland.....	10
Massachusetts.....	11
Michigan:	
Eastern.....	15
Western.....	4
Minnesota.....	7
Mississippi:	
Northern.....	3
Southern.....	5
Missouri:	
Eastern.....	5
Western.....	5
Eastern and Western.....	2
Montana.....	3
Nebraska.....	3
Nevada.....	4
New Hampshire.....	2
New Jersey.....	14
New Mexico.....	4
New York:	
Northern.....	4
Southern.....	27
Eastern.....	12
Western.....	3
North Carolina:	
Eastern.....	3
Middle.....	3
Western.....	3
North Dakota.....	2
Ohio:	
Northern.....	10
Southern.....	7
Oklahoma:	
Northern.....	2
Eastern.....	1
Western.....	4
Northern, Eastern, and Western.....	2
Oregon.....	5
Pennsylvania:	
Eastern.....	19
Middle.....	5
Western.....	10
Puerto Rico.....	7
Rhode Island.....	3
South Carolina.....	8
South Dakota.....	3
Tennessee:	
Eastern.....	4
Middle.....	3
Western.....	4
Texas:	
Northern.....	10
Eastern.....	6
Southern.....	13
Western.....	7
Utah.....	4
Vermont.....	2
Virginia:	
Eastern.....	9
Western.....	4
Washington:	
Eastern.....	3
Western.....	6
West Virginia:	
Northern.....	2
Southern.....	4
Wisconsin:	
Eastern.....	4
Western.....	2
Wyoming.....	2

Sec. 203. (a) Section 131 of title 28, United States Code, is amended in the second paragraph thereof by inserting "Jackson," after "Lander,".

(b) Section 98(a) of title 28, United States Code, is amended by inserting ", and Houma" after "New Orleans".

Sec. 204. (a) Section 371 of title 28, United States Code, is amended to read as follows:

"§ 371. Retirement on salary; retirement in senior status

"(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the

remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

"(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

"(c) The age and service requirements for retirement under this section are as follows:

"Attained age:	Years of service:
65.....	15
66.....	14
67.....	13
68.....	12
69.....	11
70.....	10

"(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section."

(b) The item relating to section 371 in the table of sections of chapter 17 of title 28 is amended to read as follows:

"371. Retirement on salary; retirement in senior status."

(c) The amendments made by this section shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act.

Sec. 205. Section 8701(a) of title 5, United States Code, is amended by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and by adding a new paragraph (5) as follows:

"(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;"

Sec. 206. Section 8714a(c) of title 5, United States Code, is amended by adding a new paragraph (3) as follows:

"(3) Notwithstanding paragraph (c)(1) of this section, a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title."

Sec. 207. Section 8714b(c) of title 5, United States Code, is amended by adding to paragraph (1) at the end thereof the following: "A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his

judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title."

SEC. 208. (a) Section 8706 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Under regulations prescribed by the Office, each policy purchase under this chapter shall provide that an insured Federal judge may make an irrevocable assignment of the judge's incidents of ownership in the policy."

(b) The heading for section 8706 of title 5, United States Code, and the item relating to section 8706 in the analysis for chapter 87 of such title are each amended by inserting "assignment of ownership" after "insurance".

SEC. 209. (a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5, United States Code, shall apply to policies purchased by judges after the date of enactment of this Act.

(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act shall apply to such policy.

SEC. 210. Section 634(c) of title 28, United States Code, is amended by striking out "subsection III" and inserting in lieu thereof "subchapter III".

SEC. 211. It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act, shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin.

TITLE III—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

SUBTITLE A—CONSUMER CREDIT AMENDMENTS

SEC. 301. Section 109 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this section, no individual may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

"(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

"(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title."

SEC. 302. Section 342 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "There shall be given"; and

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

"(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed."

SEC. 303. Section 349(a) of title 11, United States Code, is amended by inserting before the period at the end thereof "nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title".

SEC. 304. Section 362 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

SEC. 305. Section 521 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively,

(2) in paragraph (1) by inserting "a schedule of current income and current expenditures," after "liabilities," and

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

"(2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—

"(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

"(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

"(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title."

SEC. 306. (a) Section 522(b) of title 11, United States Code, is amended by striking out "Notwithstanding" and all that follows through "either—" and inserting in lieu thereof the following: "Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—"

(b) Section 522(d)(3) of title 11, United States Code, is amended by inserting "or \$4,000 in aggregate value" after "item".

(c) Section 522(d)(5) of title 11, United States Code, is amended to read as follows:

"(5) The debtor's aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection."

(d) Section 522(m) of title 11, United States Code, is amended to read as follows:

"(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case."

SEC. 307. (a) Section 523(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking out "or" at the end thereof,

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

(3) by adding at the end thereof the following new subparagraph:

"(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$500 for 'luxury goods or services' incurred by an individual debtor on or within forty

days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; 'luxury goods or services' do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.)."

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

"(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust."

SEC. 308. (a) Section 524(a)(2) of title 11, United States Code, is amended by striking out "or from property of the debtor."

(b) Section 524(c) of title 11, United States Code, is amended—

(1) by striking out paragraph (2),

(2) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively, and

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

"(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

"(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement—

"(A) represents a fully informed and voluntary agreement by the debtor; and

"(B) does not impose an undue hardship on the debtor or a dependent of the debtor;

"(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;" and

(4) by amending paragraph (6), as so redesignated, to read as follows:

"(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

"(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

"(ii) in the best interest of the debtor.

"(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property."

(c) Section 524(d)(2) of title 11, United States Code, is amended by striking out "subsection (c)(4)" and inserting in lieu thereof "subsection (c)(6)".

(d) Section 524 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt."

SEC. 309. Section 525 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "Except",

(2) by inserting "the" before "Perishable", and

(3) by adding at the end thereof the following new subsection:

"(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

"(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

"(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

"(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act."

SEC. 310. Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (5) by striking out "or" at the end thereof,

(2) in paragraph (6) by striking out the period at the end thereof and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(7) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600."

SEC. 311. (a) Section 704 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), (7), and (8) as paragraphs (4), (5), (6), (7), (8), and (9), respectively, and

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

"(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title."

(b)(1) Section 1106(a)(1) of title 11, United States Code, is amended by striking out "704(4), 704(6), 704(7), and 704(8)" and inserting in lieu thereof "704(5), 704(7), 704(8), and 704(9)".

(2) Section 1304(c) of title 11, United States Code, is amended by striking out "section 704(7)" and inserting in lieu thereof "section 704(8)".

(3) Section 15103(f) of title 11, United States Code, is amended by striking out "704(8)", and inserting in lieu thereof "704(9)".

(4) Section 151301(b)(1) of title 11, United States Code, is amended by striking out "and 704(8)" and inserting in lieu thereof "704(7), and 704(9)".

SEC. 312. Section 707 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The court may" and

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

"(b) After notice and a hearing, the court, on its own motion and not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor."

SEC. 313. Section 1301 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action."

SEC. 314. Section 1302(b) of title 11, United States Code, is amended—

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

"(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;"

(2) in paragraph (2) by striking out "and" at the end thereof,

(3) in paragraph (3) by striking out the period and inserting in lieu thereof "; and", and

(4) by adding at the end thereof the following new paragraph:

"(4) ensure that the debtor commences making timely payments under section 1326 of this title."

SEC. 315. Section 1307(c) of title 11, United States Code, is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and

(2) by inserting after paragraph (3) the following new paragraph:

"(4) failure to commence making timely payments under section 1326 of this title;"

SEC. 316. Section 1322(b)(1) of title 11, United States Code, is amended to read as follows:

"(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;"

SEC. 317. Section 1325 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out "The" and inserting in lieu thereof "Except as provided in subsection (b), the",

(2) by redesignating subsection (b) as subsection (c), and

(3) by inserting after subsection (a) the following new subsection:

"(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

"(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

"(2) For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor; or

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business."

SEC. 318. (a) Section 1326 of title 11, United States Code, is amended—

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

(2) by inserting before such subsections the following new subsection:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

"(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title."

(b) Section 15103(f) of title 11, United States Code, is amended by striking out "1326(a)", and inserting in lieu thereof "1326(b)".

SEC. 319. Section 1329(a) of title 11, United States Code, is amended by striking out "At" and all that follows through "modified to—", and inserting in lieu thereof the following: "At any time after confirmation but before the completion of payments under a plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—"

SEC. 320. The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section.

SEC. 321. Rule 2002 of the Bankruptcy Rules is amended by adding at the end thereof the following new subdivision:

"(n) In a voluntary case commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order."

SEC. 322. Official Bankruptcy Form No. 1, referred to in Rule 1002 of the Bankruptcy Rules, is amended—

(1) by inserting after paragraph (5) the following:

"(6) [If petitioner is an individual whose debts are primarily consumer debts.] Petitioner is aware that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, understands the relief available under each such chapter, and chooses to proceed under chapter 7 of such title.

"(7) [If petitioner is an individual whose debts are primarily consumer debts and such petitioner is represented by an attorney.] A declaration or an affidavit in the form of Exhibit 'B' is attached to and made a part of this petition.", and

(2) by inserting after Exhibit "A" at the end thereof the following new exhibit:

"EXHIBIT 'B'"

"[If petitioner is an individual whose debts are primarily consumer debts, this Exhibit 'B' shall be completed and attached to the petition pursuant to paragraph (7) thereof.]

"[CAPTION AS IN FORM NO. 1]

"FOR COURT USE ONLY

"Date Petition Filed

"Case Number

"Bankruptcy Judge

"I, _____, the attorney for the petitioner named in the foregoing

ing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

"Executed
on _____

"Signature

Attorney for Petitioner".

SEC. 323. Section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687(c)), as amended by the Act of November 28, 1983 (Public Law 98-166; 97 Stat. 1071), is amended by striking out "September 30, 1984" and inserting in lieu thereof "September 30, 1986".

SEC. 324. Section 1103(b) of title 11, United States Code, is amended by striking out "A person" and inserting in lieu thereof "An attorney or accountant".

SUBTITLE B—AMENDMENTS RELATING TO GRAIN STORAGE FACILITY BANKRUPTCY

SEC. 350. Section 507(a) of title 11, United States Code, is amended—

(1) by striking out "(5) Fifth" and inserting in lieu thereof "(6) Sixth"

(2) by striking out "(6) Sixth" and inserting in lieu thereof "(7) Seventh"; and

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

"(5) Fifth, allowed unsecured claims of persons—

"(A) engaged in the production or raising of grain, as defined in section 557(b)(1) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b)(2) of this title, for grain or the proceeds of grain, or

"(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of \$2,000 for each such individual".

SEC. 351. Section 546 of title 11, United States Code, is amended—

(1) in the first sentence of subsection (c) thereof, by striking out "The" and inserting in lieu thereof "Except as provided in subsection (d) of this section, the"; and

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

"(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

"(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

"(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien."

SEC. 352. (a) Chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 557. Expedited determination of interests in, and abandonment or other disposition of grain assets

"(a) This section applies only in a case concerning a debtor that owns or operates a grain storage facility and only with respect to grain and the proceeds of grain. This section does not affect the application of any other section of this title to property other than grain and proceeds of grain.

"(b) In this section—

"(1) 'grain' means wheat, corn, flaxseed, grain sorghum, barley, oats, rye, soybeans, other dry edible beans, or rice;

"(2) 'grain storage facility' means a site or physical structure regularly used to store grain for producers, or to store grain acquired from producers for resale; and

"(3) 'producer' means an entity which engages in the growing of grain.

"(c)(1) Notwithstanding sections 362, 363, 365, and 554 of this title, on the court's own motion the court may, and on the request of the trustee or an entity that claims an interest in grain or the proceeds of grain the court shall, expedite the procedures for the determination of interests in and the disposition of grain and the proceeds of grain, by shortening to the greatest extent feasible such time periods as are otherwise applicable for such procedures and by establishing, by order, a timetable having a duration of not to exceed 120 days for the completion of the applicable procedure specified in subsection (d) of this section. Such time periods and such timetable may be modified by the court, for cause, in accordance with subsection (f) of this section.

"(2) The court shall determine the extent to which such time periods shall be shortened, based upon—

"(A) any need of an entity claiming an interest in such grain or the proceeds of grain for a prompt determination of such interest;

"(B) any need of such entity for a prompt disposition of such grain;

"(C) the market for such grain;

"(D) the conditions under which such grain is stored;

"(E) the costs of continued storage or disposition of such grain;

"(F) the orderly administration of the estate;

"(G) the appropriate opportunity for an entity to assert an interest in such grain; and

"(H) such other considerations as are relevant to the need to expedite such procedures in the case.

"(d) The procedures that may be expedited under subsection (c) of this section include—

"(1) the filing of and response to—

"(A) a claim of ownership;

"(B) a proof of claim;

"(C) a request for abandonment;

"(D) a request for relief from the stay of action against property under section 362(a) of this title;

"(E) a request for determination of secured status;

"(F) a request for determination of whether such grain or the proceeds of grain—

"(i) is property of the estate;

"(ii) must be turned over to the estate; or

"(iii) may be used, sold, or leased; and

"(G) any other request for determination of an interest in such grain or the proceeds of grain;

"(2) the disposition of such grain or the proceeds of grain, before or after determination of interests in such grain or the proceeds of grain, by way of—

"(A) sale of such grain;

"(B) abandonment;

"(C) distribution; or

"(D) such other method as is equitable in the case;

"(3) subject to sections 701, 702, 703, 1104, and 1302 of this title, the appointment of a trustee or examiner and the retention and compensation of any professional person required to assist with respect to matters relevant to the determination of interests in or disposition of such grain or the proceeds of grain; and

"(4) the determination of any dispute concerning a matter specified in paragraph (1), (2), or (3) of this subsection.

"(e)(1) Any governmental unit that has regulatory jurisdiction over the operation or liquidation of the debtor or the debtor's business shall be given notice of any request made or order entered under subsection (c) of this section.

"(2) Any such governmental unit may raise, and may appear and be heard on, any issue relating to grain or the proceeds of grain in a case in which a request is made, or an order is entered, under subsection (c) of this section.

"(3) The trustee shall consult with such governmental unit before taking any action relating to the disposition of grain in the possession, custody, or control of the debtor or the estate.

"(f) The court may extend the period for final disposition of grain or the proceeds of grain under this section beyond 120 days if the court finds that—

"(1) the interests of justice so require in light of the complexity of the case; and

"(2) the interests of those claimants entitled to distribution of grain or the proceeds of grain will not be materially injured by such additional delay.

"(g) Unless an order establishing an expedited procedure under subsection (c) of this section, or determining any interest in or approving any disposition of grain or the proceeds of grain, is stayed pending appeal—

"(1) the reversal or modification of such order on appeal does not affect the validity of any procedure, determination, or disposition that occurs before such reversal or modification, whether or not any entity knew of the pendency of the appeal; and

"(2) neither the court nor the trustee may delay, due to the appeal of such order, any proceeding in the case in which such order is issued.

"(h)(1) The trustee may recover from grain and the proceeds of grain the reasonable and necessary costs and expenses allowable under section 503(b) of this title attributable to preserving or disposing of grain or the proceeds of grain, but may not recover from such grain or the proceeds of grain any other costs or expenses.

"(2) Notwithstanding section 326(a) of this title, the dollar amounts of money specified in such section include the value, as of the date of disposition, of any grain that the trustee distributes in kind.

"(i) In all cases where the quantity of a specific type of grain held by a debtor operating a grain storage facility exceeds ten thousand bushels, such grain shall be sold by the trustee and the assets thereof distributed in accordance with the provisions of this section."

(b) The table of sections of chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new item:

"557. Expedited determination of interests in and disposition of grain."

SEC. 353. Section 901(a) of title 11, United States Code, is amended by inserting "557," after "553."

SEC. 354. Rule 3001 of the Bankruptcy Rules is amended by adding at the end thereof the following new subdivision:

"(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain."

Subtitle C—Leasehold Management Amendments

SEC. 361. This subtitle may be cited as the "Leasehold Management Bankruptcy Amendments Act of 1983".

SEC. 362. (a) Section 365 of title 11, United States Code, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

"(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

"(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

"(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

"(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

"(C) provides adequate assurance of future performance under such contract or lease.

"(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

"(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

"(B) the commencement of a case under this title; or

"(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

"(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

"(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

"(B) that any percentage rent due under such lease will not decline substantially;

"(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

"(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

"(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

"(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

"(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

"(B) such party does not consent to such assumption or assignment; or

"(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

"(3) such lease of nonresidential real property has been terminated under applicable nonbankruptcy law prior to the order for relief.

"(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

"(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

"(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

"(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor."

(b) Section 365 is further amended by adding at the end thereof the following new subsection:

"(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

"(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(9), leases of real property shall include any rental agreement to use real property."

SEC. 363. (a) Section 541(b) of title 11, United States Code, is amended to read as follows:

"(b) Property of the estate does not include—

"(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or

"(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case."

(b) Section 362(b) of title 11 of the United States Code is amended by—

(1) striking out "or" at the end of paragraph (7),

(2) replacing the period after paragraph (8) with "; or", and

(3) adding the following after paragraph (8):

"(9) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property."

Subtitle D—Amendments to Title 11, Section 523 Relating to the Discharge of Debts Incurred by Persons Driving While Intoxicated

SEC. 371. Section 523(a) of title 11, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (8); and

(2) by adding the following new paragraph after such paragraph:

"(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; or"

Subtitle E—Referees Salary and Expense Fund

SEC. 381. This subtitle may be cited as the "Referees Salary and Expense Fund Act of 1984".

SEC. 382. Section 403(e) of the Act of November 6, 1978 (92 Stat. 2683; Public Law 95-598), is amended to read as follows:

"(e) Notwithstanding subsection (a) of this section—

"(1) a fee may not be charged under section 40c(2)(a) of the Bankruptcy Act in a case pending under such Act after September 30, 1979, to the extent that such fee exceeds \$200,000;

"(2) a fee may not be charged under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1978, or in which the final determination as to the amount of such fee is

made after September 30, 1979, notwithstanding an earlier confirmation date, to the extent that such fee exceeds \$100,000;

"(3) after September 30, 1979, all moneys collected for payment into the referees' salary and expense fund in cases filed under the Bankruptcy Act shall be collected and paid into the general fund of the Treasury; and

"(4) any balance in the referees' salary and expense fund in the Treasury on October 1, 1979, shall be transferred to the general fund of the Treasury and the referees' salary and expense fund account shall be closed."

Subtitle F—Amendments Regarding Repurchase Agreements

SEC. 391. Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (35), (36), (37), (38), (39), (40), and (41), as paragraphs (37), (38), (39), (40), (41), (42), and (43), respectively, and

(2) by inserting after paragraph (34) the following new paragraphs:

"(35) 'repo participant' means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor;

"(36) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds."

SEC. 392. Section 362(b) of title 11, United States Code, is amended—

(a) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively, and

(b) by inserting after paragraph (6) the following new paragraph:

"(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;"

SEC. 393. Section 546 of title 11, United States Code, is amended by inserting after subsection (e), as redesignated by section 251, the following:

"(f) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, made by or to a repo participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1) of this title."

SEC. 394. Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking out "and" at the end thereof;

(2) in subparagraph (B) by striking out the period at the end thereof and inserting in lieu thereof "; and"; and by inserting after paragraph (B) the following new subparagraph:

"(C) a repo participant that receives a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, in connection with a repurchase agreement, takes for value to the extent of such payment."

SEC. 395. Section 553(b)(1) of title 11, United States Code, is amended by inserting ", 362(b)(7)," after "362(b)(6)".

SEC. 396. (a) Chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 559. Contractual right to liquidate a repurchase agreement

"The exercise of a contractual right of a repo participant to cause the liquidation of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice."

(b) The analysis of sections for chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new item:

"559. Contractual right to liquidate a repurchase agreement."

Subtitle G—Amendments to Title 11, Section 365 of the United States Code to Provide Adequate Protection for Timeshare Consumers

SEC. 401. Title 11, United States Code, section 101 is hereby amended by—

(1) redesignating paragraph (43), as redesignated by section 391, as paragraph (44); and

(2) adding the following paragraph after paragraph (42), as redesignated in section 391:

"(43) 'timeshare plan' means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy

in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A 'timeshare interest' is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan."

SEC. 402. Section 365(h)(1) of title 11, United States Code, is amended to read as follows:

"(h)(1) If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, or a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller, the lessee or timeshare interest purchaser under such lease or timeshare plan may treat such lease or timeshare plan as terminated by such rejection, where the disaffirmance by the trustee amounts to such a breach as would entitle the lessee or timeshare interest purchaser to treat such lease as terminated by virtue of its own terms, applicable nonbankruptcy law, or other agreements the lessee or timeshare interest purchaser has made with other parties; or, in the alternative, the lessee or timeshare interest purchaser may remain in possession of the leasehold or timeshare interest under any lease or timeshare plan the term of which has commenced for the balance of such term and for any renewal or extension of such term that is enforceable by such lessee or timeshare interest purchaser under applicable nonbankruptcy law."

SEC. 403. Section 365(h)(2) of title 11, United States Code, is amended to read as follows:

"(2) If such lessee or timeshare interest purchaser remains in possession as provided in paragraph (1) of this subsection, such lessee or timeshare interest purchaser may offset against the rent reserved under such lease or moneys due for such timeshare interest for the balance of the term after the date of the rejection of such lease or timeshare interest, and any such renewal or extension thereof, any damages occurring after such date caused by the nonperformance of any obligation of the debtor under such lease or timeshare plan after such date, but such lessee or timeshare interest purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset."

SEC. 404. Section 365(i)(1) of title 11, United States Code, is amended to read as follows:

"(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest."

Subtitle H—Miscellaneous Amendments to Title 11

SEC. 421. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" after "business".

(b) Section 101(8)(B) of title 11 of the United States Code is amended by striking out the colon at the end thereof and inserting in lieu thereof a semicolon.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d)," after "section".

(d) Section 101(14) of title 11 of the United States Code is amended by inserting "and" after "trust".

(e) Section 101(24) of title 11 of the United States Code is amended by striking out "stock broker" and inserting in lieu thereof "stockbroker".

(f) Section 101(26)(B)(ii) of title 11 of the United States Code is amended by—

(1) striking out "separate" each place it appears and inserting in lieu thereof "non-partnership"; and

(2) striking out "(A)(ii)" and inserting in lieu thereof "(A)".

(g) Section 101(30) of title 11 of the United States Code is amended to read as follows:

(30) "person" includes individual, partnership, and corporation, but does not include governmental unit. Provided, however, That any governmental unit that acquires an asset from a person as a result of operation of a loan guarantee agreement, or as receiver or liquidating agent of a person, will be considered a person for purposes of section 1102 of this title.

(h) Section 101(38)(B)(vi) of title 11 of the United States Code, as redesignated by section 391 of this Act, is amended by—

(1) striking out "certificate specified in clause (xii) of subparagraph (A)" and inserting in lieu thereof "certificate of a kind specified in subparagraph (A)(xii)"; and

(2) striking out "the subject of such a registration statement" and inserting in lieu thereof "required to be the subject of a registration statement".

(i) Section 101(44) of title 11 of the United States Code, as so redesignated, is amended by striking out the period and inserting in lieu thereof "and foreclosure of the debtor's equity of redemption; and".

(j) Section 101 of title 11 of the United States Code is amended—

(1) by redesignating paragraphs (41) through (44), as previously redesignated, as paragraphs (45) through (48);

(2) by redesignating paragraphs (21) through (40) as paragraphs (24) through (43), respectively;

(3) by redesignating paragraphs (19) and (20) as paragraphs (20) and (21), respectively;

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

"(19) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741(7) of this title, such customer";

(5) by inserting after paragraph (21) as redesignated herein the following:

"(22) 'forward contract' means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

"(23) 'forward contract merchant' means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in commodities";

(6) by inserting after paragraph (43) the following:

"(44) 'State' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title"; and

(7) by inserting after paragraph (48) the following:

"(49) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States

extends, including territories and possessions of the United States";.

SEC. 422. Section 102 of title 11 of the United States Code is amended by striking out "continued" and inserting in lieu thereof "contained" in paragraph (8).

SEC. 423. Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 424. (a) Subsections (a)(1), (b)(1), and (c)(1) of section 108 of title 11 of the United States Code are each amended by striking out "and" each place it appears and inserting in lieu thereof "or".

(b) Subsections (a), (b), and (c) of section 108 of title 11 of the United States Code are each amended by inserting "nonbankruptcy" after "applicable" and after "entered in a" each place such terms appear.

SEC. 425. (a) Section 109 of title 11 of the United States Code, is amended by striking out "in the United States," the first place it appears.

(b) Section 109(c)(5)(D) of title 11 of the United States Code of this Act is amended by striking out "preference" and inserting in lieu thereof "transfer that is avoidable under section 547 of this title".

(c) Section 109(d) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 426. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" after "involuntary case".

(b) Section 303 of title 11 of the United States Code, is amended—

(1) in subsection (b)(1) by inserting "or the subject on a bona fide dispute," after "liability"; and

(2) in subsection (h)(1) by inserting "unless such debts that are the subject of a bona fide dispute" after "due".

SEC. 427. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting in lieu thereof "debtor".

SEC. 428. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting in lieu thereof "the case".

SEC. 429. Section 322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" after "bond".

SEC. 430. (a) Section 326(a) of title 11 of the United States Code is amended by striking out all the language beginning with "three percent" through "\$50,000" the second place the latter appears and inserting in lieu thereof "and three percent on any amount in excess of \$3,000".

(b) Section 326(d) of title 11 of the United States Code is amended to read as follows:

"(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title."

(c) Section 327(c) of title 11 of the United States Code is amended to read as follows:

"(c) In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest."

SEC. 431. Section 328(a) of title 11 of the United States Code is amended by striking out "unanticipatable" and inserting in lieu thereof "not capable of being anticipated".

SEC. 432. (a) Section 329(a) of title 11 of the United States Code is amended by strik-

ing out "and" the first place it appears and inserting in lieu thereof "or".

(b) Section 329(b)(1) of title 11 of the United States Code is amended by striking out "trustee" and inserting in lieu thereof "estate".

SEC. 433. Section 330(a) of title 11 of the United States Code is amended—

(1) by striking out "to any parties in interest and to the United States trustee"; and

(2) in paragraph (1), by striking out "time, the nature, the extent, and the value of such services" and inserting in lieu thereof "nature, the extent, and the value of such services, the time spent on such services".

SEC. 434. (a) Section 330(b) of title 11 of the United States Code is amended by striking out "\$20" and inserting in lieu thereof "\$45".

(b) Section 330 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Unless the court orders otherwise, in a case under chapter 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan."

SEC. 435. Section 342 of title 11 of the United States Code as amended by section 302 is further amended by amending subsection (a) to read as follows:

"(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title."

SEC. 436. Section 343 of title 11 of the United States Code is amended by striking out "examiner" the last place it appears and inserting in lieu thereof "examine".

SEC. 437. Section 345 of title 11 of the United States Code is amended by adding at the end thereof a new subsection (c) as follows:

"(c) An entity with which such moneys are deposited or invested is authorized to deposit or invest such moneys as may be required under this section."

SEC. 438. Section 346(c)(2) of title 11 of the United States Code is amended by striking out "operation" and inserting in lieu thereof "corporation".

SEC. 439. Section 350(b) of title 11 of the United States Code is amended by striking out "a" and inserting in lieu thereof "A".

SEC. 440. Section 361(1) of title 11 of the United States Code is amended by inserting "a cash payment or" after "make".

SEC. 441. (a) Section 362(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "action or" after "other"; and

(2) in paragraph (3), by inserting "or to exercise control over property of the estate" after "estate" the second place it appears.

(b) Section 362(b) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting "or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title" after "title";

(2) in paragraph (6), by—

(A) inserting "or due from" after "held by"; and

(B) striking out "or secure commodity contracts" and inserting in lieu thereof "secure, or settle commodity contracts", and by inserting "financial institution," after "stockbroker" each time it appears.

(3) in paragraph (8) as redesignated by section 392, by—

(A) striking out "said" and inserting in lieu thereof "the"; and

(B) striking out "or" the last place it appears;

(4) in paragraph (9) as redesignated by section 392, by striking out the period and inserting in lieu thereof a semicolon; and
(5) by adding after paragraph (9) the following new paragraph:

"(10) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument."

(c) Section 362(c)(2)(B) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

(d) Section 362(d)(2) of title 11 of the United States Code is amended by inserting "under subsection (a) of this section" after "property" the first place it appears.

(e) Section 362(e) of title 11 of the United States Code is amended—

(1) in the first sentence by inserting "the conclusion of" after "pending"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing."

(f) Section 362(f) of title 11 of the United States Code is amended by—

(1) striking out "The" and inserting in lieu thereof "Upon request of a party in interest, the"; and

(2) inserting "with or" after "court".

Sec. 442. (a) Section 363(a) of title 11 of the United States Code is amended by—

(1) inserting "whenever acquired" after "equivalents"; and

(2) inserting "and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title" after "interest".

(b) Section 363(b) of title 11 of the United States Code is amended by—

(1) striking out "(b)" and inserting in lieu thereof "(b)(1)"; and

(2) adding at the end thereof the following new paragraph:

"(2) If notification is required under subsection (a) of section 7A of the Clayton Act (15 U.S.C. 18a) in the case of a transaction under this subsection, then—

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

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of the receipt of such notification, unless the court, after notice and hearing, orders otherwise."

(c) Section 363(e) of title 11 of the United States Code is amended by—

(1) inserting "with or without a hearing," after "court"; and

(2) striking out the last sentence.

(d) Section 363(f)(3) of title 11 of the United States Code is amended by striking out "such interest" the second place it appears and inserting in lieu thereof "all liens on such property".

(e) Section 363(h) of title 11 of the United States Code is amended by striking out "immediately before" and inserting in lieu thereof "at the time of".

(f) Section 363(j) of title 11 of the United States Code is amended by striking out "compensation" and inserting in lieu thereof "compensation".

(g) Section 363(k) of title 11 of the United States Code is amended by striking out "if

the holder" and inserting in lieu thereof "unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder".

(h) Section 363(l) of title 11 of the United States Code is amended by—

(1) striking out "The trustee" and inserting in lieu thereof "Subject to the provisions of section 365, the trustee";

(2) striking out "conditions" and inserting in lieu thereof "condition";

(3) striking out "a taking" and inserting in lieu thereof "or the taking"; and

(4) striking out "interests" and inserting in lieu thereof "interest".

(i) Section 363(n) of title 11 of the United States Code is amended by—

(1) striking out "void" and inserting in lieu thereof "avoid";

(2) striking out "voiding" and inserting in lieu thereof "avoiding"; and

(3) amending the last sentence to read as follows: "In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection."

(j) Section 363 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(o) In any hearing under this section—

"(1) the trustee has the burden of proof on the issue of adequate protection; and

"(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest."

Sec. 443. Section 366(a) of title 11 of the United States Code is amended by inserting "of the commencement of a case under this title or" after "basis".

Sec. 444. Section 501(d) of title 11 of the United States Code is amended by inserting "502(e)(2)," before "502(f)".

Sec. 445. (a) Section 502(a) of title 11 of the United States Code is amended by inserting "general" before "partner".

(b) Section 502(b) of title 11 of the United States Code is amended—

(1) by inserting "(e)(2)," after "subsections";

(2) by inserting "in lawful currency of the United States" after "claim" the second place it appears;

(3) in paragraph (1), by striking out "and unenforceable against" and inserting in lieu thereof "and";

(4) by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (8), and (9) as paragraphs (3), (4), (5), (6), (7), and (8), respectively;

(5) in paragraph (3), as redesignated by paragraph (5), by inserting "the" after "exceeds";

(6) in paragraph (5), as redesignated by paragraph (5), by—

(A) striking out "the claim" and inserting in lieu thereof "such claim"; and

(B) striking out the comma after "petition"; and

(7) in paragraph (7), as redesignated by paragraph (5), by—

(A) inserting "the claim of an employee" before "for damages";

(B) striking out "and" in subparagraph (A)(i) and inserting in lieu thereof "or";

(C) striking out "the" the first place it appears in subparagraph (B) and inserting in lieu thereof "any"; and

(D) inserting a comma after "such contract" in subparagraph (B).

(c) Section 502(c) of title 11 of the United States Code is amended—

(1) in paragraph (1) by—

(A) inserting "the" before "fixing"; and

(B) striking out "closing" and inserting in lieu thereof "administration"; and

(2) in paragraph (2), by—

(A) inserting "right to payment arising from a" after "any"; and

(B) striking out "if such breach gives rise to a right to payment";

(d) Section 502(e)(1) of title 11, United States Code, is amended—

(1) by striking out "and (b)" and inserting in lieu thereof " (b), and (c)"; and

(2) by striking out the commas before and after "or has secured";

(3) in subparagraph (B), by inserting "or disallowance" after "allowance"; and

(4) in subparagraph (C), by—

(A) striking out "requests subrogation" and inserting in lieu thereof "asserts a right of subrogation to the rights of such creditor"; and

(B) striking out "to the rights of such creditor".

(e) Section 502(h) of title 11 of the United States Code is amended by striking out "522(i)" and inserting in lieu thereof "522".

(f) Section 502(j) of title 11 of the United States Code is amended to read as follows:

"(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor."

Sec. 446. Section 503(b) of title 11 of the United States Code is amended—

(1) by striking out the comma after "be allowed";

(2) in paragraph (1)(C), by striking out the comma after "credit";

(3) in paragraph (2), by inserting "(a)" after "330";

(4) in paragraph (3), by inserting a comma after "paragraph (4) of this subsection";

(5) in paragraph (3)(C), by striking out the comma after "case";

(6) in paragraph (5), by striking out "and" after the semicolon; and

(7) in paragraph (6), by striking out the period and inserting in lieu thereof "and".

Sec. 447. Section 505(a) of title 11 of the United States Code is amended in paragraph (2)(B)(i), by striking out "and" and inserting in lieu thereof "or".

Sec. 448. (a) Section 506(b) of title 11 of the United States Code is amended by inserting "for" after "provided".

(b) Paragraphs (1) and (2) of section 506(d) of title 11 of the United States Code are amended to read as follows:

"(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

"(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Sec. 449. (a) Section 507(a) of title 11 of the United States Code is amended—

(1) in paragraph (3), by inserting a comma after "severance";

(2) in paragraph (4), by striking out "employee benefit plans" and inserting in lieu thereof "an employee benefit plan";

(3) in paragraph (4)(B)(i), by inserting "each" after "covered by"; and

(4) in paragraph (7) as redesignated by section 350 by inserting "only" after "units";

(b) Section 507(c) of title 11 of the United States Code is amended by striking out "shall be treated the same" and inserting in lieu thereof "has the same priority".

SEC. 450. (a) Section 509(a) of title 11 of the United States Code is amended by—

(1) striking out "subsections (b) and" and inserting in lieu thereof "subsection (b) or"; and

(2) inserting "against the debtor" after "a creditor".

(b) Section 509(b)(1) of title 11 of the United States Code is amended by striking out "of a" and inserting in lieu thereof "of such".

(c) Section 509(c) of title 11 of the United States Code is amended by striking out "section 509 of this title" and inserting in lieu thereof "this section".

SEC. 451. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock."

SEC. 452. Section 521(3) of title 11 of the United States Code, as redesignated in section 305, is amended by inserting ", whether or not immaturity is granted under section 344 of this title" after "estate" the second place it appears.

SEC. 453. (a) Section 522(a)(2) of title 11 of the United States Code is amended by inserting "or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate" after "petition".

(b) Section 522(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title; or

"(2) a debt secured by a lien that is—

"(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

"(ii) not void under section 506(d) of this title; or

"(B) a tax lien, notice of which is properly filed."

(c) Section 522(e) of title 11 of the United States Code is amended by striking out "exemptions" and inserting in lieu thereof "an exemption".

SEC. 454. (a) Section 523(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by—

(A) striking out "obtaining" each place it appears; and

(B) striking out "refinance of credit," and inserting in lieu thereof "refinancing of credit, to the extent obtained"; and

(2) by striking out "of higher education" in paragraph (3).

(b) Section 523(a)(5) of title 11, United States Code, is amended by—

(1) amending the first paragraph thereof by inserting the words "or other order of a

court of record" after the words "divorce decree,"; and

(2) inserting ", or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State" after "Social Security Act".

(c) Section 523(c) of title 11 of the United States Code is amended by inserting "of a kind" after "debt" the first time it appears.

SEC. 455. Section 524(a) of title 11 of the United States Code is amended by striking out "any act" each place it appears and inserting in lieu thereof "an act".

SEC. 456. (a) Section 541(a) of title 11 of the United States Code is amended—

(1) by striking out "under" the second time it appears;

(2) by inserting "and by whomever held" after "located";

(3) in paragraph (3), by inserting "329(b), 363(n)," after "section";

(4) in paragraph (5), by striking out "An" and inserting in lieu thereof "Any"; and

(5) in paragraph (6), by striking out "and" and inserting in lieu thereof "or".

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

(1) by inserting "in an agreement, transfer instrument, or applicable nonbankruptcy law" after "provision"; and

(2) in paragraph (1)(B), by—

(A) striking out "the taking" and inserting in lieu thereof "taking"; and

(B) inserting "before such commencement" after "custodian".

(c) Section 541(d) of title 11 of the United States Code is amended by inserting "(1) or (2)" after "(a)".

(d) Section 541(e) of title 11 of the United States Code is repealed.

SEC. 457. Section 542(e) of title 11 of the United States Code is amended by inserting "to turn over or" before "disclose".

SEC. 458. (a) Section 543(a) of title 11 of the United States Code is amended by inserting ", product, offspring, rents, or profits" after "proceeds".

(b) Section 543(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by—

(A) inserting "held by or" after "debtor"; and

(B) inserting ", product, offspring, rents, or profits" after "proceeds"; and

(2) in paragraph (2), by inserting ", product, offspring, rents, or profits" after "proceeds".

(c) Section 543(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or proceeds, product, offspring, rents, or profits of such property" after "property"; and

(2) in paragraph (3), by inserting "that has been" before "approved".

(d) Section 543(d) of title 11 of the United States Code is amended to read as follows:

"(d) After notice and hearing, the bankruptcy court—

"(1) may excuse compliance with subsection (a), (b), or (c) of this section, if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and

"(2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice."

SEC. 459. Section 544(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "such" after "obtained";

(2) in paragraph (2), by striking out "; and" and inserting in lieu thereof "; or"; and

(3) in paragraph (3), by—

(A) inserting ", other than fixtures," after "property"; and

(B) inserting "and has perfected such transfer" after "purchaser" the second place it appears.

SEC. 460. Section 545 of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by striking out "is" the first time it appears;

(2) in paragraph (1)(C), by striking out "appointed" and inserting in lieu thereof "appointed or authorized to take"; and

(3) in paragraph (2), by striking out "on the date of the filing of the petition" each place it appears and inserting in lieu thereof "at the time of the commencement of the case".

SEC. 461. (a) Section 546(a) of title 11 of the United States Code is amended in paragraph (1) by striking out "and" and inserting in lieu thereof "or".

(b) Section 546(b) of title 11 of the United States Code is amended by striking out "the trustee under section 544, 545, or" and inserting in lieu thereof "a trustee under sections 544, 545, and".

(c) Section 546(c) of title 11 of the United States Code is amended—

(1) by striking out "the trustee" and inserting in lieu thereof "a trustee";

(2) by striking out "right" the first place it appears;

(3) by inserting "of goods that has sold goods to the debtor" after "seller" the first place it appears;

(4) by striking out "of goods to the debtor" after "business,"; and

(5) in paragraph (2), by—

(A) inserting "the" after "if"; and

(B) striking out "an administrative expense" and inserting in lieu thereof "a claim of a kind specified in section 503(b) of this title".

(d) Section 546(e) of title 11 of the United States Code, as redesignated by section 351, is amended by inserting "financial institution" after "stockbroker".

SEC. 462. (a) Section 547(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting "including proceeds of such property," after "law,"; and

(2) in paragraph (4), by—

(A) striking out ", without penalty"; and

(B) inserting "without penalty" after "payable".

(b) Section 547(b) of title 11 of the United States Code is amended—

(1) by striking out "of property of the debtor" and inserting in lieu thereof "of an interest of the debtor in property"; and

(2) in paragraph (4) by amending subparagraph (B) to read as follows:

"(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider."

(c) Section 547 of title 11 of the United States Code is amended in subsection (c)(2) thereof by striking out subparagraph (B) of such subsection, and by redesignating subparagraphs (B) and (C), respectively.

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

(1) in paragraph (2)(A), by inserting "by the debtor" after "incurred";

(2) in paragraph (3), by striking out "of" the first place it appears and inserting in lieu thereof "that creates";

(3) in paragraph (3)(B), by—

(A) inserting "on or" after "perfected"; and

(B) striking out "such security interest attaches" and inserting in lieu thereof "the debtor receives possession of such property";

(4) in paragraph (5), by—

(A) striking out "of" the first place it appears and inserting in lieu thereof "that creates"; and

(B) striking out "all security interest" and inserting in lieu thereof "all security interests"; and

(5) in paragraph (5)(A)(ii), by striking out "and" and inserting in lieu thereof "or".

(e) Section 547(d) of title 11 of the United States Code is amended by—

(1) striking out "A" and inserting in lieu thereof "The";

(2) inserting "an interest in" after "transfer of";

(3) inserting "to or for the benefit of a surety" after "transferred"; and

(4) inserting "such" after "reimbursement of".

(f) Section 547(e) of title 11 of the United States Code is amended in paragraph (2)(C)(i), by striking out "and" and inserting in lieu thereof "or".

(g) Section 547 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the non-avoidability of a transfer under subsection (c) of this section."

SEC. 463. (a) Section 548(a) of title 11 of the United States Code is amended—

(1) by striking out "if the debtor" and inserting in lieu thereof "if the debtor voluntarily or involuntarily";

(2) in paragraph (1), by striking out "occurred" and inserting in lieu thereof "was made"; and

(3) in paragraph (2)(B)(ii), by inserting "or a transaction" after "engaged in business".

(b) Section 548(c) of title 11 of the United States Code is amended by—

(1) inserting "or may retain" after "lien on"; and

(2) striking out ", may retain any lien transferred,".

(c)(1) Section 548(d)(1) of title 11 of the United States Code is amended by—

(A) striking out "becomes so far" and inserting in lieu thereof "is so";

(B) striking out "such transfer could have been" and inserting in lieu thereof "applicable law permits such transfer to be"; and

(C) striking out "occurs" and inserting in lieu thereof "is made".

(2) Section 548(d)(2)(B) of title 11 is amended by inserting "financial institution," after "stockbroker".

SEC. 464. (a) Section 549(a) of title 11 of the United States Code is amended—

(1) by striking out "(b) and (c)" and inserting in lieu thereof "(b) or (c)"; and

(2) in paragraph (2)(A), by inserting "only" after "authorized".

(3) striking out "that occurs" and inserting in lieu thereof "made";

(4) striking out "is valid against the trustee to the extent of" and inserting in lieu thereof "to the extent"; and

(5) inserting "is" before "given".

(c) Section 549(c) of title 11 of the United States Code is amended to read as follows:

"(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before

such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected."

(d) Section 549(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

SEC. 465. (a) Section 550(a) of title 11 of the United States Code is amended by striking out "549, or 724(a) of this title" and inserting in lieu thereof "549, 553(b), or 724(a) of this title".

(b) Section 550(d) of title 11 of the United States Code is amended—

(1) in paragraph (1)(A), by inserting "or accruing to" after "by";

(2) in paragraph (1)(B), by striking out "value" and inserting in lieu thereof "the value of such property";

(3) in paragraph (2), by striking out subparagraphs (D) and (E) and inserting in lieu thereof the following:

"(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and"; and

(4) in paragraph (2), by redesignating subparagraph (F) as subparagraph (E).

(c) Section 550(e)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

SEC. 466. Section 552(b) of title 11 of the United States Code is amended by—

(1) inserting "522," after "506(c).";

(2) striking out "a secured party enter" and inserting in lieu thereof "an entity entered"; and

(3) striking out "except to the extent" and inserting in lieu thereof "except to any extent".

SEC. 467. Section 553(b)(1) of title 11 of the United States Code is amended by striking out "or 365(h)(1)" and inserting in lieu thereof "365(h)(2), or 365(i)(2)".

SEC. 468. (a) Subsections (a) and (b) of section 554 of title 11 of the United States Code are each amended by inserting "and benefit" after "value".

(b) Section 554(c) of title 11 of the United States Code is amended to read as follows:

"(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

(c) Section 554(d) of title 11 of the United States Code is amended by striking out "section (a) or (b) of".

SEC. 469. Section 555 of title 11 of the United States Code is amended by inserting "financial institution," after "stockbroker".

SEC. 470. (a) Chapter 5 of title 11 of the United States Code as amended by section 352 is amended by adding at the end thereof the following new section:

"§ 558. Defenses of the estate

"The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate."

(b) The table of sections for chapter 5 of title 11 of the United States Code is amended by adding at the end thereof the following new item:

"558. Defenses of the estate."

SEC. 471. The table of sections for chapter 7 of title 11 of the United States Code is amended by striking out "Successor" in the item relating to section 703 and inserting in lieu thereof "Successor".

SEC. 472. (a) Section 702(b) of title 11 of the United States Code is amended by inserting "held" after "meeting of creditors".

(b) Section 702(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "of a kind" after "claims"; and

(2) in paragraph (2), by inserting "a" after "for".

(c) Section 702(d) of title 11 of the United States Code is amended by striking out "subsection (c) of".

SEC. 473. Section 703(b) of title 11 of the United States Code is amended by striking out "specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee" and inserting in lieu thereof "and subject to the provisions of section 701 of this title".

SEC. 474. Section 704 of title 11 of the United States Code as amended by section 311 is amended in paragraph (1), by striking out "up".

SEC. 475. Paragraphs (1) and (2) of section 707 of title 11 of the United States Code are each amended by striking out "and" and inserting in lieu thereof "or".

SEC. 476. (a) Section 723(a) of title 11 of the United States Code is amended by striking out all after "claims" and inserting in lieu thereof "which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner for the full amount of the deficiency".

(b) Section 723(c) of title 11 of the United States Code is amended by—

(1) striking out "such case" each place it appears and inserting in lieu thereof "such partner's case";

(2) striking out "be property" and inserting in lieu thereof "by property"; and

(3) striking out "the kind" and inserting in lieu thereof "a kind".

SEC. 477. (a) Section 724(b) of title 11 of the United States Code is amended—

(1) by striking out "taxes" and inserting in lieu thereof "a tax";

(2) in paragraph (2), by—

(A) striking out "claims" and inserting in lieu thereof "any holder of a claim of a kind";

(B) striking out "sections" and inserting in lieu thereof "section"; and

(C) striking out "and" and inserting in lieu thereof "or"; and

(3) in paragraph (3), by inserting "tax" after "allowed".

(b) Section 724(c) of title 11 of the United States Code is amended by—

(1) striking out "creditor" and inserting in lieu thereof "holder of a claim"; and

(2) striking out "creditors" each place it appears and inserting in lieu thereof "holders".

(c) Section 724(d) of title 11 of the United States Code is amended by—

(1) striking out "whose priority" and inserting in lieu thereof "the priority of which"; and

(2) inserting "if such lien were" after "the same as".

SEC. 478. Section 725 of title 11 of the United States Code is amended by inserting "of property of the estate" after "distribution".

SEC. 479. (a) Section 726(b) of title 11 of the United States Code is amended by—

(1) striking out "a particular paragraph" and inserting in lieu thereof "each such particular paragraph"; and

(2) striking out "administrative expenses" each place it appears and inserting in lieu thereof "a claim allowed under section 503(b) of this title"; and

(3) striking out "have" and inserting in lieu thereof "has".

(b) Section 726(c) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "Administrative expenses" and inserting in lieu thereof "Claims allowed under section 503 of this title"; and

(2) in paragraph (2), by striking out "Claims other than for administrative expenses" and inserting in lieu thereof "Allowed claims, other than claims allowed under section 503 of this title".

SEC. 480. (a) Section 727(a) of title 11 of the United States Code is amended—

(1) in paragraph (6)(C), by striking out "property" and inserting in lieu thereof "properly";

(2) in paragraph (7), by inserting ", under this title or under the Bankruptcy Act," after "another case"; and

(3) in paragraph (8), by inserting a comma after "371".

(b) Section 727(c)(1) of title 11 of the United States Code is amended by inserting "the granting of a" after "to".

(c) Section 727(e)(2)(A) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

SEC. 481. (a) Section 728(c) of title 11 of the United States Code is amended by striking out the comma after "taxable income".

(b) Section 728(d)(2) of title 11 of the United States Code is amended by inserting "otherwise" after "is", and by striking out "otherwise" after "partner".

SEC. 482. Section 741 of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by—

(A) striking out "the debtor" the first time it appears and inserting in lieu thereof "a person";

(B) striking out "holds" and inserting in lieu thereof "has";

(C) striking out "the debtor" the second and third time it appears and inserting in lieu thereof "such person"; and

(D) striking out "business as a stockbroker" and inserting in lieu thereof "such person's business as a stockbroker";

(2) in paragraph (2)(B), by—

(A) striking out "holds" and inserting in lieu thereof "has";

(B) striking out "the debtor" the first place it appears and inserting in lieu thereof "a person"; and

(C) by striking out "the debtor" and inserting in lieu thereof "such person" in clause (ii);

(3) in paragraph (4)(A)(i), by striking out "and that is" and inserting in lieu thereof "from and that is the lawful";

(4) in paragraph (6)(A)(i), by—

(A) inserting a comma after "petition"; and

(B) inserting "any" after "except"; and

(5) in paragraph (7), by amending such paragraph to read as follows:

"(7) 'securities contract' means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;"; and

(6) in paragraph (8) by inserting "a final settlement payment," after "settlement payment on account,".

SEC. 483. Section 745(a) of title 11 of the United States Code is amended by inserting "the debtor for" after "by".

SEC. 484. (a) Section 752(a) of title 11 of the United States Code is amended by—

(1) striking out "customers allowed" and in lieu thereof "customers' allowed";

(2) inserting "of the kind" after "except claims"; and

(3) inserting "such" before "customer property".

(b) Section 752(b)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting in lieu thereof "726".

SEC. 485. Section 761 of title 11 of the United States Code is amended in paragraph (10), by striking out "and that is" in subparagraph (A)(viii) and inserting in lieu thereof "from and that is the lawful".

SEC. 486. Section 763(a) of title 11 of the United States Code is amended by—

(1) inserting "the debtor for" after "by"; and

(2) striking out "deemed to be" and inserting in lieu thereof "treated as".

SEC. 487. Section 764(a) of title 11 of the United States Code is amended by inserting "by the debtor" after "any transfer".

SEC. 488. Section 765(a) of title 11 of the United States Code is amended by striking out "notice under", and inserting in lieu thereof "notice required by".

SEC. 489. Section 766(j)(2) of title 11 of the United States Code is amended by striking out "726(a)" and inserting in lieu thereof "726".

SEC. 490. Section 901(a) of title 11 of the United States Code is amended by inserting a comma after "1111(b)".

SEC. 491. Section 902(2) of title 11 of the United States Code is amended by striking out "title, legal or equitable, to real property against which has been levied a special assessment or special tax" and by inserting in lieu thereof "legal or equitable title to real property against which a special assessment or special tax has been levied".

SEC. 492. Section 903(2) of title 11 of the United States Code is amended by striking out "to" the first place it appears.

SEC. 493. Chapter 9 of title 11 of the United States Code is amended by striking out "SUBCHAPTER II" and inserting in lieu thereof "SUBCHAPTER II".

SEC. 494. (a) Section 921(c) of title 11 of the United States Code is amended by—

(1) striking out "an" and inserting in lieu thereof "any"; and

(2) striking out the comma after "petition", the second place it appears, and after "faith".

(b) Section 921 of title 11 of the United States Code is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) Section 921(a) is amended by striking out "109(c)" and inserting in lieu thereof "109(d)".

(d) Section 921(d) of title 11 of the United States Code, as so redesignated, is amended by striking out "subsection (d)" and inserting in lieu thereof "subsection (c)".

SEC. 495. Section 922(a)(1) of title 11 of the United States Code is amended by—

(1) inserting "a" before "judicial"; and

(2) inserting "action or" before "proceeding".

SEC. 496. Section 927(b) of title 11 of the United States Code is amended by inserting "of a plan under this chapter" after "confirmation".

SEC. 497. Section 943(b) of title 11 of the United States Code is amended—

(1) in paragraph (4), by striking out "to be taken"; and

(2) by amending paragraph (5) to read as follows:

"(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim; and".

SEC. 498. Section 945(a) of title 11 of the United States Code is amended by striking out "execution" and inserting in lieu thereof "implementation".

SEC. 499. Section 1102(b)(1) of title 11 of the United States Code is amended by striking out "order for relief" and inserting in lieu thereof "commencement of the case".

SEC. 500. (a) Section 1103(b) is amended by—

(1) inserting "having an adverse interest" after "entity"; and

(2) adding at the end thereof the following: "Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest".

(b) Section 1103(c) of title 11 of the United States Code is amended—

(1) in paragraph (3), by—

(A) striking out "recommendations" and inserting in lieu thereof "determinations"; and

(B) inserting "or rejections" after "acceptances"; and

(2) in paragraph (4), by striking out ", if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case".

SEC. 501. Section 1105 of title 11 of the United States Code is amended by striking out "estate, and" and inserting in lieu thereof "estate and of the".

SEC. 502. Section 1106(b) of title 11 of the United States Code is amended by inserting ", except to the extent that the court orders otherwise," before "any other".

SEC. 503. Section 1107(a) of title 11 of the United States Code is amended by inserting "serving in a case" after "on a trustee".

SEC. 504. Section 1108 of title 11 of the United States Code is amended by inserting ", on request of a party in interest and after notice and a hearing," after "court".

SEC. 505. (a) Section 1112(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by striking out "is an involuntary case originally commenced under this chapter" and inserting in lieu thereof "originally was commenced as an involuntary case under this chapter"; and

(2) in paragraph (3), by striking out "on other than" and inserting in lieu thereof "other than on".

(b) Section 1112(b) of title 11 of the United States Code is amended—

(1) in paragraph (5), by inserting "a request made for" before "additional"; and

(2) in paragraph (8), by striking out "and" and inserting in lieu thereof "or".

SEC. 506. (a) Section 1121(c)(3) of title 11 of the United States Code is amended by striking out "the claims or interests of which are" and inserting in lieu thereof "of claims or interests that is".

(b) Section 1121(d) of title 11 of the United States Code is amended by inserting "made within the respective periods specified in subsection (c) of this section" after "interest".

SEC. 507. (a) Section 1123(a) of title 11 of the United States Code is amended—

(1) by striking out "A" and inserting in lieu thereof "Notwithstanding any otherwise applicable nonbankruptcy law, a";

(2) in paragraph (1), by—

(A) inserting a comma after "classes of claims"; and

(B) by striking out "507(a)(6) of this title" and inserting in lieu thereof "507(a)(7) of this title";

(3) in paragraph (3), by striking out "shall";

(4) in paragraph (5), by striking out "execution" and inserting in lieu thereof "implementation"; and

(5) in paragraph (5)(G), by inserting "of" after "waiving".

(b) Section 1123(b)(2) of title 11 of the United States Code is amended by—

(1) striking out "or rejection" and inserting in lieu thereof "rejection, or assignment"; and

(2) striking out "under section 365 of this title" and inserting in lieu thereof "under such section".

SEC. 508. Section 1124 of title 11 of the United States Code is amended—

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

"(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title"; and

(2) in paragraph (3)(B)(i), by striking out "and" and inserting in lieu thereof "or".

SEC. 509. (a) Section 1125(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "but adequate information need not include such information about any other possible or proposed plan" after "plan";

(2) in paragraph (2)(B), by inserting "the" after "with"; and

(3) in paragraph (2)(C), by inserting "of" after "holders".

(b) Section 1125(d) of title 11 of the United States Code is amended by—

(1) inserting "required under subsection (b) of this section" after "statement" the first place it appears; and

(2) inserting "or otherwise seek review of" after "appeal from".

(c) Section 1125(e) of title 11 of the United States Code is amended by—

(1) inserting "acceptance or rejection of a plan" after "solicits"; and

(2) inserting "solicitation of acceptance or rejection of a plan or" after "governing".

SEC. 510. (a) Section 1126(b)(2) of title 11 of the United States Code is amended by striking out "1125(a)(1)" and inserting in lieu thereof "1125(a)".

(b) Section 1126(d) of title 11 of the United States Code is amended by inserting a comma after "such interests" the first place it appears.

(c) Section 1126(f) of title 11 of the United States Code is amended by—

(1) striking out "is deemed" and inserting in lieu thereof "and each holder of a claim or interest of such class, are conclusively presumed";

(2) striking out "solicitation" and inserting in lieu thereof "solicitation"; and

(3) striking out "interest" and inserting in lieu thereof "interests".

(d) Section 1126(g) of title 11 of the United States Code is amended by striking out "any payment or compensation" and inserting in lieu thereof "receive or retain any property".

SEC. 511. (a) Section 1127(a) of title 11 of the United States Code is amended by—

(1) inserting "of a plan" after "After the proponent"; and

(2) inserting "of such plan" after "modification".

(b) Section 1127(b) of title 11 of the United States Code is amended by striking out "the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification" and inserting in lieu thereof "circumstances warrant such modification and the court, after notice and a

hearing, confirms such plan as modified, under section 1129 of this title".

SEC. 512. (a) Section 1129(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "chapter" and inserting in lieu thereof "title";

(2) in paragraph (2), by striking out "chapter" and inserting in lieu thereof "title";

(3) by amending paragraph (4) to read as follows:

"(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable";

(4) in paragraph (5)(A)(ii), by striking out the period and inserting in lieu thereof "and";

(5) in paragraph (5)(B), by striking out "The" and inserting in lieu thereof "the";

(6) in paragraph (6), by inserting "governmental" after "Any";

(7) in paragraph (7), by—

(A) inserting "of each impaired class of claims or interests" in lieu of "each class"; and

(B) striking out "creditor's" in subparagraph (B) and inserting in lieu thereof "holders";

(8) in paragraph (8), by inserting "of claims or interests" after "each class"; and

(9) by amending paragraph (10) to read as follows:

"(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insiders";

(b) Section 1129(b) of title 11 of the United States Code is amended—

(1) in paragraph (2)(A), by striking out "lien" each place it appears and inserting in lieu thereof "liens";

(2) in paragraph (2)(B)(ii), by inserting "under the plan" after "retain"; and

(3) in paragraph (2)(C)(i), by—

(A) striking out "claim" and inserting in lieu thereof "interest"; and

(B) striking out "and the value" and inserting in lieu thereof "or the value".

(c) Section 1129(d) of title 11 of the United States Code is amended by—

(1) inserting "the application of" after "avoidance of" the second place it appears; and

(2) adding at the end thereof the following new sentence: "In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance."

SEC. 513. (a) Section 1141(a) of title 11 of the United States Code is amended by striking out "any creditor or equity security holder of, or general partner in," and inserting in lieu thereof "any creditor, equity security holder, or general partner in".

(b) Section 1141(c) of title 11 of the United States Code is amended to read as follows:

"(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor."

SEC. 514. (a) The heading for section 1142 of title 11 of the United States Code is amended to read as follows:

"§ 1142. Implementation of plan".

(b) The item relating to section 1142 in the table of sections for chapter 11 of title 11

of the United States Code is amended by striking out "Execution" and inserting in lieu thereof "Implementation".

(c) Section 1142(a) of title 11 of the United States Code is amended by striking out the comma after "plan" the second place it appears.

(d) Section 1142(b) of title 11 of the United States Code is amended by inserting "a" after "by".

SEC. 515. Section 1144 of title 11 of the United States Code is amended by inserting "if and only" after "revoke such order".

SEC. 516. (a) Section 1145(a) of title 11 of the United States Code is amended—

(1) in paragraph (3)(B)(ii), by inserting "or 15(d)" after "13" and by inserting "or 78o(d)" after "78m";

(2) by amending paragraph (3)(B)(ii) to read as follows:

"(ii) in compliance with the disclosure and reporting provision of such applicable section; and"; and

(3) in paragraph (4), by striking out "stockholder" each place it appears and inserting in lieu thereof "stockbroker".

(b) Section 1145(b) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "and except with respect to ordinary trading transactions of an entity that is not an issuer" after "subsection";

(2) in paragraph (1)(C), by striking out "for" and inserting in lieu thereof "from";

(3) in paragraph (2)(A)(i), by striking out "combination" and inserting in lieu thereof "or combining"; and

(4) in paragraph (2)(A)(ii), by striking out "among" and inserting in lieu thereof "from or to".

(c) Section 1145(d) of title 11 of the United States Code is amended by striking out "commercial".

SEC. 517. (a) Section 1146(c) of title 11 of the United States Code is amended by striking out "State or local".

(b) Section 1146(d)(1) of title 11 of the United States Code is amended by striking out "and" and inserting in lieu thereof "or".

SEC. 518. Section 1166 of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and inserting in lieu thereof "sub-title IV of title 49".

SEC. 519. Section 1168(b) of title 11 of the United States Code is amended by inserting a comma after "approval".

SEC. 520. Section 1169(c) of title 11 of the United States Code is amended by striking out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and inserting in lieu thereof "sub-title IV of title 49".

SEC. 521. (a) Section 1170(a) of title 11 of the United States Code is amended by inserting "of all or a portion" after "the abandonment".

(b) Section 1170(c) of title 11 of the United States Code is amended by inserting a comma after "abandonment".

(c) Section 1170(d)(2) of title 11 of the United States Code is amended by—

(1) striking out "the abandonment of a railroad line" and inserting in lieu thereof "such abandonment"; and

(2) striking out "termination" each place it appears and inserting in lieu thereof "suspension".

SEC. 522. Section 1171(b) of title 11 of the United States Code is amended by striking out "such" and inserting in lieu thereof "the same".

SEC. 523. Section 1173(a)(4) of title 11 of the United States Code is amended by striking out "compatible" and inserting in lieu thereof "consistent".

SEC. 524. Section 1301(c)(3) of title 11 of the United States Code is amended by inserting "continuation of" after "by".

SEC. 525. (a) Section 1302(b) of title 11 of the United States Code as amended by section 314 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively and by inserting after paragraph (2) the following new paragraph:

"(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act; and"

(b) Section 1302(e) of title 11 of the United States Code is amended—

(1) in paragraph (4), by striking out "for" and inserting in lieu thereof "set for such individual";

(2) in paragraph (1)(A), by striking out "for such individual"; and

(3) in paragraph (2)(A), by—

(A) striking out "of" and inserting in lieu thereof "received by"; and

(B) striking out "upon all payments" and inserting in lieu thereof "of all such payments made";

SEC. 526. Section 1304(b) of title 11 of the United States Code is amended by striking out the comma after "of the debtor".

SEC. 527. (a) Section 1307(b) of title 11 of the United States Code is amended by inserting a comma after "time".

(b) Section 1307(c) of title 11 of the United States Code as amended by section 315 is amended—

(1) in paragraph (5), as redesignated by inserting "a request made for" before "additional";

(2) in paragraph (7), as redesignated by striking out "and" after the semicolon and inserting in lieu thereof "or"; and

(3) in paragraph (8), as redesignated by inserting "other than completion of payments under the plan" after "in the plan".

SEC. 528. (a) Section 1322(a)(2) of title 11 of the United States Code is amended by inserting a comma after "payments".

(b) Section 1322(b) of title 11 of the United States Code is amended—

(1) in paragraph (2), by inserting ", or leave unaffected the rights of holders of any class of claims" before the semicolon;

(2) in paragraph (4), by inserting "other" after "claim or any";

(3) in paragraph (7), by—

(A) inserting "subject to section 365 of this title" before "provide";

(B) striking out "or rejection" and inserting in lieu thereof "rejection, or assignment"; and

(C) striking out "under section 365 of this title" and inserting in lieu thereof "under such section"; and

(4) in paragraph (8), by striking out "any".

SEC. 529. Section 1324 of title 11 of the United States Code is amended by striking out "the" the second place it appears.

SEC. 530. Section 1325(a)(1) of title 11 of the United States Code is amended by inserting "the" before "other".

SEC. 531. Section 1326(b)(2) of title 11 of the United States Code as amended by section 318 is amended by inserting "of this title" after "1302(d)".

SEC. 532. Section 1328(e) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "by the debtor" after "obtained"; and

(2) in paragraph (2), by striking out "knowledge of such fraud came to the requesting party" and inserting in lieu thereof "the requesting party did not know of such fraud until".

SEC. 533. Section 1329(a) of title 11 of the United States Code is amended—

(1) by inserting "of the plan" after "confirmation";

(2) by striking out "a plan" and inserting in lieu thereof "such plan"; and

(3) in paragraph (3), by striking out the comma.

SEC. 534. Section 151302(a) of title 11 of the United States Code is amended by inserting "; or shall appoint a disinterested person to serve," after "The United States trustee shall serve".

SUBTITLE J—COLLECTIVE BARGAINING AGREEMENTS

SEC. 541. (a) Title 11 of the United States Code is amended by adding after section 1112 the following new section:

"§ 1113. Rejection of collective bargaining agreements

"(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

"(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

"(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

"(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

"(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

"(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

"(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

"(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

"(3) the balance of the equities clearly favors rejection of such agreement.

"(d)(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

"(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within

thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

"(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

"(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement. Any hearing under this paragraph shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot.

"(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section."

(b) The table of sections for chapter 11 of title 11, United States Code, is amended by inserting after the item relating to section 1112 the following new item:

"1113. Rejection of collective bargaining agreements."

(c) The amendments made by this section shall become effective upon the date of enactment of this Act; provided that this section shall not apply to cases filed under title 11 of the United States Code which were commenced prior to the date of enactment of this section.

SUBTITLE K—MISCELLANEOUS

SEC. 551. If any provision of this title or any amendment made by this title, or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby.

SEC. 552. Notwithstanding the provisions of section 8331(22) of title 5, United States Code, or any other provision of law, for purposes of section 8339(n) of title 5, United States Code, any individual appointed under section 34 of the Bankruptcy Act who served as a United States bankruptcy judge for the district of Oregon or for the Central district of California until March 31, 1984, shall receive an annuity computed with respect to his service as a referee in bankruptcy and as a bankruptcy judge, and his military service (not exceeding five years) creditable under section 8332 of title 5, United States Code, by multiplying 2 1/2 per centum of his average annual pay by the years of that service.

SEC. 553. (a) Except as otherwise provided in this section the amendments made by this title shall become effective to cases filed 90 days after the date of enactment of this Act.

(b) The amendments made by section 426(b) shall become effective upon the date of enactment of this Act.

(c) The amendments made by subtitle J, shall become effective as provided in section 541(c).

And the Senate agree to the same.

That the House recede from its disagreement to the amendment to the title and

agree to the same as follows: "An Act to amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes."

PETER W. RODINO,
BOB KASTENMEIER,
DON EDWARDS,
JOHN F. SEIBERLING,
BILL HUGHES,
MIKE SYNAR,
DAN GLICKMAN,
BRUCE A. MORRISON,
HAMILTON FISH, Jr.,
CARLOS J. MOORHEAD,
THOMAS N. KINDNESS,
HAL SAWYER,
JACK BROOKS,
DANIEL E. LUNGREN,

Managers on the Part of the House.

STROM THURMOND,
BOB DOLE,
AL SIMPSON,
JOHN P. EAST,
ORRIN G. HATCH,
CHARLES GRASSLEY,
EDWARD KENNEDY,
HOWARD M. METZENBAUM,
DENNIS DECONCINI,

Managers on the Part of the Senate.

Mr. RODINO. Mr. Speaker, pursuant to the unanimous consent agreement on June 28, 1984, I call up the conference report on the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstance which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Pursuant to the order of the House, the conference report is considered as having been read.

The gentleman from New Jersey [Mr. RODINO], will be recognized for 30 minutes, and the gentleman from New York [Mr. FISH], will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, today, to the surprise, amazement and relief of many, I am sure, if not all, I rise to take up the result of the conference on H.R. 5174, the bankruptcy amendments and Federal Judgeship Act of 1984.

Let me quickly outline the provisions of our agreement. As all of us know, this is a very complex, complicated measure. Title I creates a new bankruptcy court arrangement to replace the provisions enacted in the Bankruptcy Reform Act of 1978—Public Law 95-598—which were found unconstitutional by the U.S. Supreme Court in the case of *Northern Pipeline*

v. Marathon Pipeline Co., 458 U.S. 50 (1982).

The conferees adopted most of the provisions creating this new bankruptcy court arrangement that were contained in the bill passed by this body.

Title II creates 85 additional district court and court of appeals article III judgeships. Forty of these positions are to take effect in 1984 and forty-five are to take effect in 1985.

Title III provides for certain amendments to title II of the United States Code which is the Bankruptcy Code. This body and the other body agreed to the amendments contained in subtitle A of title III, commonly referred to as the consumer credit amendments. Identical provisions were passed by both bodies, and the conferees did not alter the consumer credit amendments. These amendments are fair to both debtors and creditors, and contain no threshold or future income test.

Subtitle B of title III contains amendments relating to a grain storage facility bankruptcy. Each body passed very similar grain elevator provisions. The conferees adopted the other body's language.

H.R. 5174, as amended by the other body, contained subtitles C through H, which were not in this body's version of the bill. This body's version contained provisions clarifying the exclusive means for the rejection of a collective bargaining agreement in a chapter 11 reorganization case, which were not in the bill passed by the other body. The result of the conference was that the other body's amendments contained in subtitles C through H of title III were accepted, as well as a modified version of amendments concerning the limited circumstances under which a collective bargaining agreement may be rejected in a reorganization case.

Subtitle C of title III of the bill contains amendments altering the treatment of unexpired commercial leases to provide protections for lessors of real property in a shopping center.

Subtitle D clarifies present law relating to the nondischargeability of debts incurred by drunk drivers. Debts incurred by persons driving while intoxicated are presumed to be willfully and maliciously incurred under this provision.

Subtitle E places limits on the fund for the expenses and salaries of referees under the former Bankruptcy Act of 1898.

Subtitles F and G of title III of the bill deal with the treatment of repurchase agreements and timeshare agreements in a bankruptcy case.

The conferees also adopted, with certain changes, the other body's version of subtitle H, containing miscellaneous substantive and nonsubstantive amendments to title 11 of the United States Code.

Subtitle J of the bill contains amendments relating to the standard and procedure for the rejection of a

collective bargaining agreement in a reorganization case. The provision requires the trustee to propose only those modifications that are necessary. The proposed modifications must be necessary to the reorganization of the debtor, and assure that the covered employees and other creditors of the debtor are treated fairly and equitably in the concessions they are asked to make. The provision ensures that a process of negotiation will take place between the employer and union in a reorganization case before the hearing for rejection of the collective bargaining agreement is commenced. Once a hearing is commenced, the new section provides for the speedy conclusion of the hearing and a ruling by the court. These provisions apply only to pending cases.

The existing bankruptcy judges and court system are continued by this bill until the date of enactment of this bill.

I might emphasize that this was the most serious matter that the conference had to deal with and we dealt with it over a long period of time and it was only after much deliberation and much exchange that we finally came to what we believe to be a very balanced provision which will provide for fair and equitable treatment and the assurance that the court will be in a position to review when there is a filing and a question of consideration of rejection by a union.

The proposed modifications, as I say, must be necessary to the reorganization of the debtor and assure that the covered employees and other creditors of the debtor are treated fairly and equitably in the concessions they are asked to make.

The provision thereby insures that a process of negotiation will take place between the employer and union in a reorganization case before the hearing for rejection of the collective bargaining agreement is commenced.

Once a hearing is commenced, the new section provides for the speedy conclusion of the hearing and a ruling by the court.

The labor provisions apply—and I want to make this clear—only to pending cases.

The existing bankruptcy judges and court system are continued by this bill until the date of enactment of this bill. This would be so that there is an assurance that the gap period would be overcome and there is not going to be a question as to the continuity of the existing system.

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from California.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, the conference report on H.R. 5174, Bankruptcy Amendments of 1984, is regrettable, at best. It ignores over a decade of study on this issue and creates a maze for debtors, creditors, and their lawyers who participate in the bankruptcy process. Even more regrettable, we must approve this conference report today, lest we plunge the bankruptcy system into further chaos because of the expiration of the transition provision under the 1978 bankruptcy legislation on Wednesday, June 27.

The years of study that lead to the passage of the 1978 bankruptcy law made clear that the two major failings of the prior bankruptcy referee system were the lack of simplicity in determining jurisdiction of the bankruptcy court and the low status and lack of power of the bankruptcy judges which resulted in disrespect for their position and inability to attract the best caliber judges.

In 1978, the House of Representatives responded to these problems by passing legislation enacting a bankruptcy court system that was clearly constitutional, provided the simplest jurisdictional system, and ensured the highest caliber of judges. Unfortunately, at that time the Senate could not be persuaded to go along with the House-passed system and a flawed compromise was reached and passed by the Congress.

Though the 1978 compromise was flawed in constitutionality, it did provide simplicity and gave increased status and powers to the bankruptcy judges so that the system would attract fine judges and the jurisdictional process would be simplified. The system worked well during its 3 years of operation and most of those who came in contact with it agreed that it was a major improvement over pre-1978 law.

The House's original position in 1978 proved prophetic, for in 1982, the Supreme Court, in *Northern Pipeline Construction v. Marathon Pipeline Co.*, ruled the 1978 compromise unconstitutional.

The conference report before us today turns back the clock, and it does so more than just 6 years, by diminishing the status of bankruptcy judges and their powers from what they were before the 1978 legislation. Under this report, bankruptcy judges are stripped of their powers. In addition, the bill limits the bankruptcy court's jurisdiction substantially because of the unwillingness to grant the bankruptcy judges adequate status in the federal system to enable them to exercise complete jurisdiction. These limitations on jurisdiction result in construction of a jurisdiction maze that gives up to six different options for where any particular dispute is to be tried.

In short, the Conference Report on H.R. 5174 undoes the court reform accomplished in 1978, makes the pre-1978 jurisdictional system seem simple by comparison, and makes the job of

bankruptcy judge even less attractive than under the pre-1978 system. Finally, and very importantly, the jurisdictional powers granted to the bankruptcy judge and the methods of appointment are not free from constitutional doubt, which is what got us into this in the first place under the 1978 compromise.

I regret all of this and I fear that, rather than solving anything, with approval of this bill as reported by the conference committee we have guaranteed that the issue will, again, soon be before us for its necessary resolution.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, at long last, the seemingly interminable impasse over the bankruptcy legislation (H.R. 5174) has been resolved, the conferees have been laboring long and hard over the past 2 days and have reached a reasonable accommodation of the complex matters that fall under this general subject. I commend our work product to the House.

The conference report contains:

An article I bankruptcy court structure; basically as it passed the House.

Provisions authorizing the appointment of a total of 85 badly needed district and circuit court judges 40 of whom can be appointed this year.

The previously agreed upon substantive, consumer bankruptcy amendments based on H.R. 1800.

A compromise provision regarding the rejection of collective bargaining agreements under title 11, United States Code, and

A portion of the miscellaneous amendments which were included as part of the original Senate-passed bill (S. 1013).

With respect to the labor provision, what we bring back is entirely different from the House-passed version. The House set up series of elements of proof, some felt even beyond REA Express to justify rejection of collective bargaining agreements in reorganization.

The conference version is a modification of a compromise offered in the Senate. It requires that in advance of application to reject union contracts the debtor must make a proposal to the union which makes the modifications necessary for reorganization of debtor. It must contain reasonable assurances to affected parties—creditors, debtors, employees—that they are being treated fairly.

Another change is that the court approves rejection only if the union representative has rejected it without good cause. The standard is *Bildisco*, that "balancing of equities" favors rejection.

There is an emergency provision—recommended by the National Bankruptcy Conference—which permits bankruptcy courts, notwithstanding, to authorize modification of a collec-

tive bargaining agreement to prevent draining estates beyond repair.

In particular, I am gratified that this compromise includes the provisions exempting repurchase agreements from the automatic stay provisions. This legislation has been strongly supported by State and local government and by the Federal Reserve Board. It is sought by my State. People will benefit from lower taxes because State and local governments will park money for short periods of time, generating income.

Similarly, I am also pleased that this legislation contains the clarifications of the treatment of forward contracts in the Bankruptcy Code. The provisions related to forward contracts and forward contract merchants in the conference report are identical to legislation (H.R. 3933) which I introduced last year. The definition was omitted in the 1982 amendments. It helps all involved in futures. Ambiguity has caused problems.

The mandatory abstention provision is basically House language. The compromise provides that the district court shall abstain from hearing a State law case related to a bankruptcy proceeding if that action is commenced and can be timely adjudicated in State court. This would cover the marathon-type fact situation. This provision is made prospective only. It would not apply to pending title 11 cases.

A personal injury or wrongful death tort claim against a bankrupt estate can be tried in a Federal district court with a jury. These claims shall be tried in the district court in which the bankruptcy case is pending or in the district court in which the claim arose, as determined by the district court where the bankruptcy case is pending.

I support the compromise which has been achieved with the other body on H.R. 5174. It is not without its faults, but it nonetheless constitutes a singular legislative achievement after so many months of legislative delay and stalemate.

As all of us know, the question of whether we should adopt an article I or article III court structure was debated and decided on this floor 3 months ago. The House at that time followed the lead of the other body in establishing a bankruptcy court structure whose judges will not have the life tenure which the Supreme Court told us in *Marathon* is required by the Constitution. I believe that the House made a mistake in its action last March. Since that time, however, I have continued to press for the early enactment of a courts bill in order to end the existing corrosive uncertainty in bankruptcy administration and adjudication.

When H.R. 5174 becomes the law of the land, the Supreme Court will have to confront the constitutionality of the course Congress has chosen to take, as it did not confront the interim

rule which kept the courts operating after the stay of the *Marathon* decision expired. I am convinced that a decision in a case which we may call *Marathon II*, which I anticipate within a year or so, will confirm the original wisdom of the House of Representatives in 1978 and of the House Judiciary Committee in 1982 and 1983 in establishing a life-tenured bankruptcy court system. Nevertheless, the immediate crisis is at last resolved.

I strongly urge the House to adopt this conference report.

□ 1410

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MOORHEAD].

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I rise in strong support of the compromise agreement made by the conferees on this legislation.

We spent several days of debate, and each side—both the House and the Senate—gave in substantially on issues that meant a lot to them. After many, many months of controversy on the bankruptcy bill, we were able to come to terms that permits the Bankruptcy Court once more to operate.

TITLE I

Title I of H.R. 5174 deals with bankruptcy court jurisdiction and procedure. Under the terms of this legislation, bankruptcy court judges are designated as article I judges under the Constitution. Bankruptcy judges are to be appointed by the U.S. Court of Appeals for each judicial circuit with respect to those judicial districts within that circuit. The bill provides for the appointment of 26 bankruptcy judges in the four judicial districts in the State of California. This breaks down to 7 bankruptcy judges in the northern district of California; 4 bankruptcy judges in the eastern district of California; 12 bankruptcy judges in the central district of California; and 3 bankruptcy judges in the southern district of California. Whenever a majority of the judges in the Circuit Court of Appeals cannot agree on a particular appointment, the chief judge of the circuit is authorized to make the appointment. The salaries of bankruptcy judges are to be determined under the Federal Salary Act of 1967 (2 U.S.C., sections 351-361). The conference committee deleted the provision contained in the Senate-passed bill that would have allowed bankruptcy judges to serve as magistrates.

TITLE II

Title II of the bill authorizes the President to appoint additional Federal circuit and district court judges. Twenty-four additional circuit court judgeships are provided for, with 5 additional circuit court judges for the Ninth Circuit Court of Appeals. President Reagan is authorized to appoint 11 of these 24 circuit court judges prior to January 21, 1985. The Presi-

dent is authorized to appoint an additional 61 district court judgeships, but no more than 29 of these judges may be appointed prior to January 21, 1985.

TITLE III

Title III of H.R. 5174 makes major substantive changes in the Bankruptcy Code. All of the so-called consumer credit amendments that were contained in H.R. 5174 as it first passed the House of Representatives are contained in this legislation. These consumer credit amendments largely reflect the provisions contained in H.R. 1800. In addition, title III also contains amendments to the Bankruptcy Code dealing with: First, grain elevator bankruptcies; second, repurchase agreements [REPOS]; third, liability of drunk drivers, who have filed for bankruptcy subsequent to the automobile accident supported by MADD; fourth, protections for timeshare consumers; fifth, clarification of the treatment of forward contracts under the Bankruptcy Code; and sixth, protections for shopping centers where one of the tenants files a petition for bankruptcy.

UNION CONTRACTS

H.R. 5174 also contains a modified Bildisco amendment dealing with the treatment of collective bargaining. However, provisions agreed to by the conferees are far less extensive than the language contained in the original House-passed bill. The collective bargaining language in the final bill reflects a rewrite of the proposals made by the National Bankruptcy Conference. Prior to filing an application for rejection of a union contract, a company that has filed a petition for bankruptcy must make a "proposal" to the authorized union representative. The company is required to base its proposal on the most "complete and reliable information available" at the time. The proposal for modifications in the collective bargaining agreement should not go beyond those alterations necessary to permit the reorganization of the debtor. The proposal must contain reasonable assurances that the creditors, debtor, and all the affected parties are treated "fairly and equitably." After the proposal has been made, the trustee is directed to meet with representatives of the company and the union for good faith negotiations on the proposal.

Once an application for rejection of a labor contract has been made, the district court must schedule a hearing not later than 14 days after the filing—which can be extended for 7 days in the "interests of justice." The court is required to rule on the application for rejection with 30 days after the commencement of the hearing. The court must approve the application for rejection if: First, a trustee has negotiated with both parties; second, the Union has refused to accept the proposal "without good cause"; and third, the "balance of the equities" clearly favors the rejection

of the collective bargaining agreement. The judge is also authorized to make interim modifications in the collective bargaining agreement prior to rejection "if essential to the continuation of the debtor's business." Finally, this collective bargaining subtitle is prospective only; it does not affect cases which were filed prior to the enactment of this subtitle.

Everyone involved in this conference has given something. It is truly a compromise agreement. I ask this House to accept the compromise and approve the committee report.

The CHAIRMAN pro tempore [Mr. ANNUNZIO]. The Chair recognizes the gentleman from New Jersey [Mr. RODINO].

Mr. SAM B. HALL, JR. Mr. Speaker, will the gentleman yield for a question?

Mr. RODINO. I yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. Could the gentleman state how the existing judges will be continued? I have had 2 calls from the bankruptcy judges in Texas since yesterday, and they are concerned about what their status is as a result of this conference report.

Mr. RODINO. Let me respond to the gentleman in this way: We believe that we have crafted what is going to be a constitutional provision to take place in the transition period.

As a result of the problems we faced in resolving our differences with the other body the Wednesday midnight deadline came and went. The conferees agreed that sitting bankruptcy judges should continue in office.

We recognized that the Supreme Court has upheld similar periods. See *Glidden v. Zdanok*, 370 U.S. 530, 547 (1962) (plurality opinion of Justice Harlan) ("(t)he touchstone of decision in all these cases has been the need to exercise jurisdiction then and there for the transitory period."); see also *Mellakalla Indian Comm. v. Egan*, 363 U.S. 555 (1960). *Freeborn v. Smith*, 69 U.S. 160 (1895); *Baker v. Morton*, 79 U.S. 150 (1871); *John v. Paullin*, 231 U.S. 583 (1913).

The conference report continues the existing transition court so as to allow bankruptcy judges to continue to efficiently do their work. It was the expectation and intention of the Conferees that those persons who were bankruptcy judges continue in those jobs.

In closing, let me say to those who may have raised some constitutional questions about the transition period that in another context the Supreme Court has said:

the legitimacy of protecting reasonable reliance on prior law even when that requires allowing an unconstitutional statute in effect for a limited period of time. *Heckler v. Mathews*, —U.S.— (March 5, 1984) (slip opinion at 16, (citing with approval *Marathon*)).

Thus, I firmly believe that we have crafted a constitutional bill.

Mr. SAM B. HALL, JR. Will the gentleman yield for one further question?

Mr. RODINO. I yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. I was told yesterday that the bankruptcy judges had been given an additional oath of office after the termination of their position as bankruptcy judges. Will they have to be sworn in again by the Court?

Mr. RODINO. There is no need for administering any oath. The provisions that we have crafted provide for a continued transitional period.

Mr. SAM B. HALL, JR. I thank the gentleman.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. KASTENMEIER].

(Mr. KASTENMEIER asked and was given permission to revise and extend his remarks.)

Mr. KASTENMEIER. Mr. Speaker, 2 years ago yesterday the Supreme Court of the United States decided the *Marathon case*¹ finding a part of the 1978 Bankruptcy Act unconstitutional. Today the House and Senate conferees present before this body a conference report which finally will resolve this problem. In my view this conference report presents the legislative process at its best and at its worst. I am pleased that we were able to fashion a constitutional, workable bankruptcy court system. On the other hand, the use of the bankruptcy court bill as a vehicle for other reforms, no matter how meritorious, is to be lamented, as my chairman has steadfastly maintained.

Let me take a moment to review how the provisions of this conference report differ from the House-passed bill with respect to the bankruptcy court system. See "Extensions of Remarks" by ROBERT W. KASTENMEIER, March 20, 1984, at E1109-10, a description of how the provisions of the Kastenmeier-Kindness amendment work. As my colleagues will recall, the bill we passed provided that bankruptcy judges shall serve as adjuncts of the Federal District Court. Under the House bill, bankruptcy judges were to be appointed by the various courts of appeal. These two features were the heart of the House-passed bill. Both of these features have been retained in conference.

The House-passed bill provided that there should be mandatory abstention in a narrow range of cases involving *Marathon*-type litigation. The House abstention provisions also have been retained. The House-passed bill contained a definition of what a bankruptcy judge could properly do. The Senate bill adopted a largely similar view with one exception. Under the Senate-passed bill, bankruptcy judges

could not hear unliquidated claims. The Senate approach would have repudiated decades of bankruptcy law and practice. See, *Kachen v. Landy*, 382 U.S. 323 (1966). The change in the definition in the Senate-passed bill would have contradicted the basic purposes of the consolidated jurisdiction we adopted in 1978 in response to the recommendations of the Commission on Bankruptcy Laws. Finally, it would have dissipated the assets of the estate by creating a multiplicity of forums for the adjudication of parts of a bankruptcy case.

The conference report largely rejects the Senate limitations on the tasks which are to be performed by a bankruptcy judge. The report states that a narrow category of cases are not be construed as core proceedings.² Thus, personal injury cases and wrongful death cases may not be heard to final judgment by a bankruptcy judge. These cases are to be transferred to the district court judge. Of course, under the provisions of section 157(c)(2), such proceedings may be handled by a bankruptcy judge as long as that judge does not enter a final judgment. In addition, a bankruptcy judge may hear such cases with the consent of all of the parties. Thus, in those rare cases where the parties insist, a personal injury or wrongful death case may be tried to judgment by a district court judge. Finally, the conference report states that in this narrow range of cases the parties do not lose any right to a jury trial that they may have had if the claim had been cognizable outside the bankruptcy context.

Thus, the conference report—with the minor exception listed above—adopts the House formulation on bankruptcy court structure. Even the narrow exception described above will only apply to cases filed after the effective date of the act. Thus, this change in the jurisdiction of the bankruptcy judge will not affect in any way the resolution of pending cases.

CONCLUSION

In closing, I wish to take this opportunity to thank several of my distinguished colleagues. To my esteemed chairman, PETER RODINO, with whom I so rarely disagree, I thank you for having the grace and spirit to work toward the resolution of this difficult issue—on which we did have differing views—with skill and commitment. To my Republican colleagues, TOM KINDNESS and TRENT LOTT, and to counsel David Beyer, I extend my sincere thanks for a commitment to crafting court legislation which avoided the shoals of partisanship. Finally, I wish to congratulate the House leadership for playing a constructive role in facilitating the resolution of these issues.

² Section 157(b)(4) provides that non-core bankruptcy cases involving personal injury cases or wrongful death are not subject to the mandatory abstention provisions of section 1334.

□ 1420

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. SAWYER].

(Mr. SAWYER asked and was given permission to revise and extend his remarks.)

Mr. SAWYER. I thank the gentleman for yielding to me.

Mr. Speaker, at long last we have gotten this lagging bankruptcy thing to the point the House can act on it. It is a major improvement over the House bill, in my opinion. On the handling of the labor provision which was handled in the House, I think in a disgraceful manner, it totally circumvented all of the normal procedures. The subcommittee and committees that had jurisdiction never got to look at the provision at all. It was drafted by staff and put into the bill when it was actually sitting in the Rules Committee and then covered by a gag rule so the House had no ability whatever to express its view.

I am pleased to say that in conference we considerably modified that bill bringing it back to the state of the law prior to *Bildisco*, but nothing remotely resembling the horrendous proposal that was pushed through the House on the tails of the necessity of getting the bankruptcy court legalized, but under a gag rule so no one can touch it. It is certainly a provision we can now live with in its present form, and I am proud to say it bears little resemblance to the one pushed through the House originally.

We also got 85 badly needed Federal judges: 61 of them district judges; 24 court of appeals judges. Half of them or 40 of them to be appointed this year; 45 by the next President. Those are badly needed, and we had none of those in the House bill, although many of us tried to get that kind of a consideration.

We also in a number of consumer and creditor problems that were absolutely denied us being addressed in the House by the leadership in the House; namely, things like grain elevator bankruptcy, where farmers who have never been paid for their grain, when the elevator went broke got nothing except their percentage. The creditors could not get their grain back. That is fixed now. Shopping centers where a big tenant went bankrupt; it had to sit vacant for a couple of years, hurting the whole center, nothing could be done about it.

Judgments against drunk drivers for personal injuries, and judgments could be discharged in bankruptcy like any other judgment; now that is prohibited. Just a number of distinct improvements. Repossessions and repurchase agreements, a lot of inequities that came to account and encouraged bankruptcy almost frivolously to get rid of legitimate debts that could be paid. Those things have been largely thwarted thanks largely to the bill sponsored originally by Mr. SYNAR

¹ *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

from Oklahoma. We ended up getting it in the Senate bill, although he was unable to get the House people to go along here; we got the Senate to go along.

One thing I am still disturbed about is I am not sure that we have not created a serious problem for the existing bankruptcy judges, despite our effort to cure it. Their office disappeared for a while; they are probably, in my view, going to have to be reappointed. The personnel of the court of appeals may have changed since their appointment. They may have got out front wanting to be article III judges, which would not have endeared them to the court of appeals judges who will do the appointing. I hope those things do not happen, and it certainly is the sense of all the conferees that we hope it does not, since it was really the legislative fault and not theirs.

I have one reservation on which I am joined by the senior Senator from Alabama, that I am not sure by going the article I route judges instead of article III judges, which many of us on the committee strongly favored by giving adjudicatory powers over unliquidated claims that we might not back right into another constitutional problem. I hope we do not, but I would not guarantee that we might not fear that, and that is along the line of the senior Senator from Alabama.

All in all, I think the bill now, as compared to the bill the House turned out, is a very respectable bill addressing many of the problems, and one that all Members of the House can enthusiastically support.

Mr. FISH. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. KINDNESS].

Mr. KINDNESS. I thank the gentleman for yielding me this time.

Mr. Speaker, I do not believe that there is a lot more that needs to be said except to express my appreciation and thanks for the good efforts that have been put into this piece of legislation over quite a period of time by a good many people. I will not attempt to enumerate all of that in the spirit of saving time. I assume we will not take a lot of time for those laudatory purposes. But I respect deeply the efforts that have been put into this by a lot of people.

There is, however, one point of clarification that I would like to mention for the record, that in the last minutes of the meeting of the conferees on yesterday evening, there may have been a slight error in language left in the bill which might pose some problems over the next couple of weeks until we have an opportunity to approach a technical amendment.

Section 157 of the act does provide that each district court may provide that any and all cases arising under title 11 and proceedings in related cases shall be referred to the bankruptcy judges for the district. I trust that that would be interpreted to over-

come the matter that I will now mention.

□ 1430

In subsection (b) following thereafter, in the definition of core proceedings, it is stated that core proceedings would include allowance or disallowance of claims against the estate or exemptions from property of the estate, an estimation of claims or interest for the purposes of confirming a plan under chapter XI or XIII or title XI.

The SPEAKER pro tempore [Mr. ANNUNZIO]. The time of the gentleman from Ohio [Mr. KINDNESS] has expired.

Mr. FISH. Mr. Speaker, I yield 2 additional minutes to the gentleman from Ohio.

Mr. KINDNESS. I thank the gentleman for yielding this additional time to me. I did not stop to realize this might take a little while to lay out just to make the record clear here.

That subsection defining core proceedings goes on to say:

But there would not be included . . . the liquidation or estimation of contingent or unliquidated personal injury, tort or wrongful death claims against the estate for purposes of distribution.

The estimation of contingent or unliquidated claims in order to allow or provide for the distribution of an estate would, of course, be a core proceeding. I think it was intended, certainly by the conferees, that the estimation function, and thus proceeding with the distribution, would not be interfered with by the change that was wrought to deal with the personal injury court actions and wrongful death actions at the instance of the junior Senator from Ohio in the conference yesterday.

So I would hope that if there is to arise any question in the weeks ahead about the meaning of that language that certainly the beginning part of section 157 would clarify that the district court can refer those matters to the bankruptcy judge.

I am happy to support the conference agreement. There were two of us who seemed to be a bit reticent to support the first portion of the matter that was decided upon, and it was solely for the reason that we had not dealt with title I, the bankruptcy courts matter.

I am glad to see this concluded over this time and would heartily endorse and urge my colleagues to support the conference report.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from Kansas [Mr. GLICKMAN].

(Mr. GLICKMAN asked and was given permission to revise and extend his remarks.)

Mr. GLICKMAN. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this conference report. Those of us who served as conferees know that it was a monumental task to try to pull together two very disparate bills which to-

gether covered a whole range of questions, structural and procedural alike. That process was complicated by the fact that we were under severe time constraints once we go to conference to put together a package. The end result, especially in light of those constraints, is a well balanced one and one which I feel confident that all of us in this House can support.

Before I comment on a number of the specific provisions which were of key interest to me, I would like to take a few moments to commend a number of the conferees. The chairman of our Judiciary Committee [Mr. RODINO], in spite of the fact that I know he has serious reservations—as I do—about the decision not to resolve the constitutional problems of the bankruptcy courts by establishing article III judgeships, did yeoman's work in arguing on behalf of the position taken by this House and in behalf of the integrity of the Bankruptcy Code. As a personal note, I fear that we have not finally resolved the constitutional issues facing article I judges and that we probably will revisit this issue in the next few years; even the Supreme Court may revisit it sooner.

Of course, I would also commend Representative FISH, the committee's ranking minority member, for his help in reaching the many compromises that had to be crafted. Finally, I would pay special commendation to three of our Senate colleagues with whom it was a true pleasure to work. Senators DECONCINI, METZENBAUM, and HEFLIN all worked diligently on behalf of reaching accommodations without losing sight of the basic principles which are essential to our judicial system. I would also be negligent if I failed to acknowledge the hard work and dedication shown by our House Committee staff, most notably Alan Parker, Elaine Mielke, Susan Block, and DAN FREEMAN on the majority side and Alan Coffey, Charles Kern, and TOM BOYD on the minority side, who helped into the wee hours of the morning to frame the many issues we had to address and who made sure that we understood the implications of the changes we were considering, technically and substantively.

The conference report provides for restructuring the bankruptcy courts in a fashion that is intended to bring them into constitutional conformity. It also responds to concerns that have arisen over the last several years involving substantive bankruptcy laws.

First, it provides relief which farmers have found the hard way is badly needed when elevators holding their grain go bankrupt. The reforms in this bill will give farmers priority in distribution of assets and provide for the expedited determinations that are needed to preserve the value of their grain in fluctuating markets and to avoid the potential problem of physical deterioration. This is an area where I have focused attention for

several years now, and, while I feel that changes are needed in other areas of the law to avert grain elevator bankruptcies, I am glad to finally be able to report to my colleagues that constructive changes are before us for a final vote.

This package also responds to what I consider to have been a misinterpretation of congressional intent by the Supreme Court in its *Bildisco* decision with regard to the status of collective bargaining agreements in bankruptcies. The *Bildisco* decision reversed long-standing policy in favor of preferential treatment of labor contracts in recognition of their origins in negotiations. The package we have brought back to the House is based on the so-called Packwood amendment which was debated at length but never voted on in the Senate, but did make a number of modifications, including language authored by my good friend, **BILL HUGHES**, to facilitate a compromise that addressed the concerns of the House.

Finally, I would note that a project on which I have been working for over a year now, to clarify the status of repurchase agreements in bankruptcies, is dealt with in this conference report. That provision, which is very important to helping State and local governments in particular make secure, high/return investments of revenues which they have on hand on a short term basis before bills come due. These investment opportunities have been clouded as a result of the bench decision in the *Lombard-Wall* case nearly 2 years ago. This legislation clarifies that these repurchase agreements are exempted from the automatic stay provisions of the code and should facilitate the continuation of this investment policy.

In closing, I urge my colleagues to support this conference report because of these provisions and a good many others. Most importantly, I urge support for this package as a means of putting to rest some of the confusion that developed as a result of the *Marathon* decision 2 years ago. Though it is not the solution I personally advocated to the questions raised by that decision, I do hope the court system in this package will withstand constitutional challenge.

I would like to compliment, again, particularly my chairman for working through a great deal of adversity in coming up with a compromise which should be able to be accepted and voted in an affirmative sense by all members of this Chamber.

Mr. RODINO. Mr. Speaker, I would like to be advised how much time I have remaining.

The **SPEAKER** pro tempore. The gentleman from New Jersey [Mr. **RODINO**] has 12 minutes remaining, and the gentleman from New York [Mr. **FISH**] has 13 minutes remaining.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. **HYDE**].

(Mr. **HYDE** asked and was given permission to revise and extend his remarks.)

Mr. HYDE. I thank the gentleman for yielding time to me.

Mr. Speaker, I want to congratulate the House conferees on the work they completed in the wee hours of the morning yesterday. This issue of bankruptcy reform has been with us for years—unfortunately—and we have had to fight for the right to hold hearings on matters contained in legislation passed by the other body on several occasions. Once we were forced by circumstance to face the issue, and those on the House conference met with members of the Senate conference, a solution to the omnibus package was forged.

I have closely followed the progress of bankruptcy legislation in this body, having cosponsored several bills pertaining to repurchase agreements, shopping center leases, and consumer credit reforms. Each of these issues was resolved in the conference between the Houses, and I am pleased to say that the language in the bill before us retains the language passed by the Senate at least three times.

I hope, Mr. Speaker, that the spirit of accommodation which enabled the House and Senate conferees to talk to one another and produce a satisfactory compromise, a spirit which was slow to take hold within the leadership of this body, and which in fact never took hold until the Supreme Court forced the issue by deciding the *Bildisco* case in favor of the unilateral rejection of collective bargaining agreements, will extend to other issues on which there might be reasonable disagreement. If we are able to talk about these matters, rather than tuck them away in the bosom of the House Judiciary Committee, we may well find, as the conferees did in this instance, that we have more to agree about than we thought.

I urge the adoption of this legislation which I applaud.

Mr. FISH. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. **GEKAS**].

(Mr. **GEKAS** asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. I thank the gentleman for yielding this time to me.

Mr. Speaker and Members of the House, bankruptcy is not that type of subject that is likely to evoke the passions that some issues are able to bring to the floor of the House of Representatives. Yet, it is extremely important and it is no longer a subject matter which is relegated just to a group of lawyers who handling legalistic issues.

I must say and my colleagues must recognize that people back home now recognize the seriousness of the issue about which we are debating today. When we consider that there are 600,000 cases pending in the bankruptcy courts, and when we consider that

many thousands of those involve hundreds and sometimes thousands of people, then we must recognize that there is not one congressional district, actually not one community, that is without some kind of touching that occurs by reason of the existence of a bankruptcy case.

I, myself, am worried in the question and answer that was held between the gentleman from Texas and the gentleman from New Jersey about the transitional period, as to whether or not refiling would be necessary for the 600,000 cases that are now pending. I hope that the record would make clear my conclusion that it would not, that the 600,000 cases pending are still pending and the transitional period would not have any effect on them.

But the American public is aware of this issue and the House of Representatives does itself good and does the public good in resolving this issue. I urge the adoption of the conference report.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. **LUNGREN**] a conferee.

(Mr. **LUNGREN** asked and was given permission to revise and extend his remarks.)

Mr. LUNGREN. I thank the gentleman for yielding.

Mr. Speaker, I am one of the many Members who believed, when the House took up the labor provisions in March, that the entire package of labor provisions was significant and deserved closer scrutiny, perhaps at least one hearing before we overturned a unanimous decision of the U.S. Supreme Court.

We never got that hearing on the so-called *Bildisco* provisions, at least in the House, and what we were forced to vote on, at that time, without an opportunity for amendment, was in my judgment totally unacceptable because of its over-react.

In the conference between the Houses, however, we were able to inaugurate the debate we never had in the House, and the result was a good-faith compromise which probably could have come a good deal earlier. We took the language offered during Senate consideration, and altered it to fit the need of the debtor in possession during a reorganization proceeding.

For example, in an effort to respond to concerns that the circumstance of union workers was important in the determination of whether or not to reject a collective bargaining agreement, we placed a requirement in proposed section 1113(b)(1)(A) which mandates that, prior to filing an application before a bankruptcy court to reject a collective bargaining agreement, the debtor must first propose modifications in the union contract which are necessary to permit reorganization and which assure, to the extent possible given the facts available at the time, that all affected par-

ties, namely the debtor, the creditors, and all employees whose jobs are directly tied to the union contract, are treated fairly and equitably under the proposal.

□ 1440

I believe, Mr. Speaker, that our assumptions with respect to assurance contemplates "reasonableness."

Moreover, before a bankruptcy court can approve a rejection, it must first conclude that the union representative, to whom the proposal I have just discussed was presented, has refused to accept it without good cause. The phrase "good cause" is undefined, but the conferees clearly believed that it should be interpreted narrowly by a reviewing court; it certainly was not intended to permit virtually any refusal on the part of the labor representative. It should be on the basis of facts directly resulting from the contract between the debtor and his employees, contracts immediately before the bankruptcy judge in the chapter 11 proceeding. It should not involve contracts with unions other than those immediately before the court.

Last, Mr. Speaker, in proposed section 1113(e), we incorporated a provision which was recommended by the National Bankruptcy Conference. Specifically, this language enables the bankruptcy court, if it determines that it is "essential to the continuation of the debtor's business," and "in order to avoid irreparable damage to the estate," may authorize interim modifications in elements of the collective bargaining agreement. This is an important provision of the compromise, because it underscores the primary purpose of chapter 11; that is, to maintain the debtor's business so that both the debtor and his employees can keep their jobs.

In other words, Mr. Speaker, this chapter 11 allows a company to reorganize rather than going belly-up. In essence, it is the best way to protect the jobs of the workers of the company as then constituted. If we were to define the proposal so strictly that it would make it virtually impossible for any debtor in possession to move in this direction, we essentially would give them no alternative but to continue until they go belly-up, with no opportunity to save the jobs of the employees.

Any labor provision which would subordinate the debtor's reorganization to a union contract, which I feel the original House language did and which, I might add, the National Bankruptcy Conference also felt the original House language did, would impinge on the goals of the 1978 Bankruptcy Reform Act and indeed on the principal reasons for a bankruptcy procedure.

Mr. Speaker, in short, they said it could not be done, and yet we did it. So, Mr. Speaker, I urge adoption of the conference report, and I congratulate my fellow conferees on a job well

done, although perhaps belatedly performed.

Mr. SAM B. HALL, JR. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I am happy to yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. Mr. Speaker, would the gentleman explain this to me in a little detail: After the initial meeting prior to bankruptcy proceedings between the debtor and the representative of the bargaining union agreement, if they make a decision, is that decision binding on a court?

Mr. LUNGREN. Well, we apply the final standard of the court to the language that was contained in *Bildisco*: "The balance of the equities clearly favors a rejection of such agreement." So at the time the court would consider this question we would have a proposal that had already been made to the unions, and under the standards articulated in the bill the authorized representatives of the employees would have had to refuse to accept such proposal without good cause. Only at that point would the court move to allow an abrogation of the contract when it made a decision based on the determination, that "the balance of the equities clearly favors a rejection of such agreement."

Mr. SAM B. HALL, JR. Mr. Speaker, if the gentleman would yield for one further question? Does the discretion of the bankruptcy court still remain?

Mr. LUNGREN. The discretion of the bankruptcy court remains within the provisions that we have articulated here. They must go through those elements we described, but the final judgment is the court's in terms of a balancing of the equities clearly favoring rejection of such agreement.

Mr. SAM B. HALL, JR. So the court in balancing the equities would include the union contract—and any other matters that might make it detrimental to the debtor for the contract to remain in force? That would be up to the discretion of the judge, as I understand it?

Mr. LUNGREN. The judge would have to make that decision within the circumstances we have articulated, which includes a proposal which concerned itself with the assurance that all creditors, the debtor, and all affected parties are treated fairly and equitably.

Mr. SAM B. HALL, JR. Of course, that is the present law, that all the debtors will be treated fairly and equitably. So I assume then that this contract under the *Bildisco* case will still be considered, after you take all the steps you have mentioned, by the judge as to whether or not that contract will be vitiated or amended.

Mr. LUNGREN. Absolutely, because in the petition that is made a proposal has to already have been made to the employees which provides for "those necessary modifications in the employees' benefits and protections." So that, of course, incorporates those benefits

and protections that are contained in the existing contract.

Mr. SAM B. HALL, JR. Mr. Speaker, I thank the gentleman.

Mr. MORRISON of Connecticut. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I am happy to yield to the gentleman from Connecticut.

Mr. MORRISON of Connecticut. Mr. Speaker, I just wanted to clarify what the gentleman said. The discretion that is being spoken about is discretion that is defined by these provisions in the language, as opposed to an unbridled discretion?

Mr. LUNGREN. Absolutely.

Mr. RODINO. Mr. Speaker, I yield 6 minutes to the gentleman from Connecticut [Mr. MORRISON].

(Mr. MORRISON of Connecticut asked and was given permission to revise and extend his remarks.)

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman for yielding me this time.

I want to start by commending my chairman, the gentleman from New Jersey [Mr. RODINO], for his leadership that has brought us to this important day when we are going to be passing this conference report and putting the bankruptcy courts back on a solid statutory footing. I thank the gentleman for the opportunity to participate in this conference process.

There are, in this bill, critically important provisions which deal with the question of when a company in chapter 11 proceedings may be relieved from the provisions of collective bargaining agreements. The conference report strikes the necessary balance between the threat to companies in risk of being liquidated because of financial problems and the possibility of abuse of chapter 11 bankruptcy proceedings merely to vitiate union contracts. The compromise that has been achieved is one that favors procedures which allow for negotiations between the debtor and the labor union for the resolution of these problems when they arise.

The language agreed to by the conferees moves us in the direction of a negotiation process rather than a litigation process to save companies that are in trouble without permitting any abuse of chapter 11 to vitiate improperly labor contracts.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield on that point?

Mr. MORRISON of Connecticut. I am happy to yield to the gentleman from California.

Mr. LUNGREN. I would just point out that a major part of this is that we no longer allow unilateral rejection. There is a process that must be gone through before that can be entertained. That is an abrogation of the contract, and that is a significant difference in the law prior to this time. The gentleman is absolutely correct.

Mr. MORRISON of Connecticut. Mr. Speaker, I think that is a very important point.

During the conference, the gentleman from New Jersey [Mr. HUGHES] and I offered several key amendments relating to this issue. On behalf of Mr. HUGHES and myself, I would like to take this opportunity to clarify some of the labor provisions and to outline our understanding of the language adopted by the conferees.

Mr. Speaker, as a result of the conferees' agreement, any proposal by a trustee or debtor-in-possession to modify a collective bargaining agreement in a chapter 11 case is to "provide for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor." This language makes plain that the trustee must limit his proposal to modify a collective bargaining agreement to only those modifications that must be accomplished if the reorganization is to succeed. The key phrase is "necessary" modifications.

The same provision also includes language that requires assurance that "All creditors, the debtor and other affected parties are treated fairly and equitably." This language is similar to language in an amendment offered by the junior Senator from Oregon in the other body. This section would ensure that, where the trustee seeks to repudiate a collective bargaining agreement, the covered employees do not bear either the entire financial burden of making the reorganization work or a disproportionate share of that burden, but only their fair and equitable share of the necessary sacrifices.

The phrase "without good cause" in subsection (c)(2) of new section 1113 of title 11, like similar language in the amendment offered by the junior Senator from Oregon in the other body, is intended to ensure that a continuing process of good faith negotiation will take place before court involvement and so by embodying the standard set out in "The Rejection of Collective Bargaining Agreements by Chapter 11 Debtors," 57 American Bankruptcy Law Journal 299, 300, 319.

As in civil litigation generally, it is the applicant—the trustee—who must carry the burden of proving the elements of his case to secure from the court an order permitting the rejection of the agreement.

The trustee is permitted to "terminate or alter any provisions of the collective-bargaining agreement" if the court does not rule on the rejection application within 30 days after the commencement of the hearing. The courts are expected as a matter of course to meet the time limits set by Congress. In the unlikely event that a particular court should not do so, expeditious mandamus relief would be available in the appellate courts.

The trustee has an affirmative obligation to provide all the relevant financial and other information necessary to adequately evaluate the proposal and if that obligation is not met or if the trustee otherwise delays the

proceeding, the application should be denied.

If an application for rejection is denied by the court after a hearing on the merits, the covered employees are entitled to their wages and benefits lost by employer unilateral action as an administrative expense.

The House conferees accepted subsection (e) permitting the court to authorize interim changes in the collective-bargaining agreement on the understanding: That, as the final sentence of the subsection makes clear, a motion for such interim relief may only be made in conjunction with an application for rejection and any authorization shall be effective only for the period for considering and ruling on the application stated in subsection (d). In deference to the overall policy of the provision which is to encourage the parties to reach their own agreement through collective bargaining, the court in framing any such relief may not go beyond the proposal made by the trustee pursuant to subsection (b)(1)(A). The statutory language of subsection (e) stating the standard for qualifying for interim relief is, in essence, the REA Express standard. After a full hearing and the court's consideration of the entire matter in depth on the merits if the application for rejection is denied and the collective bargaining agreement is continued in force, the employees are entitled to their wages and benefits lost under an interim order as an administrative expense.

Since an application to reject a collective bargaining agreement implicates national labor policy, as well as bankruptcy policy, if the union or trustee so move, such an application is to be heard by a U.S. district judge.

It was also our understanding that a chapter 11 reorganization case that is brought for the sole purpose or repudiating or modifying a collective bargaining agreement is a case brought in "bad faith."

□ 1450

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. HUGHES].

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I only rise because I reviewed the interpretation placed upon these very key sections of the bill and reworked in a number of different drafts.

The gentleman from Connecticut, as far as I am concerned, has expressed what at least was my intent in offering the amendment that I offered to break the logjam with regard to this particular section.

I say to my colleague, the gentleman from California, who I noticed was following the dialog very carefully to see if he would agree that if in fact we have expressed what was the intent in

this particular key section of this legislation.

Mr. Speaker, I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I would say generally speaking that is correct. I do not recall specifically saying that the third page of this section incorporated in its entirety the REA standard. I understand the thrust of the gentleman, but I am not certain that I would like to define it totally as the REA standard, because that was never discussed in our compromise.

I would agree with the gentleman that the standard is extremely narrow with respect to that emergency section, but I am not sure I would identify it as the REA standard.

The SPEAKER pro tempore. The time of the gentleman from New Jersey has expired.

Mr. RODINO. Mr. Speaker, I yield an additional 30 seconds to the gentleman.

Mr. HUGHES. Mr. Speaker, I yield to the gentleman from California.

Mr. LUNGREN. With respect to the language that the gentleman was speaking of, I absolutely agree. That referred to language we had on page 1 and page 2. With respect to page 3, it is narrowly defined. I agree it should be, but whether or not it is precisely the REA standard or not, I think is open to question.

Mr. HUGHES. Well, I thank the gentleman, because I was particularly concerned about the standard that was set with regard to the necessary portion of the amendment as well as that portion of the amendment dealing with the assurance that all parties, debtor, creditor and all affected parties, would be treated equitably in the proposal.

The SPEAKER pro tempore. The time of the gentleman from New Jersey had again expired.

Mr. RODINO. Mr. Speaker, I yield an additional 30 seconds to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, I thank my chairman for yielding the additional time.

I was concerned about the particular section, because that was the section that really hung us up for so long in conference and that obviously is an important part of the issue.

Mr. LUNGREN. Mr. Speaker, if the gentleman will yield further, I absolutely agree with the gentleman's interpretation of that important section and for his contribution.

Mr. HUGHES. Mr. Speaker, I want to commend all the parties, the chairman of the full committee in particular, but the ranking minority member, the gentleman from New York [Mr. FISH] and all the conferees for I think a good job. I think we have come out with a good product, a fair and balanced bill, and I urge my colleagues to support the conference report.

Mr. FISH. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri [Mr. EMERSON].

(Mr. EMERSON asked and was given permission to revise and extend his remarks.)

Mr. EMERSON. Mr. Speaker, this is a happy day in mid-America and wherever our agriculture producers store their commodities because the so-called grain elevator bankruptcy reform provisions in this legislation are about to become law. I simply want to take this minute to thank all who have been so cooperative in their persistence and determination to see these needed reforms become reality. In particular I want to thank the gentleman from Kansas, Mr. GLICKMAN, for being in there as he did, as a member of both the Agriculture and Judiciary Committees on behalf of our agricultural producers. Also, a Member of the other body, Mr. DOLE, deserves our thanks for his persistence and unyielding determination on the grain elevator problem. I want to salute both of these great Kansans and to thank them and to say what a pleasure it has been to work with them and many others in resolving this difficult, torturous and frustrating problem that is of such concern to rural America.

I am also very interested in, and am a cosponsor of, the consumer bankruptcy provisions of this bill, much needed and long overdue. Mr. SYNAR's statesmanship and leadership is heartily commended. He, too, has extended wonderful cooperation to all of us with an interest in this subject.

To my colleagues on the Republican side, thank you all for your endurance and never wavering staunch support for our farmers.

Mr. ROBERTS. Mr. Speaker, will the gentleman yield?

Mr. EMERSON. I would be glad to yield to the gentleman from Kansas.

Mr. ROBERTS. Well, the gentleman has thanked everybody in this entire House except himself.

Let the record show that for over 3 years the gentleman has persevered and been a leader in this fight.

I also want to associate myself with the remarks made by the gentleman from Kansas [Mr. GLICKMAN]. This has been a bipartisan effort.

Also, I want to commend the efforts of Senator DOLE in the other body.

The gentleman from Missouri has been a champion and he has succeeded.

Mr. EMERSON. Mr. Speaker, I thank the gentleman.

Mr. FISH. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I think that the legislative history being made by the conferees this afternoon in this body as well

as the other body is particularly important in view of the fact that there is no statement of managers accompanying this bill. The conference did not conclude until yesterday evening and the time has been too short. For that reason, I think it has been very important that we have had this debate this afternoon.

Mr. Speaker, I would like to close simply by commending my chairman and all the members of the Judiciary Committee of the House of Representatives. This has been a long road, difficult at times, and I think we have brought a successful conclusion to this issue with this bankruptcy conference.

Mr. Speaker, I yield back the balance of my time.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BROOKS].

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I rise to commend my distinguished chairmen, both my chairmen. I rise in support of the conference report on H.R. 5174. It is a splendid bill. It is a tribute to the dedication with which our chairman, the gentleman from New Jersey [Mr. RODINO] has worked, and also the ranking minority member, the gentleman from New York, Mr. "HAM" FISH.

Mr. Speaker, I rise in support of the conference report on H.R. 5174, the Bankruptcy Amendments of 1984. This report is the product of a lengthy conference between the Senate and House conferees in which I participated. It represents a long overdue compromise needed to restore the Nation's bankruptcy system to a sound constitutional footing.

This bill will reconstitute the bankruptcy system and its 232 judgeships in a constitutional fashion. The Supreme Court has declared the present system operating under the 1978 Bankruptcy Act unconstitutional.

Further, these bankruptcy amendments will make needed substantive changes to the bankruptcy laws. They will help ensure that the employees of companies in bankruptcy are protected from the unilateral abrogation of their labor agreements. This law will require bankruptcy trustees to make a proposal to the authorized representative of the bankrupt company's employees covered by a labor agreement which provides for those necessary modifications in the employees' benefits and protections that are necessary to permit the reorganization of the company. This proposal, required by the bill, must assure that all creditors, debtors, and other affected parties, including employees, are treated fairly and equitably.

This bill will also make personal bankruptcy reforms by eliminating the use of the bankruptcy system by debtors who are not suffering economic hardship. At the same time, these consumer credit bankruptcy reforms will retain the needed relief under the bankruptcy laws for those who truly deserve a new start—the people for whom the system is meant to work. There are also numerous other amendments which are needed to reform the present bankruptcy laws.

Along with these bankruptcy reforms, the bill will create 85 new Federal district court judgeships to help alleviate the tremendous litigation backlogs in our courts; 40 of these positions may be filled this year, with the remaining 45 to be filled next year by whoever is elected President.

Mr. Speaker, I urge the support of this conference report so that the Nation's bankruptcy system may be reformed and made sound again.

□ 1500

Mr. RODINO. I yield 30 seconds to the gentleman from Mississippi [Mr. MONTGOMERY].

(Mr. MONTGOMERY asked and was given permission to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I commend the conferees on the work they have done. Also, Mr. Speaker, I would like to commend the gentleman from Oklahoma, Mr. MIKE SYNAR, for his work on the consumer bankruptcy part of this bill. Mr. SYNAR kept me posted on what status of this part of the bill was. I was very supportive of that part of the bill and I certainly wanted to give him credit for the work he has done in the consumer bankruptcy part of the bill.

I thank the chairman for yielding.

Mr. RODINO. I yield 1 minute to the gentleman from Ohio [Mr. SEIBERLING].

(Mr. SEIBERLING asked and was given permission to revise and extend his remarks.)

Mr. SEIBERLING. Mr. Speaker, as one of the conferees, I rise in strong support of this conference report.

This is not a perfect bill. I happen to think that the original approach of Chairman RODINO to have title III judges was a better approach. But this bill, nevertheless, does get the courts reconstituted, solves that very serious problem, solves a great many other problems including the consumer problem and the labor contract problem, and I think it deserves to be approved. The country needs action now, and for that reason I strongly support it and commend all of the conferees, as well as the staff, who have done tremendous work to make sure that this was a bill that we could support.

NOTICE

*Incomplete record of House proceedings.
House proceedings will be continued in Part II.*