Public Law 98-353
98th Congress

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.

July 10, 1984
[H.R. 5174]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984".

Bankruptcy Amendments and Federal Judgeship Act of 1984.
28 USC 151 note.

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.

11 USC 101 *et seq.*

"(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.".

Gifts and property.

(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.".

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

28 USC 1408.

"§ 1408. Venue of cases under title 11

Post, p. 335.
11 USC 101 *et seq.*

"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.

28 USC 1409.

"§ 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.

11 USC 101 *et seq.*

"(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.

11 USC 541, 544.

"(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 28 USC 1410.

"(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. 11 USC 304.

"(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 28 USC 1411.

"(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. 11 USC 101 *et seq.*

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

"§ 1412. Change of venue 28 USC 1412.

"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.". 11 USC 101 *et seq.*

(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 28 USC 1452.

"(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. *Ante*, p. 333.

"(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.

28 USC 151.

"§ 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.

28 USC 152.

"§ 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.

USC prec. title 1.

"(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

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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.

Judicial Conference of the U.S.

"(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.

28 USC 153.

"§ 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 28 USC 154.

"(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 28 USC 155.

"(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. 5 USC 8331.

"§ 156. Staff; expenses 28 USC 156.

"(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 *Ante*, p. 333. 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.

28 USC 157.

"§ 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.

11 USC 101 *et seq.*

"(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.

Post, p. 341.

"(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;

11 USC 1101 *et seq.*, 1301 *et seq.*

"(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).

Ante, p. 340.
Ante, p. 333.

"(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.

11 USC 101 *et seq.*

"(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.

Infra.

"(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

28 USC 158.

"(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.

Ante, p. 340.

"(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.

Ante, p. 336.

"(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.

11 USC app.

"(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.".

28 USC 153 note.

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.

Ante, p. 338.

28 USC 152 note.

Ante, p. 336.

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)(vii) of title 28, United States Code, is amended by striking out "section 153" 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".

28 USC 634 note.

(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.

Supra.

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". 11 USC note prec. 101.

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. 28 USC notes prec. 151, notes prec. 1471.

SEC. 115. (a) On the date of the enactment of this Act the appropriate district court of the United States shall have jurisdiction of— 28 USC 1334 note.

(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 11 USC note prec. 101. 28 USC note prec. 151.

(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). 28 USC note prec. 1471.

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;"; *Ante*, p. 333.

(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

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

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

Ante, p. 336.

(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.".

97 Stat. 701.

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

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

Retirement.

(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".

Effective date.
5 USC 8331 note.

(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.

Retirement.
5 USC 8331 note.

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).

97 Stat. 1105.
5 USC 5948 note.

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.".

28 USC 1 *et seq.*

Ante, p. 336.

Provisions held invalid.
28 USC 151 note.

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.

28 USC 152 note.

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.

Ante, p. 336.

(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 (e) 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".

11 USC note prec. 101.

(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".

28 USC note prec. 151.

28 USC note prec. 151.

(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".

28 USC note prec. 1471.

(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".

28 USC note prec. 151.

(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.

Ante, p. 268.

(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".

Ante, p. 268.

(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".

Effective date. 28 USC 151 note.

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.

Ante, p. 333. *Ante*, p. 335.

(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.

Effective date.

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

TITLE II—JUDGESHIPS

President of U.S. 28 USC 44 note.

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.

President of U.S.

(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.

28 USC 44.

(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.".

President of U.S.
28 USC 133 note.

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.

President of U.S.
28 USC 133 note.

(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 district 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.

President of U.S.
28 USC 133 note.

(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.

28 USC 133 note.

(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.

28 USC 133 note.

28 USC 133.

(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

President of U.S.

"(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.".

28 USC 371 note.

(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.

Retirement.

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)

Supra.

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;". *Ante*, p. 350.

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

"(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.". *Ante*, p. 350. *Ante*, p. 350.

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.". Insurance. *Ante*, p. 350. *Ante*, p. 350.

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. 5 USC 8706 note.

(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. Discrimination, prohibition. 28 USC 44 note.

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".

Supra.

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;

11 USC 701 *et seq.*

"(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—". 11 USC app.

(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 recission 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.

Real property.

"(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:

Employment and unemployment. Discrimination, prohibition. 11 USC note prec. 101.

"(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;". *Ante*, p. 352.

(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)". 11 USC 151302.

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;".

Claims.

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.

Supreme Court of U.S.
28 USC 2075 note.
Ante, p. 355.

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

11 USC app.

"(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—

11 USC app.

(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.

11 USC 701 *et seq.*, 1301 *et seq.*

"(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 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".

28 USC note prec. 581. 92 Stat. 2686.

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

Fish and fishing.

(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

Post, p. 359.

"(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

Post, p. 359.

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 Claims.

"(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 11 USC 557.

"(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. 11 USC app.

"(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.". 7 USC 241. *Ante*, p. 359.

Subtitle C—Leasehold Management Amendments

SEC. 361. This subtitle may be cited as the "Leasehold Management Bankruptcy Amendments Act of 1983". Leasehold Management Bankruptcy Amendments Act of 1983. 11 USC 365 note.

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.

11 USC 701 *et seq.*

"(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.

11 USC 901 *et seq.*, 1101 *et seq.*, 1301 *et seq.*

"(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.

Ante, p. 361.

"(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.".

Real property.
Infra.

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".

Referees Salary and Expense Fund Act of 1984.
11 USC note prec. 101.

Subtitle E—Referees Salary and Expense Fund

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

11 USC note prec. 101.

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

11 USC note prec. 101.

"(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;". Securities.

SEC. 392. Section 362(b) of title 11, United States Code, is amended— *Ante*, p. 363.

(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: *Ante*, p. 358.

"(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:

Securities.
11 USC 559.

"§ 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

Ante, p. 364.
Real property.

(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.".

Real property.

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.".

Real property.

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.".

Real property.

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 "nonpartnership"; 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—

Ante, p. 364.

(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".

Ante, p. 364.
Infra.

(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;";

Post, p. 382.

(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

11 USC 901 *et seq.*

(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.".

Employment and unemployment.
11 USC 701 *et seq.*, 1101 *et seq.*

(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 striking 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:

11 USC 1301 *et seq.*

"(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.".

Ante, p. 352.

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— *Ante*, p. 365.

(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 "compenation" 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".

Claims.

(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:

Ante, p. 373.

"(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: Claims.

"(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 immunity is granted under section 344 of this title" after "estate" the second place it appears. *Ante*, p. 352.

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 *Ante*, p. 374.

"(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 (8).

(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 "apponted" 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 (C) and (D) thereof as 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 nonavoidability 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: Real property.

"(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:

11 USC 558.

"§ 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 "Succesor" 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". *Ante*, p. 355.

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 "SUBCHAPER II" and inserting in lieu thereof "SUBCHAPTER II". 11 USC prec. 921.

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)".

Ante, p. 383.

(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

Ante, p. 361.

(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 "solicititation" 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 "holder's";

(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 insider.".

(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)(i), 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 "subtitle 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 "subtitle 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".

Ante, p. 356.

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 "fix" 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— *Ante*, p. 356.

(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)". *Ante*, p. 357.

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:

11 USC 1113.

"§ 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.

11 USC 1161.
45 USC 151.

"(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.

Confidentiality.

"(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.".

Effective date.
11 USC 1113 note.

(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

Provisions held invalid.
11 USC 101 note.

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.

Ante, p. 343.

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 2½ per centum of his average annual pay by the years of that service.

Effective dates.
11 USC 101 note.

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.

Ante, p. 390.

(c) The amendments made by subtitle J, shall become effective as provided in section 541(c).

Approved July 10, 1984.

LEGISLATIVE HISTORY—H.R. 5174:

HOUSE REPORT No. 98-882 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Mar. 21, considered and passed House.
May 21-24, June 4, 5, 19, considered and passed Senate, amended.
June 29, House and Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 28 (1984):
July 10, Presidential statement.