**This is an unofficial transcription of a 1990 excerpt amending the Bankruptcy Code,
prepared by Robert J. Pfister for ease of reading and copying/pasting.
The authoritative text is the United States Statutes at Large.**

One Hundred First Congress, Session II
Public Law 101-647 — 104 Stat. 4789 (S. 3266)
November 29, 1990

AN ACT *To control crime.*

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crime Control Act of 1990".

TITLE I—INTERNATIONAL MONEY LAUNDERING

SEC. 101. REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS.

Not later than 180 days after the effective date of this section, and every 2 years for 4 years, the Secretary of the Treasury shall report to the Congress the following:

(1) the number of each type of report filed pursuant to subchapter II of chapter 53 of title 31, United States Code (or regulations promulgated thereunder) in the previous fiscal year;

(2) the number of reports filed pursuant to section 6050I of the Internal Revenue Code of 1986 (regarding transactions involving currency) in the previous fiscal year;

(3) an estimate of the rate of compliance with the reporting requirements by persons required to file the reports referred to in paragraphs (1) and (2);

(4) the manner in which the Department of the Treasury and other agencies of the United States collect, organize, analyze and use the reports referred to in paragraphs (1) and (2) to support investigations and prosecutions of (A) violations of the criminal laws of the United States, (B) violations of the laws of foreign countries, and (C) civil enforcement of the laws of the United States including the provisions regarding asset forfeiture;

(5) a summary of sanctions imposed in the previous fiscal year against persons who failed to comply with the reporting requirements referred to in paragraphs (1) and (2), and other steps taken to ensure maximum compliance;

(6) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by analysis of the reports referred to in paragraphs (1) and (2); and

(7) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions.

[104 Stat. 4790–4864 omitted (75 pages)]

when acting in a manner described in section 11(d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

"(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

"(ii) appoints a temporary receiver to administer the restraining order.

"(B) STANDARD.—A permanent or temporary injunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.".

(2) ATTORNEY GENERAL.—Section 1345 of title 18, United States Code, is amended—

(1) by striking the 1st sentence and inserting the following:

"(a)(1) If a person is—

"(A) violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title; or

"(B) committing or about to commit a banking law violation (as defined in section 3322(d) of this title),

the Attorney General may commence a civil action in any Federal court to enjoin such violation.

"(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title) or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

"(A) to enjoin such alienation or disposition of property; or

"(B) for a restraining order to—

"(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

"(ii) appoint a temporary receiver to administer such restraining order.

(3) A permanent or temporary injunction or restraining order shall be granted without bond."; and

(2) by redesignating the material remaining in such section as subsection (b).

SEC. 2522. NONDISCHARGE OF DEBTS IN FEDERAL BANKRUPTCY INVOLVING OBLIGATIONS ARISING FROM A BREACH OF FIDUCIARY DUTY; DISALLOWING USE OF BANKRUPTCY TO EVADE COMMITMENTS TO MAINTAIN THE CAPITAL OF A FEDERALLY INSURED DEPOSITORY INSTITUTION OR TO EVADE CIVIL OR CRIMINAL LIABILITY.

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

(1) in subsection (a) by—

(A) striking "or" at the end of paragraph (9);

(B) striking the period at the end of paragraph (10) and inserting a semicolon; and

(C) adding at the end thereof the following new paragraphs:

"(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement

agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union; or

"(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;"; and

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

"(e) Any institution-affiliated party of a depository institution or insured credit union shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11)."; and

(3) in subsection (c)—

(A) by inserting "(1)" after "(c)"; and

(B) by adding at the end the following:

"(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.".

(b) EXCEPTION TO EXEMPTIONS.—Section 522(c) of title 11, United States Code, is amended—

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

(2) in paragraph (2) by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution.".

(c) ASSUMPTION OF COMMITMENTS AS EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, is amended by adding at the end thereof the following:

"(o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or its predecessors or successors, to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.".

(d) COMMITMENTS TO MAINTAIN THE CAPITAL OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS.—Section 507(a) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(8) Eighth, allowed unsecured claims based upon any commitment by the debtor to the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution.".

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

(1) by redesignating paragraphs (32) through (53) as paragraphs (36) through (57), respectively;

(2) by inserting before paragraph (36), as so redesignated, the following:

"(33) 'institution-affiliated party'—

"(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)); and

"(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act (12 U.S.C. 1786(r));

"(34) 'insured credit union' has the meaning given it in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(35) 'insured depository institution'—

"(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)); and

"(B) includes an insured credit union (except in the case of paragraphs (3) and (33)(A) of this subsection);";

(3) by redesignating paragraphs (3) through (31) as paragraphs (4) through (32), respectively; and

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

"(3) 'Federal depository institutions regulatory agency' means—

"(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

"(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

"(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

"(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation;".

SEC. 2523. REGULATION OF GOLDEN PARACHUTES AND OTHER BENEFITS WHICH ARE SUBJECT TO MISUSE.

(a) FDIC INSURED DEPOSITORY INSTITUTIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (j) the following new subsection:

"(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

"(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

"(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

"(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had a material affect on the financial condition of the institution.

"(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).

"(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

"(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

"(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or

"(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

"(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

"(F) The length of time the party was affiliated with the insured depository institution or depository institution holding company and the degree to which—

"(i) the payment reasonably reflects compensation earned over the period of employment; and

"(ii) the compensation involved represents a reasonable payment for services rendered.

"(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or depository institution holding company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

[104 Stat. 4869–4915 omitted (47 pages)]

TITLE XXXI—BANKRUPTCY AND RESTITUTION

SEC. 3101. SHORT TITLE.

This title may be cited as the "Criminal Victims Protection Act of 1990".

SEC. 3102. NONDISCHARGEABILITY OF CERTAIN DEBTS ARISING FROM UNLAWFUL DRIVING WHILE INTOXICATED OR IMPAIRED.

(a) AMENDMENT TO CHAPTER 5.—Section 523(a)(9) of title 11, United States Code, is amended to read as follows:

> "(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; or".

(b) AMENDMENT TO CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended by inserting "or 523(a)(9)" after "523(a)(5)".

SEC. 3103. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR RESTITUTION IMPOSED FOR COMMITTING CRIMES.

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

> (1) in paragraph (1) by striking "or" at the end,
>
> (2) in paragraph (2) by striking the period at the end and inserting "; or", and
>
> (3) by adding at the end the following:
>
> "(3) for restitution included in a sentence on the debtor's conviction of a crime.".

SEC. 3104. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

TITLE XXXII—MISCELLANEOUS

SEC. 3201. AUTHORIZATION OF APPROPRIATIONS FOR HUMANITARIAN EXPENSES.

(a) FEDERAL BUREAU OF INVESTIGATION.—For each fiscal year beginning after September 30, 1990, there is authorized to be appropriated for the Federal Bureau of Investigation $25,000, to be expended in the discretion of the Director of the Federal Bureau of Investigation to pay humanitarian expenses incurred—

(1) by an employee of the Bureau as a result of serious illness, serious injury, or death occurring while on official business; or

(2) by any member of the immediate family of such employee, incident to the serious illness, serious injury, or death of such employee occurring while on official business.

(b) DRUG ENFORCEMENT ADMINISTRATION.—For each fiscal year beginning after September 30, 1990, there is authorized to be appropriated for the Drug Enforcement Administration $25,000, to be

[104 Stat. 4917–4963 omitted (47 pages)]

exceed the judgment on a debt. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

"(c) VALUE OF ASSET.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) EXCEPTIONS.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

"(f) LIMITATION OF VOIDABILITY.—A transfer is not voidable under section 3304(a)(2)—

"(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

"§ 3308. Supplementary provision

"Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.".

Sec. 3302. The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"176. Federal Debt Collection Procedures".

Subtitle B—Amendments to Other Provisions of Law

SEC. 3621. Section 523(a)(8) of title 11, United States Code, is amended—

(1) by striking "for an educational" and all that follows through "unless", and inserting the following: "for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless"; and

(2) by amending subparagraph (A) to read as follows:

"(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 3622. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;".

SEC. 3623. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;".

SEC. 3624. Section 3142(g)(4) of title 18, United States Code, is amended by—

(1) striking out "(c)(2)(K)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(2) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 3625. Section 3552(d) of title 18, United States Code, is amended by adding at the end the following: "The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

SEC. 3626. (a) Section 550 of title 28, United States Code, is amended—

(1) in the heading by striking "and messengers" and inserting ", messengers, and private process servers"; and

(2) by striking "and messengers on" and inserting ", messengers, and private process servers on".

(b) The table of sections of chapter 35 of title 28, United States Code, is amended by striking the item relating to section 550 and inserting the following:

"550. Clerical assistants, messengers, and private process servers.".

SEC. 3627. Section 1962 of title 28, United States Code, is amended by inserting after the first sentence the following: "This section does not apply to judgments entered in favor of the United States.".

SEC. 3628. Section 1963 of title 28, United States Code, is amended by inserting after the first sentence the following: "Such a judgment

[104 Stat. 4966–4967 omitted (2 pages)]

information and technical assistance in the missing children cases.

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