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*Counsel for Official Committee of Unsecured  
Creditors of Arcapita Bank B.S.C.(c), et al.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(C), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
-----	x	

**JOINDER OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
IN SUPPORT OF THE DEBTORS' MEMORANDUM OF LAW REGARDING  
SUBORDINATION OF TIDE'S CLAIMS**

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita Bank") and the other debtors in possession in the above-captioned jointly administered chapter 11 cases (collectively, the "Debtors") hereby joins in the Debtors' *Memorandum of Law in Support of Subordination of the Tide Claims Pursuant to the Confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c), et al.* [Docket No. 1108] (the "Debtors' Memorandum"),<sup>1</sup> and respectfully states as follows:

**JOINDER**

1. The Committee joins in the Debtors' Memorandum for each of the reasons set forth therein. As the plain text of section 510(b) of title 11 of the U.S. Code, 11 U.S.C.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Debtors' Memorandum.

§§ 101 et seq. (the “Bankruptcy Code”) and the arguments set forth in the Debtors’ Memorandum all make clear, the Tide Claims must be subordinated to all claims against and interests in Falcon and Arcapita Bank.

2. There is no dispute that the Tide Claims must be subordinated to general unsecured claims against Falcon. Rather the only dispute is whether Tide can preserve the possibility of recovery through use of the “common stock” exception contained in section 510(b) to permit the Tide Claims to share in potential recoveries that Falcon’s equity holders (and consequently the other Debtors’ unsecured creditors) stand to receive if and when Falcon recovers the Escrowed Money. Tide’s attempts to “shoe horn” their claims arising from the sale of Delaware LLC interests into the narrow common stock exception is inappropriate and must be rejected.

3. Although the Tide Claims did not arise in connection with a purchase or sale of common stock, Tide argues that, under section 510(b), they should be treated as if they did in fact arise in connection with a transaction in common stock. Tide’s argument is particularly unpersuasive in light of the history of section 510(b), which is summarized in the chart that is attached as Exhibit A.<sup>2</sup>

4. That history demonstrates that, from 1973 to 1984, on many occasions Congress considered, and often changed the wording of, proposed provisions that culminated in the enactment of section 510(b) in 1978. In addition, promptly after section 510(b) was enacted, Congress started considering the first of many versions of proposed amendments of section 510(b) (and, in one instance, a proposed elimination of it), which culminated in the enactment of the current version of section 510(b) in 1984. The addition of the limited common-stock exception to the general subordination-priority rule was first proposed near the end of that entire

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<sup>2</sup> The source material for this chart is attached as Exhibit B.

process, less than two months before the enactment of the law that amended section 510(b) to make it read as it now does.

5. For eleven years, Congress repeatedly wrote, and re-wrote in various ways, the language of section 510(b). Congress's frequent attention to and scrutiny of section 510(b) establishes that its current wording — in particular, the wording of the clause that prescribes the priority level of claims that are subject to subordination under section 510(b) — is no accident, but instead is the result of careful scrutiny and deliberate action over more than a decade. For that reason, apart from general principles of statutory construction, it would be especially inappropriate to treat the Tide Claims in a manner that is inconsistent with the plain language of this particular statute, section 510(b).

6. For the foregoing reasons as well as those contained in the Debtors' Memorandum, the Committee respectfully requests that the Court subordinate the Tide Claims below all claims against and equity interests in Falcon and Arcapita Bank.

Dated: New York, New York  
May 16, 2013

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

By: /s/ Evan R. Fleck  
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**Exhibit A**

**ORIGIN, EVOLUTION, ENACTMENT, AND  
AMENDMENT OF BANKRUPTCY CODE § 510(b)**

**1973-1984**

<b>DATE</b>	<b>DOCUMENT</b>	<b>TEXT</b>	<b>COMMENT</b>
09/06/73	Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, pt. 2, at 115	Proposed section 4-406(a)(1): “The following claims are subordinated in payment to all other nonsubordinated but allowable claims: (1) any claim for rescission of the purchase of securities issued by the debtor corporation or for damages resulting from the purchase or sale of such securities . . . .”	Original version of what was ultimately enacted as section 510(b)  Subordinated securities-related claims to “all other nonsubordinated but allowable claims”
10/09/73	H.R. 10,792, 93d Cong. 116 (introduced in House)	Same (except that “rescission” was spelled “recission”)	
10/11/73	S. 2565, 93d Cong. 109-10 (introduced in Senate)	Same	
09/12/74	H.R. 16,643, 93d Cong. 118 (introduced in House)	Same	
09/26/74	S. 4046, 93d Cong. 118 (introduced in Senate)	Same	
01/14/75	H.R. 31, 94 <sup>th</sup> Cong. 116 (introduced in House)	Same (except that “rescission” was spelled “recission”)	
01/14/75	H.R. 32, 94 <sup>th</sup> Cong. 118 (introduced in House)	Same	
01/17/75	S. 235, 94 <sup>th</sup> Cong. 118 (introduced in senate)	Same	
01/17/75	S. 236, 94 <sup>th</sup> Cong. 109-10 (introduced in Senate)	Same	

01/04/77	H.R. 6, 95 <sup>th</sup> Cong. 67 (introduced in House)	Proposed section 510	Provided only for (1) enforcement of subordination agreements and (2) equitable subordination; had no provision regarding subordination of securities-related claims
05/23/77	H.R. 7330, 95 <sup>th</sup> Cong. 83-84 (introduced in House)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate in payment any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security to all claims and interests that are senior to the claim or interest represented by such security.”	<p>Changed “security issued by the debtor corporation” to “security of the debtor or of an affiliate of the debtor”</p> <p>Changed securities-related-claim subordination language that had appeared in prior bills from “subordinated to all other nonsubordinated but allowable claims” to “subordinate[d] . . . to all claims and interests that are senior or equal to the claim or interest represented by such security”</p>
06/11/77	H.R. 8200, 95 <sup>th</sup> Cong. 84-85 (introduced in House)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate in priority of distribution any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security to all claims and interests that are senior to the claim or interest represented by such security.”	<p>Changed H.R. 7330’s “security of the debtor or of an affiliate of the debtor” to “security of the debtor or of an affiliate”</p> <p>Changed H.R. 7330’s “subordinate . . . to all claims and interests that are senior or equal to the claim or interest represented by such security” to “subordinate . . . to all claims and interests that are senior to the claim or interest represented by such security”</p>

09/08/77	H.R. 8200, 95 <sup>th</sup> Cong. 393 (reported in House)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate for purposes of distribution any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security to all claims and interests that are senior or equal to the claim or interest represented by such security.”	Changed prior H.R. 8200’s “subordinate . . . to all claims and interests that are senior to the claim or interest represented by such security” to “subordinate . . . to all claims and interests that are senior or equal to the claim or interest represented by such security”, the same language that was first used in H.R. 7300
10/31/77	S. 2266, 95 <sup>th</sup> Cong. 87-88 (introduced in Senate)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate for purposes of distribution any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security to all claims and interests that are senior or equal to the claim or interest represented by such security.”	Same as H.R. 8200 (09/08/77)
02/08/78	H.R. 8200, 95 <sup>th</sup> Cong. 86 (received by Senate)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate for purposes of distribution any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security to all claims and interests that are senior or equal to the claim or interest represented by such security.”	Same as S. 2266

07/14/78	S. 2266, 95 <sup>th</sup> Cong. 405 (reported in Senate)	Proposed section 510(a)(2): “After notice and a hearing, the court shall -- . . . (2) subordinate for purposes of distribution any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security to all claims and interests that are senior or equal to the claim or interest represented by such security.”	Same as H.R. 8200 (02/08/78)
11/06/78	Pub. L. No. 95-598, 92 Stat. 2586	Enacted section 510(b): “Any claim for rescission [sic] of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be subordinated for purposes of distribution to all claims or interests that are senior or equal to the claim or interest represented by such security.”	
03/14/79	S. 658, 96 <sup>th</sup> Cong. 14 (introduced in Senate)	Proposed amendment to section 510(b) to change “recission” to “rescission”	
08/03/79	S. 658, 96 <sup>th</sup> Cong. 67 (reported in Senate)	Proposed amending section 510(b) to (1) change “recission” to “rescission” and (2) to change the “shall be subordinated” clause to read “shall be subordinated for purposes of distribution to all claims senior or equal to the claim or to all interests that are senior to the interests represented by such security”	“It makes clear that the subordination of a rescission claim for stock cannot be below the common stock class.” S. Rep. No. 96-305, at 8 (1979)



09/07/79	125 Cong. Rec. 23,505, 23,507, 23,513, 23,515 (Senate consideration and passage of S. 658)	Same	
09/11/79	S. 658, 96 <sup>th</sup> Cong. 22 (received by House)	Same	
07/25/80	H.R. Rep. No. 96- 1195, at 71 (House report on S. 658)	Proposed amending to section 510(b) to make it read as follows: “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 sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security.”	Changed “affiliate” to “affiliate of the debtor”  Changed subordination language to read “shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security”
07/28/80	126 Cong. Rec. 19,899-900, 19,902 (House consideration of S. 658)	Same	
09/22/80	126 Cong. Rec. 26,485, 26,488 (House consideration, amendment, and passage of S. 958)	Same	
12/01/80	126 Cong. Rec. 31,139, 31,142 (Senate consideration, amendment, and passage of S. 658)	Same (except that “For the purpose” was changed to “For the purposes”)	
12/03/80	126 Cong. Rec. 31,902, 31,906 (House consideration, amendment, and passage of S. 658)	Same	
12/09/80	S. 3259, 96 <sup>th</sup> Cong. 31 (introduced in Senate)	Same	

12/09/80	126 Cong. Rec. 33,079-81 (Senate consideration and passage of S. 3259 without amendment)	Same	
04/02/81	S. 863, 97 <sup>th</sup> Cong. 31 (introduced in Senate)	Same	
07/10/81	S. 863, 97 <sup>th</sup> Cong. 32- 33 (reported in Senate)	Same	“It makes clear that the subordination of a rescission claim for stock cannot be below the common stock class.” S. Rep. No. 97-150, at 9 (1981)
07/17/81	127 Cong. Rec. 16,289, 16,293 (Senate consideration and passage of S. 863)	Same	
07/21/81	S. 863, 97 <sup>th</sup> Cong. 32 (received in House)	Same	
04/26/83	S. 445, 98 <sup>th</sup> Cong. 86 (reported in Senate)	Same	“It makes clear that the subordination of a rescission claim for stock cannot be below the common stock class.” S. Rep. No. 98-65, at 79 (1983)
04/27/83	129 Cong. Rec. 9920, 9953, 9962, 9976, 9990 (Senate consideration, amendment, and passage of S. 1013)	Same	
05/21/84	129 Cong. Rec. 13,086, 13,100 (Senate consideration and amendment of H.R. 5174)	Proposed amendment to section 510(b) to make it read as follows: “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	Added reference to securities-related claims for reimbursement or contribution  Changed subordination language from “subordinated to all claims or interests that are senior to the claim or interest represented by such security” to “subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security”

		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.”	Added exception to general subordination provision for securities-related claims based on common stock
06/29/84	H.R. Rep. No. 98-882, at 46 (conference report on H.R. 5174)	Same	
07/10/84	Pub. L. No. 98-353, 98 Stat. 375 (amending section 510(b))	Same	

**Exhibit B**

**COMMUNICATION**

**FROM THE**

**EXECUTIVE DIRECTOR, COMMISSION ON  
THE BANKRUPTCY LAWS OF THE  
UNITED STATES**

**TRANSMITTING A**

**REPORT OF THE  
COMMISSION ON THE BANKRUPTCY LAWS  
OF THE UNITED STATES**

**JULY 1973**

**PART II**



**SEPTEMBER 6, 1973.—Referred to the Committee on the Judiciary and  
ordered to be printed**

**U.S. GOVERNMENT PRINTING OFFICE**

**WASHINGTON : 1973**

§4-403(b)(2) notwithstanding the place of the payment. See *In re Pacat Finance Corp.*, 295 Fed. 394, 401-02 (S.D.N.Y. 1923); *In re Pollman*, 156 Fed. 221 (S.D.N.Y. 1907). The subdivision preserves the effect of the amendment of §65d in 1952 to eliminate the distinction between resident and nonresident creditors. See Nadelmann, *Revision of Conflicts Provisions in the Bankruptcy Act*, 1 Int. & Comp. L. Q. 484 (4th ser. 1952), 27 Ref. J. 53 (1953).

14. The effect of proposed subdivision (f) is to abandon the so-called "jingle rule" embodied in present §5g of the Act insofar as that rule postponed participation by partnership creditors in the distribution of the separate estates of the partners until separate creditors are fully paid. The proposed subdivision allows partnership creditors to compete with each partner's separate creditors as claimants against the estate of a partner who is a debtor under the Act, just as they may now pursue their legal remedies against the separate property of a partner under nonbankruptcy law. The right of partnership creditors to payment in full out of the proceeds of the partnership property before creditors of any partner can share in any distribution from the partnership estate remains unchanged by the new subdivision. For a discussion of the considerations supporting the proposed change in the distribution of the proceeds of partners' estates, see Kennedy, *A New Deal for Partnership Bankruptcy*, 60 Col. L. Rev. 610, 630-32 (1960).

1 *Section 4-406. Subordination of Claims.*

2 (a) *Subordinated Classes of Claims.* The following claims are  
3 subordinated in payment to all other nonsubordinated but allowable  
4 claims:

5 (1) any claim for rescission of the purchase of securities issued by  
6 the debtor corporation or for damages resulting from the purchase or  
7 sale of such securities;

8 (2) any claim, whether secured or unsecured, of any principal  
9 officer, director, or affiliate of a debtor, or of any member of the  
10 immediate family of such officer, director, or affiliate; and

11 (3) any claim, whether secured or unsecured, to the extent it is for a  
12 fine, penalty, or forfeiture or for multiple, punitive, or exemplary  
13 damages.

14 (b) *Subrogation of Trustee to Lien Securing Subordinated Claims.*  
15 Any lien or trust securing a claim subordinated under subdivision (a)  
16 shall pass to the trustee for the benefit of all claims allowed but not  
17 subordinated.

18 (c) *Equitable Power of Court to Subordinate Other Claims.* This  
19 section does not limit the equitable power of a bankruptcy court to  
20 subordinate claims or to enforce voluntary subordination agreements.

Westlaw

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(Cite as: A&P H.R. 10792)

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BILLS

IN THE HOUSE OF REPRESENTATIVES

H.R. 10792  
October 9, 1973

Mr. EDWARDS of California (for himself and Mr. WIGGINS) introduced the following bill; which was referred to the Committee on the Judiciary

\*1 A BILL To establish a uniform law on the subject of bankruptcies.

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,  
3 TITLE I--THE BANKRUPTCY ACT  
4 SECTION 1. The law relating to bankruptcy is revised,  
5 codified, and enacted as title 11 of the United States Code,  
6 entitled "Bankruptcy", and may be cited as 11 U.S.C. §  
7 , as follows:  
8 TITLE 11--BANKRUPTCY

CHAPTER I--GENERAL PROVISIONS

Sec.

- 1-101 Short title.
- 1-102 Definitions.
- 1-103 Applicability of Act to persons and property.
- 1-104 Applicability of Act to United States, States, and subdivisions.
- 1-105 Adjustment of dollar amounts.
- 1-106 Public access to records and papers in bankruptcy cases.
- 1-107 Rules of construction.

CHAPTER II--THE BANKRUPTCY COURTS  
PART 1. ORGANIZATION AND STRUCTURE

Sec.

- 2-101 Creation and composition.
- 2-102 Bankruptcy judges: appointment, terms, compensation, expenses, and removal.
- 2-103 Retirement of bankruptcy judges.
- 2-104 Annuities to widows and dependent children of bankruptcy judges.
- 2-105 Number and locations of bankruptcy courts; number and assignments of bankruptcy judges.
- 2-106 Staff of the bankruptcy courts: clerks, marshals, reporters, and other

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(Cite as: A&P H.R. 10792)

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16 by the trustee or debtor shall be computed without reduction  
17 in the amount of any applicable credit due to late payment.  
18 The trustee shall deduct from the amount to be paid for  
19 claims having priority under paragraph (3) or (4) of sub-  
20 section (a) and any other claims for compensation for per-  
21 sonal services the amount required to be withheld by the  
22 laws of the United States, any State, and any subdivision  
23 thereof, and, subject to the other provisions of this section,  
24 remit such amount to the appropriate governmental agency.

\*115 1 (d) CLAIM BY CODEBTOR.--Payments shall not be  
2 made on a claim of a person who is or may be liable on a debt  
3 with a debtor, or who has secured a creditor of the debtor,  
4 except on proof that the original debt will be diminished by  
5 the amount so paid.

6 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED  
7 IN ANOTHER COUNTRY.--In ordering or approving any div-  
8 idend or distribution in a case under this Act, the adminis-  
9 trator shall take into account any dividend or distribution in  
10 a liquidation or rehabilitation proceeding, and any other  
11 payment or transfer of property to a creditor, when made in  
12 another country after the date of the petition under this Act.  
13 Although the claim of such a creditor may be allowed in the  
14 case under this Act, he shall not be paid any dividend or re-  
15 ceive any distribution in the case until each of the other credi-  
16 tors of the same class whose claims are allowed has received  
17 a dividend or distribution equal in value to the consideration  
18 received after the date of the petition by such creditor in the  
19 other country.

20 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
21 TORS.--The creditors of a partnership shall share in the dis-  
22 tribution of the proceeds of the estate of a general partner in  
23 the same manner and to the same extent as other creditors of  
24 such partner.

\*116 1 SEC. 4-406. SUBORDINATION OF CLAIMS.--

2 (a) SUBORDINATED CLASSES OF CLAIMS.--The follow-  
3 ing claims are subordinated in payment to all other non-  
4 subordinated but allowable claims:

5 (1) Any claim for rescission of the purchase of  
6 securities issued by the debtor corporation or for damages  
7 resulting from the purchase or sale of such securities.

8 (2) Any claim, whether secured or unsecured, of  
9 any principal officer, director, or affiliate of a debtor, or  
10 of any member of the immediate family of such officer,  
11 director, or affiliate.

12 (3) Any claim, whether secured or unsecured, to  
13 the extent it is for a fine, penalty, or forfeiture or for  
14 multiple, punitive, or exemplary damages.

15 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
16 SUBORDINATED CLAIMS.--Any lien or trust securing a claim  
17 subordinated under subdivision (a) shall pass to the trustee  
18 for the benefit of all claims allowed but not subordinated.

19 (c) EQUITABLE POWER OF COURT TO SUBORDINATE  
20 OTHER CLAIMS.--This section does not limit the equitable



*gas Reference  
Audit - p 67  
p 21*

93D CONGRESS  
1st Session

# S. 2565

IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 1973

Mr. BURDICK (for himself and Mr. COOK) introduced the following bill; which  
was read twice and referred to the Committee on the Judiciary

## A BILL

To revise and reform title 11 of the United States Code; and  
for other purposes.

*Be it enacted by the Senate and House of Representa-  
tives of the United States of America in Congress assembled,*

### CHAPTER I—GENERAL PROVISIONS

SECTION 1-101. SHORT TITLE.—This Act may be cited  
as the Bankruptcy Act of 1973.

SEC. 1-102. DEFINITIONS.—The words and phrases  
used in this Act have the following meanings unless they  
are inconsistent with the context:

(1) "Accountant" means a certified public accountant  
or a public accountant authorized to practice public ac-

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1 debt with a debtor, or who has secured a creditor of the  
2 debtor, except on proof that the original debt will be  
3 diminished by the amount so paid.

4 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED IN  
5 ANOTHER COUNTRY.—In ordering or approving any divi-  
6 dend or distribution in a case under this Act, the administra-  
7 tor shall take into account any dividend or distribution in a  
8 liquidation or rehabilitation proceeding, and any other pay-  
9 ment or transfer of property to a creditor, when made in  
10 another country after the date of the petition under this Act.  
11 Although the claim of such a creditor may be allowed in the  
12 case under this Act, he shall not be paid any dividend or  
13 receive any distribution in the case until each of the other  
14 creditors of the same class whose claims are allowed has  
15 received a dividend or distribution equal in value to the  
16 consideration received after the date of the petition by such  
17 creditor in the other country.

18 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
19 TORS.—The creditors of a partnership shall share in the dis-  
20 tribution of the proceeds of the estate of a general partner in  
21 the same manner and to the same extent as other creditors  
22 of such partner.

23 SEC. 4-406. SUBORDINATION OF CLAIMS.—

24 (a) SUBORDINATED CLASSES OF CLAIMS.—The follow-

1 ing claims are subordinated in payment to all other nonsub-  
2 ordinated but allowable claims:

3 (1) any claim for rescission of the purchase of se-  
4 curities issued by the debtor corporation or for damages  
5 resulting from the purchase or sale of such securities;

6 (2) any claim, whether secured or unsecured, of any  
7 principal officer, director, or affiliate of a debtor, or of any  
8 member of the immediate family of such officer, director,  
9 or affiliate; and

10 (3) any claim, whether secured or unsecured, to  
11 the extent it is for a fine, penalty, or forfeiture or for  
12 multiple, punitive, or exemplary damages.

13 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
14 SUBORDINATED CLAIMS.—Any lien or trust securing a claim  
15 subordinated under subdivision (a) shall pass to the trustee  
16 for the benefit of all claims allowed but not subordinated.

17 (c) EQUITABLE POWER OF COURT TO SUBORDINATE  
18 OTHER CLAIMS.—This section does not limit the equitable  
19 power of a bankruptcy court to subordinate claims or to en-  
20 force voluntary subordination agreements.

21 PART 5. DEBTOR'S DUTIES AND BENEFITS

22 SEC. 4-501. AUTOMATIC STAY.—

23 (a) STAY OF ACTIONS AND LIEN ENFORCEMENT;  
24 NOTICE OF STAY.—

25 (1) SCOPE OF STAY.—A petition filed by or against a



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7 §----" as follows:  
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CHAPTER I--GENERAL PROVISIONS

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1-106. Public access to records and papers in bankruptcy cases.  
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2-103. Retirement of judges.  
2-104. Annuities to widows and dependent children of judges.  
2-105. Number and locations of bankruptcy courts; number and assignments of judges.  
2-106. Staff of the bankruptcy courts.  
2-107. Appropriations for bankruptcy courts and staff.  
2-108. Disqualification of judge.

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8 personal services the amount required to be withheld by the  
9 laws of the United States, any State, and any subdivision  
10 thereof, and, subject to the other provisions of this section,  
11 remit such amount to the appropriate governmental agency.

12 (d) CLAIM BY CODEBTOR.--Payments shall not be  
13 made on a claim of a person who is or may be liable on a  
14 debt with a debtor, or who has secured a creditor of the  
15 debtor, except on proof that the original debt will be dimin-  
16 ished by the amount so paid.

17 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED  
18 IN ANOTHER COUNTRY.--In ordering or approving any  
19 dividend or distribution in a case under this title, the admin-  
20 istrator shall take into account any dividend or distribution  
21 in a liquidation or rehabilitation proceeding, and any other  
22 payment or transfer of property to a creditor, when made in  
23 another country after the date of the petition under this title.  
24 Although the claim of such a creditor may be allowed in the  
25 case under this title, he shall not be paid any dividend or  
\*118 1 receive any distribution in the case until each of the other  
2 creditors of the same class whose claims are allowed has  
3 received a dividend or distribution equal in value to the  
4 consideration received after the date of the petition by such  
5 creditor in the other country.

6 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
7 TORS.--The creditors of a partnership shall share in the dis-  
8 tribution of the proceeds of the estate of a general partner  
9 in the same manner and to the same extent as other creditors  
10 of such partner.

11 SEC. 4-406. SUBORDINATION OF CLAIMS.--

12 (a) SUBORDINATED CLASSES OF CLAIMS.--The follow-  
13 ing claims are subordinated in payment to all other non-  
14 subordinated but allowable claims:

15 (1) Any claim for rescission of the purchase of se-  
16 curities issued by the debtor corporation or for damages  
17 resulting from the purchase or sale of such securities.

18 (2) Any claim, whether secured or unsecured, to  
19 the extent it is for a fine, penalty, or forfeiture or for  
20 multiple, punitive, or exemplary damages.

21 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
22 SUBORDINATED CLAIMS.--Any lien or trust securing a claim  
23 subordinated under subsection (a) shall pass to the trustee  
24 for the benefit of all claims allowed but not subordinated.

\*119 1 (c) EQUITABLE POWER OF COURT TO SUBORDINATE  
2 OTHER CLAIMS.--This section does not limit the equitable  
3 power of a bankruptcy court to subordinate claims or to en-  
4 force voluntary subordination agreements.

5 PART 5. DEBTOR'S DUTIES AND BENEFITS

6 SEC. 4-501. AUTOMATIC STAY.--

7 (a) STAY OF ACTIONS AND LIEN ENFORCEMENT; NO-  
8 TICE OF STAY.--

9 (1) SCOPE OF STAY.--A petition filed by or against  
10 a debtor under this title shall operate as a stay of (A)  
11 the commencement or continuation of any civil action

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# S. 4046

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 1974

Mr. BURDICK (for himself and Mr. COOK) introduced the following bill; which  
was read twice and referred to the Committee on the Judiciary

---

## A BILL

To establish a uniform law on the subject of bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—THE BANKRUPTCY ACT

4 SECTION 1. The law relating to bankruptcy is revised,  
5 codified, and enacted as title 11 of the United States Code,  
6 entitled "Bankruptcy", and may be cited as "11 U.S.C.  
7 § ——" as follows:

8 TITLE II—BANKRUPTCY

CHAPTER I—GENERAL PROVISIONS

Sec.

1-101. Short title.

1-102. Definitions.

1-103. Applicability of Act to persons and property.

1-104. Applicability of title to United States, States, and subdivisions.

1-105. Adjustment of dollar amounts.

1-106. Public access to records and papers in bankruptcy cases.

1-107. Rules of construction.

II—O

FINAL ACTION

1 receive any distribution in the case until each of the other  
2 creditors of the same class whose claims are allowed has  
3 received a dividend or distribution equal in value to the  
4 consideration received after the date of the petition by such  
5 creditor in the other country.

6 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
7 TORS.—The creditors of a partnership shall share in the dis-  
8 tribution of the proceeds of the estate of a general partner  
9 in the same manner and to the same extent as other creditors  
10 of such partner.

11 SEC. 4-406. SUBORDINATION OF CLAIMS.—

12 (a) SUBORDINATED CLASSES OF CLAIMS.—The follow-  
13 ing claims are subordinated in payment to all other non-  
14 subordinated but allowable claims:

15 (1) Any claim for rescission of the purchase of se-  
16 curities issued by the debtor corporation or for damages  
17 resulting from the purchase or sale of such securities.

18 (2) Any claim, whether secured or unsecured, to  
19 the extent it is for a fine, penalty, or forfeiture or for  
20 multiple, punitive, or exemplary damages.

21 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
22 SUBORDINATED CLAIMS.—Any lien or trust securing a claim  
23 subordinated under subsection (a) shall pass to the trustee  
24 for the benefit of all claims allowed but not subordinated.

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BILLS

IN THE HOUSE OF REPRESENTATIVES

H.R. 31  
January 14, 1975

Mr. EDWARDS of California (for himself and Mr. WIGGINS) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL** To establish a uniform law on the subject of bankruptcies.

\*1 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I-THE BANKRUPTCY ACT**

4 SECTION 1. The law relating to bankruptcy is revised,  
5 codified, and enacted as title 11 of the United States Code,  
6 entitled "Bankruptcy", and may be cited as 11 U.S.C. §  
7 , as follows:

8 **TITLE 11-BANKRUPTCY**

CHAPTER I-GENERAL PROVISIONS

Sec.

- 1-101 Short title.
- 1-102 Definitions.
- 1-103 Applicability of Act to persons and property.
- 1-104 Applicability of Act to United States, States, and subdivisions.
- 1-105 Adjustment of dollar amounts.
- 1-106 Public access to records and papers in bankruptcy cases.
- 1-107 Rules of construction.

\*2 CHAPTER II-THE BANKRUPTCY COURTS

PART 1. ORGANIZATION AND STRUCTURE

Sec.

- 2-101 Creation and composition.
- 2-102 Bankruptcy judges: appointment, terms, compensation, expenses, and removal.
- 2-103 Retirement of bankruptcy judges.
- 2-104 Annuities to widows and dependent children of bankruptcy judges.
- 2-105 Number and locations of bankruptcy courts; number and assignments of



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Bankruptcy Revision 11 1978 Legis. History 18 (A&P)  
(Cite as: A&P H.R. 31)

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2 When the estate is sufficient to pay some but not all claimants  
3 within a class defined by a numbered clause in subsection  
4 (a), distribution shall be made pro rata to such claimants  
5 within the class, except that administrative claims arising in  
6 a liquidation under chapter V and charges assessed pursuant  
7 to section 3-302 shall be paid before administrative claims  
8 arising in a case under another chapter or in a nonbankruptcy  
9 proceeding.

10 (c) EMPLOYMENT TAXES.—For the purpose of this  
11 section, taxes imposed on an employer with respect to the  
12 payment of compensation for personal services earned but un-  
13 paid prior to the filing of the petition shall be considered  
14 claims within paragraph (5)(D) of subsection (a). Not-  
15 withstanding any other law, such taxes on an employer paid  
16 by the trustee or debtor shall be computed without reduction  
17 in the amount of any applicable credit due to late payment.  
18 The trustee shall deduct from the amount to be paid for  
19 claims having priority under paragraph (3) or (4) of sub-  
20 section (a) and any other claims for compensation for per-  
21 sonal services the amount required to be withheld by the  
22 laws of the United States, any State, and any subdivision  
23 thereof, and, subject to the other provisions of this section,  
24 remit such amount to the appropriate governmental agency.

\*115 1 (d) CLAIM BY CODEBTOR.—Payments shall not be  
2 made on a claim of a person who is or may be liable on a debt  
3 with a debtor, or who has secured a creditor of the debtor,  
4 except on proof that the original debt will be diminished by  
5 the amount so paid.

6 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED  
7 IN ANOTHER COUNTRY.—In ordering or approving any div-  
8 idend or distribution in a case under this Act, the adminis-  
9 trator shall take into account any dividend or distribution in  
10 a liquidation or rehabilitation proceeding, and any other  
11 payment or transfer of property to a creditor, when made in  
12 another country after the date of the petition under this Act.  
13 Although the claim of such a creditor may be allowed in the  
14 case under this Act, he shall not be paid any dividend or re-  
15 ceive any distribution in the case until each of the other credi-  
16 tors of the same class whose claims are allowed has received  
17 a dividend or distribution equal in value to the consideration  
18 received after the date of the petition by such creditor in the  
19 other country.

20 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
21 TORS.—The creditors of a partnership shall share in the dis-  
22 tribution of the proceeds of the estate of a general partner in  
23 the same manner and to the same extent as other creditors of  
24 such partner.

\*116 1 SEC. 4-406. SUBORDINATION OF CLAIMS.—

2 (a) SUBORDINATED CLASSES OF CLAIMS.—The follow-  
3 ing claims are subordinated in payment to all other non-  
4 subordinated but allowable claims:

5 (1) Any claim for rescission of the purchase of  
6 securities issued by the debtor corporation or for damages

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(Cite as: A&P H.R. 31)

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7 resulting from the purchase or sale of such securities.  
8 (2) Any claim, whether secured or unsecured, of  
9 any principal officer, director, or affiliate of a debtor, or  
10 of any member of the immediate family of such officer,  
11 director, or affiliate.  
12 (3) Any claim, whether secured or unsecured, to  
13 the extent it is for a fine, penalty, or forfeiture or for  
14 multiple, punitive, or exemplary damages.  
15 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
16 SUBORDINATED CLAIMS.-Any lien or trust securing a claim  
17 subordinated under subsection (a) shall pass to the trustee  
18 for the benefit of all claims allowed but not subordinated.  
19 (c) EQUITABLE POWER OF COURT TO SUBORDINATE  
20 OTHER CLAIMS.-This section does not limit the equitable  
21 power of a bankruptcy court to subordinate claims or to  
22 enforce voluntary subordination agreements.  
23 PART 5. DEBTOR'S DUTIES AND BENEFITS  
24 SEC. 4-501. AUTOMATIC STAY.-  
25 (a) STAY OF ACTIONS AND LIEN ENFORCEMENT;  
26 NOTICE OF STAY.-(1) SCOPE OF STAY.-A petition filed  
\*117 1 by or against a debtor under this title shall operate as a  
2 stay of (A) the commencement or continuation of any civil  
3 action by or against the debtor seeking recovery of money  
4 or affecting property of the estate, except an action author-  
5 ized by title 28, United States Code, section 959; (B) the  
6 enforcement of any judgment against him, except for the  
7 collection of alimony, maintenance, or support out of prop-  
8 erty not belonging to the estate; and (C) any act to create  
9 or enforce any lien against the property of the estate.  
10 (2) NOTICE.-Notice of the stay shall be given to credi-  
11 tors as provided in section 4-307, to every party to any pend-  
12 ing proceeding and to the clerk of the court in which it is  
13 pending, and to every person believed to be contemplating  
14 any act in disregard of the stay.  
15 (b) DURATION OF STAY.-Except as it may be ter-  
16 minated or modified by the bankruptcy court, the stay pro-  
17 vided by this section shall continue until the administration of  
18 the estate of the debtor is completed and the case is closed or,  
19 if the stay bars enforcement of a lien, the property subject  
20 to the lien is abandoned or transferred by the trustee.  
21 (c) RELIEF FROM STAY.-Relief from the stay pro-  
22 vided by this section may be sought and obtained from the  
23 bankruptcy court pursuant to the Rules of Bankruptcy Pro-  
24 cedure. The determination of the right to relief from a stay  
25 shall be given priority under such rules. Relief shall be  
26 granted if-  
\*118 1 (1) such relief will not prejudice the administration  
2 of the estate or the award or enjoyment of any benefit  
3 to which the debtor may be entitled under this title;  
4 (2) the stay results in irreparable injury, loss, or  
5 damage to the complainant;  
6 (3) the trustee or, if there is no trustee, the debtor  
7 consents to the relief, subject to court approval; or

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BILLS

IN THE HOUSE OF REPRESENTATIVES

H.R. 32  
January 14, 1975

Mr. EDWARDS of California (for himself and Mr. WIGGINS) introduced the following bill; which was referred to the Committee on the Judiciary

\*1 A BILL To establish a uniform law on the subject of bankruptcies.

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,  
3 TITLE I--THE BANKRUPTCY ACT  
4 SECTION 1. The law relating to bankruptcy is revised,  
5 codified, and enacted as title 11 of the United States Code,  
6 entitled "Bankruptcy", and may be cited as "11 U.S.C.  
7 §-----" as follows:  
8 TITLE II--BANKRUPTCY

CHAPTER I--GENERAL PROVISIONS

Sec.

- 1-101. Short title.
- 1-102. Definitions.
- 1-103. Applicability of Act to persons and property.
- 1-104. Applicability of title to United States, States, and subdivisions.
- 1-105. Adjustment of dollar amounts.
- 1-106. Public access to records and papers in bankruptcy cases.
- 1-107. Rules of construction.

CHAPTER II--THE BANKRUPTCY COURTS  
PART 1. ORGANIZATION AND STRUCTURE

Sec.

- 2-101. Creation and composition.
- 2-102. Judges: appointment, terms, compensation, expenses, and removal.
- 2-103. Retirement of judges.
- 2-104. Annuities to widows and dependent children of judges.
- 2-105. Number and locations of bankruptcy courts; number and assignments of judges.
- 2-106. Staff of the bankruptcy courts.
- 2-107. Appropriations for bankruptcy courts and staff.

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Bankruptcy Revision 11 1978 Legis. History 26 (A&P)  
(Cite as: A&P H.R. 32)

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21 bankruptcy proceeding.

22 (c) EMPLOYMENT TAXES.--For the purpose of this  
23 section, taxes imposed on an employer with respect to the  
24 payment of compensation for personal services earned but  
25 unpaid prior to the filing of the petition shall be considered

\*117 1 claims within paragraph (5) (D) of subsection (a). Not-  
2 withstanding any other law, such taxes on an employer paid  
3 by the trustee or debtor shall be computed without reduction  
4 in the amount of any applicable credit due to late payment.  
5 The trustee shall deduct from the amount to be paid upon  
6 claims having priority under paragraph (3) or (4) of sub-  
7 section (a) and any other claims for compensation for  
8 personal services the amount required to be withheld by the  
9 laws of the United States, any State, and any subdivision  
10 thereof, and, subject to the other provisions of this section,  
11 remit such amount to the appropriate governmental agency.

12 (d) CLAIM BY CODEBTOR.--Payments shall not be  
13 made on a claim of a person who is or may be liable on a  
14 debt with a debtor, or who has secured a creditor of the  
15 debtor, except on proof that the original debt will be dimin-  
16 ished by the amount so paid.

17 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED  
18 IN ANOTHER COUNTRY.--In ordering or approving any  
19 dividend or distribution in a case under this title, the  
20 court shall take into account any dividend or distribution  
21 in a liquidation or rehabilitation proceeding, and any other  
22 payment or transfer of property to a creditor, when made in  
23 another country after the date of the petition under this title.  
24 Although the claim of such a creditor may be allowed in the  
25 case under this title, he shall not be paid any dividend or

\*118 1 receive any distribution in the case until each of the other  
2 creditors of the same class whose claims are allowed has  
3 received a dividend or distribution equal in value to the  
4 consideration received after the date of the petition by such  
5 creditor in the other country.

6 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
7 TORS.--The creditors of a partnership shall share in the dis-  
8 tribution of the proceeds of the estate of a general partner  
9 in the same manner and to the same extent as other creditors  
10 of such partner.

11 SEC. 4-406. SUBORDINATION OF CLAIMS.--

12 (a) SUBORDINATED CLASSES OF CLAIMS.--The follow-  
13 ing claims are subordinated in payment to all other non-  
14 subordinated but allowable claims:

15 (1) Any claim for rescission of the purchase of se-  
16 curities issued by the debtor corporation or for damages  
17 resulting from the purchase or sale of such securities.

18 (2) Any claim, whether secured or unsecured, to  
19 the extent it is for a fine, penalty, or forfeiture or for  
20 multiple, punitive, or exemplary damages.

21 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
22 SUBORDINATED CLAIMS.--Any lien or trust securing a claim  
23 subordinated under subsection (a) shall pass to the trustee

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BILLS

IN THE SENATE OF THE UNITED STATES

S. 235  
January 17, 1975

Mr. BURDICK (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

\*1 A BILL To establish a uniform law on the subject of bankruptcies.

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,  
3 TITLE I--THE BANKRUPTCY ACT  
4 SECTION 1. The law relating to bankruptcy is revised,  
5 codified, and enacted as title 11 of the United States Code,  
6 entitled "Bankruptcy", and may be cited as "11 U.S.C.  
7 §-----" as follows:  
8 TITLE II--BANKRUPTCY

CHAPTER I--GENERAL PROVISIONS

Sec.  
1-101. Short title.  
1-102. Definitions.  
1-103. Applicability of Act to persons and property.  
1-104. Applicability of title to United States, States, and subdivisions.  
1-105. Adjustment of dollar amounts.  
1-106. Public access to records and papers in bankruptcy cases.  
1-107. Rules of construction.

CHAPTER II--THE BANKRUPTCY COURTS  
PART 1. ORGANIZATION AND STRUCTURE

Sec.  
2-101. Creation and composition.  
2-102. Judges: appointment, terms, compensation, expenses, and removal.  
2-103. Retirement of judges.  
2-104. Annuities to widows and dependent children of judges.  
2-105. Number and locations of bankruptcy courts; number and assignments of  
judges.  
2-106. Staff of the bankruptcy courts.  
2-107. Appropriations for bankruptcy courts and staff.

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Bankruptcy Revision 11 1978 Legis. History 16 (A&P)  
(Cite as: A&P SEN. 235)

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22 (c) EMPLOYMENT TAXES.--For the purpose of this  
23 section, taxes imposed on an employer with respect to the  
24 payment of compensation for personal services earned but  
25 unpaid prior to the filing of the petition shall be considered  
\*117 1 claims within paragraph (5) (D) of subsection (a). Not-  
2 withstanding any other law, such taxes on an employer paid  
3 by the trustee or debtor shall be computed without reduction  
4 in the amount of any applicable credit due to late payment.  
5 The trustee shall deduct from the amount to be paid upon  
6 claims having priority under paragraph (3) or (4) of sub-  
7 section (a) and any other claims for compensation for  
8 personal services the amount required to be withheld by the  
9 laws of the United States, any State, and any subdivision  
10 thereof, and, subject to the other provisions of this section,  
11 remit such amount to the appropriate governmental agency.

12 (d) CLAIM BY CODEBTOR.--Payments shall not be  
13 made on a claim of a person who is or may be liable on a  
14 debt with a debtor, or who has secured a creditor of the  
15 debtor, except on proof that the original debt will be dimin-  
16 ished by the amount so paid.

17 (e) EFFECT OF PAYMENT OR TRANSFER RECEIVED  
18 IN ANOTHER COUNTRY.--In ordering or approving any  
19 dividend or distribution in a case under this title, the admin-  
20 istrator shall take into account any dividend or distribution  
21 in a liquidation or rehabilitation proceeding, and any other  
22 payment or transfer of property to a creditor, when made in  
23 another country after the date of the petition under this title.  
24 Although the claim of such a creditor may be allowed in the  
25 case under this title, he shall not be paid any dividend or  
\*118 1 receive any distribution in the case until each of the other  
2 creditors of the same class whose claims are allowed has  
3 received a dividend or distribution equal in value to the  
4 consideration received after the date of the petition by such  
5 creditor in the other country.

6 (f) PARTNERSHIP CREDITORS AND PARTNERS' CREDI-  
7 TORS.--The creditors of a partnership shall share in the dis-  
8 tribution of the proceeds of the estate of a general partner  
9 in the same manner and to the same extent as other creditors  
10 of such partner.

11 SEC. 4-406. SUBORDINATION OF CLAIMS.--

12 (a) SUBORDINATED CLASSES OF CLAIMS.--The follow-  
13 ing claims are subordinated in payment to all other non-  
14 subordinated but allowable claims:

15 (1) Any claim for rescission of the purchase of se-  
16 curities issued by the debtor corporation or for damages  
17 resulting from the purchase or sale of such securities.

18 (2) Any claim, whether secured or unsecured, to  
19 the extent it is for a fine, penalty, or forfeiture or for  
20 multiple, punitive, or exemplary damages.

21 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
22 SUBORDINATED CLAIMS.--Any lien or trust securing a claim  
23 subordinated under subsection (a) shall pass to the trustee  
24 for the benefit of all claims allowed but not subordinated.

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BILLS

IN THE SENATE OF THE UNITED STATES

S. 236  
January 17, 1975

Mr. BURDICK (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

\*1 A BILL To revise and reform title 11 of the United States Code; and for other purposes.

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,  
3 CHAPTER I--GENERAL PROVISIONS  
4 SECTION 1-101. SHORT TITLE.--This Act may be cited  
5 as the Bankruptcy Act of 1973.  
6 SEC. 1-102. DEFINITIONS.--The words and phrases  
7 used in this Act have the following meanings unless they  
8 are inconsistent with the context:  
9 (1) "Accountant" means a certified public accountant  
10 or a public accountant authorized to practice public ac-  
\*2 1 counting by any State and includes an accounting partner-  
2 ship or corporation if so authorized.  
3 (2) "Act" means the Bankruptcy Act of 1973.  
4 (3) "Administrator" means the principal executive  
5 officer of the United States Bankruptcy Administration and  
6 his authorized agents.  
7 (4) "Affiliate" of a debtor means (A) a corporation  
8 20 per centum or more of whose outstanding voting securi-  
9 ties are directly or indirectly owned, controlled, or held  
10 with power to vote, by the debtor, or (B) a person who  
11 directly or indirectly owns, controls, or holds with power to  
12 vote, 20 per centum or more of the outstanding voting  
13 securities of the debtor, or (C) a corporation 20 per centum  
14 or more of whose outstanding voting securities are directly  
15 or indirectly owned, controlled, or held with power to vote,  
16 by a person who directly or indirectly owns, controls, or  
17 holds with power to vote, 20 per centum or more of the  
18 outstanding voting securities of the debtor, or (D) a person  
19 substantially all of whose property is operated under lease

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Bankruptcy Revision 11 1978 Legis. History 17 (A&P)  
(Cite as: A&P SEN. 236)

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19 TORS.--The creditors of a partnership shall share in the dis-  
20 tribution of the proceeds of the estate of a general partner in  
21 the same manner and to the same extent as other creditors  
22 of such partner.

23 SEC. 4-406. SUBORDINATION OF CLAIMS.--

24 (a) SUBORDINATED CLASSES OF CLAIMS.--The follow-  
\*110 1 ing claims are subordinated in payment to all other nonsub-  
2 ordinated but allowable claims:

3 (1) any claim for rescission of the purchase of se-  
4 curities issued by the debtor corporation or for damages  
5 resulting from the purchase or sale of such securities;  
6 (2) any claim, whether secured or unsecured, of any  
7 principal officer, director, or affiliate of a debtor, or of any  
8 member of the immediate family of such officer, director,  
9 or affiliate; and

10 (3) any claim, whether secured or unsecured, to  
11 the extent it is for a fine, penalty, or forfeiture or for  
12 multiple, punitive, or exemplary damages.

13 (b) SUBROGATION OF TRUSTEE TO LIEN SECURING  
14 SUBORDINATED CLAIMS.--Any lien or trust securing a claim  
15 subordinated under subdivision (a) shall pass to the trustee  
16 for the benefit of all claims allowed but not subordinated.

17 (c) EQUITABLE POWER OF COURT TO SUBORDINATE  
18 OTHER CLAIMS.--This section does not limit the equitable  
19 power of a bankruptcy court to subordinate claims or to en-  
20 force voluntary subordination agreements.

21 PART 5. DEBTOR'S DUTIES AND BENEFITS

22 SEC. 4-501. AUTOMATIC STAY.--

23 (a) STAY OF ACTIONS AND LIEN ENFORCEMENT;

24 NOTICE OF STAY.--

25 (1) SCOPE OF STAY.--A petition filed by or against a  
\*111 1 debtor under this Act shall operate as a stay of (A) the  
2 commencement or continuation of any civil action by or  
3 against the debtor seeking recovery of money or affecting  
4 property of the estate, except an action authorized by title 28,  
5 United States Code, section 959; (B) the enforcement of  
6 any judgment against him, except for the collection of ali-  
7 mony, maintenance, or support out of property not belong-  
8 ing to the estate; and (C) any act to create or enforce any  
9 lien against the property of the estate.

10 (2) NOTICE.--Notice of the stay shall be given to  
11 creditors as provided in section 4-307, to every party to any  
12 pending proceeding and to the clerk of the court in which  
13 it is pending, and to every person believed to be contem-  
14 plating any act in disregard of the stay.

15 (b) DURATION OF STAY.--Except as it may be termi-  
16 nated or modified by the bankruptcy court, the stay provided  
17 by this section shall continue until the administration of the  
18 estate of the debtor is completed and the case is closed or,  
19 if the stay bars enforcement of a lien, the property subject  
20 to the lien is abandoned or transferred by the trustee.

21 (2) RELIEF FROM STAY.--Relief from the stay pro-  
22 vided by this section may be sought and obtained from the



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Bankruptcy Revision 11 1978 Legis. History 27 (A&P)  
(Cite as: A&P H.R. 6)

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Arnold & Porter LLP Legislative History: P.L. 95-598

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BILLS

IN THE HOUSE OF REPRESENTATIVES

H.R. 6

A BILL To establish a uniform law on the subject of bankruptcies.  
January 4, 1977

Mr. EDWARDS of California (for himself and Mr. BUTLER) introduced the following bill; which was referred to the Committee on the Judiciary

\*1 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I-ENACTMENT OF TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 SEC. 101. The law relating to bankruptcy is codified and  
6 enacted as title 11 of the United States Code, entitled "Bank-  
7 ruptcy", and may be cited as 11 U.S.C. § \*\*\*, as follows:

8 **TITLE 11-BANKRUPTCY**

	CHAPTER	Sec.
1.	GENERAL PROVISIONS .....	101
3.	CASE ADMINISTRATION .....	301
5.	CREDITORS, THE DEBTOR, AND THE ESTATE .....	501
7.	LIQUIDATION .....	701
9.	ADJUSTMENT OF DEBTS OF A MUNICIPALITY .....	901
11.	REORGANIZATION .....	1101
13.	ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME ..	1301

\*2 1 **CHAPTER 1-GENERAL PROVISIONS**

	Sec.
101.	Definitions.
102.	Rules of construction.
103.	Applicability of chapters.
104.	Adjustment of dollar amounts.
105.	Power of court.
106.	Waiver of sovereign immunity.
107.	Public access to papers.
108.	Extension of time.
109.	Who may be a debtor under this title.
2	<b>§ 101. Definitions</b>
3	In this title-

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5 section may receive payments under this title on such entity's  
6 claim only if the claim with respect to which such entity is  
7 subrogated is paid in full, either through payments under  
8 this title, or otherwise.

9 **§ 510. Subordination of claims**

10 (a) After notice and a hearing, the court shall enforce  
11 any subordination agreement between two or more creditors  
12 holding allowed claims to the same extent that such agree-  
13 ment is enforceable under applicable nonbankruptcy law.

14 (b) After notice and a hearing, the court may, on  
15 equitable grounds-

16 (1) subordinate in payment all or any part of an  
17 allowed claim or interest to all or any part of another  
18 allowed claim or interest; or

19 (2) order that any lien securing such a subor-  
20 dinated claim be transferred to the estate.

21 **SUBCHAPTER II-DEBTOR'S DUTIES AND**

22 **BENEFITS**

23 **§ 521. Debtor's duties**

24 The debtor shall-

25 (1) file with the court a schedule of assets and liabil-  
26 ities, and a statement of the debtor's financial affairs;

\*68 1 (2) if a trustee has been elected or appointed to  
2 serve in the case, cooperate with the trustee as neces-  
3 sary to enable the trustee to perform the trustee's duties  
4 under this title; and

5 (3) surrender to the trustee, if a trustee has been  
6 elected or appointed to serve in the case, all property  
7 of the estate and any recorded information, including  
8 books, documents, records, and papers, relating to prop-  
9 erty of the estate.

10 **§ 522. Exemptions**

11 (a) In this section-

12 (1) "dependent" includes spouse, whether or not  
13 actually dependent; and

14 (2) "value" means fair market value as of the date  
15 of the filing of the petition.

16 (b) Notwithstanding section 541 of this title, an indi-  
17 vidual debtor may exempt from property of the estate  
18 either-

19 (1) property that is specified under subsection (d)  
20 of this section; or, in the alternative,

21 (2)(A) any property that is exempt under the  
22 laws, Federal, State, or local, other than subsection (d)  
23 of this section, that are applicable on the date of the  
24 filing of the petition at the place in which the debtor's  
25 domicile has been located for the 180 days immediately

\*69 1 preceding the date of the filing of the petition, or for a  
2 longer portion of such 180-day period than in any other  
3 place;

4 (B) property in which the debtor has an interest  
5 as a tenant by the entirety; and

6 (C) the debtor's beneficial interest in a trust to the

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Bankruptcy Revision 11 1978 Legis. History 19 (A&P)  
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BILLS

IN THE HOUSE OF REPRESENTATIVES

H.R. 7330

A BILL To establish a uniform Law on the subject of Bankruptcies.  
May 23, 1977

Mr. EDWARDS of California (for himself, Mr. BUTLER, Mr. SEIBERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILENSON, and Mr. MCCLORY) introduced the following bill; which was referred to the Committee on the Judiciary

\*1 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 **TITLE I-ENACTMENT OF TITLE 11 OF THE**  
4 **UNITED STATES CODE**  
5 SEC. 101. The law relating to bankruptcy is codified and  
6 enacted as title 11 of the United States Code, entitled "Bank-  
7 ruptcy", and may be cited as 11 U.S.C. § \*\*\*, as follows:  
8 **TITLE 11-BANKRUPTCY**

CHAPTER	Sec.
1. GENERAL PROVISIONS .....	101
3. CASE ADMINISTRATION .....	301
5. CREDITORS, THE DEBTOR, AND THE ESTATE .....	501
7. LIQUIDATION .....	701
9. ADJUSTMENT OF DEBTS OF A MUNICIPALITY .....	901
11. REORGANIZATION .....	1101
13. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME ..	1301

\*2 1 **CHAPTER 1-GENERAL PROVISIONS**

Sec.
101. Definitions.
102. Rules of construction.
103. Applicability of chapters.
104. Adjustment of dollar amounts.
105. Power of court.
106. Waiver of sovereign immunity.
107. Public access to papers.
108. Extension of time.
109. Who may be a debtor under this title.
2 § 101. Definitions

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Bankruptcy Revision 11 1978 Legis. History 19 (A&P)  
(Cite as: A&P H.R. 7330)

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21 of, or a transfer of property on account of, a claim that is  
22 allowed under this title, such creditor may not receive any  
23 payment under this title on account of such claim until each  
24 of the other holders of claims on account of which such  
25 holders are entitled to share equally with such creditor  
\*83 1 under this title has received payment under this title equal in  
2 value to the consideration received by such creditor in such  
3 foreign proceeding.

4 **§ 509. Claims of codebtors**

5 (a) Except as provided in subsection (b) of this sec-  
6 tion, an entity that is liable with the debtor on, or that has  
7 secured, a claim of a creditor, and whose claim is disallowed  
8 under section 502(e) of this title, is subrogated to the rights  
9 of such creditor, to the extent of any payment made to such  
10 creditor on such claim by such entity, whether such entity  
11 or such creditor filed proof of such creditor's claim under  
12 section 501 of this title.

13 (b) An entity subrogated under subsection (a) of this  
14 section may receive payments under this title on such entity's  
15 claim only if the claim with respect to which such entity is  
16 subrogated is paid in full, either through payments under  
17 this title, or otherwise.

18 **§ 510. Subordination of claims**

19 (a) After notice and a hearing, the court shall-  
20 (1) enforce any subordination agreement between  
21 two or more creditors holding allowed claims to the  
22 same extent that such agreement is enforceable under  
23 applicable nonbankruptcy law; and

24 (2) subordinate in payment any claim for rescission  
25 of a purchase or sale of a security of the debtor or of  
\*84 1 an affiliate of the debtor or for damages arising from  
2 the purchase or sale of such a security to all claims and  
3 interests that are senior to the claim or interest repre-  
4 sented by such security.

5 (b) After notice and a hearing, the court may, on  
6 equitable grounds-

7 (1) subordinate in payment all or any part of an  
8 allowed claim or interest to all or any part of another  
9 allowed claim or interest; or

10 (2) order that any lien securing such a subor-  
11 dinated claim be transferred to the estate.

12 **SUBCHAPTER II-DEBTOR'S DUTIES AND**  
13 **BENEFITS**

14 **§ 521. Debtor's duties**

15 The debtor shall-

16 (1) file with the court a list of creditors, and unless  
17 the court orders otherwise, a schedule of assets and liabil-  
18 ities, and a statement of the debtor's financial affairs;

19 (2) if a trustee has been elected or appointed to  
20 serve in the case, cooperate with the trustee as neces-  
21 sary to enable the trustee to perform the trustee's duties  
22 under this title; and

23 (3) surrender to the trustee, if a trustee has been

*Supersedes H.R. 6*

95TH CONGRESS  
1ST SESSION

# H. R. 8200

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1977

Mr. EDWARDS of California (for himself, Mr. BUTLER, Mr. SEIDERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILSON, and Mr. McCLORY) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To establish a uniform Law on the subject of Bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—ENACTMENT OF TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 SEC. 101. The law relating to bankruptcy is codified and  
6 enacted as title 11 of the United States Code, entitled "Bank-  
7 ruptcy", and may be cited as 11 U.S.C. § , as follows:

8 **TITLE 11—BANKRUPTCY**

CHAPTER	Sec.
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9. ADJUSTMENT OF DEBTS OF A MUNICIPALITY.....	901
11. REORGANIZATION.....	1101
13. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME.....	1301

1 holders are entitled to share equally with such creditor  
2 under this title has received payment under this title equal in  
3 value to the consideration received by such creditor in such  
4 foreign proceeding.

5 **§ 509. Claims of codebtors**

6 (a) Except as provided in subsections (b) and (c) of  
7 this section, an entity that is liable with the debtor on, or that  
8 has secured, a claim of a creditor, and that pays such creditor  
9 on such claim after the commencement of the case, is subro-  
10 gated to the rights of such creditor to the extent of such  
11 payment.

12 (b) Such entity is not subrogated to the rights of such  
13 creditor to the extent that a claim of such entity for reim-  
14 bursement or contribution on account of a payment to such  
15 creditor by such entity after the commencement of the case  
16 is allowed under section 502 of this title.

17 (c) An entity subrogated under subsection (a) of this  
18 section may receive payments under this title on such entity's  
19 claim only if the claim with respect to which such entity is  
20 subrogated is paid in full, either through payments under  
21 this title, or otherwise.

22 **§ 510. Subordination of claims**

23 (a) After notice and a hearing, the court shall—

24 (1) enforce any subordination agreement to the

1 same extent that such agreement is enforceable under  
2 applicable nonbankruptcy law; and

3 (2) subordinate in priority of distribution any  
4 claim for rescission of a purchase or sale of a security  
5 of the debtor or of an affiliate or for damages arising  
6 from the purchase or sale of such a security to all claims  
7 and interests that are senior to the claim or interest  
8 represented by such security.

9 (b) Notwithstanding subsection (a) of this section,  
10 after notice and a hearing, the court may, on equitable  
11 grounds—

12 (1) subordinate in priority of distribution all or  
13 any part of an allowed claim or interest to all or any  
14 part of another allowed claim or interest; or

15 (2) order that any lien securing such a subor-  
16 dinated claim be transferred to the estate.

17 **SUBCHAPTER II—DEBTOR'S DUTIES AND**  
18 **BENEFITS**

19 **§ 521. Debtor's duties**

20 **The debtor shall—**

21 (1) file with the court a list of creditors, and unless  
22 the court orders otherwise, a schedule of assets and liabil-  
23 ities, and a statement of the debtor's financial affairs;

24 (2) if a trustee has been elected or appointed to

# Union Calendar No. 311

95TH CONGRESS  
1ST SESSION

# H. R. 8200

[Report No. 95-595]

## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1977

Mr. EDWARDS of California (for himself, Mr. BUTLER, Mr. SEIBERLING, Mr. DRINAN, Mr. VOLKMER, Mr. BEILSON, and Mr. McCLORY) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 8, 1977

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

(Strike out all after the enacting clause and insert the part printed in italic)

# A BILL

To establish a uniform Law on the subject of Bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 ~~TITLE I ENACTMENT OF TITLE 11 OF THE~~  
4 ~~UNITED STATES CODE~~

5 ~~SEC. 101. The law relating to bankruptcy is codified and~~  
6 ~~enacted as title 11 of the United States Code, entitled "Bank-~~  
7 ~~ruptcy", and may be cited as 11 U.S.C. § , as follows:~~

8 ~~TITLE 11 BANKRUPTCY~~

<del>CHAPTER</del>	<del>Sec.</del>
<del>1. GENERAL PROVISIONS.....</del>	<del>101</del>
<del>2. CASE ADMINISTRATION.....</del>	<del>201</del>
<del>5. CREDITORS, THE DEBTOR, AND THE ESTATE.....</del>	<del>501</del>
<del>7. LIQUIDATION.....</del>	<del>701</del>
<del>9. ADJUSTMENT OF DEBTS OF A MUNICIPALITY.....</del>	<del>901</del>
<del>11. REORGANIZATION.....</del>	<del>1101</del>
<del>13. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR</del>	
<del>INCOME.....</del>	<del>1301</del>



1 *claim by way of such subrogation only if the claim with re-*  
2 *spect to which such entity is subrogated is paid in full, either*  
3 *through payments under this title, or otherwise.*

4 **§ 510. Subordination of claims**

5 (a) *After notice and a hearing, the court shall—*

6 (1) *enforce any subordination agreement to the*  
7 *same extent that such agreement is enforceable under*  
8 *applicable nonbankruptcy law; and*

9 (2) *subordinate for purposes of distribution any*  
10 *claim for rescission of a purchase or sale of a security*  
11 *of the debtor or of an affiliate or for damages arising*  
12 *from the purchase or sale of such a security to all claims*  
13 *and interests that are senior or equal to the claim or inter-*  
14 *est represented by such security.*

15 (b) *Notwithstanding subsection (a) of this section,*  
16 *after notice and a hearing, the court may, on equitable*  
17 *grounds—*

18 (1) *subordinate for purposes of distribution all or*  
19 *any part of an allowed claim or interest to all or any*  
20 *part of another allowed claim or interest; or*

21 (2) *order that any lien securing such a subordi-*  
22 *nated claim be transferred to the estate.*



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BILLS

IN THE SENATE OF THE UNITED STATES

S. 2266  
October 31, 1977

Mr. DECONCINI (for himself and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on the Judiciary and if and when reported to the Committee on Finance for not to exceed thirty days to consider sections 346, 509, 507, 523, 728, 1146, and 1331

\*1 A BILL To establish a uniform law on the subject of bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 **TITLE I-ENACTMENT OF TITLE 11 OF THE**  
4 **UNITED STATES CODE**  
5 SEC. 101. The law relating to bankruptcy is codified and  
6 enacted as title 11 of the United States Code, entitled "Bank-  
7 ruptcy", and may be cited as 11 U.S.C. § , as follows:  
8 **TITLE 11-BANKRUPTCY**

CHAPTER	Sec.
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\*2 1 **CHAPTER 1-GENERAL PROVISIONS**

Sec.
101. Definitions.
102. Rules of construction.
103. Applicability of chapters.
104. Adjustment of dollar amounts.
105. Power of court.
106. Waiver of sovereign immunity.
107. Public access to papers.

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11 (6) Sixth, allowed unsecured claims of individuals,  
12 to the extent of \$600 for each such individual, arising  
13 from the deposit, before the commencement of the case,  
14 of money in connection with the purchase, lease, or rental  
15 of property, or the purchase of services, for the personal,  
16 family, or household use of such individuals, that were  
17 not delivered or provided.

18 **§ 508. Effect of distribution in a foreign proceeding**

19 If a creditor receives, in a foreign proceeding, payment  
20 of, or a transfer of property on account of, a claim that is  
21 allowed under this title, such creditor may not receive any  
22 payment under this title on account of such claim until each  
23 of the other holders of claims on account of which such  
24 holders are entitled to share equally with such creditor  
25 under this title has received payment under this title equal in  
\*87 1 value to the consideration received by such creditor in such  
2 foreign proceeding.

3 **§ 509. Claims of codebtors**

4 (a) Except as provided in subsections (b) and (c) of  
5 this section, an entity that is liable with the debtor on, or that  
6 has secured, a claim of a creditor, and that pays such creditor  
7 on such claim after the commencement of the case, is subro-  
8 gated to the rights of such creditor to the extent of such  
9 payment.

10 (b) Such entity is not subrogated to the rights of such  
11 creditor to the extent that-

12 (1) a claim of such entity for reimbursement or  
13 contribution on account of a payment to such creditor  
14 by such entity after the commencement of the case is  
15 allowed under section 502 of this title; or

16 (2) as between the debtor and such entity, such  
17 entity received the consideration for the claim held  
18 by such creditor.

19 (c) An entity subrogated under subsection (a) of this  
20 section may receive payments under this title on such entity's  
21 claim by way of such subrogation only if the claim with  
22 respect to which such entity is subrogated is paid in full,  
23 either through payments under this title, or otherwise.

24 **§ 510. Subordination of claims**

25 (a) After notice and a hearing, the court shall-

\*88 1 (1) enforce any subordination agreement to the  
2 same extent that such agreement is enforceable under  
3 applicable nonbankruptcy law; and

4 (2) subordinate for purposes of distribution any  
5 claim for rescission of a purchase or sale of a security  
6 of the debtor or of an affiliate or for damages arising  
7 from the purchase or sale of such a security to all claims  
8 and interests that are senior or equal to the claim or  
9 interest represented by such security.

10 (b) Notwithstanding subsection (a) of this section, after  
11 notice and hearing, the court may, on equitable grounds-

12 (1) subordinate for purposes of distribution all or  
13 any part of an allowed claim or interest, except a tax

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BILLS

IN THE SENATE OF THE UNITED STATES

H.R. 8200

AN ACT To establish a uniform Law on the subject of Bankruptcies.  
February 8, 1978

\*1 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 **TITLE I-ENACTMENT OF TITLE 11 OF THE**  
4 **UNITED STATES CODE**  
5 SEC. 101. The law relating to bankruptcy is codified and  
6 enacted as title 11 of the United States Code, entitled "Bank-  
7 ruptcy", and may be cited as 11 U.S.C. § , as follows:  
8 **TITLE 11-BANKRUPTCY**

CHAPTER	Sec.
1. GENERAL PROVISIONS .....	101
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5. CREDITORS, THE DEBTOR, AND THE ESTATE .....	501
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9. ADJUSTMENT OF DEBTS OF A MUNICIPALITY .....	901
11. REORGANIZATION .....	1101
13. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME ...	1301

\*2 1 **CHAPTER 1-GENERAL PROVISIONS**

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101. Definitions.
102. Rules of construction.
103. Applicability of chapters.
104. Adjustment of dollar amounts.
105. Power of court.
106. Waiver of sovereign immunity.
107. Public access to papers.
108. Extension of time.
109. Who may be a debtor.
2 <b>§ 101. Definitions</b>
3 In this title-
4 (1) "accountant" means accountant authorized un-
5 der applicable law to practice public accounting, and
6 includes professional accounting association, corpora-

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Bankruptcy Revision II 1978 Legis. History 35 (A&P)  
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8 of the other holders of claims on account of which such  
9 holders are entitled to share equally with such creditor  
10 under this title has received payment under this title equal  
11 in value to the consideration received by such creditor in  
12 such foreign proceeding.

13 **§ 509. Claims of codebtors**

14 (a) Except as provided in subsections (b) and (c) of  
15 this section, an entity that is liable with the debtor on, or  
16 that has secured, a claim of a creditor, and that pays such  
17 creditor on such claim after the commencement of the case,  
18 is subrogated to the rights of such creditor to the extent of  
19 such payment.

20 (b) Such entity is not subrogated to the rights of such  
21 creditor to the extent that-

22 (1) a claim of such entity for reimbursement or con-  
23 tribution on account of a payment to such creditor by such  
24 entity after the commencement of the case is allowed under  
25 section 502 of this title; or

\*86 1 (2) as between the debtor and such entity, such entity  
2 received the consideration for the claim held by such  
3 creditor.

4 (c) An entity subrogated under subsection (a) of this  
5 section may receive payments under this title on such entity's  
6 claim by way of such subrogation only if the claim with re-  
7 spect to which such entity is subrogated is paid in full, either  
8 through payments under this title, or otherwise.

9 **§ 510. Subordination of claims**

10 (a) After notice and a hearing, the court shall-

11 (1) enforce any subordination agreement to the  
12 same extent that such agreement is enforceable under  
13 applicable nonbankruptcy law; and

14 (2) subordinate for purposes of distribution any  
15 claim for rescission of a purchase or sale of a security  
16 of the debtor or of an affiliate or for damages arising  
17 from the purchase or sale of such a security to all claims  
18 and interests that are senior or equal to the claim or inter-  
19 est represented by such security.

20 (b) Notwithstanding subsection (a) of this section,  
21 after notice and a hearing, the court may, on equitable  
22 grounds-

23 (1) subordinate for purposes of distribution all or  
24 any part of an allowed claim or interest to all or any  
25 part of another allowed claim or interest; or

\*87 1 (2) order that any lien securing such a subordi-  
2 nated claim be transferred to the estate.

3 **SUBCHAPTER II-DEBTOR'S DUTIES AND**  
4 **BENEFITS**

5 **§ 521. Debtor's duties**

6 The debtor shall-

7 (1) file with the court a list of creditors, and unless  
8 the court orders otherwise, a schedule of assets and lia-  
9 bilities, and a statement of the debtor's financial affairs;

10 (2) if a trustee is serving in the case, cooperate

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BILLS

IN THE SENATE OF THE UNITED STATES

S. 2266

A BILL To establish a uniform law on the subject of bankruptcies.  
August 10, 1978

May 17, 1978

Mr. DECONCINI (for himself and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on the Judiciary and if and when reported to the Committee on Finance for not to exceed thirty days to consider sections 346, 505, 507, 523, 728, 1146, and 1331

\*1 OCTOBER 31 (legislative day, OCTOBER 29), 1977

JULY 14 (legislative day, MAY 17), 1978

Reported by Mr. DECONCINI, with an amendment and referred to the Committee on Finance for not to exceed thirty days to consider sections 346, 505, 507, 523, 728, 1146, and 1331

1 Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,

\* \* \*

\*\*\*

\*296 \*\*\*

23 TITLE I--ENACTMENT OF TITLE 11 OF THE  
24 UNITED STATES CODE

25 SEC. 101. The law relating to bankruptcy is codified and  
\*297 1 enacted as title 11 of the United States Code, entitled "Bank-  
2 ruptcy", and may be cited as 11 U.S.C. § \*\*\*, as follows:  
3

TITLE 11--BANKRUPTCY

CHAPTER	SEC.
1. GENERAL PROVISIONS .....	101
3. CASE ADMINISTRATION .....	301

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Bankruptcy Revision 11 1978 Legis. History 33 (A&P)  
(Cite as: A&P SEN. 2266)

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11 of, or a transfer of property on account of, a claim that is  
12 allowed under this title, such creditor may not receive any  
13 payment under this title on account of such claim until each  
14 of the other holders of claims on account of which such  
15 holders are entitled to share equally with such creditor  
16 under this title has received payment under this title equal in  
17 value to the consideration received by such creditor in such  
18 foreign proceeding.

19 **§ 509. Claims of codebtors**

20 (a) Except as provided in subsections (b) and (c) of  
21 this section, an entity that is liable with the debtor on, or that  
22 has secured, a claim of a creditor, and that pays such creditor  
23 on such claim after the commencement of the case, is subro-  
24 gated to the rights of such creditor to the extent of such  
25 payment.

\*405 1 (b) Such entity is not subrogated to the rights of such  
2 creditor to the extent that-

3 (1) a claim of such entity for reimbursement or  
4 contribution on account of a payment to such creditor  
5 by such entity after the commencement of the case is  
6 allowed under section 502 of this title; or

7 (2) as between the debtor and such entity, such  
8 entity received the consideration for the claim held  
9 by such creditor.

10 (c) An entity subrogated under subsection (a) of this  
11 section may receive payments under this title on such entity's  
12 claim by way of such subrogation only if the claim with  
13 respect to which such entity is subrogated is paid in full,  
14 either through payments under this title, or otherwise.

15 **§ 510. Subordination or disallowance of claims or interests**

16 (a) After notice and a hearing, the court shall-

17 (1) enforce any subordination agreement to the  
18 same extent that such agreement is enforceable under  
19 applicable nonbankruptcy law; and

20 (2) subordinate for purposes of distribution any  
21 claim for rescission of a purchase or sale of a security  
22 of the debtor or of an affiliate or for damages arising  
23 from the purchase or sale of such a security to all claims  
24 and interests that are senior or equal to the claim or  
25 interest represented by such security.

\*406 1 (b) Notwithstanding subsection (a) of this section, after  
2 notice and hearing, the court may, on principles of equitable  
3 subordination-

4 (1) subordinate for purposes of distribution all or  
5 any part of an allowed claim or interest to all or any  
6 part of another allowed claim or interest; or

7 (2) order that any lien securing such a subor-  
8 dinated claim be transferred to the estate.

9 (c) After notice and a hearing the court may-

10 (1) restrain the exercise of, and declare invalid,  
11 any provision of a deposit agreement, proxy, trust  
12 mortgage, trust indenture, or deed of trust, or of  
13 a committee or other authorization which the court

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(Cite as: A&P SEN. 2266)

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14 finds to be unfair or not consistent with public policy,  
15 and may enforce an accounting thereunder;  
16 (2) limit to the actual consideration paid therefor  
17 any claim or stock acquired in contemplation or in the  
18 course of a case under this title by any person serving  
19 in a fiduciary or representative capacity in a case under  
20 this title.

21 (3) disallow, in part or in whole, any claim  
22 or interest in accordance with the equities of the case.

23 **§ 511. Certain employment tax credits**

24 "(a) Notwithstanding the Internal Revenue Code of  
25 1954 (26 U.S.C. 1 et seq.), no reduction due to late payment  
\*407 1 shall be made in the amount of an otherwise applicable  
2 credit available to the trustee in connection with any em-  
3 ployment tax on wages, salaries, or commissions paid by the  
4 debtor or by the trustee.

5 (b) For purposes of this title, a reduction, due to late  
6 payment, of a credit which was available to the debtor in  
7 connection with any employment tax on wages, salaries, or  
8 commissions paid by the debtor shall be treated as a penalty  
9 which is not in compensation for actual pecuniary loss.

10 **§ 512. Additional conforming amendments**

11 (a) Subsection (a) of section 6871 of the Internal Rev-  
12 enue Code of 1954 (relating to claims for income, estate,  
13 and gift taxes and bankruptcy receivership proceedings) is  
14 amended by striking out "the adjudication of bankruptcy of  
15 any taxpayer in any liquidating proceeding, the filing, or  
16 (where approval is required by the Bankruptcy Act) the  
17 approval of a petition of, or the approval of a petition  
18 against, any taxpayer in any other bankruptcy proceeding,  
19 or".

20 (b) Subsection (b) of section 6871 of the Internal  
21 Revenue Code of 1954 (relating to claims file despite depend-  
22 ency of tax court proceedings) is amended by striking out  
23 "the adjudication of bankruptcy, the filing, or (where  
24 approval is required by the Bankruptcy Act) the approval  
\*408 1 of a petition of, or the approval of a petition against, any  
2 taxpayer in any other bankruptcy proceeding, or".

3 (c) Subsection (a) of section 6873 of the Internal  
4 Revenue Code of 1954 (relating to unpaid claims) is  
5 amended by striking out "or any proceeding under the  
6 Bankruptcy Act".

7 **SUBCHAPTER II-DEBTOR'S DUTIES AND**  
8 **BENEFITS**

9 **§ 521. Debtor's duties**

10 The debtor shall-

- 11 (1) file with the court a list of creditors, and unless  
12 the court orders otherwise, a schedule of assets and liabil-  
13 ities, and a statement of the debtor's financial affairs;
- 14 (2) if a trustee is serving in the case, cooperate  
15 with the trustee as necessary to enable the trustee to  
16 perform the trustee's duties under this title; and
- 17 (3) if a trustee is serving in the case, surrender



**Public Law 95-598  
95th Congress**

**An Act**

To establish a uniform Law on the Subject of Bankruptcies.

Nov. 6, 1978  
[H.R. 8200]

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

Title 11, USC.  
Bankruptcy.

**TITLE I—ENACTMENT OF TITLE 11 OF THE  
UNITED STATES CODE**

SEC. 101. The law relating to bankruptcy is codified and enacted as title 11 of the United States Code, entitled "Bankruptcy", and may be cited as 11 U.S.C. § , as follows: 11 USC prec. 101 note.

**TITLE 11—BANKRUPTCY**

CHAPTER	Sec.
1. GENERAL PROVISIONS.....	101
3. CASE ADMINISTRATION.....	301
5. CREDITORS, THE DEBTOR, AND THE ESTATE.....	501
7. LIQUIDATION.....	701
9. ADJUSTMENT OF DEBTS OF A MUNICIPALITY.....	901
11. REORGANIZATION.....	1101
13. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME.....	1301
15. UNITED STATES TRUSTEES.....	1501

**CHAPTER 1—GENERAL PROVISIONS**

- Sec.
- 101. Definitions.
  - 102. Rules of construction.
  - 103. Applicability of chapters.
  - 104. Adjustment of dollar amounts.
  - 105. Power of court.
  - 106. Waiver of sovereign immunity.
  - 107. Public access to papers.
  - 108. Extension of time.
  - 109. Who may be a debtor.

**§ 101. Definitions**

11 USC 101.

In this title—

(1) "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized;

(2) "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity

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of a creditor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of a payment of such creditor's claim is—

(A) allowed under section 502 of this title;

(B) disallowed other than under section 502(e) of this title; or

(C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under section 509 of this title, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

11 USC 510.

#### § 510. Subordination

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

(b) Any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be subordinated for purposes of distribution to all claims and interests that are senior or equal to the claim or interest represented by such security.

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

### SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

11 USC 521.

#### § 521. Debtor's duties

The debtor shall—

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, and a statement of the debtor's financial affairs;

(2) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(3) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate; and

(4) appear at the hearing required under section 524(d) of this title.

11 USC 522.

#### § 522. Exemptions

(a) In this section—

96TH CONGRESS  
1ST SESSION

# S. 658

To correct technical errors, clarify and make minor substantive changes to Public  
Law 95-598.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, FEBRUARY 22), 1979

Mr. DeCONCINI introduced the following bill; which was read twice and referred  
to the Committee on the Judiciary

---

## A BILL

To correct technical errors, clarify and make minor substantive  
changes to Public Law 95-598.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—AMENDMENTS TO TITLE 11 OF THE  
4 UNITED STATES CODE

5 SEC. 101. Section 101(1) of title 11 of the United  
6 States Code is amended by striking out the second "account-  
7 ant" and inserting "an individual" in lieu thereof.

8 SEC. 102. Section 101(2)(D) of title 11 of the United  
9 States Code is amended by striking out "or all" immediately  
10 after "business".

II—E

1 after three years before the date of the filing  
2 of the petition;”.

3 (e) Section 507(b) of title 11 of the United States Code  
4 is amended—

5 (1) by striking out “If” and inserting “Notwith-  
6 standing section 726(b) of this title, if” in lieu thereof;

7 (2) by striking out “creditor” each place it ap-  
8 pears and inserting “holder” in lieu thereof; and

9 (3) by striking out “subsection (a)(1) of this sub-  
10 section” and inserting “section 503(b) of this title” in  
11 lieu thereof.

12 (f) Section 507(c) of title 11 of the United States Code is  
13 amended by striking out “shall be treated the same” and  
14 inserting “has the same priority” in lieu thereof.

15 SEC. 124. Section 509(c) of title 11 of the United States  
16 Code is amended by striking out “section 509 of this title”  
17 and inserting “this section” in lieu thereof.

18 SEC. 125. Section 510(b) of title 11 of the United States  
19 Code is amended by striking out “recission” and inserting  
20 “rescission” in lieu thereof.

21 SEC. 126. (a) Section 522(b)(1) of title 11 of the United  
22 States Code is amended by striking out “does not so author-  
23 ize” and inserting “prohibits application of such subsection  
24 (d)” in lieu thereof.

ii

## Calendar No. 325

96TH CONGRESS  
1ST SESSION

# S. 658

[Report No. 96-305]

To correct technical errors, clarify and make minor substantive changes to Public Law 95-598.

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### IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, FEBRUARY 22), 1979

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

AUGUST 3 (legislative day, JUNE 21), 1979

Reported by Mr. DECONCINI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

---

## A BILL

To correct technical errors, clarify and make minor substantive changes to Public Law 95-598.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AMENDMENTS TO TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 **Sec. 101.** Section 101(1) of title 11 of the United  
6 States Code is amended by striking out the second "account-  
7 ant" and inserting "an individual" in lieu thereof.

1        *SEC. 127. Section 509(c) of title 11 of the United*  
2 *States Code is amended by striking out "section 509 of this*  
3 *title" and inserting "this section" in lieu thereof.*

4        *SEC. 128. Section 510(b) of title 11 of the United*  
5 *States Code is amended—*

6            *(1) by striking out "recission" and inserting "re-*  
7 *scission" in lieu thereof; and*

8            *(2) by striking out "and interests that are" and*  
9 *inserting "to all interests that are senior to the" imme-*  
10 *diately before "interest represented".*

11        *SEC. 129. (a) Section 522(b)(1) of title 11 of the*  
12 *United States Code is amended by striking out "does not so*  
13 *authorize" and inserting "prohibits application of such sub-*  
14 *section (d)" in lieu thereof.*

15        *(b) Section 522(c) of title 11 of the United States Code*  
16 *is amended—*

17            *(1) by inserting a comma immediately after*  
18 *"arisen";*

19            *(2) in paragraph (1), to read as follows:*

20            *"(1) a tax liability excepted from discharge under*  
21 *section 523(a) (1) or (7) of this title; or";*

22            *(3) in paragraph (2)—*

23            *(A) by inserting "a debt secured by" imme-*  
24 *diately before "a lien";*

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Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, it is my understanding that, under a previous consent agreement, this legislation would be set aside.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I know of no further amendments.

I move that the Senate stand in recess subject to the call of the Chair.

Mr. DeCONCINI. Mr. President, before going into recess, may I propose a parliamentary inquiry, a clarification? S. 1477 is being set aside in accordance with the unanimous-consent agreement of yesterday?

The PRESIDING OFFICER. The Senator is correct.

Mr. DeCONCINI. Is it my understanding that, in accordance with that unanimous-consent agreement, it can no longer be amended, except for one judicial tenure bill that is part of the unanimous-consent agreement?

The PRESIDING OFFICER. The Senator is correct.

Mr. DeCONCINI. I thank the Chair.

The PRESIDING OFFICER. Does the Senator from Massachusetts renew his request?

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. KENNEDY. Mr. President, I renew my request that we stand in recess subject to the call of the Chair.

The motion was agreed to, and at 2:24 p.m. the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 2:47 p.m., when called to order by the Presiding Officer (Mr. BUMPERS).

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, there will be no further rollcall votes today.

AUTHORIZATION FOR RECORD TO BE KEPT OPEN UNTIL 5 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Record be kept open until 5 p.m. today for Senators to file statements, introduce bills, resolutions, and that committees may report.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TECHNICAL AMENDMENTS TO BANKRUPTCY REFORM ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 325.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I reserve only for the purpose of advising the majority leader that this item has been cleared on our calendar and we have no objection to its consideration and passage.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598.

The PRESIDING OFFICER. Is there objection of the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

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

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

Sec. 102. (a) 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 a semicolon in lieu thereof.

(b) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d)" after "section", and by striking "502(h) or 502(i)" and inserting "or 502(h)" in lieu thereof.

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

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

(e) Section 102(26)(B)(ii) of title 11 of the United States Code is amended—

(1) by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof; and

(2) by striking out "the kind specified in subparagraph" and inserting "a kind specified in subparagraph (A)(i) or" in lieu thereof.

(f) Section 101(35)(B)(vi) of title 11 of the United States Code is amended by striking out "specified in clause (xii) of subparagraph (A)" and inserting "of a kind specified in subparagraph (A)(xii)" in lieu thereof.

(g) Section 101 is amended by adding the following immediately after paragraph (37):

"(37A) 'State' includes the Commonwealth of Puerto Rico, the Panama Canal Zone, the District of Columbia, and any territory or possession of the United States;"

(h) Section 101 is amended by adding the following immediately after paragraph (34):

"(34A) 'securities clearing agency' means person registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance of the functions of a clearing agency with respect to 'exempted securities,' as defined in section 3 of said Act (15 U.S.C. 78c) for the purposes of said section 17A;"

Sec. 103. Section 102 of title 11 of the United States Code is amended—

(a) by striking out "and" at the end of paragraph (7);

(b) by striking out "continued" and inserting in lieu thereof "contained" in paragraph (8);

(c) by striking out the period at the end of paragraph (8) and inserting "; and" in lieu thereof; and

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

"(9) 'United States', when used in a geographical sense, includes the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the territories and possessions of the United States."

Sec. 104. (a) Section 103(c) of title 11 of the United States Code is amended—

(1) by striking out "stockholder" and inserting "stockbroker" in lieu thereof; and

(2) by striking out the period at the end thereof and inserting ", except with respect to section 753 which shall apply in any case under chapter 7, 11, or 13 of this title." in lieu thereof.

(b) Section 103(d) of title 11 of the United States Code is amended by striking out "748(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant" and inserting "787 which shall apply in any case under chapter 7, 11, or 13 of this title" in lieu thereof.

Sec. 105. Section 108(c) of title 11 of the United States Code is amended by—

(a) inserting after "bankruptcy court" the following: "or for taking other collection action, including levy,"

(b) Adding a new subsection (d) to read as follows:

"(d) If applicable law or an agreement suspends the period of limitation for assessing a tax liability of the debtor as of the commencement of a case under this title, such suspension shall not expire before 90 days following the earlier of—

"(1) termination or expiration of the stay under section 362 of this title, or

"(2) the date, determined under sections 362(b)(9) and 505(c) of this title, after which assessment of such tax liability is permitted."

(c) Adding a new subsection (e) to read as follows:

"(e) If applicable law fixes a period for filing a petition or otherwise commencing an action in the United States Tax Court, or in a similar judicial or administrative forum under State or local law, and if any such act is stayed under section 362 of this title, such period shall not expire before 60 days after termination or expiration of the stay with respect to any such petition or action."

Sec. 106. (a) Section 109(c)(5)(D) of title 11 of the United States Code is amended by striking out "preference" and inserting "transfer that is avoidable under section 547 of this title" in lieu thereof.

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

Sec. 107. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" immediately after "involuntary case".

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

Sec. 108. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting "the case" in lieu thereof.

Sec. 109. (a) Section 326(a) of title 11 of the United States Code is amended by inserting "of this title" immediately after "7 or 11".

(b) Section 326(d) of title 11 of the United

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amount to those already received by the other creditors. If the estate equals so much, before such other creditors are paid any further dividends.

Sec. 123. Section 503(b) of title 11 of the United States Code is amended—

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

(2) in paragraph (1)(B)(i) to read as follows:

"(i) incurred by the estate or required to be collected or withheld from others with respect to any payment by or to the estate, other than a tax liability referred to in section 501(e) of this title; or";

(3) in paragraph 503(b)(1)(C) to read as follows:

"(C) any fine, penalty, or reduction in credit, incurred by the estate;";

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

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

(6) in paragraph (4) by striking out "the time," and "and" immediately before "the value," and inserting "the time spent thereon," before "and the cost of comparable services";

(7) by adding a new paragraph (7) as follows:

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection incurred by a committee appointed under section 1102 of this title.;"

(8) by striking out "and" at the end of paragraph (5); and

(9) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof.

Sec. 124. (a) Section 505(a)(1) of title 11 of the United States Code is amended by striking "amount or legality of" and inserting "amount of or liability for" in lieu thereof.

(b) Section 505(a)(2)(A) of title 11 of the United States Code is amended by—

(1) Striking "amount or legality of" and inserting "amount of or liability for" in lieu thereof.

(2) Striking "legality" and inserting "liability" in lieu thereof.

(c) Section 505(a)(1) of title 11 of the United States Code is amended by striking "assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction," and inserting in lieu thereof "assessed or paid, and whether or not a proof of claim has been filed.;"

(d) Section 505(a) of title 11 of the United States Code is amended by adding a new paragraph (3) to read as follows:

"(3) Notwithstanding subparagraph (B) of this paragraph, the court may offset against a claim for, or request of payment of, a tax liability any counterclaim with respect to such tax liability for the same taxable period, event, act (or failure to act) to which the claim or request for payment relates, and may, where appropriate, order a net credit or refund to be made to the estate. The preceding sentence shall not apply if, at the commencement of the case under this title, the debtor had filed suit for refund relating to such taxable period, event, act (or failure to act), and if the stay on continuation of such suit is terminated under section 362 of this title.;"

(e) Section 505(c) of title 11 of the United States Code is amended to read as follows:

"(c) After allowance of a claim or administrative expense relating to a tax liability by the court in a case under this title, or a final determination of such tax liability by another court, the governmental unit charged with responsibility for collecting such tax may assess such tax, if not permitted to do so previously, against the

estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.;"

Sec. 125. (a) Section 506(a) of title 11 of the United States Code is amended by inserting "; except to the extent that such creditor does not have recourse, under any agreement or applicable law, against the debtor on account of such claim," immediately before "is an unsecured claim".

(b) Section 506(d) of title 11 of the United States Code is amended—

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

(2) by inserting in paragraph (2) "502(b)(6) or" immediately after "section", and striking out the period at the end of the paragraph and inserting "; or" in lieu thereof; and

(3) by adding a new paragraph (3) to read as follows:

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

Sec. 126. (a) Section 507(a)(3) of title 11 of the United States Code is amended by inserting a comma after "severance".

(b) Section 507(a)(4)(B)(ii) of title 11 of the United States Code is amended by striking out the comma.

(c) Section 507(a)(6)(A) of title 11 of the United States Code is amended by striking out clause (ii) thereof and inserting in lieu thereof the following:

"(ii) assessed within 240 days before the date of the filing of the petition;";

(d) Section 507(a)(6)(A)(iii) of title 11 of the United States Code is amended to read as follows:

"(iii) not assessed before commencement of the case but not prohibited, at the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge under section 523(a)(1)(B) or (C) of this title.;"

(e) Section 507(a)(6)(D) of title 11 of the United States Code is amended to read as follows:

"(D) an employment tax on a wage, salary, or commission—

"(i) of a kind specified in paragraph (3) of this subsection; or

"(ii) paid before the date of the filing of the petition for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;";

(f) Section 507(a)(6)(F) of title 11 of the United States Code is amended by deleting everything after "fraud," and inserting in lieu thereof "fraud.;"

(g) Section 507(a)(6) of title 11 of the United States Code is amended by deleting subparagraph (G) thereof.

(h) Section 507(b) of title 11 of the United States Code is amended—

(1) by striking out "If" and inserting "Notwithstanding section 726(b) of this title, if" in lieu thereof;

(2) by inserting "or the court finds that such interest is adequately protected by such lien" immediately after "debtor"; and

(3) by striking out "creditor" each place it appears and inserting "holder" in lieu thereof; and

(4) by striking out "subsection (a)(1) of this subsection shall" and inserting "section 503(b) of this title shall" in lieu thereof; and

(5) by striking out "subsection" where it last appears and inserting "this section" in lieu thereof.

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

(j) Section 507 of title 11 of the United

States Code is amended by adding a new subsection (e) to read as follows:

"(e) For purposes of subsection (a)(6) of this section—

"(1) a penalty that represents compensation for actual pecuniary loss of a governmental unit with respect to a tax liability shall be treated as a tax liability;

"(2) a child support obligation governed by section 6305 of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) shall not be treated as a tax liability; and

"(3) if an offer in compromise with respect to a tax liability is submitted during the 240-day period referred to in subsection (a)(6)(A)(ii) of this section, the balance of such period remaining at the date on which the offer is submitted shall be suspended until final resolution of the offer, but in any event such period shall not expire before 30 days after the offer is withdrawn by the debtor or finally rejected by the governmental unit.;"

Sec. 127. Section 509(c) of title 11 of the United States Code is amended by striking out "section 509 of this title" and inserting "this section" in lieu thereof.

Sec. 128. Section 510(b) of title 11 of the United States Code is amended—

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

(2) by striking out "and interests that are" and inserting "to all interests that are senior to the" immediately before "interest represented".

Sec. 129. (a) Section 522(b)(1) of title 11 of the United States Code is amended by striking out "does not so authorize" and inserting "prohibits application of such subsection (d)" in lieu thereof.

(b) Section 522(c) of title 11 of the United States Code is amended—

(1) by inserting a comma immediately after "arisen";

(2) in paragraph (1), to read as follows: "(1) a tax liability excepted from discharge under section 523(a)(1) or (7) of this title; or";

(3) in paragraph (2)—  
(A) by inserting "a debt secured by" immediately before "a lien";

(B) by redesignating subparagraph (A) as subparagraph (A)(i);

(C) by inserting "and" immediately after subparagraph (A)(i);

(D) by redesignating subparagraph (B) as clause (ii);

(E) by inserting a new paragraph (3) in subsection (c) as follows:

"(3) a debt of a kind specified in section 523(a)(5) of this title.;"

(F) by amending subsection (c)(2)(B) to read as follows:

"(B) a tax lien, notice of which is properly filed, notwithstanding that such lien is avoided under section 545(2) of this title.;"

(c) Section 522(f)(2)(A) of title 11 of the United States Code is amended by inserting "jewelry or" between "crops," and "musical instruments", and striking out ", or jewelry" following "musical instruments".

(d) Section 522(h)(1) of title 11 of the United States Code is amended by striking out "title" and inserting "title" in lieu thereof.

(e) Section 522(i)(2) of title 11 of the United States Code is amended by striking out "his" and inserting "this" in lieu thereof.

Sec. 130. (a) Section 523(a)(2) of title 11 of the United States Code is amended by striking out "refinance" and inserting "refinancing" in lieu thereof.

(b) Section 523(a)(5)(A) of title 11 of the United States Code is amended by inserting after "otherwise" the following: ", except as provided in section 656(b) of title 42 of the United States Code".



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The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 658

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

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

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

Sec. 102. (a) 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 a semicolon in lieu thereof.

(b) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d)" after "section", and by striking "502(h) or 502(i)" and inserting "or 502(h)" in lieu thereof.

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

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

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

(1) by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof; and

(2) by striking out "the kind specified in subparagraph" and inserting "a kind specified in subparagraph (A)(i) or" in lieu thereof.

(f) Section 101(35)(B)(vi) of title 11 of the United States Code is amended by striking out "specified in clause (xii) of subparagraph (A)" and inserting "of a kind specified in subparagraph (A)(xii)" in lieu thereof.

(g) Section 101 is amended by adding the following immediately after paragraph (37): "(37A) 'State' includes the Commonwealth of Puerto Rico, the Panama Canal Zone, the District of Columbia, and any territory or possession of the United States;".

(h) Section 101 is amended by adding the following immediately after paragraph (34): "(34A) 'securities clearing agency' means person registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance of the functions of a clearing agency with respect to 'exempted securities,' as defined in section 3 of said Act (15 U.S.C. 78c) for the purposes of said section 17A."

(i) Section 101(35)(A)(xii) is amended by striking out "is the subject of a registration statement" and inserting in lieu thereof "should be the subject of a registration statement".

(j) Section 101(35)(B)(vi) is amended by striking out "the subject of such a registration statement" and inserting in lieu thereof "required to be the subject of a registration statement".

Sec. 103. Section 102 of title 11 of the United States Code is amended—

(a) by striking out "and" at the end of paragraph (7);

(b) by striking out "continued" and inserting in lieu thereof "contained" in paragraph (8);

(c) by striking out the period at the end of paragraph (8) and inserting "; and" in lieu thereof; and

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

"(9) 'United States', when used in a geographical sense, includes the District of

Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the territories and possessions of the United States."

Sec. 104. (a) Section 103(c) of title 11 of the United States Code is amended—

(1) by striking out "stockholder" and inserting "stockbroker" in lieu thereof; and

(2) by striking out the period at the end thereof and inserting ", except with respect to section 753 which shall apply in any case under chapter 7, 11, or 13 of this title." in lieu thereof.

(b) Section 103(d) of title 11 of the United States Code is amended by striking out "746 (c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant" and inserting "767 which shall apply in any case under chapter 7, 11, or 13 of this title" in lieu thereof.

Sec. 105. Section 108(c) of title 11 of the United States Code is amended by—

(a) Inserting after "bankruptcy court" the following: "or for taking other collection action, including levy,".

(b) Adding a new subsection (d) to read as follows:

"(d) If applicable law or an agreement suspends the period of limitation for assessing a tax liability of the debtor as of the commencement of a case under this title, such suspension shall not expire before 90 days following the earlier of—

"(1) termination or expiration of the stay under section 362 of this title, or

"(2) the date, determined under sections 362(b)(9) and 505(c) of this title, after which assessment of such tax liability is permitted."

(c) Adding a new subsection (e) to read as follows:

"(e) If applicable law fixes a period for filing a petition or otherwise commencing an action in the United States Tax Court, or in a similar judicial or administrative forum under State or local law, and if any such act is stayed under section 362 of this title, such period shall not expire before 60 days after termination or expiration of the stay with respect to any such petition or action."

Sec. 106. (a) Section 109(c)(5)(D) of title 11 of the United States Code is amended by striking out "preference" and inserting "transfer that is avoidable under section 547 of this title" in lieu thereof.

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

Sec. 107. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" immediately after "involuntary case".

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

Sec. 108. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting "the case" in lieu thereof.

Sec. 109. (a) Section 326(a) of title 11 of the United States Code is amended by inserting "of this title" immediately after "7 or 11".

(b) Section 326(d) of title 11 of the United States Code is amended by striking out "and" and inserting "or" in lieu thereof.

Sec. 110. (a) Section 330(a) of title 11 of the United States Code is amended by striking out "and to the United States trustee".

(b) Section 330(a)(1) of title 11 of the United States Code is amended to read as follows:

"(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee.

professional person, or attorney, as the case may be, based on the nature, the extent, the value of such services to the debtor or estate, the time spent thereon, and the cost of comparable services other than in a case under this title; and".

(c) Section 330(b) of title 11 of the United States Code is amended by deleting "from the filing fee" and substituting "from appropriated funds" in lieu thereof.

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

"(c) When a trustee performs substantial service in a case in which there are no funds to pay an adequate commission, the Director shall pay the trustee a special service fee not to exceed \$80 from appropriated funds, if ordered by the bankruptcy judge. Such order shall be the exception and not the rule."

Sec. 111. (a) Section 341(a) of title 11 of the United States Code is amended by deleting "there shall be a meeting of creditors" and inserting "the court shall call a meeting of creditors" in lieu thereof.

(b) Section 341(c) of title 11 of the United States Code is amended by adding "except that the court shall preside at any election of the trustee" after "section".

Sec. 112. Section 345 of title 11 of the United States Code is amended by adding a new subsection (c) as follows:

"(c) All depositories are authorized to give such security as may be required by this section."

Sec. 113. (a) Section 346(c)(2) of title 11 of the United States Code is amended by striking out "operation" and inserting "corporation" in lieu thereof.

(b) Section 346(f) of title 11 of the United States Code is amended by deleting "State or local".

(c) Section 346(j)(7) of title 11 of the United States Code is amended by striking out "owed" and inserting "owed" in lieu thereof.

Sec. 113A. Section 347(a) of title 11 of the United States Code is amended by deleting the words "under chapter 129 of title 28" and inserting in lieu thereof "under chapter 11, subchapter IV, section 725 of title 31".

Sec. 114. Section 350(b) of title 11 of the United States Code is amended by striking out "a" and inserting "A" in lieu thereof.

Sec. 115. Section 361(1) of title 11 of the United States Code is amended by inserting "a cash payment or" immediately after "make".

Sec. 116. (a) Section 362(a)(1) of title 11 of the United States Code is amended by inserting "action or" immediately after "other".

(b) Section 362(a)(8) of title 11 of the United States Code is amended by striking "Court concerning the debtor" and inserting in lieu thereof "Court, or a similar administrative or judicial forum under State or local law, concerning the debtor".

(c) Section 362(b)(6) of title 11 of the United States Code is amended by inserting immediately before the semicolon the following: " or, under subsection (a) of this section, of the setoff of any claim of a commodity broker, forward commodity contract merchant, stockbroker, or securities clearing agency against the debtor for a margin payment, as defined in section 761(15) or section 741(4A) of this title, or settlement payment arising out of a commodity contract, as defined in section 761(4) of this title, forward commodity contract, or securities contract, as defined in section 741(5A) of this title, against cash, a security, or other property held by such commodity broker, forward commodity contract merchant, stockbroker, or securities clearing agency to margin, guarantee, or secure such commodity contract, forward commodity contract, or securities contract".

(d) Section 362(b)(7) of title 11 of the

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

(2) by inserting in paragraph (2) "502(b) (6) or" immediately after "section", and striking out the period at the end of the paragraph and inserting "; or" in lieu thereof; and

(3) by adding a new paragraph (3) to read as follows:

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

Sec. 128. (a) Section 507(a) (3) of title 11 of the United States Code is amended by inserting a comma after "severance".

(b) Section 507(a) (B) (ii) of title 11 of the United States Code is amended by striking out the comma.

(b) Section 507(a) (6) (A) of title 11 of the United States Code is amended by striking out clause (ii) thereof and inserting in lieu thereof the following:

"(ii) assessed within 240 days before the date of the filing of the petition;"

(d) Section 507(a) (6) (A) (iii) of title 11 of the United States Code is amended to read as follows:

"(iii) not assessed before commencement of the case but not prohibited, at the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge under section 523 (a) (1) (B) or (C) of this title;"

(e) Section 507(a) (6) (D) of title 11 of the United States Code is amended to read as follows:

"(D) an employment tax on a wage, salary, or commission—

"(1) of a kind specified in paragraph (3) of this subsection; or

(ii) paid before the date of the filing of the petition for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;"

(f) Section 507(a) (6) (F) of title 11 of the United States Code is amended by deleting everything after "fraud," and inserting in lieu thereof "fraud."

(g) Section 507(a) (6) of title 11 of the United States Code is amended by deleting subparagraph (G) thereof.

(h) Section 507(b) of title 11 of the United States Code is amended—

(1) by striking out "If" and inserting "Notwithstanding section 726(b) of this title, if" in lieu thereof;

(2) by inserting "or the court finds that such interest is adequately protected by such lien" immediately after "debtor"; and

(3) by striking out "creditor" each place it appears and inserting "holder" in lieu thereof; and

(4) by striking out "subsection (a) (1) of this subsection shall" and inserting "section 503(b) of this title shall" in lieu thereof; and

(5) by striking out "subsection" where it last appears and inserting "this section" in lieu thereof.

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

(j) Section 507 of title 11 of the United States Code is amended by adding a new subsection (e) to read as follows:

"(e) For purposes of subsection (a) (6) of this section—

"(1) a penalty that represents compensation for actual pecuniary loss of a governmental unit with respect to a tax liability shall be treated as a tax liability;

"(2) a child support obligation governed by section 6305 of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) shall not be treated as a tax liability; and

"(3) if an offer in compromise with respect to a tax liability is submitted during the 240-day period referred to in subsection

(a) (6) (A) (ii) of this section, the balance of such period remaining at the date on which the offer is submitted shall be suspended until final resolution of the offer, but in any event such period shall not expire before 30 days after the offer is withdrawn by the debtor or finally rejected by the governmental unit."

Sec. 127. Section 509(c) of title 11 of the United States Code is amended by striking out "section 509 of this title" and inserting "this section" in lieu thereof.

Sec. 128. Section 510(b) of title 11 of the United States Code is amended—

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

(2) by striking out "and interests that are senior to the" immediately before "interest represented".

Sec. 129. (a) Section 522(b) (1) of title 11 of the United States Code is amended by striking out "does not so authorize" and inserting "prohibits application of such subsection (d)" in lieu thereof.

(b) Section 522(c) of title 11 of the United States Code is amended—

(1) by inserting a comma immediately after "arisen";

(2) in paragraph (1), to read as follows: "(1) a tax liability excepted from discharge under section 523(a) (1) or (7) of this title; or";

(3) in paragraph (2)—

(A) by inserting "a debt secured by" immediately before "a lien";

(B) by redesignating subparagraph (A) as subparagraph (A) (1);

(C) by inserting "and" immediately after subparagraph (A) (1);

(D) by redesignating subparagraph (B) as clause (ii);

(E) by inserting a new paragraph (3) in subsection (c) as follows:

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

(F) by amending subsection (c) (2) (B) to read as follows:

"(B) a tax lien, notice of which is properly filed, notwithstanding that such lien is avoided under section 545(2) of this title."

(c) Section 522(f) (2) (A) of title 11 of the United States Code is amended by inserting "jewelry or" between "crops," and "musical instruments", and striking out ", or jewelry" following "musical instruments".

(d) Section 522(h) (1) of title 11 of the United States Code is amended by striking out "title" and inserting "title" in lieu thereof.

(e) Section 522(l) (2) of title 11 of the United States Code is amended by striking out "his" and inserting "this" in lieu thereof.

Sec. 130. (a) Section 523(a) (2) of title 11 of the United States Code is amended by striking out "refinance" and inserting "refinancing" in lieu thereof.

(b) Section 523(a) (5) (A) of title 11 of the United States Code is amended by inserting after "otherwise" the following: "except as provided in section 456(b) of the Social Security Act".

Sec. 131. (a) Section 524(a) of title 11 of the United States Code is amended—

(1) by striking out "any act" each place it appears, and inserting "an act" in lieu thereof; and

(2) in paragraph (2)—

(A) by inserting "except as to enforcement of a lien that is not voided by section 506(d) of this title and except as provided in section 522(c) of this title," immediately before "operates"; and

(B) by inserting a comma immediately after "recover".

(b) Section 524(d) of title 11 of the United States Code is amended—

(1) by inserting "and" immediately after paragraph (1) thereof; and

(2) in paragraph (2), by striking out "subsection" the second time it appears and inserting "section" in lieu thereof.

Sec. 132. Section 525 of title 11 of the United States Code is amended by inserting "the" immediately before "Perishable".

Sec. 133. (a) Section 541(a) (3) of title 11 of the United States Code is amended by inserting "363(n)," immediately after "section".

(b) Section 541(a) (5) of title 11 of the United States Code is amended by striking out "An" and inserting "Any" in lieu thereof.

(c) Section 541(c) (1) of title 11 of the United States Code is amended—

(1) by inserting "in an agreement or applicable law" immediately after "provision"; and

(2) in subparagraph (B)—

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

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

Sec. 134. Section 542(a) of title 11 of the United States Code is amended by striking out "value or benefit" and inserting "value and benefit" in lieu thereof.

Sec. 135. (a) Section 543(c) (3) of title 11 of the United States Code is amended by striking out "appointed or" and inserting "appointed and" in lieu thereof.

(b) Section 543 is amended by adding a new section (e) as follows:

"(e) For the purposes of a case under chapter 7 of this title, custodian shall not include an assignee under a general assignment 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; but, the trustee or the court may nevertheless, and at any time, require such an assignee to file an accounting as set forth in subsection (b) (2) hereinabove."

Sec. 135A. Section 544(a) of title 11 of the United States Code is amended by striking out "and" at the end thereof and inserting "or" in lieu thereof.

Sec. 135B. (a) Section 545(1) (A) of title 11 of the United States Code is amended by striking out "is" immediately after "debtor".

(b) Section 545(1) (C) of title 11 of the United States Code is amended by striking out "appointed" and inserting "appointed" in lieu thereof.

Sec. 136. (a) Section 546(a) of title 11 of the United States Code is amended by striking out "or 553" and inserting "553, or 724 (a)" in lieu thereof.

(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 "a trustee under sections 544, 545, and" in lieu thereof.

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

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

(2) in paragraph (2), by inserting "the" immediately after "if"; and

(3) by deleting "sections 544(a), 545, 547, and 549 or".

(d) Section 546 of title 11 of the United States Code is amended by inserting at the end thereof the following:

"(d) Notwithstanding sections 544, 545, 547, and 548 of this title, the trustees may not avoid a transfer that is a margin payment, as defined in section 761(15) or section 741 (4A) of this title, deposit, or settlement payment, made by or to a commodity broker, forward contract merchant, stockbroker, or securities clearing agency, and that occurs before the commencement of the case, except under section 548(a) (1) of this title."

Sec. 137. (a) Section 547(c) (5) of title 11 of the United States Code is amended by striking out "all security interest" and inserting "all security interests" in lieu thereof.

96TH CONGRESS  
1ST SESSION

# S. 658

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1979

Referred to the Committee on the Judiciary

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## AN ACT

To correct technical errors, clarify and make minor substantive changes to Public Law 95-598.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AMENDMENTS TO TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 **SEC. 101.** Section 101(2)(D) of title 11 of the United  
6 States Code is amended by striking out "or all" immediately  
7 after "business".

8 **SEC. 102. (a)** Section 101(8)(B) of title 11 of the United  
9 States Code is amended by striking out the colon at the end  
10 thereof and inserting a semicolon in lieu thereof.

1 not expire before 30 days after the offer is withdrawn  
2 by the debtor or finally rejected by the governmental  
3 unit.”.

4 SEC. 127. Section 509(c) of title 11 of the United States  
5 Code is amended by striking out “section 509 of this title”  
6 and inserting “this section” in lieu thereof.

7 SEC. 128. Section 510(b) of title 11 of the United States  
8 Code is amended—

9 (1) by striking out “recission” and inserting “re-  
10 scission” in lieu thereof; and

11 (2) by striking out “and interests that are” and  
12 inserting “to all interests that are senior to the” imme-  
13 diately before “interest represented”.

14 SEC. 129. (a) Section 522(b)(1) of title 11 of the United  
15 States Code is amended by striking out “does not so author-  
16 ize” and inserting “prohibits application of such subsection  
17 (d)” in lieu thereof.

18 (b) Section 522(c) of title 11 of the United States Code  
19 is amended—

20 (1) by inserting a comma immediately after  
21 “arisen”;

22 (2) in paragraph (1), to read as follows:

23 “(1) a tax liability excepted from discharge under  
24 section 523(a) (1) or (7) of this title; or”;

25 (3) in paragraph (2)—

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } { No. 96-1195

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AN ACT TO CORRECT TECHNICAL ERRORS, CLARIFY  
AND MAKE MINOR SUBSTANTIVE CHANGES TO PUB-  
LIC LAW 95-598

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JULY 25, 1980.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. RODINO, from the Committee on the Judiciary,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany S. 658]

The Committee on the Judiciary, to whom was referred the bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

INTRODUCTION

The Bankruptcy Reform Act of 1978 has now been in effect less than one year. It is clear even at this early time in the life of this law that technical amendments are required. Errors in printing, spelling, punctuation, grammar, syntax, and numeration arose in the bill as enacted because of the last-minute process of change through which the bill went when considered at the closing sessions of the 95th Congress.

These same last-minute changes also resulted in the enactment of a bill that contains incongruent provisions; material that was removed from earlier versions remained as either cross-references or antecedents for provisions changed or inserted. And, material added often was not completely integrated into the total fabric of the bill as enacted.

under [section 509 of this title] *this section*, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

**§ 510. Subordination**

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

**[(b) Any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be subordinated for purposes of distribution to all claims and interests that are senior or equal to the claim or interest represented by such security.]**

*(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 or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security.*

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

**SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS**

**§ 521. Debtor's duties**

The debtor shall—

(1) file a list of creditors[, and] *and*, unless the court orders other wise, a schedule of assets [and], liabilities, *and equity interests*, and a statement of the debtor's financial affairs;

(2) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(3) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate; and

(4) appear at the hearing required under section 524(d) of this title.

**§ 522. Exemptions**

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition, *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.*

July 28, 1980

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money market to buy Federal debt, the average maturity of Federal debt declined considerably, thus further complicating debt management and forcing greater reliance on the much more volatile short-term market. Several years ago, a Treasury study demonstrated that the annual interest cost on the public debt would have been substantially lower had Treasury been free to issue all maturities without any restraint.

The committee bill increases the authority to issue long-term bonds by \$4 billion through September 30, 1980. The \$54 billion level is sufficient additional authority for the Treasury to realize its current debt management objectives for the remainder of fiscal year 1980. For the period beginning with fiscal year 1981, the exception will be increased to \$70 billion, which is the amount the Treasury believes it will need to issue to meet its debt management and financing requirements through September 30, 1981.

This is a bill which provides important authority and flexibility in the debt management area. I recommend its approval by the House.

Mr. Speaker, I would like to read into the RECORD a letter from James G. Affleck, chairman and chief executive officer, American Cyanamid Co., national chairman of the 1981 U.S. Savings Bond Drive:

AMERICAN CYANAMID Co.,  
Wayne, N.J., July 9, 1980.

HON. AL ULLMAN,  
Chairman, Committee on Ways and Means,  
Washington, D.C.

DEAR MR. CHAIRMAN: It is my privilege to serve as National Chairman of the 1981 U.S. Savings Bond drive. In that role, I have a great interest in your bill, H.R. 7478, which would grant authority to Treasury to adjust U.S. savings bond interest rates.

It is vital that Treasury have this authority. Many important industrial leaders are unwilling to participate in the program because they feel it is morally wrong for them to press their employees to invest in bonds at such inferior rates of interest. In addition, most major employers offer company savings programs to their employees that provide much higher returns. In short, the Savings Bond program is in real jeopardy and will remain so, with redemption rates high and purchases low, until more competitive interest rates are offered.

I am pleased to note that your Committee has ordered H.R. 7478 reported. I urge that it be brought to the floor of the House for a vote as soon as possible and that you and your Committee colleagues give it your vigorous support in order to assure passage.

Sincerely yours,  
JAMES G. AFFLECK,  
Chairman and Chief Executive Officer.

Mr. Speaker, I reserve the balance of my time.

Mr. CONABLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there is comparatively little interest in this measure, but let no one mistake the fact that it is an important bill. Its presence on the suspension calendar does not mean that it is inconsiderable. I support the suspension of the rules for the

immediate passage of H.R. 7478, which is designated as a bill to facilitate the management of the public debt. There is some error in the title of the bill. It does not establish the raising of the interest rate to 8½ percent, but permits the Secretary of the Treasury, with approval of the President, to increase the interest rate on savings bonds, the rate increase in any 6-month period not to exceed the rate of 1 percentage point a year. Therefore, the maximum rate increase would be 2 percentage points in any one year. Currently, the Secretary may increase the interest rate up to a rate of 7 percent a year. We are at the ceiling now. Under H.R. 7478, no statutory ceiling would exist on U.S. savings bonds interest rates, although rate increases could occur only at 6-month intervals.

For the record, Mr. Speaker, there are roughly \$73 billion in savings bonds outstanding at the present time. That is less than 10 percent of the national debt. Of course, savings bonds are at an interest rate below that of other Government securities. It is somewhat embarrassing to have the level of savings bonds, for which, as the letter the chairman read indicates, a patriotic appeal is made to the employees of many companies, far below what the interest rate is for other comparable debt certificates. So it seems entirely appropriate to raise the ceiling at this point.

Since we considered this measure, of course, interest rates have been in something of a free fall, tumbling down. They may go up again. We do not know. There is no pressure on the Secretary to set the savings rate at a level to match the ceiling if it is not appropriate.

□ 1510

He should have that power, particularly with an interest rate jumping around as it is now and with redemptions far exceeding purchase of savings bonds, so the total number outstanding is likely to be declining. This is a timely measure.

The bill also increases the amount of long-term bonds exempt from the 4¼ interest limitation from \$50 billion to \$54 billion through September 30, 1980, and to \$70 billion beginning October 1, 1980.

Once again, with the interest rate going through gyrations, the economy in a very uncertain condition, it is entirely appropriate that we give to the Secretary of the Treasury the power to move to take advantage of long-term financing opportunities that can reduce the remarkable and very quick revolution of our national debt. It is absolutely ridiculous that we are financing so much of it on a short-term basis when there are opportunities through appropriate debt management to save the taxpayers of this country additional interest through judicious issuance of long-term bonds and not just the notes, which get you out from under the 4¼ percent interest limitation.

Increasing the portion of the long-term debt then will permit the Treasury to achieve the better balance of the ma-

turity of national debt. Lengthening the average maturity of the debt reduces relative portion which must be financed with shorter term maturity. It is the shorter term maturity instruments which can fluctuate widely and significantly increase the Government's interest cost.

The bill also requests the Secretary of the Treasury to prepare a report on the savings bond program and to make recommendations for improvements.

Quite frankly, we should stay up with conditions in the interest market and have a better understanding of the relationship of the savings bond program to the other debt programs, which now total in the aggregate to \$900 billion.

Mr. Speaker, H.R. 7478 will allow the Treasury to offer savings bonds at interest rates competitive with other investment alternatives. The surge in interest rates paid by other savings vehicles such as money market funds certificate of deposit accounts has resulted in situations where saving bond redemptions far exceed new purchase of savings bonds.

If I could give my colleagues the latest figure in recent months, the sale of new savings bonds have been \$2 billion below the amount of redeemed savings bonds.

Savings bonds are an important part of the savings program of the American people, and we should treat it with respect as we should treat the American people, the patriotic savers, those people who take deductions at their places of work, with greater respect as well.

H.R. 7478 will restore the attractiveness of the U.S. savings bonds program as investment for millions of Americans and I urge its passage.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7478, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to facilitate the management of the public debt by permitting an increase in the investment yield on U.S. savings bonds above the existing 7 per centum ceiling, and by increasing the amount of the bonds paying interest in excess of 4¼ per centum which may be outstanding."

A motion to reconsider was laid on the table.

CLARIFYING AND TECHNICAL AMENDMENTS TO BANKRUPTCY LAW

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and

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pass the Senate bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, as amended.

The Clerk read as follows:

S. 658

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

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

SECTION 1. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" immediately 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 a semicolon in lieu thereof.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d), 502(e)(2)," immediately after "section".

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

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

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

(1) in clause (i), by striking out "the kind specified in subparagraph (A)(i) of this paragraph; and" and inserting "a kind specified in subparagraph (A)(i) of this paragraph; or" in lieu thereof; and

(2) in clause (ii), by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof and by striking out "the kind specified in subparagraph (A)(ii)" and inserting "a kind specified in subparagraph (A)(i) or (A)(ii)" in lieu thereof.

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

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

(2) by adding immediately after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance of functions of a clearing agency with respect to 'exempted securities', as defined in section 3(12) of such Act (15 U.S.C. 78c(12)) for the purposes of such section 17A;"

(h) Section 101(36)(A)(xii) of title 11 of the United States Code, as so redesignated, is amended by striking out "is the subject of a registration statement" and inserting "is required to be the subject of a registration statement" in lieu thereof.

(i) Section 101(36)(B)(iii) of title 11 of the United States Code, as so redesignated, is amended by striking out "commodity" the second place it appears.

(j) Section 101(36)(B)(vi) of title 11 of the United States Code, as so redesignated, is amended—

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

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

(k) Section 101 of title 11 of the United States Code is amended by inserting immediately after paragraph (38), as so redesignated, the following new paragraph:

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

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

"(41) 'stockbroker' means person—

"(A) with respect to which there is a customer, as defined in section 741 of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;"

(m) Section 101(42) of title 11 of the United States Code, as so redesignated, is amended by striking out the period and inserting "; and" in lieu thereof.

(n) Section 101 of title 11 of the United States Code is amended by adding at the end thereof the following new paragraph:

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

SEC. 3. (a) Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting "stockbroker" in lieu thereof.

(b) Sections 103(d) of title 11 of the United States Code is amended by striking out "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant".

SEC. 4. (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 "or" in lieu thereof.

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

SEC. 5. (a) Section 109(a) 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 is amended by striking out "preference" and inserting "transfer that is avoidable under section 547 of this title" in lieu thereof.

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

SEC. 6. Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" immediately after "case".

SEC. 7. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting "debtor" in lieu thereof.

SEC. 8. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting "the case" in lieu thereof.

SEC. 9. Section 322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" immediately after "bond".

SEC. 10. (a) Section 326(a) of title 11 of the United States Code is amended by inserting "of this title" immediately after "7 or 11".

(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."

SEC. 11. Section 327 of title 11 of the United States Code is amended by inserting "or examiner" immediately after "trustee" the first place it appears.

SEC. 12. Section 328(a) of title 11 of the United States Code is amended by striking out "unanticipatable and inserting "not capable of being anticipated" in lieu thereof.

SEC. 13. (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 "or" in lieu thereof.

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

SEC. 14. 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 "nature, the extent, the value of such services, the time spent thereon," in lieu thereof.

SEC. 15. Section 341 of title 11 of the United States Code is amended to read as follows:

"§ 341. Notice

"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. 16. (a) Section 342 of title 11 of the United States Code is amended to read as follows:

"§ 342. Meetings of creditors and equity security holders

"(a) In a case under chapter 7 or 11 of this title, within a reasonable time after the order for relief in a case under this title, there shall be a meeting of creditors.

"(b) In a case under chapter 13 of this title, the court may order a meeting of creditors.

"(c) The court may order a meeting of any equity security holders.

"(d) The court may not preside at, and may not attend, any meeting under this section."

(b) The table of sections for chapter 3 of title 11 of the United States Code is amended by striking out the items relating to sections 341 and 342 and inserting in lieu thereof the following:

"341. Notice.

"342. Meetings of creditors and equity security holders."

SEC. 17. Section 343 of title 11 of the United States Code is amended—

(1) by striking out "341(a)" and inserting "342" in lieu thereof; and

(2) by striking out "examiner" the last place it appears and inserting "examine" in lieu thereof.

SEC. 18. Section 345 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

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

SEC. 19. (a) Section 346(c)(2) of title 11 of the United States Code is amended by striking out "operation" and inserting "corporation" in lieu thereof.

(b) Section 346(g)(2) of title 11 of the United States Code is amended by striking



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commencing with the rental year during which such termination occurs; plus

"(B) any unpaid rent due under such lease, without acceleration, on the earlier of—

"(1) the date of the filing of the petition; or

"(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property;" and

(9) in paragraph (7), as so redesignated, by inserting "the claim of an employee" immediately before "for damages", by striking out "and" in subparagraph (A)(1) and inserting "or" in lieu thereof, by striking out "the" the first place it appears in subparagraph (B) and inserting "any" in lieu thereof, and by inserting a comma immediately 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 inserting "the" before "fixing" and by striking out "closing" and inserting "administration" in lieu thereof; and

(2) in paragraph (2), by inserting "right to payment arising from a" immediately after "any" and by striking out "if such breach gives rise to a right to payment".

(d) Section 502(d) of title 11 of the United States Code is amended by striking out "section 542, 543, 550, or 553 of", by striking out "section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of", and by striking out "section 522(i), 542, 543, 550, or 553 of".

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

(1) by striking out "and (b)" and inserting ", (b), and (c)" in lieu thereof and by striking out the commas immediately before and immediately after "or has secured";

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

(3) in subparagraph (C), by striking out "requests subrogation" and inserting "asserts a right of subrogation to the rights of such creditor" in lieu thereof, and by striking out "to the rights of such creditor".

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

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

"(i) There shall be allowed a claim for any tax liability arising from payment from the estate of a claim for wages, salaries, or commissions, including vacation, severance, or sick pay, whether or not a proof of such claim is filed."

(h) 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. 31. Section 503(b) of title 11 of the United States Code is amended—

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

(2) in paragraph (1)(C) by striking out the comma immediately after "credit", and by inserting "incurred by the estate" immediately after "paragraph";

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

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

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

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

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

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

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title."

Sec. 32. Section 505(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out ", whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction" and inserting "or paid" in lieu thereof;

(2) in paragraph (2)(A), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "or legality" and inserting ", legality, or liability" in lieu thereof; and

(3) in paragraph (2)(B)(1), by striking out "and" and inserting "or" in lieu thereof.

Sec. 33. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor either secured by a lien on property in which the estate has an interest or that is subject to setoff under section 553 of this title is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim. For the purpose of this subsection, value shall be determined in light of the purpose of the valuation and of any disposition proposed for such property and in conjunction with any hearing on disposition or use or on a plan affecting such creditor's interest."

(b) Section 506(b) of title 11 of the United States Code is amended by inserting "for" immediately after "provided" and by inserting "if such provision is enforceable under applicable nonbankruptcy law" immediately before the period at the end thereof.

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

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

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

Sec. 34. (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 "an employee benefit plan" in lieu thereof;

(3) in paragraph (4)(B)(1), by inserting "each" immediately after "covered by";

(4) in paragraph (5), by inserting "only" immediately after "units";

(5) in paragraph (6)(A), by amending clauses (i) and (ii) to read as follows:

"(i) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before the commencement of the case but not prohibited, at the time of the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge solely under section 523(a)(1)(B) or 523(a)(1)(C) of this title;" and

(6) in paragraph (6)(D), by striking out "earned from the debtor" and inserting ", or paid" in lieu thereof and by striking out "whether or not actually paid before such date,".

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate or if the court finds that there is adequate protection of such interest by a lien on such property and, notwithstanding such protection, the holder has a claim allowable under section 503(b)(1) of this title arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, and such holder's allowable claims shall have priority over every other claim of a kind specified in subsection (a)(1) of this section."

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

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder."

Sec. 35. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsections (b) and" and inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately after "a creditor".

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

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

Sec. 36. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 37. Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;"

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unforeseen inflation, the plan will be inequitable to members who retire in the future—particularly to enlisted members. The costs involved in this legislation—\$36 million in fiscal year 1981—are over and above the costs under the current system. But they are not over and above the original intent. These costs represent the cost of returning the plan to an equitable status; not improving the benefit level beyond that originally envisioned.

In summary, the bill, though not as broad in scope as many of us might wish, is a significant improvement.

Finally, Mr. Speaker, I would like to make just one observation. I know that my friend and colleague Bob WILSON has worked long and hard in this general subject area. His insight, initiative and leadership in this area will be sorely missed. I know all my colleagues will agree that when Bob Wilson departs the Congress he will leave behind the survivor benefit plan for military retirees as one of many important monuments to his long and extraordinarily distinguished service to his district, to his Nation, and to its service members.

Mr. Speaker, I urge all Members to support S. 91.

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Mr. BENNETT. Mr. Speaker, on behalf of the whole Committee on Armed Services, we join in the fine words just said about our illustrious colleague from California (Mr. WILSON). Indeed, he has performed excellently in this U.S. Congress.

Mr. Speaker, I yield such time as she may desire to the gentlewoman from Maryland (Mrs. BYRON).

Mrs. BYRON. Mr. Speaker, I rise in strong support of S. 91.

The legislation makes needed changes to the survivor benefit plan for military retirees. It reestablishes the status originally intended by the Congress. This intent included a significant amount of cost sharing by the Government. Today, some Members are contributing several times what the plan is worth. This was not the original intent.

I might point out that the House has passed similar legislation in the 94th and 95th Congresses. In fact, in the 95th Congress, the House passed H.R. 3702 by a vote of 391 to 0; although not identical to S. 91, the provisions of that bill would have enacted similar changes.

Mr. Speaker, I urge all Members to support this bill.

Mr. HARRIS. Mr. Speaker, I rise in strong support of S. 91, the survivor benefit plan amendments.

While I am aware that this version of the bill does not accomplish all the goals set for reform of SBP, S. 91 represents significant progress toward more fully meeting the needs of our servicemen and women who choose SBP as a means of providing for their families.

And it represents a victory for the National Association of Uniformed Services and the Retired Officer's Association, whose consistent and effective advocacy on behalf of America's military personnel was instrumental in gaining this much needed reform.

The complete elimination of the social security offset remains a priority for fu-

ture SBP reform legislation. But the provision of S. 91 limiting the offset to 40 percent of the survivor benefit annuity is a welcome improvement.

Other major provisions of S. 91: Reduce the social security offset for a widow with one child to not more than 40 percent of the SBP annuity;

Provide eligibility for SBP annuities to the so-called forgotten widows whose husbands died on active duty prior to 1972 and were retirement eligible;

Eliminate the social security offset for reservists whose active service after 1956 was for periods of less than 30 days;

Allow a waiver of SBP payments for certain 100 percent service connected disabled retirees.

In two previous Congresses, I voted for more comprehensive SBP reform. Both times the House passed substantial improvements in the survivor benefit program, but both times the House-passed legislation died in the other body.

This year, survivor benefit amendments were dislodged from the other body and the House can act quick to institute these reforms.

Much remains to be done in this field and in other areas of interest to retired service personnel. Specifically, I am hopeful that similar progress can be achieved in eliminating the "Catch-62" provision of Federal law which results in the reduction of civil service retirement annuities at age 62 for individuals with active duty military service after 1956.

I am a cosponsor of H.R. 135 which would eliminate Catch-62, and I hope hearings on this important legislation can be scheduled for early next year.

I strongly support S. 91 as an important first step, and I look forward to the continued efforts of the National Association of Uniformed Services and the Retired Officers Association in bringing about elimination of Catch-62, and further improvements in the survivor benefit plan.

Mr. MITCHELL of New York. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BENNETT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BENNETT) that the House suspend the rules and pass the Senate bill, S. 91, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed, as well as H.R. 7878.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CORRECTING TECHNICAL ERRORS AND MAKING MINOR SUBSTANTIVE CHANGES TO PUBLIC LAW 95-598

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 658), to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, as amended.

The Clerk read as follows:

S. 658

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

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

SECTION 1. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" immediately 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 a semicolon in lieu thereof.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d), 502(e)(2)," immediately after "section".

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

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

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

(1) in clause (i), by striking out "the kind specified in subparagraph (A)(i) of this paragraph; and" and inserting "a kind specified in subparagraph (A)(i) of this paragraph; or" in lieu thereof; and

(2) in clause (ii) by striking out "sep rate" each place it appears and insert "nonpartnership" in lieu thereof and striking out "the kind specified in subparagraph (A)(ii)" and inserting "a kind specified in subparagraph (A)(i) or (A)(ii) in lieu thereof.

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

(1) by redesignating paragraphs (3)(36), (37), (38), (39), and (40) as paragraphs (36), (37), (38), (40), (41), and (42) respectively; and

(2) by adding immediately after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person that is registered as a clearing agent under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance functions of a clearing agency with respect to 'exempted securities', as defined in section 3(12) of such Act (15 U.S.C. 78c(12)) for purposes of such section 17A."

(h) Section 101(36)(A)(xii) of title 11 of the United States Code, as so redesignated, is amended by striking out "is the subject of a registration statement" and inserting "is required to be the subject of a registration statement" in lieu thereof.

(i) Section 101(36)(B)(iii) of title 11 of the United States Code, as so redesignated, is amended by striking out "commodity" the second place it appears.

(j) Section 101(36)(B)(vi) of title 11 of the United States Code, as so redesignated, is amended—

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

(2) by striking out "the subject of such a registration statement" and inserting "re-

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

(2) in paragraph (1)(C), by striking out the comma immediately after "credit", and by inserting "incurred by the estate" immediately after "paragraph";

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

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

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

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

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

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

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title."

Sec. 32. Section 505(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out ", whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction" and inserting "or paid" in lieu thereof;

(2) in paragraph (2)(A), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "or legality" and inserting ", legality, or liability" in lieu thereof; and

(3) in paragraph (2)(B)(i), by striking out "and" and inserting "or" in lieu thereof.

Sec. 33. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor either secured by a lien on property in which the estate has an interest or that is subject to setoff under section 553 of this title is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim. For the purpose of this subsection, value shall be determined in light of the purpose of the valuation, and of any disposition proposed for such property and in conjunction with any hearing on disposition or use or on a plan affecting such creditor's interest."

(b) Section 506(b) of title 11 of the United States Code is amended by inserting "for" immediately after "provided" and by inserting "to such extent such provision is enforceable under applicable nonbankruptcy law" immediately before the period at the end thereof.

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

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

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

Sec. 34. (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 "an employee benefit plan" in lieu thereof;

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

(4) in paragraph (6), by inserting "only" immediately after "units";

(5) in paragraph (6)(A), by amending clauses (ii) and (iii) to read as follows:

(ii) assessed within 240 days before the date of the filing of the petition; or

(iii) not assessed before the commencement of the case but not prohibited, at the time of the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge solely under section 523(a)(1)(B) or 523(a)(1)(C) of this title;"; and

(6) in paragraph (6)(D), by striking out "earned from the debtor" and inserting ", or paid" in lieu thereof and by striking out "whether or not actually paid before such date,".

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate or if the court finds that there is adequate protection of such interest by a lien on such property and if, notwithstanding such protection, the holder of such interest has a claim allowable under section 503(b)(1) of this title arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such holder's allowable claim shall have priority over every other claim of a kind specified in subsection (a)(1) of this section."

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

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder."

Sec. 35. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsections (b) and" and inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately 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 "of such" in lieu thereof.

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

Sec. 36. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 37. Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;"

Sec. 38. (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" immediately after "petition".

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

"(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—

"(1) property wherever located of a kind specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2) of this subsection specifically does not so authorize; or

"(2) any property or interest of the debtor in property, as of the date of the filing of the petition, to the extent that such property or interest is exempt or not subject to process or levy under Federal law, other than subsection (d) of this section, or is exempt or not subject to levy by a creditor, of only the debtor, on a simple contract whether or not such a creditor exists, under State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place."

(c) 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), 523(a)(5), or 523(a)(6) of this title; or

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

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

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title."

(d) Section 522(d)(3) of title 11 of the United States Code is amended by striking out "that are"

(e) Section 522(e) of title 11 of the United States Code is amended—

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof;

(2) by striking out "with respect to such claim against property that" and inserting "to the extent of such claim with respect to property" in lieu thereof;

(3) by striking out "or (h) of this section to avoid a transfer, under subsection (g)" and by inserting ", (g), (h)," in lieu thereof; and

(4) by striking out "to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer,".

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

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof; and

(2) in paragraph (2)(A), by inserting "jewelry, or" immediately after "crops," and striking out ", or jewelry that are" after "musical instruments".

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

"(g) Notwithstanding any waiver of an exemption, the debtor may avoid a transfer or recover a setoff of property of the debtor and exempt such property under subsection (i) of this section, whether or not the trustee attempts to recover such property or avoid such transfer, if—

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in turn is contributing to extraordinary fire damage. I am afraid that when the next fire cycle occurs in the next 4 or 5 years, we will run a risk of losing the major portions of that area.

In the Pecos Wilderness, another beautiful area of north-central New Mexico, we have dead-fall that is contributing to disease; and because of overrestrictive regulations, we cannot go in and cut the dead-fall out for firewood. In the traditional wood gathering activities of many New Mexicans, we have seen restriction to the point, in terms of use of modern equipment, that it becomes almost an impossible task to conduct these traditional activities.

On the other hand, we are seeing poachers from surrounding States coming in and taking out large amounts of firewood because the Forest Service does not have the personnel to supervise that particular activity and make sure that it is done legally.

All these problems are coming to the fore because we have designated wilderness, and we are beginning to see what compromises are going to be required.

Fortunately, many of the groups which are strongly advocating the designation of wilderness areas also are beginning to realize that it is going to take good, commonsense management, some of which can be economical in terms of its return to local communities in order to protect the wilderness itself.

The Senator makes an excellent point, and I hope the next Congress will be able to deal with this matter in a very systematic and commonsense way.

Mr. DOMENICI. And some of this commonsense management will require a great deal of oversight and perhaps some changes in the law.

Mr. SCHMITT. Although the law probably contains the essential elements of multiple-use management in protection of the wilderness as well as protection of local economies, the interpretations of that law have built up a body of regulatory and judicial law that may make it necessary to go in and clarify exactly what Congress meant in those provisions. That is something we must work on. There is no question in my mind about that.

Mr. DOMENICI. I thank the Senator. The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 8298) was ordered to a third reading, was read the third time, and passed.

#### BANKRUPTCY ACT AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. DeCONCINI, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 658.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598.

(The amendment of the House is printed in the Record of September 22, 1980 beginning at page 26485.)

UP AMENDMENT NO. 1811

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the amendment of the House with a further amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an unprinted amendment numbered 1811.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert:

#### TITLE I—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

SECTION 1. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" immediately 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 a semicolon in lieu thereof.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d), 502(e)(2)." immediately after "section".

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

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

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

(1) in clause (i), by striking out "the kind specified in subparagraph (A)(1) of this paragraph; and" and inserting "a kind specified in subparagraph (A)(1) of this paragraph; or" in lieu thereof; and

(2) in clause (ii), by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof and by striking out "the kind specified in subparagraph (A)(ii) and inserting "a kind specified in subparagraph (A)(i) or (A)(ii)" in lieu thereof.

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

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

(2) by adding immediately after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1), or whose business is confined to the performance of functions of a clearing agency with respect to 'exempted securities' as defined in section 3(12) of such Act (15 U.S.C. 78c(12)) for the purposes of such section 17A;"

(h) Section 101(36)(A)(xii) of title 11 of the United States Code, as so redesignated, is amended by striking out "is the subject of a registration statement" and inserting "is required to be the subject of a registration statement" in lieu thereof.

(i) Section 101(36)(B)(iii) of title 11 of the United States Code, as so redesignated,

is amended by striking out "commodity" the second place it appears.

(j) Section 101(36)(B)(vi) of title 11 of the United States Code, as so redesignated, is amended—

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

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

(k) Section 101 of title 11 of the United States Code is amended by inserting immediately after paragraph (38), as so redesignated, the following new paragraph:

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

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

"(41) 'stockbroker' means person—

"(A) with respect to which there is a customer, as defined in section 741 of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(1) for the account of others; or

"(2) with members of the general public, from or for such person's own account;"

(m) Section 101(42) of title 11 of the United States Code, as so redesignated, is amended by striking out the period and inserting "; and" in lieu thereof.

(n) Section 101 of title 11 of the United States Code is amended by adding at the end thereof the following new paragraph:

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

Sec. 3. (a) Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting "stockbroker" in lieu thereof.

(b) Section 103(d) of title 11 of the United States Code is amended by striking out "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant".

Sec. 4. (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 "or" in lieu thereof.

(b) Subsections (a), (b), and (c) of section 108 of title 11 of the United States Code are each amended by inserting "non-bankruptcy" immediately after "applicable" and immediately after "entered in a".

(c) Section 108(a) of title 11 of the United States Code is amended by inserting ", or any person to whose rights the trustee succeeds," immediately after "debtor".

(d) Section 108(c) of title 11 of the United States Code is amended by—

(a) Inserting after "bankruptcy court" the following: "Or for taking other collection action, including levy."

(b) Adding a new subsection (d) to read as follows:

"(d) If applicable law or an agreement suspends the period of limitation for assessing a tax liability of the debtor as of the commencement of a case under this title, such suspension shall not expire before 90 days following the earlier of—

"(1) termination or expiration of the stay under section 362 of this title, or

"(2) the date, determined under sections

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

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

(2) in paragraph (1)(B)(i), by inserting "or required to be collected or withheld from another with respect to any payment made by or to the estate" immediately after "estate";

(3) in paragraph (1)(C), by striking out the comma immediately after "credit", and by inserting "incurred by the estate" immediately after "paragraph";

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

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

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

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

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

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

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title."

Sec. 32. Section 505(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal or competent jurisdiction" and inserting "or paid" in lieu thereof;

(2) in paragraph (2)(A), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "or legality" and inserting "legality, or liability" in lieu thereof; and

(3) in paragraph (2)(B)(i), by striking out "and" and inserting "or" in lieu thereof.

(4) by adding a new paragraph (3) to read as follows:

"(3) Notwithstanding subparagraph (B) of this paragraph, the court may offset against a claim for, or request for payment of, a tax liability any counterclaim with respect to such tax liability for the same taxable period, event, act (or failure to act) to which the claim or request for payment relates, and may, where appropriate, order a net credit or refund to be made to the estate. The preceding sentence shall not apply if, at the commencement of the case under this title, the debtor had filed suit for refund relating to such taxable period, event, act (or failure to act), and if the stay on continuation of such suit is terminated under section 362 of this title."

Sec. 33. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor either secured by a lien on property in which the estate has an interest or that is subject to setoff under section 553 of this title is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim. For the purpose of this subsection, value shall be determined in light of the purpose of the valuation and of any disposition proposed for such property and in conjunction with any hearing on disposition or use or on a plan affecting such creditor's interest."

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

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

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

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

Sec. 34. (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 "an employee benefit plan" in lieu thereof;

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

(4) in paragraph (6), by inserting "only" immediately after "units";

(5) in paragraph (6)(A), by amending clauses (ii) and (iii) to read as follows:

"(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before the commencement of the case but not prohibited, at the time of the commencement of the case, from being assessed under the applicable statute of limitations, other than a tax or customs duty of a kind excepted from discharge solely under section 523(a)(1)(B) or 523(a)(1)(C) of this title;"; and

(6) in paragraph (6)(D), by striking out "earned from the debtor" and inserting "or paid" in lieu thereof and by striking out "whether or not actually paid before such date."

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate or if the court finds that there is adequate protection of such interest by a lien on such property and if, notwithstanding such protection, the holder of such interest has a claim allowable under section 503(b)(1) of this title arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such holder's allowable claim shall have priority over every other claim of a kind specified in subsection (a)(1) of this section."

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

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in sub-

section (a)(3), (a)(4), (a)(5), or (a)(6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder."

Sec. 35. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsections (b) and" and inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately 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 "of such" in lieu thereof.

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

Sec. 36. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purposes 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 or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 37. (a) Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;";

(b) Section 521(3) of title 11 of the United States Code is amended by inserting "whether or not immunity is granted under 344 of this title" immediately after "estate" the second place it appears.

Sec. 38. (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" immediately after "petition".

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

"(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—

"(1) property wherever located of a kind specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2) of this subsection specifically does not so authorize; or

"(2) any property or interest of the debtor in property, as of the date of the filing of the petition, to the extent that such property or interest is exempt or not subject to process or levy under Federal law, other than subsection (d) of this section, or is exempt or not subject to levy by a creditor, of only the debtor, on a simple contract whether or not such a creditor exists, under State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place."

(c) 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—



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CONGRESSIONAL RECORD—HOUSE

December 3, 1980

Lloyd Long, La. Long, Md. Lowry Luken Lundine McCormack McHugh McKay Maguire Markey Matsui Mazzoli Mica Mikulski Miller, Calif. Mineta Minish Mookley Moffett Mollohan Montgomery Mottl Murphy, Ill. Murphy, Pa. Murtha Musto Natcher Nelson Nichols Nowak Oskar Oberstar Obey

NAYS—140

Abdnor Andrews, N.Dak. Archer Ashbrook Badham Bafalis Bauman Beard, Tenn. Beruter Bethune BrComfield Brown, Ohio Broyhill Buchanan Burgener Butler Campbell Carney Carr Carter Cheney Clausen Cleveland Clinger Coleman Collins, Tex. Conable Corcoran Coughlin Courter Crane, Daniel Daniel, R. W. Dannemeyer Davis, Mich. Derwinski Devine Dornan Dougherty Duncan, Tenn. Edwards, Ala. Edwards, Okla. Emery Erdahl Erlenborn Evans, Del. Find'ey Forsythe Frenzel Gilman Gingrich Goldwater Goodling Gradison Grassley Green Grisham Guyer Hagedorn Hammer-schmidt Hansen Harsha Hinson Holt Hopkins Hughes Hyde Jeffords Jeffries Kemp Kindness Kramer Lagomarsino Leach, Iowa Lee Lent Levitas Livingston Loeffler Lott Lujan Lungren McClory McDade McDonald McEwen Madigan Marks Mralenee Marriott Martin Michel Miller, Ohio Mitchell, N.Y. Moore Moorhead, Calif. Myers, Ind. Pashayan Paul Petri Porter Pritchard Quayle Quillen Rallsback Regula Rinaldo Ritter Robinson Roth Rouselet Royer Rudd Satterfield Sawyer Schulze Sebelius Sensenbrenner Shumway Shuster Smith, Nebr. Snowe Snyder Solomon Spence Stangeland Stanton Stockman Symms Tauke Taylor Thomas Triple Vander Jagt Walker Whitehurst Whitaker Williams, Ohio Winn Wylie Young, Fla.

NOT VOTING—65

Applegate Ashley Baldus Beard, R.I. Bonior Bowen Burton, Phillip Cavanaugh Collins, Ill. Corman Crane, Phillip Davis, S.C. Deckard Dickinson English Evans, Ga. Fenwick Fish Ford, Mich. Frost Garcia Gramm Guarini Hance Hanley Harkin Hillis Hollenbeck Horton Ichord Jenrette Johnson, Colo. Kelly Leath, Tex. Lewis McCloskey McKinney Mathis Mattox Mavroules Mitchell, Md. Moorhead, Pa. Murphy, N.Y. Neal Nedzi Nolan O'Brien Pursell Rhodine Rodino Santini Schroeder Shannon Spellman

Thompson Travler Wampler Williams, Mont. Wilson, Bob Wilson, C. H. Wolf Wyatt Wydler Young, Alaska Young, Mo.

□ 1410

The Clerk announced the following pairs:

On this vote: Mr. Thompson for, with Mr. Wampler against. Mr. Rodino for, with Mr. Philip M. Crane against. Mr. Shannon for, with Mr. Deckard against. Mr. Guarini for, with Mr. Dickinson against. Mr. Ford of Michigan for, with Mrs. Fenwick against. Mr. Garcia for, with Mr. Fish against. Mr. Corman for, with Mr. Hollenbeck against. Mr. Bonior of Michigan for, with Mr. Horton against. Mr. Hanley for, with Mr. Kelly against. Mr. Mavroules for, with Mr. Lewis against. Mr. Mitchell of Maryland for, with Mr. McCloskey against. Mr. Murphy of New York for, with Mr. McKinney against. Mr. Moorhead of Pennsylvania for, with Mr. O'Brien against. Mr. Wolf for, with Mr. Pursell against. Mrs. Collins of Illinois for, with Mr. Wydler against.

Until further notice:

Mr. Nolan with Mr. Cavanaugh. Mr. Nedzi with Mr. Evans of Georgia. Mr. Ashley with Mr. Gramm. Mr. Beard of Rhode Island with Mr. Hillis. Mr. Applegate with Mr. Johnson of Colorado. Mr. Charles H. Wilson of California with Mr. Leath of Texas. Mr. Young of Missouri with Mr. Bob Wilson. Mr. Bowen with Mr. Wyatt. Mr. Baldus with Mr. Young of Alaska. Mr. Davis of South Carolina with Mr. English. Mr. Frost with Mr. Hance. Mr. Harkin with Mr. Jenrette. Mr. Ichord with Mr. Mattox. Mr. Mathis with Mr. Neal. Mr. Santini with Mr. Williams of Montana. Mrs. Schroeder with Mr. Traxler.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to House Resolution 821, the Chair announces that in not less than 1 hour the Chair will recognize the gentleman from New Jersey (Mr. FLORIO) to move to suspend the rules and dispose of Senate amendments to H.R. 7020.

PARLIAMENTARY INQUIRY

Mr. FRENZEL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. FRENZEL. Mr. Speaker, as I understand the resolution just passed, the gentleman from New Jersey (Mr. FLORIO) will not be recognized until 3:20 p.m.; is that correct?

The SPEAKER. At least 3:20 p.m.

Mr. FRENZEL. I thank the Chair.

UNIFYING RULES FOR PREVENTING COLLISIONS ON INLAND WATERS OF THE UNITED STATES

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill, H.R. 6671, to unify the rules for preventing collisions on the inland waters of the United States, with Senate amendments thereto, and further insist on disagreement with Senate amendment No. 70.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

MAKING TECHNICAL AND CLARIFYING AMENDMENTS TO PUBLIC LAW 95-598, UNIFORM LAW ON BANKRUPTCIES

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 658) to correct technical errors, clarify and make minor substantive changes to Public Law 95-598, with the Senate amendment to the House amendment, and concur in the Senate amendment with an amendment thereto.

The Clerk read the title of the Senate bill.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment to the House amendment to the bill (S. 658), insert the following:

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

SECTION 1. (a) Section 101(2)(D) of title 11 of the United States Code is amended by striking out "or all" immediately 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 a semicolon in lieu thereof.

(c) Section 101(9)(B) of title 11 of the United States Code is amended by inserting "348(d), 502(e)(2)," immediately after "section".

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

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

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

(1) in clause (i), by striking out "the kind specified in subparagraph (A)(1) of this paragraph; and" and inserting "a kind specified in subparagraph (A)(1) of this paragraph; and" in lieu thereof; and

(2) in clause (ii), by striking out "separate" each place it appears and inserting "nonpartnership" in lieu thereof and by striking out "the kind specified in subparagraph (A)(ii)" and inserting "a kind specified in subparagraph (A)(i) or (A)(ii)" in lieu thereof.

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

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

(2) by adding immediately after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person that is registered as a clearing agency under section 17A of the Securities Exchange

"(d) If a claim of a kind specified in subsection (a) (3), (a) (4), (a) (5), or (a) (6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder."

Sec. 34. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsection (b) and" inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately 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 "of such" in lieu thereof.

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

Sec. 35. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 36. (a) Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;"

(b) Section 521(3) of title 11 of the United States Code is amended by inserting "whether or not immunity is granted under section 344 of this title" immediately after "estate" the second place it appears.

Sec. 37. (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" immediately after "petition".

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

"(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either—

"(1) property wherever located of a kind specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2) of this subsection specifically does not so authorize; or

"(2) any property or interest of the debtor in property, as of the date of the filing of the petition, to the extent that such property or interest is exempt or not subject to process or levy under Federal law, other than subsection (d) of this section, or is exempt or not subject to levy by a creditor, of only the debtor, on a simple contract whether or not such a creditor exists, under State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place."

(c) 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), 523(a) (5), or 523(a) (6) of this title; or

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

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

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(a) of this title."

(d) Section 522(d) (3) of title 11 of the United States Code is amended by striking out "that are".

(e) Section 522(e) of title 11 of the United States Code is amended—

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof;

(2) by striking out "with respect to such claim against property that" and inserting "to the extent of such claim with respect to property" in lieu thereof;

(3) by striking out "or (h) of this section to avoid a transfer, under subsection (g)" and by inserting " (g), (h)," in lieu thereof; and

(4) by striking out "to exempt property, or under subsection (1) of this section to recover property or to preserve a transfer,".

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

(1) by striking out "exemptions" and inserting "an exemption" in lieu thereof; and

(2) in paragraph (2) (A), by inserting "jewelry, or" immediately after "crops," and striking out "or jewelry that are" after "musical instruments".

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

"(g) Notwithstanding any waiver of an exemption, the debtor may avoid a transfer or recover a setoff of property of the debtor and exempt such property under subsection (1) of this section, whether or not the trustee attempts to recover such property or avoid such transfer, if—

"(1) (A) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title, or recoverable by the trustee under section 553 of this title;

"(B) such transfer was not a voluntary transfer of such property by the debtor; and

"(C) the debtor did not conceal such property; or

"(2) such transfer is in satisfaction of a lien of a kind specified in subsection (f) (2) of this section."

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

"(h) (1) The debtor's power to avoid a transfer or recover a setoff under subsection (f) or (g) of this section is subject to the limitations of section 550 of this title to which the trustee's power to avoid such a transfer or recover such a setoff under this title is subject.

"(2) Notwithstanding section 551 of this title, a transfer avoided or property recovered by the trustee or by the debtor may be preserved for the benefit of the debtor, if—

"(A) (i) such property otherwise would be exempt under subsection (1) of this section;

"(ii) such transfer was not a voluntary transfer of such property by the debtor; and

"(iii) the debtor did not conceal such property; or

"(B) such transfer is of a kind specified in subsection (f) of this section."

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

"(i) The debtor may exempt under subsection (b) of this section property disencumbered or recovered under subsection (f), (g), or (h) of this section to the extent the

debtor could have exempted such property under subsection (b) of this section had such property not been encumbered, transferred, or set off."

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

"(j) The debtor may exempt a particular kind of property under subsection (1) of this section only to the extent that such exemption, plus the debtor's already claimed exemption of the same kind of property under subsection (b) of this section, does not exceed the limitation specified for such kind of property in subsection (b) of this section."

(k) Section 522(k) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "(g)" and inserting "(1)" in lieu thereof; and

(2) in paragraph (2), by striking out "(h)" and inserting "(g)" in lieu thereof, and by striking out "or of recovery of property under subsection (1) (1) of this section."

(l) Section 522(l) of title 11 of the United States Code is amended by striking out "or may claim property as exempt from property of the estate" and by inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate."

Sec. 38. (a) Section 523(a) of title 11 of the United States Code is amended—

(1) in paragraph (2), by striking out "obtaining" each place it appears, and by striking out "refinance of credit," and inserting "refinancing of credit, to the extent obtained" in lieu thereof;

(2) in paragraph (3), by striking out "(6)" each place it appears and inserting "(7)" in lieu thereof;

(3) by amending paragraph (5) to read as follows:

"(5) to a spouse former spouse, or child of the debtor, for support of such child, but not to the extent that such debt includes a liability designated as support unless such liability actually is in the nature of support;"

(4) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (7), (8), (9), and (10), respectively; and

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

"(6) to a spouse or former spouse of the debtor for alimony to, maintenance for, or support of such spouse, but not to the extent that such debt includes a liability designated as alimony, maintenance, or support, unless such liability actually is in the nature of alimony, maintenance, or support;"

(b) Section 523(b) of title 11 of the United States Code is amended by striking out "(8)" and inserting "(9)" in lieu thereof.

(c) Section 523(c) of title 11 of the United States Code is amended by inserting "of a kind" immediately after "debt" the first time it appears, and by striking out "(6)" each place it appears and inserting "(7)" in lieu thereof.

Sec. 39. (a) Section 524(a) of title 11 of the United States Code is amended—

(1) by striking out "any act" each place it appears and inserting "an act" in lieu thereof; and

(2) in paragraph (2), by inserting a comma immediately after "recover", by inserting "wherever located and by whomever held, whether directed toward the debtor or any other entry, and" immediately after "property of the debtor," and by inserting "except to the extent provided under section 522(c) of this title" immediately after "waived".

(b) Section 524(c) (4) (B) (ii) of title 11 of the United States Code is amended by striking out "redemption under section 722 of this title" and inserting "the terms and conditions of redemption by the debtor" in lieu thereof.

11

96TH CONGRESS  
2D SESSION

# S. 3259

To establish a uniform law on the subject of bankruptcies.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 9 (legislative day, NOVEMBER 20), 1980

Mr. DeCONCINI (for himself and Mr. WALLOP) introduced the following bill:  
which was read twice, considered, read the third time, and passed

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## A BILL

To establish a uniform law on the subject of bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AMENDMENTS TO TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 **SECTION 1. (a)** Section 101(2)(D) of title 11 of the  
6 United States Code is amended by striking out “or all” im-  
7 mediately after “business”.

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



1 than the original holder of such claim, then such claim is  
2 entitled to priority under each such subsection, as the case  
3 may be, but only to the extent of the value actually trans-  
4 ferred to or for the benefit of such original holder on account  
5 of the transfer of such claim by such original holder.”.

6 SEC. 35. (a) Section 509(a) of title 11 of the United  
7 States Code is amended by striking out “subsections (b) and”  
8 and inserting “subsection (b) or” in lieu thereof, and by in-  
9 serting “against the debtor” immediately after “a creditor”.

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

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

16 SEC. 36. Section 510(b) of title 11 of the United States  
17 Code is amended to read as follows:

18 “(b) For the purpose of distribution under this title, a  
19 claim arising from rescission of a purchase or sale of a secu-  
20 rity of the debtor or of an affiliate of the debtor or for dam-  
21 ages arising from the purchase or sale of such a security shall  
22 be subordinated to all claims or interests that are senior to  
23 the claim or interest represented by such security.”.

24 SEC. 37. (a) Section 521(1) of title 11 of the United  
25 States Code is amended to read as follows:

December 9, 1980

CONGRESSIONAL RECORD—SENATE

33079

lack of support from military and civilian leaders. Hopefully, this package will help us. Keep up the good work. Sincerely

MELVIN L. PHIPPS, Captain, USAF.

DEPARTMENT OF THE AIR FORCE, Nellis AFB, Nev., November 18, 1980.

HON. JOHN W. WARNER, Dirksen Building, Washington, D.C.

DEAR SENATOR WARNER: The aircrews and families of the 429 Tactical Fighter Squadron "Black Falcons" wish to extend their sincere thanks for your efforts on our behalf. It has been a long time since anyone championed our cause with such vigor and outstanding results. Your amendment, plus the bills still before the Congress, have renewed our faith.

Again, thank you, Senator Warner.

Sincerely,

Charles E. Fulton, Lt. Colonel, USAF, Commander.

William F. Looke, Lt. Colonel, USAF, Operations Officer.

Patrick M. Quinn, Major, USAF, Assistant Operations Officer.

Richard W. Bulckeroed, Major, USAF, A Flight Commander.

Robert P. Albright, Captain, USAF, B Flight Commander.

Gary A. Lewis, Captain, USAF, C Flight Commander.

Walter S. Thedford, Captain, USAF, D Flight Commander.

Plus the members of the "Black Falcons" listed on attached page.

429 TACTICAL FIGHTER SQUADRON, BLACK FALCONS

- Lt. Colonel Jerry K. Sharp.
- Lt. Colonel Donald D. Graham.
- Major Robert R. Ames.
- Major John W. Lierrnan.
- Major James D. Davies.
- Captain Domingo Bustos.
- Captain Charles J. Fagan.
- Captain W. Carl Gallegos.
- Captain Joseph Gentile.
- Captain James E. Green.
- Captain Stephen L. Owens.
- Captain Richard J. Prosek.
- Captain Verlin C. Snouffer.
- Captain Kevin F. Henabray.
- Captain David E. Lundquist.
- Captain Douglas G. Malloy.
- Captain Patrick Y. Nakagawa.
- Captain Charles W. Tucker.
- Captain Stephen P. Woodford.
- Captain Kenneth E. Yowell.
- Captain Robert Dulinawka.
- Captain Michael M. Moore.
- Captain Thomas P. Shaw.
- Captain Ray Stetzler.
- Captain Larry D. Thompson.
- Captain Wayne S. Dodds.
- Captain Russell E. Latenser.
- Captain Keith K. Miller.
- Captain William Plummer.
- Captain Lawrence W. Smith.
- Captain Robert S. Temkow.
- Captain Robert W. Vaughan.
- Captain Niko T. Zarras.
- Captain Larry D. Hubatka.
- Captain Wendall Johnson.
- Captain Vincent J. Santillo.
- Captain John H. Young.
- Captain Michael J. Holm.
- Captain Thomas R. Kendall.
- Captain Robert Murray.
- Captain Bill Sanders.
- Lt. Michael J. Burke.
- Lt. Robert L. Wright.
- Lt. John E. Watkins.
- Lt. Gregory M. Baker.
- A1C Mark E. Dettle.
- A1C John A. Picerno.
- SSgt. Rick A. Stiles.
- TSgt. Charles Wuchterpfennig.

- SSgt. Celeste M. Adams.
- SSgt. Marvin Allen.
- MSgt. Charles E. Bailey.
- SRA Sixto D. Domine.
- TSgt. Henry L. Jackson.
- SRA Deborah R. Thomas.
- SSgt. David White, Jr.

JOHN LENNON

Mr. BRADLEY. Mr. President, I do not think I can let this day pass without at least saying for the record that I, as one Senator, one American, one individual, am deeply saddened by the news of John Lennon's assassination last night.

For a generation of Americans, John Lennon and the Beatles brought an important new dimension to music and also to countless facets of American life. I think there are people in the country tonight who, as odd as it might sound, have as great a sense of loss as they have had in the other tragic assassinations of the last decade and a half. As the youngest Member of the U.S. Senate, I suppose I am part of that generation more than some of my colleagues. There really is a sense that something is gone, in part because of the importance and the role music has played in all of our lives, in raising attitudes toward self, toward community, and toward country.

I would say that John Lennon certainly demonstrated that the question of self frequently leads to an emerging stronger personality. I know that we as politicians think about the state of affairs, think about the election that was just held, and reflect on the fact that 25 percent of the people in this country who could have voted, voted the new President in. Then think of the millions of people under 35 years of age who chose not to participate in this process, and reflect on what those millions of individuals across this country sensed when they heard John Lennon sing his songs, when they heard him say, "Give peace a chance," when they heard him say, "Imagine the world is one," when they recognize he touched a strain of idealism that was beyond country but was extremely personal. It is that sense of idealism that is extremely personal that many times in political life is lacking.

We content ourselves with institutions and procedures, issues and numbers, and we fail to take the chance that is necessary to touch human beings lives.

I have had not only one call in the last 24 hours from people of my generation who cried out literally in lament about, "Why do we have to kill all our heroes?"

I do not know if John Lennon was a hero in the great sense of the word, but I know that he spoke for a strain in our national character that is rich and important, and a strain in world literature which has touched peoples lives.

So I simply say tonight that I personally feel a sense of loss. When I heard the news while driving my car, I must say that my eyes were filled with some tears. I think it is hard for people who are not in that generation to understand the importance of not just his music, but of the emotions that he touched and that his group touched, aside from the crass commercials.

We think back to the images of thousands of people walking together and saying, "Give peace a chance." It is the kind of emotion that is not always duplicated in politics. It is the kind of emotion that is genuine and I think almost necessary if we are going to bring ourselves together in this country.

So although times have changed and the Beatles have parted company, Lennon's generation continues to identify with him. It is strange because even after he stopped recording in the 1970's he faced that primary dilemma that many of my generation have faced when they have a family, and he chose to honor that family; he chose to drop out of his profession for 5 years and do the things that were necessary to raise his son for 5 years. He just returned this year with his newest album, in a way talking about those years.

All Americans, I think, whether they agree with John Lennon's political and social values or not, recognize that we have lost a talented artist, recognize that we have lost something of ourselves; that when we hear the music in the years to come that, hopefully, we will exert the effort to recapture those moments and use them wisely to make the world, as he says, one.

Mr. DeCONCINI. Mr. President, I cannot help but be moved by the statement of the Senator from New Jersey about the tragedy that happened today.

ESTABLISHMENT OF UNIFORM LAW ON BANKRUPTCIES

Mr. DeCONCINI. Mr. President, I send to the desk a bill which incorporates the language of S. 658, the Bankruptcy Technical Amendments Act, the Parental Kidnaping Prevention Act, and the State Justice Institute Act, all three of which have previously passed the Senate. The reason for introducing these items as a new bill is a parliamentary impasse with the House of Representatives.

Therefore, Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and that the Senate proceed to its immediate consideration.

Mr. President, I advise the Chair that the majority members and majority staff of the Judiciary Committee and the minority staff and the minority members of this body, as well as the majority members, have agreed to this. I believe there is no objection, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, this matter has been cleared with the majority. Mr. MATHIAS will speak for the minority.

Mr. MATHIAS. Mr. President, the majority leader is correct that this has been cleared with the minority.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3259) to establish a uniform law on the subject of bankruptcies.

33080

CONGRESSIONAL RECORD—SENATE

December 9, 1980

The Senate proceeded to consider the bill.

Mr. DECONCINI. Mr. President, on Monday of this week, the Senate amended the House amendment to the Senate bill S. 658, and sent the bill to the House. The House further amended the bill to a slight degree but in a manner that is unacceptable to the ranking member of the Judiciary Committee (Mr. THURMOND). The issue involves the amount of retirement for bankruptcy judges. The House bill provides for a significant increase in retirement benefits for these judges, while the Senate bill would not address the issue, Senator THURMOND preferring to wait until next year to address that matter. The bill we send to the House today will not include a retirement section for bankruptcy judges; otherwise, the two bodies are in almost complete agreement.

I urge my colleagues to adopt the Senate bill and hope that our colleagues on the House side will also see fit to accept this vital piece of legislation. If the House does not accept this bill, the ramifications for the country and the Nation's bankruptcy courts will be adverse and severe. Having had a good working relationship with many bankruptcy judges for the past several years, I strongly urge them not to alienate their allies in the Senate by continuing to urge the House to reject any bill that does not contain an increased retirement section.

In addition, a new title VI has been added to the bill, the text of which is the Parental Kidnaping Prevention Act which has passed the Senate on two prior occasions and which recently passed the House by a 2-to-1 margin as title III of the domestic violence report. Because of the opposition in this body to title I of that conference agreement, it becomes necessary to sever title III, the child abduction proposal, if it is to be enacted this year.

Mr. President, as this Congress rapidly nears a conclusion it seems likely that an important bill that has been pending in the Finance Committee, H.R. 5043, will not be enacted. This continues the void in the bankruptcy area of practice concerning what the applicable tax law is since the Bankruptcy Code repealed old tax law as of October 1, 1979, and no new law has been passed to fill the void. Hopefully, legislation will be enacted early next year to fill that gap but in the meantime, for the benefit of the litigants, the courts, and the Department of the Treasury, I would urge that the law as it existed in this area prior to its repeal continue to be the guide in resolving tax issues of bankruptcy estates that are currently being litigated.

Mr. President, the text of S. 3259, which I have just introduced, is identical to the Senate version of S. 658 that passed on December 1, with the exception of several technical corrections and the additions of separate titles which represent the texts of the Parental Kidnaping Prevention Act and the State Justice Institute Act the texts of which have previously passed the Senate and have been printed elsewhere. Therefore, I shall not ask that the text of the bill be

reprinted in the CONGRESSIONAL RECORD, but rather that interested parties refer to the December 1 RECORD for the text of this bill.

● Mr. WALLOP. Mr. President, over a million children are affected by divorce or separation every year. Adjusting to this situation is not easy for many of them. It is virtually impossible for the thousands who fall victim to child snatching, the restraint or concealment of a child from one parent by the other parent. Congress has turned its attention to this disruptive, abusive practice because of its harmful effect on children and the inherent difficulties States have in resolving multistate conflicts that so often ensue.

I would propose an amendment the purpose of which is to promote cooperation among the States in the enforcement of custody and visitation orders, to discourage continuing interstate controversies and conflicts, and to deter interstate and international child abductions. My amendment, the Parental Kidnaping Prevention Act, has been favorably considered by the Senate on two prior occasions, and was most recently passed by a solid 2-to-1 margin in the House as title III of the domestic violence conference report. The language I am proposing is, in fact, the work product of a House-Senate conference on which members of the House Ways and Means and Judiciary Committees participated. Because of the controversy surrounding the domestic violence proposal here in the Senate, it has become necessary to sever title III from that conference report if the child abduction legislation, which enjoys strong bipartisan support in both bodies, is to be enacted this year.

The conferees were faithful to the principles underlying S. 105 but did make some modifications. To begin with, the conferees accepted the Senate provision requiring State courts to enforce and refrain from modifying custody and visitation decrees rendered by sister States acting consistently with the jurisdictional provisions set forth in the legislation and derived from the Uniform Child Custody Jurisdiction Act. This will remove the incentive court-shopping parents now have for abducting their children and fleeing to States that would otherwise freely entertain custody petitions and modifications actions, thereby rewarding the snatching parent for his/her actions.

The conferees also agreed to the provisions of the bill authorizing the use of the Federal Parent Locator Service in child abduction cases. The parent locator service was set up as part of the child support enforcement program to find parents who had defaulted on their child support obligations.

Specifically, this section allows States to enter into agreements with the Secretary of Health and Human Services for use of the Federal Parent Locator Service to locate children and parents who take, restrain, or conceal them. Location requests will be made in conjunction with civil or criminal custody cases arising under State, Federal, or treaty law. It is anticipated that most, if not all, of the States will agree to re-

ceive and forward requests for location from the persons authorized in the statute to make such requests.

In order to insure that the services of the FPLS are used for legitimate purposes, and to deter frivolous or malevolent requests for location assistance, the bill restricts access to the FPLS to public officials responsible for making or enforcing child custody determinations, or for investigating, enforcing or bringing prosecutions under criminal or civil laws respecting the wrongful taking or restraint of a child.

To further ferret out inappropriate requests, in addition to offsetting administrative costs, the bill permits the imposition of a fee to cover the costs of processing location requests. These fees will be comparable to those nominal charges which have been assessed against non-AFDC applicants who have utilized the FPLS to locate and collect arrearages from defaulting parents. Importantly, the service charge in practically every case will be substantially less than the tens of thousands of dollars many parents pay private detectives to locate their abducted and concealed children.

Finally, the privacy protections contained in current child support enforcement law are made applicable to child custody and abduction cases under this provision. Language has been added to the text at the request of the House to strictly limit the information obtainable from the IRS to the most recent home address and the most recent place of employment of the alleged abductor. In no event will wage information, or any other information, be made available to the requesting party. Because of some concerns about possible misuse of this information, it bears repeating that only public officials—courts and State and U.S. attorneys—will have access to the information pertinent to locating the absconding parent, and only then in connection with child custody matters.

One last point. The amendment does not contemplate an entirely new function. The location service authorized by the bill for child abduction cases is currently available in child-snatching cases which coincidentally involve issues of nonsupport. Thus, this provision simply puts abducted children on an equal footing with the funds that are owed the Government and which are presently collectible through use of the parent locator service. Surely the Government has at least as much interest in children as it does in money.

S. 105, the Parental Kidnaping Prevention Act, also contained a section making it a Federal misdemeanor to remove or retain a child in violation of an enforceable child custody determination, and a felony in the case of international abductions. Despite a solid and lengthy record in support of the proposed Federal criminal statute, the conferees—many of whom did not have the occasion to review the record or to study the issues in detail—did not adopt the suggested approach. Instead, there was general agreement that current Federal law should be fully enforced with regard to interstate and international child-snatchings. In particular, the conference

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committee focused its attention on the Fugitive Felon Act, 18 U.S.C. 1073, and adopted language which would require the Department of Justice to apply this law to State parental kidnaping felony cases in the same manner as in all other cases.

The primary purpose of the Fugitive Felon Act is to permit the Federal Government to assist in the location and apprehension of fugitives from State justice. Normally, once the fugitive is apprehended, the Federal complaint is dismissed and State proceedings instituted. Although the statute by its terms applies to all State felonies, the Justice Department has effectively created an exception for parental kidnaping cases in all but the rarest instances. Departmental guidelines contained in the U.S. attorneys' manual evidence this policy.

The conference agreement will immediately revitalize 18 U.S.C. 1073 in parental kidnaping cases. In practice, this will mean that upon a showing by the State that a prosecution will go forward against the fugitive parent, the local U.S. attorney will be authorized to issue a warrant and the FBI will be authorized to investigate, apprehend, and return the alleged abductor to State authorities. This amendment will result in cooperation between Federal investigative authorities and State prosecutors while deferring at all times to State law respecting the custody of the minor child and criminal law violations.

The conference agreement is not without shortcomings. It does not provide the uniform deterrent embodied in the proposed misdemeanor felony provision because it depends upon the existence of State felony antiabduction statutes which vary in kind and quality throughout the country. While 38 States have felony laws on point, not all of these will facilitate FBI involvement under this pending proposal. It can be expected that parents' organizations concerned about parental kidnaping will increase their efforts in the 50 States to get tougher laws against custodial interference and child abduction enacted so that all States may obtain valuable Federal law enforcement and investigative assistance in these difficult interstate controversies.

The pending compromise falls short in the realm of international abductions as well. While the original proposal set up a stiff felony penalty for transnational wrongful removals and retentions of children with the intent of deterring such conduct, the pending compromise relies exclusively upon FBI involvement under the Fugitive Felon Act. This may well provide some deterrence, but lacks the teeth contained in S. 105 for international childstealing.

Notwithstanding the foregoing observations, I think it is fair to say that the compromise is a good and reasonable first step toward reducing the trauma anguish associated with childstealing. The losses on the international side of the proposal hopefully will be offset in the very near future by a treaty negotiated in the Hague, Holland, on the

Civil Aspects of International Child Abduction. That proposal, which I understand may soon be before the Senate for its consideration, calls upon participating countries to promptly return children to the countries from which they have been wrongfully removed or retained. While the felony provision would have made extradition of offending parents possible, the convention establishes a framework for the prompt return of children.

The State Department is currently consulting with its group of experts on the recently completed treaty which will hopefully meet with their approval and be available for Senate consideration soon thereafter.

Mr. President, in 1977, the parental kidnaping prevention proposal passed the Senate but unfortunately died because of House inaction on the bill to which it was added as an amendment. In the 3 years since then, countless parents have suffered the anguish of losing their children, many never to see them again. My heart goes out to the children who are uprooted and deprived of access to both of their parents. The passage of this amendment would provide long-awaited, meaningful assistance to the many families torn apart by childstealing.●

The bill was ordered to a third reading, was read the third time, and passed.

Mr. DeCONCINI. Mr. President I move to reconsider the vote by which the bill passed.

Mr. MATHIAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I thank Senator KENNEDY and Senator DeCONCINI for their cooperation in passing that portion of the bill dealing with the Justice Department. I thank Senator MATHIAS and the minority for their cooperation on this bill.

#### IN CELEBRATION OF 25 YEARS IN THE GOSPEL MINISTRY OF REV. RONALD WINTERS, PASTOR OF SHILOH BAPTIST CHURCH

Mr. WILLIAMS. Mr. President, I speak in recognition of the dedicated service to the gospel ministry of my staff assistant, Ronald Winters.

Mr. President, in his 25 years of serving the gospel ministry, Rev. Ronald Winters has done much to share and celebrate the joy of Christian fellowship, care for the needs of all persons and meet the growing demands of church, congregation and self within the complex framework of the modern ministry. Reverend Winters, pastor of Shiloh Baptist Church in McLean, Va., was licensed to the ministry on December 4, 1955, at North Indianapolis First Baptist Church and was ordained in May 1965 at Mount Calvary Baptist Church in Rockville, Md.

Reverend Winters was born December 15, 1933 to John and Leontine Winters. Raised in Indianapolis, Ind., Ronald Winters graduated from Crispus Attucks High School before leaving Indianapolis

to attend Bishop College in Dallas, Tex. Returning to Indianapolis, Mr. Winters was licensed to the ministry, after which he served 2 years with the U.S. Navy. After being honorably discharged, Reverend Winters studied theology at Baltimore Bible College and Seminary, receiving his baccalaureate and, later, an honorary doctorate of divinity.

Indiana Senator Vance Hartke brought Reverend Winters to Washington, to join his personal staff, in 1960. While on Senator Hartke's staff, he met and married the former Janice Lewis on June 20, 1964, with Senator Hartke standing as best man. Ronald Winters served on Senator Hartke's staff, and on the Veterans' Affairs Committee, for 16 years before joining my staff in 1977, where he handles veterans' affairs and military matters, extending his ministry to attend to the needs of my New Jersey constituents. In the years he has been with my staff, Mr. Winters has consistently devoted himself to serving the varied requirements of a demanding position with a cheerfulness and dedication that are truly an example to us all.

After his ordination in 1965, Reverend Winters served as pastor of Mount Pleasant Baptist Church for 7 years before assuming the role of pastor at Shiloh Baptist Church, in McLean. During his tenure as pastor, Reverend Winters has established a reputation as a fine preacher, expanded the church membership, enlarged the ministry of the church, instituted a college scholarship program and founded the Shiloh Mass Choir, a group renowned for the excellence of their singing and repertoire.

Reverend Winters is an active member and former president of the Northern Virginia Baptist Ministers Conference, former correspondent secretary for the Northern Virginia Baptist Association, former president of McLean's Neighbors for a Better Community and former chaplain of the Fidelity Lodge No. 20, F. & A.M. Prince Hall Affiliated, where he is a master Mason. He was considered for chaplain of the Grand Lodge of Washington, D.C., but was forced to decline due to the press of other duties. On the death of Dr. Martin Luther King, Jr., Reverend Winters' memorial sermon was published in the CONGRESSIONAL RECORD. Two years later, in 1970, he offered the convening prayer in the U.S. Senate.

Reverend Winters lives in Reston, Va., with his wife Janice and their two children, Ronald, Jr., aged 13 and Christy Ann, aged 12.

Mr. President, Reverend Winters exemplifies the finest in public and community service, as attested to by his many achievements, of which this is only a partial listing. I know the entire Senate will wish to join me in commending this truly fine man for his dedication and service.

Mr. President, Mr. Winters' ministry is a guiding light for the parishioners that he reaches at his church and his 25th anniversary in the ministry was observed with great beauty recently and most richly deserved by a man of his

11

97TH CONGRESS  
1ST SESSION

# S. 863

To establish a uniform law on the subject of bankruptcies.

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## IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, FEBRUARY 16), 1981

Mr. DOLK (for himself, Mr. HEPLIN, and Mr. DeCONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish a uniform law on the subject of bankruptcies.

- 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 **TITLE I—AMENDMENTS TO TITLE 11 OF THE**  
4 **UNITED STATES CODE**  
5 **SECTION 1. (a) Section 101(2)(D) of title 11 of the**  
6 **United States Code is amended by striking out “or all” in-**  
7 **mediately after “business”.**  
8 **(b) Section 101(8)(B) of title 11 of the United States**  
9 **Code is amended by striking out the colon at the end thereof**  
10 **and inserting a semicolon in lieu thereof.**

1 than the original holder of such claim, then such claim is  
2 entitled to priority under each such subsection, as the case  
3 may be, but only to the extent of the value actually trans-  
4 ferred to or for the benefit of such original holder on account  
5 of the transfer of such claim by such original holder.”.

6       Sec. 35. (a) Section 509(a) of title 11 of the United  
7 States Code is amended by striking out “subsections (b) and”  
8 and inserting “subsection (b) or” in lieu thereof, and by in-  
9 serting “against the debtor” immediately after “a creditor”.

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

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

16       Sec. 36. Section 510(b) of title 11 of the United States  
17 Code is amended to read as follows:

18       “(b) For the purpose of distribution under this title, a  
19 claim arising from rescission of a purchase or sale of a secu-  
20 rity of the debtor or of an affiliate of the debtor or for dam-  
21 ages arising from the purchase or sale of such a security shall  
22 be subordinated to all claims or interests that are senior to  
23 the claim or interest represented by such security.”.

24       Sec. 37. (a) Section 521(d) of title 11 of the United  
25 States Code is amended to read as follows:

II

## Calendar No. 192

97TH CONGRESS  
1ST SESSION

# S. 863

[Report No. 97-150]

To establish a uniform law on the subject of bankruptcies.

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### IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, FEBRUARY 16), 1981

Mr. DOLE (for himself, Mr. HEFLIN, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 10 (legislative day, JULY 8), 1981

Reported by Mr. THURMOND, with amendments

(Omit the part struck through and insert the part printed in *italic*)

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## A BILL

To establish a uniform law on the subject of bankruptcies. .

- 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 TITLE I—AMENDMENTS TO TITLE 11 OF THE  
4 UNITED STATES CODE  
5 SECTION 1. (a) Section 101(2)(D) of title 11 of the  
6 United States Code is amended by striking out “or all” im-  
7 mediately after “business”.

1 (d) Section 507(d) of title 11 of the United States Code  
2 is amended to read as follows:

3 “(d) If a claim of a kind specified in subsection (a)(3),  
4 (a)(4), (a)(5), or (a)(6) of this section is held by an entity other  
5 than the original holder of such claim, then such claim is  
6 entitled to priority under each such subsection, as the case  
7 may be, but only to the extent of the value actually trans-  
8 ferred to or for the benefit of such original holder on account  
9 of the transfer of such claim by such original holder.”.

10 SEC. 35. (a) Section 509(a) of title 11 of the United  
11 States Code is amended by striking out “subsections (b) and”  
12 and inserting “subsection (b) or” in lieu thereof, and by in-  
13 serting “against the debtor” immediately after “a creditor”.

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

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

20 SEC. 36. Section 510(b) of title 11 of the United States  
21 Code is amended to read as follows:

22 “(b) For the purpose of distribution under this title, a  
23 claim arising from rescission of a purchase or sale of a secu-  
24 rity of the debtor or of an affiliate of the debtor or for dam-  
25 ages arising from the purchase or sale of such a security shall



1 be subordinated to all claims or interests that are senior to  
2 the claim or interest represented by such security.”

3 SEC. 37. (a) Section 521(1) of title 11 of the United  
4 States Code is amended to read as follows:

5 “(1) file a list of creditors and, unless the court  
6 orders otherwise, a schedule of assets, liabilities, and  
7 equity interests, and a statement of the debtor’s finan-  
8 cial affairs;”.

9 (b) Section 521(3) of title 11 of the United States Code  
10 is amended by inserting “, whether or not immunity  
11 is granted under section 344 of this title” immediately after  
12 “estate” the second place it appears.

13 SEC. 38. (a) Section 522(a)(2) of title 11 of the United  
14 States Code is amended by inserting “, or with respect to  
15 property that becomes property of the estate after such date,  
16 as of the date such property becomes property of the estate”  
17 immediately after “petition”.

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

20 “(b) Notwithstanding section 541 of this title, an indi-  
21 vidual debtor may exempt from property of the estate  
22 either—

23 “(1) property wherever located of a kind specified  
24 under subsection (d) of this section, unless the State

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SECURITIES AND EXCHANGE COMMISSION

Bevis Longstreth, of New York, to be a member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1982.

DEPARTMENT OF EDUCATION

James Bert Thomas, Jr., of Virginia, to be Inspector General, Department of Education.

DEPARTMENT OF LABOR

Thomas F. McBride, of the District of Columbia, to be Inspector General, Department of Labor.

DEPARTMENT OF TRANSPORTATION

Joseph F. Weisich, of Virginia, to be Inspector General, Department of Transportation.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

June Gibbs Brown, of Virginia, to be Inspector General, National Aeronautics and Space Administration.

U.S. AIR FORCE

Sundry nominations in the U.S. Air Force.

U.S. ARMY

Sundry nominations in the U.S. Army.

U.S. NAVY

Sundry nominations in the U.S. Navy.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE ARMY AND NAVY

Sundry nominations in the Army and Navy which had been placed on the Secretary's desk.

Mr. BAKER. Mr. President, I move to reconsider the votes by which the nominations were considered en bloc.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations considered and confirmed en bloc today are printed at the conclusion of the Senate proceedings.)

Mr. BAKER. Mr. President, before I ask the Senate to return to legislative session, I should like to make one inquiry, and for the moment I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TREATY WITH CANADA ON PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

Mr. BAKER. Mr. President. Calendar Order No. 4, the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, Treaty Doc. No. 97-13, is cleared on this side, and I wish to propound a unanimous-consent request for consideration of the minority leader.

Mr. President, I ask unanimous consent that on Monday at the hour of 1:40

p.m. the Senate lay aside the pending business temporarily and turn to the consideration of Treaty Doc. No. 97-13, Calendar Order No. 4, on today's Executive Calendar in executive session, and that there be a time limitation of 20 minutes equally divided for debate, with control of the time to be in the usual form and equally divided, and that at the hour of 2 p.m. a vote occur on that treaty at the conclusion of which the Senate will return to legislative session and resume consideration of the pending business, the tax bill.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object.

Mr. BAKER. Mr. President, let me add to the request in order to facilitate the consideration of the measure on the basis that I have described.

Mr. President, I also ask unanimous consent that the treaty be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification.

Mr. ROBERT C. BYRD. Mr. President, I have no objection to the request.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington, D.C., May 26, 1981.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BAKER. Mr. President, there are certain other matters that I believe we can dispose of at this time, and I wish to bring to the attention of the minority leader measures that have been cleared on our calendar of general orders for consideration by unanimous consent.

First is Calendar Order No. 192, S. 863, a bill to establish a uniform law on the subject of bankruptcies. I am prepared to proceed with the consideration of that measure, and I have certain statements to be inserted in the Record in connection with the consideration of this matter and one colloquy, and if the minority leader is prepared to proceed at this point, I will ask the Chair to lay that matter before the Senate.

Mr. President, while we are about it, let me inquire as well about certain other measures that are cleared on this side.

Calendar Order No. 194, Senate Joint Resolution 78, a joint resolution to provide for the designation of October 2, 1981, as "American Enterprise Day"; Calendar Order No. 195, Senate Joint Resolution 92, a joint resolution to authorize and request the President to designate the week of September 6, 1981, through September 12, 1981, as "Older Americans Employment Opportunity Week"; Calendar Order No. 196, Senate Joint Resolution 42, a joint resolution to designate the third Sunday in September as "National Ministers Day"; Calendar Order No. 153, H.R. 3420, an act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes.

Mr. President, these items are cleared on our calendar and if the minority leader is willing to proceed to their consideration, there are certain insertions and colloquys which I will offer but otherwise they will require no debate.

Mr. ROBERT C. BYRD. Mr. President, the measures that the distinguished majority leader has mentioned have been cleared on this side of the aisle, and the minority is ready to proceed.

Mr. BAKER. I thank the distinguished minority leader.

Mr. President, I ask unanimous consent that the Chair lay before the Senate the matters that I have just identified.

The PRESIDING OFFICER. Without objection, it is so ordered.

BANKRUPTCY AMENDMENTS ACT OF 1981

The PRESIDING OFFICER. The first bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 863) to establish a uniform law on the subject of bankruptcies.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments, as follows:

On page 5, line 16, strike "746(c)" and insert "764(c)";

On page 6, line 8, strike "(a)" and insert "(1)";

On page 6, line 11, strike "(b)" and insert "(2)";

On page 6, line 23, strike "(c)" and insert "(3)";

On page 8, beginning with line 7, strike all through and including line 9, and insert the following:

Sec. 10. Section 326(a) of title 11 of the United States Code is amended to read as follows:

"(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, upon all moneys disbursed or turned over in the case by the trustees to parties in interest, excluding the debtor, but including holders of secured claims. In a case under chapter 7, such compensation shall not exceed fifteen percent on the first \$1,000 or less, six percent on any amount in excess of \$1,000, but not in excess of \$3,000, three percent on any amount in excess of \$3,000, but not in excess of \$20,000, two percent on any amount in

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creditor" in lieu thereof, and by striking out "to the rights of such creditor".

(f) Section 502(h) of title 11 of the United States Code is amended by striking out "522 (1)" and inserting "522" in lieu thereof.

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

"(i) There shall be allowed a claim for any tax liability arising from payment from the estate of a claim for wages, salaries, or commissions, including vacation, severance, or sick pay, whether or not a proof of such claim is filed."

(h) 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. 31. Section 503(b) of title 11 of the United States Code is amended—

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

(2) in paragraph (1)(B)(i), by inserting "or required to be collected or withheld from another with respect to any payment made by or to the estate" immediately after "estate";

(3) in paragraph (1)(C), by striking out the comma immediately after "credit", and by inserting "incurred by the estate" immediately after "paragraph";

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

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

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

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

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

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

"(7) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (2) of this subsection, incurred by a committee appointed under section 1102 of this title."

Sec. 32. Section 505(a) of title 11 of the United States Code is amended—

(1) in paragraph (1), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out ", whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction" and inserting "or paid" in lieu thereof;

(2) in paragraph (2)(A), by inserting "or liability of an entity for" immediately after "or legality of" and by striking out "or legality" and inserting ", legality, or liability" in lieu thereof; and

(3) in paragraph (2)(B)(i), by striking out "and" and inserting "or" in lieu thereof.

(4) by adding a new paragraph (3) to read as follows:

"(3) Notwithstanding subparagraph (B) of this paragraph, the court may offset against a claim for, or request for payment of, a tax liability any counterclaim with respect to such tax liability for the same taxable period, event, act (or failure to act) to which the claim or request for payment relates, and may, where appropriate, order a net credit or refund to be made to the estate. The preceding sentence shall not apply if, at the commencement of the case under this title, the debtor had filed suit for refund relating to such taxable period, event, act (or failure to act), and if the stay on continuation of such suit is terminated under section 362 of this title."

Sec. 33. (a) Section 506(a) of title 11 of the United States Code is amended to read as follows:

"(a) An allowed claim of a creditor either secured by a lien on property in which the estate has an interest or that is subject to setoff under section 553 of this title is a secured claim to the extent of the value of such lien or to the extent of the amount subject to setoff, as the case may be, and, except to the extent that such creditor does not have recourse under any agreement or applicable nonbankruptcy law against the debtor on account of such claim, is an unsecured claim to the extent that the value of such lien or the amount so subject to setoff is less than the amount of such allowed claim. For the purpose of this subsection, value shall be determined in light of the purpose of the valuation and of any disposition proposed for such property and in conjunction with any hearing on disposition or use or on a plan affecting such creditor's interest."

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

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

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

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

Sec. 34. (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 "an employee benefit plan" in lieu thereof;

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

(4) in paragraph (6), by inserting "only" immediately after "units";

(5) in paragraph (6)(A), by amending clauses (ii) and (iii) to read as follows:

"(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before commencement of the case, unless at such time the liability remained assessable, under the applicable statute of limitations, solely because of an act or failure to act described in section 523(a)(1)(B) or 523(a)(1)(C) of this title."

(6) in paragraph (6)(D), by striking out "earned from the debtor" and inserting ", or paid" in lieu thereof and by striking out "whether or not actually paid before such date."

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate or if the court finds that there is adequate protection of such interest by a lien on such property and if, notwithstanding such protection, the holder of such interest has a claim allowable under section 503(b)(1) of this title arising from

the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such holder's allowable claim shall have priority over every other claim of a kind specified in subsection (a)(1) of this section."

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

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder."

Sec. 35. (a) Section 509(a) of title 11 of the United States Code is amended by striking out "subsections (b) and" and inserting "subsection (b) or" in lieu thereof, and by inserting "against the debtor" immediately 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 "of such" in lieu thereof.

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

Sec. 36. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 37. (a) Section 521(1) of title 11 of the United States Code is amended to read as follows:

"(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;"

(b) Section 521(3) of title 11 of the United States Code is amended by inserting ", whether or not immunity is granted under section 344 of this title" immediately after "estate" the second place it appears.

Sec. 38. (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" immediately 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), 523(a)(5), or 523(a)(6) of this title; or

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

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

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title."

(c) Section 522(d)(3) of title 11 of the

97TH CONGRESS  
1ST SESSION

# S. 863

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IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1981

Referred to the Committee on the Judiciary

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## AN ACT

To establish a uniform law on the subject of bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AMENDMENTS TO TITLE 11 OF THE**  
4 **UNITED STATES CODE**

5 **SECTION 1. (a) Section 101(2)(D) of title 11 of the**  
6 **United States Code is amended by striking out “or all” im-**  
7 **mediately after “business”.**

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

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

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

7 SEC. 36. Section 510(b) of title 11 of the United States  
8 Code is amended to read as follows:

9 "(b) For the purpose of distribution under this title, a  
10 claim arising from rescission of a purchase or sale of a secu-  
11 rity of the debtor or of an affiliate of the debtor or for dam-  
12 ages arising from the purchase or sale of such a security shall  
13 be subordinated to all claims or interests that are senior to  
14 the claim or interest represented by such security."

15 SEC. 37. (a) Section 521(1) of title 11 of the United  
16 States Code is amended to read as follows:

17 "(1) file a list of creditors and, unless the court  
18 orders otherwise, a schedule of assets, liabilities, and  
19 equity interests, and a statement of the debtor's finan-  
20 cial affairs;"

21 (b) Section 521(3) of title 11 of the United States Code  
22 is amended by inserting ", whether or not immunity  
23 is granted under section 344 of this title" immediately after  
24 "estate" the second place it appears.

II

**Calendar No. 102**

**98TH CONGRESS  
1ST SESSION**

**S. 445**

**[Report No. 98-65]**

To amend title 11, United States Code, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

**FEBRUARY 3 (legislative day, JANUARY 25), 1983**

**Mr. DOLE introduced the following bill; which was read twice and referred to the  
Committee on the Judiciary**

**APRIL 26, 1983**

**Reported by Mr. THURMOND, with amendments**

**(Omit the part struck through and insert the part printed in italic)**

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**A BILL**

To amend title 11, United States Code, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
  - 2 *tives of the United States of America in Congress assembled,*
  - 3 That this Act may be cited as the "Omnibus Bankruptcy Im-
  - 4 *provements Act of 1983".*
-

1 *subrogated to the consumer's claim under subsection*  
2 *(a)(5)."*

3 **SEC. 346. (a)** Section 509(a) of title 11 of the United  
4 States Code is amended by—

5 (1) striking out "subsections (b) and" and insert-  
6 ing in lieu thereof "subsection (b) or"; and

7 (2) inserting "against the debtor" after "a credi-  
8 tor".

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

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

15 **SEC. 347.** Section 510(b) of title 11 of the United States  
16 Code is amended to read as follows:

17 "(b) For the purpose of distribution under this title, a  
18 claim arising from rescission of a purchase or sale of a secu-  
19 rity of the debtor or of an affiliate of the debtor or for dam-  
20 ages arising from the purchase or sale of such a security shall  
21 be subordinated to all claims or interests that are senior to  
22 the claim or interest represented by such security."

23 **SEC. 348. (a)** Section 521(a)(1) of title 11 of the United  
24 States Code, as redesignated herein, is amended to read as  
25 follows:

inches deep. Today six to eight inches remain.

Heavier application of fertilizer has masked the loss of soil. The rising cost of fertilizers may help turn farmers back to old practices such as terracing, stripcropping and crop rotation. The new technique of no-till farming is also promising. With no-till the seed is planted through the residue of last year's crop. The soil is not disturbed by plowing.

Whatever happens in the cornfield, mud will continue to come down the Mississippi just as it always has. The only way to protect the wetlands completely would be to let the river play things its own way: in other words, eliminate commercial navigation. If that is not to be, some compromise must be found, some means of considerate coexistence. Jerry Schotzko of the Upper Mississippi Wild Life and Fish Refuge suggests the only realistic approach is to limit future expansion, both by commercial and recreational interests. Growth by either one imperils the wildlands. When it comes to resolving conflicts, he says, those pressing for the other interests—navigation and recreation—always look toward gains. Fish and wildlife are just trying to hold their own. Every time we compromise when it comes to wilderness, we increase the earth's losses, but all that happens to the other interests is that they reduce their future gains. They operate on earnings; the earth, approaching bankruptcy, operates on capital.

Mr. KASTEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, all things come to those who wait. We have waited a long time, and I have long since agreed to settle for far less than all things. But we have an agreement, I believe. I have consulted with the minority leader, with the chairman of the committee, and with all of those who have indicated a particular interest in this matter. I have reason to think that the unanimous-consent request I am about to propound may not be objected to. I hope not.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 82, S. 1013, a bill to amend title 28 of the United States Code regarding jurisdiction in bankruptcy proceedings, and to establish new Federal judicial positions, it be considered under the following time agreement:

Two hours on the bill to be equally divided between the chairman of the Judiciary Committee and the ranking minority member or their designees;

Twenty minutes equally divided on each of three amendments to be offered

by the Senator from South Carolina (Mr. THURMOND) with the Senator from Alabama (Mr. HEFLIN) dealing with:

Ten additional Federal district judges; miscellaneous technical and clarification of bankruptcy retirement and abstention provisions, three current bankruptcy positions omitted from bill; and

Committee clarifying amendment;

Twenty minutes equally divided on an amendment to be offered by the Senator from South Carolina (Mr. THURMOND), dealing with salaries, bankruptcy, judges, and Federal magistrates;

Twenty minutes equally divided on an amendment to be offered by the Senator from Arizona (Mr. DECONCINI) dealing with:

Bankruptcy appellate panels;

Fifteen minutes equally divided on an amendment to be offered by the Senator from Washington (Mr. GORTON) dealing with a new circuit.

One hour on an amendment to be offered by the Senator from Kansas (Mr. Dole), the Senator from South Carolina (Mr. THURMOND) and the Senator from Alabama (Mr. HEFLIN) containing the substance of S. 445, a bill to amend title 11 of the United States Code, and for other purposes, as well as the committee amendments thereto; that no further amendments in any degree be in order; 5 minutes on any debatable motions, appeals, or points of order, if so submitted to the Senate; and that the agreement be in the usual form.

I also ask unanimous consent that following the consideration of S. 1013, the Senate turn to the consideration of Calendar No. 102, S. 445, a bill to amend title II of the United States Code, and for other purposes, and the bill be considered under the following time agreement:

One hour on the bill to be equally divided between the chairman of the Judiciary Committee and the ranking minority member, or their designees;

That the provisions of rule XVII, paragraph 5, of the standing rules be waived;

That there be 15 minutes on an amendment to be offered by the Senator from Alaska (Mr. STEVENS) dealing with fishing;

That no amendments other than committee amendments be in order;

That no other amendments in any degree, be in order;

Five minutes on any debatable motions, appeals or points of order, if so submitted to the Senate; and

That the agreement be in the usual form.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do

not intend to object, is the Senator from Ohio correct in the assurances he has received that S. 445 would indeed be brought to the floor and that the leadership, including the chairman of the committee, would press for enactment of that legislation, notwithstanding the fact that it would have been included as an amendment to S. 1013?

Mr. BAKER. The Senator is correct. Such action, I believe, would be automatic under the order, but I can give the Senator my assurance that it is the intention of the leadership on this side to proceed in that manner.

Mr. METZENBAUM. I thank the Senator.

Mr. THURMOND. Mr. President, that is correct.

Mr. METZENBAUM. I thank the chairman.

And am I correct in my understanding that the amendment to S. 1013 which will include S. 445 as it came out of the committee will be an exact duplicate of S. 445 as it came out of the committee with only those amendments as made by the committee?

Mr. THURMOND. Including such others as made. In other words, S. 445, if passed today, would be identical to the S. 445 amendment to S. 1013.

Mr. METZENBAUM. I thank the Senator.

Is the Senator from Ohio also correct in his understanding that the amendment to be offered by the Senator from Alaska is in the exact form as that which the Senator from Ohio and representatives of the Senator from Ohio have agreed to in the last 15 or 20 minutes, or are there any problems in connection with that matter?

Mr. BAKER. There are no problems with that. It will be in the identical form.

Mr. METZENBAUM. I thank the majority leader and the chairman of the Judiciary Committee.

Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, the unanimous-consent request is agreed to.

#### BANKRUPTCY COURT AND FEDERAL JUDGESHIP ACT OF 1983

The PRESIDING OFFICER. The Senate will proceed to the consideration of Calendar Order No. 82, S. 1013, which the clerk will state by title.

The bill clerk read as follows:

A bill (A. 1013) to amend title XXVIII of the United States Code regarding jurisdiction in bankruptcy proceedings, and to establish new Federal judicial positions.

The Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I have a question of the majority leader.



April 27, 1983

any person in the absence of a petition in bankruptcy.

A proceeding does not arise under title 11, however, merely because title 11 passes to the estate a cause of action the debtor had. Such suits are subject to mandatory recall where the right to recovery is governed by State law. The most common, although not the only example, is the type of suit involved in *Marathon*, a State law contract action by the estate against a party that had not filed a claim against the estate. Such suits are not an integral part of the restructuring of debtor-creditor rights, and would have been brought in State court before the 1978 act.

Mr. HEFLIN. Mr. President, I concur in that statement and I think the statement contains matters that are correct.

Mr. THURMOND. Mr. President, the distinguished Senator from Kansas has an amendment that he wishes to offer at this time.

#### AMENDMENT NO. 1208

Mr. DOLE. Mr. President, I send an amendment to the desk for myself, the distinguished Senator from South Carolina, the chairman of the committee (Mr. THURMOND), and the distinguished Senator from Alabama (Mr. HEFLIN) and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself, Mr. THURMOND, and Mr. HEFLIN, proposes an amendment numbered 1208.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new title:

#### TITLE V

SEC. 500. This title may be cited as the "Omnibus Bankruptcy Improvements Act of 1983".

#### SUBTITLE A—CONSUMER CREDIT AMENDMENTS

SEC. 501. This subtitle may be cited as the "Consumer Debtor Bankruptcy Amendments Act of 1983".

SEC. 502. (a) Section 301 of title 11 of the United States Code, is amended—

(1) by striking out "A voluntary" and inserting in lieu thereof "(a) For a debtor who is not an individual, a voluntary"; and

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

"(b) With respect to an individual debtor or debtors, a voluntary case under this title is commenced by the filing with the bankruptcy court of a petition which conditionally designates a chapter under which relief is sought. The filing of such a petition shall constitute an order for relief under the provisions of the chapter conditionally designated. A final designation of the chapter under which relief is sought shall be made within the time period specified in section 521 of this title.

(b) Section 302(a) of title 11, United States Code, is amended to read as follows:

"(a) A joint case under this title is commenced by the filing, with the bankruptcy court, of a single petition pursuant to section 301(b) by an individual and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under the chapter conditionally designated in accordance with section 301(b)."

SEC. 503. (a) Section 305 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to the provisions of paragraph (2), the court on its own motion according to procedures established by rule, and not at the request or suggestion of any party in interest, may dismiss a case under chapter 7 of this title filed by an individual debtor if it finds that the granting of relief under such chapter would be a substantial abuse of the provisions of such chapter. In determining the question of substantial abuse, there shall be a presumption in favor of granting the relief requested by the debtor.

"(2) Prior to dismissing any chapter 7 case for substantial abuse, the court shall set forth, in writing within 20 days of the permanent designation of relief made by the debtor under the provisions of section 521(a)(3), its reasons for finding that substantial abuse would occur; and the court shall, at the same time, advise the debtor of his right to respond in writing and/or to request and secure a hearing on the court's findings. The court shall establish, by rule, time limits for the debtor's response and for the court's written findings in response thereto. No creditor or representative of a creditor may participate in judicial proceedings relating to substantial abuse except upon the request of the court.

"(3) Any dismissal of a case under chapter 7 pursuant to this subsection is a final order, and the debtor shall have the right to appeal. No creditor or representative of a creditor may appeal any judicial decision on substantial abuse. In passing upon such an appeal, the court shall accept the bankruptcy court's findings of fact unless clearly erroneous. If the appellate court holds that the ruling of substantial abuse constitutes an error of law, it shall reverse."

(b) Section 349 of title 11 is amended by amending subsection (a) to read as follows:

"(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does it prejudice the debtor in any respect with regard to the filing of a subsequent petition under this title."

SEC. 504. Section 704 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The Trustee shall";

(2) by adding after paragraph (3) a new paragraph (4) to read as follows:

"(4) counsel with individual debtors as provided in subsection (b) of this section;"

(3) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

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

"(b)(1) In the case of an individual debtor or debtors, immediately prior to the meeting of creditors under section 341 of this title, the trustee shall provide counseling to such debtor or debtors. Such counseling shall include—

"(A) a simple explanation to the debtor of the relief available to such debtor under chapters 7 and 13 of this title;

"(B) an analysis of the debtor's estimated income and expenses, and information concerning the possibility of repayment of debts under the provisions of chapter 13;

"(C) an analysis of the debtor's position if he elects relief under chapter 7, including a statement as to debts that would be discharged under such chapter; and

"(D) a statement to the debtor that the trustee is making no recommendation as to appropriate relief under this title, and that the debtor is free to make whatever final designation of chapter relief he may deem to be in his own best interests.

"(2) The trustee shall make no recommendation as to the final designation by the debtor of the chapter under which the debtor should seek relief, nor shall the trustee influence nor advise the debtor as to what final designation of relief the debtor should make. The trustee shall not suggest how the court will dispose of the debtor's petition.

"(3) Counsel for the debtor shall be present during the counseling by the trustee required by this section: *Provided*, That the debtor may waive the attendance of counsel. No creditor may be present during the counseling provided for in this section.

"(4) The trustee may waive counseling if, after review of the debtor's statement of estimated income and expenses, the trustee determines and reports to the court that a reasonable chapter 13 plan could not be devised. Counseling shall be waived with regard to any debtor that does not have regular income."

SEC. 505. Section 341(c) of title 11, United States Code, is amended to read as follows:

"(c) The court shall convene, and may preside at any meeting under this section. The court shall also perform such judicial duties as may be required under other provisions of this title promptly in conjunction with the meeting."

SEC. 506. Section 506(a) of title 11, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) striking out the last sentence, and

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

"(2) The value of the creditor's interest in the estate's interest in such property shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest. The value of consumer goods which the debtor seeks to redeem pursuant to section 722 of this title or which are to be retained pursuant to section 1325(a)(5)(B)(ii) of this title shall be presumed to be the established resale market price, if such market exists, as may be determined from recognized trade publications or by comparable means. If no such market exists, or if the court determines that resale value is inappropriate in light of the proposed use or disposition of the property, the court may utilize such other methods of valuation as may be appropriate under the circumstances."

SEC. 507. Section 521 of title 11, United States Code, is amended by—

(1) redesignating paragraphs (2), (3), and (4) as paragraphs (5), (6), and (7), respectively;

(2) amending paragraph (7), as redesignated, to read as follows:

"(7) appear at the hearing required under section 341(c) of this title."

to file a proof of such claim under section 501 of this title."

Sec. 645. (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";

(4) in paragraph (7), as redesignated in section 535, by inserting "only" after "units";

(5) in paragraph (7)(A), as redesignated herein, by amending clauses (ii) and (iii) to read as follows:

"(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before commencement of the case, unless at such time the liability remained assessable under the applicable statute of limitations, solely because of an act or failure to act described in section 523(a)(1)(B) or 523(a)(1)(C) of this title."

(b) Section 507(b) of title 11 of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate, or if the court finds that there is adequate protection of such interest, and if, notwithstanding such protection, the holder of an interest suffers a decrease in the value of such interest such holder shall have a claim allowable under subsection (a)(1) of this section, and such holder's allowable claim shall have priority over every other claim allowable under such subsection except similar claims under this subsection."

(c) 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".

(d) Section 507(d) of title 11 of the United States Code is amended to read as follows:

"(d)(1) If a claim of a kind specified in paragraph (3), (4), (5), (6), or (7) of subsection (a) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such subsection, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder.

"(2) An entity which is a creditor because—

"(A) a consumer used a credit card as defined in section 103(k) of the Trust in Lending Act (15 U.S.C. 1602(k)), for a transaction within subsection (a)(5) involving property or services which were not delivered prior to the petition;

"(B) the debtor was advanced funds prior to the petition based on its presentation of charge slips, vouchers, or similar documents arising from said transaction; and

"(C) the person advancing the funds is unable to collect the funds from the consumer because such property or services were not delivered or provided, shall be subrogated to the consumer's claim under subsection (a)(5)."

Sec. 646. (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. 647. Section 510(b) of title 11 of the United States Code is amended to read as follows:

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 648. (a) Section 521(a)(1) of title 11 of the United States Code, as redesignated herein, is amended to read as follows:

"(a)(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;".

(b) Section 521(a)(5) of title 11 of the United States Code, as redesignated in section 507, is amended by inserting ", whether or not immunity is granted under section 344 of this title" after "estate" the second place it appears.

Sec. 649. (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), 523(a)(5), or 523(a)(6) of this title; or

"(2) a debt secured by a lien that is—  
"(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title."

(c) Section 522(e) of title 11 of the United States Code is amended by—

(1) striking out "exemptions" and inserting in lieu thereof "an exemption";

(2) striking out "with respect to such claim against property that" and inserting in lieu thereof "to the extent of such claim with respect to property";

(3) striking out "or (h) of this section to avoid a transfer, under subsection (g)" and by inserting in lieu thereof ", (g), (h)."; and

(4) striking out "to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer."

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

"(g) Notwithstanding any waiver of an exemption, the debtor may avoid a transfer or recover a setoff of property of the debtor and exempt such property under subsection (i) of this section, whether or not the trustee attempts to recover such property or avoid such transfer, if—

"(1)(A) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549,

or 724(a) of this title, or recoverable by the trustee under section 553 of this title;

"(B) such transfer was not a voluntary transfer of such property by the debtor; and

"(C) the debtor did not conceal such property; or

"(2) such transfer is in satisfaction of a lien of a kind specified in subsection (f)(2) of this section."

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

"(h)(1) The debtor's power to avoid a transfer or recover a setoff under subsection (f) or (g) of this section is subject to the limitations of section 550 of this title to which the trustee's power to avoid such a transfer or recover such a setoff under this title is subject.

"(2) Notwithstanding section 551 of this title, a transfer avoided or property recovered by the trustee or by the debtor may be preserved for the benefit of the debtor, if—

"(A)(i) such property otherwise would be exempt under subsection (i) of this section;

"(ii) such transfer was not a voluntary transfer of such property by the debtor; and

"(iii) the debtor did not conceal such property; or

"(B) such transfer is of a kind specified in subsection (f) of this section."

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

"(i) The debtor may exempt under subsection (b) of this section property disencumbered or recovered under subsection (f), (g), or (h) of this section to the extent the debtor could have exempted such property under subsection (b) of this section had such property not been encumbered, transferred, or set off."

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

"(j) The debtor may exempt a particular kind of property under subsection (i) of this section only to the extent that such exemption, plus the debtor's already claimed exemption of the same kind of property under subsection (b) of this section, does not exceed the limitation specified for such kind of property in subsection (b) of this section."

(h) Section 522(k) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "(g)" and inserting in lieu thereof "(i)"; and

(2) in paragraph (2), by—

(A) striking out "(h)" and inserting in lieu thereof "(g)"; and

(B) striking out "or of recovery of property under subsection (i)(1) of this section."

(i) Section 522(l) of title 11 of the United States Code is amended by—

(1) striking out ", or may claim property as exempt from property of the estate"; and

(2) inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate."

(j) Section 522 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(n) For purposes of this section the State or local law applicable under subsection (b) of this section is the State or local law in effect upon the date of the filing of the petition."

Sec. 650. (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

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Mr. HEFLIN. Mr. President, I concur in the accolades that have been given to various staff members for their work on this bill. I think we would be remiss if we did not mention the great work that Jan Wilson of the Legislative Counsel has done. She worked on this many, many days and many, many nights, I may say, relative to getting this bill in proper legislative language.

I particularly pay tribute to my staff, Randall Black and the judge, Arthur Briskman, who was a judge in Alabama before he came here. He probably is more knowledgeable about bankruptcy law than any person that I have known on the Hill here. He practiced for many years in the bankruptcy courts of Alabama and has vast knowledge of the law of bankruptcy. That knowledge has been of great benefit to us as we have worked on this legislation.

Mr. THURMOND. Mr. President, in speaking about staff members, I overlooked two members. I wish to thank Peggy Mainor and Randall Black of Senator HEFLIN's staff. I also wish to express appreciation to Jan Wilson, of the Legislative Counsel's Office. She was most helpful, as Senator HEFLIN stated, in the work on the legislation.

Mr. President, I yield back my time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The bill (S. 1013) was passed as follows:

S. 1013

An act to amend title 28 of the United States Code regarding jurisdiction in bankruptcy proceedings, and to establish new Federal judicial positions

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 Court and Federal Judgeship Act of 1983".

TITLE I

Sec. 101. Section 241 of the Act of November 8, 1978 (Public Law 95-598; 92 Stat. 2668), adding chapter 90 of title 28, United States Code, is hereby repealed.

Sec. 102. (a) Title 28, United States Code, is amended by inserting after chapter 89 the following:

"CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

"Sec.

"1471. Jurisdiction.

"1472. Venue of cases under title 11.

"1473. Venue of proceedings arising under or related to cases under title 11.

"1474. Venue of cases ancillary to foreign proceedings.

"1475. Change of venue.

"1476. Removal of bankruptcy cases.

"1477. Jury trials.

"1478. Appeals.

"§1471. Jurisdiction

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

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

"(c) All cases under title 11 and all civil proceedings arising under title 11, or arising in or related to cases under title 11 shall be referred to the bankruptcy court for the district. The bankruptcy court for the district in which a case or proceeding under title 11 is pending shall have the authority to exercise all of the jurisdiction conferred on the district courts by subsections (a) and (b) of this section, except where inconsistent with the Constitution, unless such case or proceeding has been recalled by the district court.

"(d) The district court on its own motion may recall any case or proceeding referred to the bankruptcy court under subsection (c) of this section.

"(e)(1) Any party, or the bankruptcy judge, may file a petition for recall of any civil case or proceeding referred to the bankruptcy court under subsection (c). Such petition shall be filed with the clerk of the district court for the district, and shall contain a short and plain statement of the grounds for recall. Written notice of the filing of such a petition shall be given promptly to all parties.

"(2) Recall of a proceeding pursuant to such petition may be granted in the discretion of the district court, except that recall shall be granted—

"(A) with respect to a proceeding involving a claim or cause of action which is not one arising under title 11 or arising in a case under title 11; or

"(B) where the district 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.

"(f) A case or proceeding which has been recalled by the district court under this section shall be determined by the district court. The court, in its discretion, may determine the entire case. In any case or proceeding before the district court pursuant to subsection (d) or (e), such court may—

"(1) designate any bankruptcy judge within the district to serve as a special master to hear such case or proceeding and to make findings and recommendations pursuant to the Federal Rules of Civil Procedure, notwithstanding Rule 53(b) thereof, or

"(2) refer such case or proceeding to a United States magistrate in accordance with the provisions of section 636 of this title as applicable to civil proceedings generally, or to a bankruptcy judge, who shall exercise all of the jurisdiction and powers of a United States magistrate under section 636. For purposes of this section, the district court shall use the standard of review provided in Rule 53(e)(2) of the Federal Rules of Civil Procedure or section 636(b) of this title, as the case may be, unless the court, in its designation of the special master or its referral to the magistrate orders otherwise.

"(g) Notwithstanding the provisions of subsection (e), and subject to a right to appeal pursuant to section 1334 of this title, any party to a case or proceeding under subsection (a) or (b) of this section shall be deemed to have consented to the exercise of jurisdiction by the bankruptcy court to determine the entire matter if the party has

failed to file a timely petition pursuant to subsection (e)(1) of this section. Such a petition must be filed together with the initial pleading of the party.

"(h)(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. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

"(2) In a proceeding involving the debtor which is based upon a State law claim or cause of action not arising under title 11 or arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be timely instituted and prosecuted in a State forum of appropriate jurisdiction: *Provided*, That this paragraph shall be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, only to the extent necessary to permit adjudication but not the execution of such claim by the State forum.

"(3) A motion to abstain pursuant to this subsection shall be filed within ten days of the granting of a petition to recall pursuant to subsection (d) or (e).

"(i) Subject to the provisions of this section, the bankruptcy court in which a case under title 11 is commenced or pending may exercise jurisdiction over all property, wherever located, of the debtor or the estate as of the date of the commencement of such case.

"§ 1472. Venue of cases under title 11

"Except as provided in section 1474 of this title, a case under title 11 may be commenced in the district court for a 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, 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.

"§ 1473. Venue of proceedings arising under or related to cases under title 11

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

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

"(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for

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

"(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor or for damages arising from the purchase or sale of such a security shall be subordinated to all claims or interests that are senior to the claim or interest represented by such security."

Sec. 648. (a) Section 521(a)(1) of title 11 of the United States Code, as redesignated herein, is amended to read as follows:

"(a)(1) file a list of creditors and, unless the court orders otherwise, a schedule of assets, liabilities, and equity interests, and a statement of the debtor's financial affairs;"

(b) Section 521(a)(5) of title 11 of the United States Code, as redesignated in section 507, is amended by inserting ", whether or not immunity is granted under section 344 of this title" after "estate" the second place it appears.

Sec. 649. (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), 523(a)(5), or 523(a)(6) of this title; or

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

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

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title."

(c) Section 522(e) of title 11 of the United States Code is amended by—

(1) striking out "exemptions" and inserting in lieu thereof "an exemption";

(2) striking out "with respect to such claim against property that" and inserting in lieu thereof "to the extent of such claim with respect to property";

(3) striking out "or (h) of this section to avoid a transfer, under subsection (g)" and by inserting in lieu thereof ", (g), (h),"; and

(4) striking out "to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer,"

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

"(g) Notwithstanding any waiver of an exemption, the debtor may avoid a transfer or recover a setoff of property of the debtor and exempt such property under subsection (i) of this section, whether or not the trustee attempts to recover such property or avoid such transfer, if—

"(1)(A) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title, or recoverable by the trustee under section 553 of this title;

"(B) such transfer was not a voluntary transfer of such property by the debtor; and

"(C) the debtor did not conceal such property; or

"(2) such transfer is in satisfaction of a lien of a kind specified in subsection (f)(2) of this section."

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

"(h)(1) The debtor's power to avoid a transfer or recover a setoff under subsection (f) or (g) of this section is subject to the limitations of section 550 of this title to which the trustee's power to avoid such a transfer or recover such a setoff under this title is subject.

"(2) Notwithstanding section 551 of this title, a transfer avoided or property recovered by the trustee or by the debtor may be preserved for the benefit of the debtor, if—

"(A)(i) such property otherwise would be exempt under subsection (i) of this section;

"(ii) such transfer was not a voluntary transfer of such property by the debtor; and

"(iii) the debtor did not conceal such property; or

"(B) such transfer is of a kind specified in subsection (f) of this section."

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

"(i) The debtor may exempt under subsection (b) of this section property disencumbered or recovered under subsection (f), (g), or (h) of this section to the extent the debtor could have exempted such property under subsection (b) of this section had such property not been encumbered, transferred, or set off."

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

"(j) The debtor may exempt a particular kind of property under subsection (i) of this section only to the extent that such exemption, plus the debtor's already claimed exemption of the same kind of property under subsection (b) of this section, does not exceed the limitation specified for such kind of property in subsection (b) of this section."

(h) Section 522(k) of title 11 of the United States Code is amended—

(1) in paragraph (1), by striking out "(g)" and inserting in lieu thereof "(i)"; and

(2) in paragraph (2), by—

(A) striking out "(h)" and inserting in lieu thereof "(g)"; and

(B) striking out "or of recovery of property under subsection (i)(1) of this section,"

(i) Section 522(l) of title 11 of the United States Code is amended by—

(1) striking out ", or may claim property as exempt from property of the estate"; and

(2) inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate."

(j) Section 522 of title 11 of the United States Code is amended by adding at the end thereof the following new subsection:

"(n) For purposes of this section the State or local law applicable under subsection (b) of this section is the State or local law in effect upon the date of the filing of the petition."

Sec. 650. (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) in paragraph (3), by striking out "(6)" each place it appears and inserting in lieu thereof "(7)" and by striking out "521(1)"

and inserting in lieu thereof "521(a)(1)"; and

(3) by striking out "of higher education" in paragraph (8).

(b) 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. 651. 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. 652. Section 525 of title 11 of the United States Code is amended by—

(1) inserting "the" before "Perishable";

(2) inserting "(a)" before "Except"; and

(3) adding a new subsection (b) as follows:

"(b) No private employer may terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or any person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or under the Bankruptcy Act, or 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, who has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

Sec. 653. (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 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)" after "(a)".

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

Sec. 654. Section 542(e) of title 11 of the United States Code is amended by inserting "to turn over or" before "disclose".

Sec. 655. (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".

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as a cosponsor of S. 2687, a bill to authorize an employer to pay a youth employment opportunity wage to a person under 20 years of age from May through September under the Fair Labor Standards Act of 1938 which shall terminate on September 30, 1987, and for other purposes.

At the request of Mr. HUMPHREY, his name was withdrawn as a cosponsor of S. 2687, supra.

SENATE JOINT RESOLUTION 230

At the request of Mr. SPECTER, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of Senate Joint Resolution 230, a joint resolution to designate the week of October 7, 1984, through October 13, 1984, as "National Birds of Prey Conservation Week."

SENATE JOINT RESOLUTION 267

At the request of Mr. CHILES, the name of the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Joint Resolution 267, a joint resolution to designate the week of September 23, 1984, through September 29, 1984, as "National Drug Abuse Education and Prevention Week."

SENATE JOINT RESOLUTION 292

At the request of Mr. HELMS, the name of the Senator from California (Mr. WILSON) was added as a cosponsor of Senate Joint Resolution 292, a joint resolution to designate the week of May 27 through June 2, 1984, as "National Animal Health Week."

SENATE RESOLUTION 372

At the request of Mr. SIMPSON, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of Senate Resolution 372, a resolution expressing the sense of the Senate regarding exposure of members of the Armed Forces to ionizing radiation and to herbicides containing dioxin.

SENATE RESOLUTION 385

At the request of Mr. BENTSEN, the names of the Senator from Connecticut (Mr. DODD), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of Senate Resolution 385, a resolution urging continuation of tax deductibility of residential mortgage interest payments.

AMENDMENTS SUBMITTED

APPOINTMENT OF BANKRUPTCY JUDGES AND CHANGES IN THE BANKRUPTCY LAWS

THURMOND AMENDMENT NO 3083

Mr. THURMOND proposed an amendment to the bill (H.R. 5174) to provide for the appointment of United States bankruptcy judges under article III of the Constitution, to amend title II of the United States Code for the

purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstances under which collective bargaining agreements may be rejected in cases under chapter 11, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

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

"§ 1334. Bankruptcy cases and proceedings

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

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

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such decision to abstain or to not abstain is not reviewable by appeal or otherwise.

"(2) In a proceeding involving the debtor which is based upon a State law claim or cause of action neither arising under title 11 nor arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be timely instituted and prosecuted in a State forum of appropriate jurisdiction: *Provided*, that this paragraph shall be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, only to the extent necessary to permit adjudication but not the execution of such claim by the State forum. Such abstention is not reviewable by appeal or otherwise.

(3) A motion to abstain pursuant to this subsection shall be filed with the initial pleading.

"(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, or of the estate, as of the commencement of such case.

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

"1334. Bankruptcy cases and proceedings."

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

"§ 1408. Venue of cases under title 11

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

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

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

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

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

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

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

"(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable non-bankruptcy 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 non-bankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

"§ 1410. Venue of cases ancillary to foreign proceedings

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

"(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only



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(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";

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

(5) in paragraph (6)(A) as redesignated by section 350 by amending clauses (ii) and (iii) to read as follows:

"(ii) assessed within 240 days before the date of the filing of the petition; or

"(iii) not assessed before commencement of the case, unless at such time the liability remained assessable under the applicable statute of limitations, solely because of an act or failure to act described in section 523(a)(1)(B) or 523(a)(1)(C) of this title."

(b) Section 507(b) of title II of the United States Code is amended to read as follows:

"(b) Notwithstanding section 726(b) of this title, if the trustee, after notice and a hearing, provides, under section 362, 363, or 364 of this title, adequate protection of the interest of an entity other than the estate that has an interest in property of the estate, or if the court finds that there is adequate protection of such interest and if, notwithstanding such protection, the holder of an interest suffers a decrease in the value of such interest, such holder shall have a claim allowable under subsection (a)(1) of this section, and such holder's allowable claim shall have priority over every other claim allowable under such subsection except similar claims under this subsection."

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

(d) Section 507(d) of title II of the United States Code is amended to read as follows:

"(d) If a claim of a kind specified in paragraph (3), (4), (5), (6), or (7) of subsection (a) of this section is held by an entity other than the original holder of such claim, then such claim is entitled to priority under each such paragraph, as the case may be, but only to the extent of the value actually transferred to or for the benefit of such original holder on account of the transfer of such claim by such original holder.

Sec. 454. (a) Section 509(a) of title II 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 II 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 II of the United States Code is amended by striking out "section 509 of this title" and inserting in lieu thereof "this section".

Sec. 455. Section 510(b) of title II of the United States Code is amended to read as follows:

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

Sec. 456. Section 521(3) of title II 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.

Sec. 457. (a) Section 522(a)(2) of title II 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 II 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

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

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

"(B) a tax lien, notice of which is properly filed, whether or not such lien is avoided under section 545(2) of this title."

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

(d) Section 522(1) of title II of the United States Code is amended by—

(1) striking out ", or may claim property as exempt from property of the estate"; and

(2) inserting after the second sentence thereof the following new sentence: "In the event of the debtor's death, a dependent of the debtor may claim property as exempt from property of the estate."

(e) Section 522 of title II of the United States Code is amended by adding at the end thereof the following new subsection:

"(n) For purposes of this section the State or local law applicable under subsection (b) of this section is the State or local law in effect upon the date of the filing of the petition."

Sec. 458. (a) Section 523(a) of title II 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(c) of title II of the United States Code is amended by inserting "of a kind" after "debt" the first time it appears.

Sec. 459. Section 524(a) of title II of the United States Code is amended by striking out "any act" each place it appears and inserting in lieu thereof "an act".

Sec. 460. (a) Section 541(a) of title II 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 II 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 II of the United States Code is amended by inserting "(1) or (2)" after "(a)".

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

Sec. 461. Section 542(e) of title II of the United States Code is amended by inserting "to turn over or" before "disclose".

Sec. 462. (a) Section 543(a) of title II of the United States Code is amended by inserting ", product, offspring, rents, or profits" after "proceeds".

(b) Section 543(b) of title II 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 II 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 II 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. 463. Section 544(a) of title II 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. 464. Section 545 of title II of the United States Code is amended—

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

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

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

Sec. 465. (a) Section 546(a) of title II of the United States Code is amended in paragraph (1) by striking out "and" and inserting in lieu thereof "or".

98TH CONGRESS }  
2d Session }

HOUSE OF REPRESENTATIVES

REPORT  
98-882

## BANKRUPTCY AMENDMENTS OF 1984

JUNE 29, 1984.—Ordered to be printed

Mr. RODINO, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 5174]

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

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

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

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

#### **TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE**

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

*"§ 1334. Bankruptcy cases and proceedings*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in paragraph (2), by—

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

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

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



PUBLIC LAW 98-353—JULY 10, 1984

98 STAT. 333

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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98 STAT. 375

(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

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

Ante. p. 374.

(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