

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7370
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Protecting Employees and Retirees in Business Bank-
4 ruptcies Act of 2020”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—IMPROVING RECOVERIES FOR EMPLOYEES AND
RETIREES**

Sec. 101. Increased wage priority.

Sec. 102. Claim for stock value losses in defined contribution plans.

Sec. 103. Priority for severance pay and contributions to employee benefit plans.

Sec. 104. Financial returns for employees and retirees.

Sec. 105. Priority for WARN Act damages.

TITLE II—REDUCING EMPLOYEES’ AND RETIREES’ LOSSES

Sec. 201. Rejection of collective bargaining agreements.

Sec. 202. Payment of insurance benefits to retired employees.

Sec. 203. Protection of employee benefits in a sale of assets.

Sec. 204. Claim for pension losses.

Sec. 205. Payments by secured lender.

Sec. 206. Preservation of jobs and benefits.

Sec. 207. Termination of exclusivity.

TITLE III—RESTRICTING EXECUTIVE COMPENSATION PROGRAMS

Sec. 301. Executive compensation upon exit from bankruptcy.

Sec. 302. Limitations on executive compensation enhancements.

- Sec. 303. Prohibition against special compensation payments.
- Sec. 304. Assumption of executive benefit plans.
- Sec. 305. Recovery of executive compensation.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Union proof of claim.
- Sec. 402. Exception from automatic stay.
- Sec. 403. Effect on collective bargaining agreements under the Railway Labor Act.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Business bankruptcies have increased
4 sharply in recent years and remain at high levels
5 due to the impact of the COVID–19 pandemic. As
6 the use of bankruptcy has expanded, job preserva-
7 tion and retirement security are placed at greater
8 risk.

9 (2) Laws enacted to improve recoveries for em-
10 ployees and retirees and limit their losses in bank-
11 ruptcy cases have not kept pace with the increasing
12 and broader use of bankruptcy by businesses in all
13 sectors of the economy. While protections for em-
14 ployees and retirees in bankruptcy cases have erod-
15 ed, management compensation plans devised for
16 those in charge of troubled businesses have become
17 more prevalent and are escaping adequate scrutiny.

18 (3) Changes in the law regarding these matters
19 are urgently needed as bankruptcy is used to ad-
20 dress increasingly more complex and diverse condi-
21 tions affecting troubled businesses and industries.

1 **TITLE I—IMPROVING RECOV-**
2 **ERIES FOR EMPLOYEES AND**
3 **RETIREES**

4 **SEC. 101. INCREASED WAGE PRIORITY.**

5 Section 507(a) of title 11, United States Code, is
6 amended—

7 (1) in paragraph (4)—

8 (A) by redesignating subparagraphs (A)
9 and (B) as clauses (i) and (ii), respectively;

10 (B) in the matter preceding clause (i), as
11 so redesignated, by inserting “(A)” before
12 “Fourth”;

13 (C) in subparagraph (A), as so designated,
14 in the matter preceding clause (i), as so reded-
15 igned—

16 (i) by striking “\$10,000” and insert-
17 ing “\$20,000”;

18 (ii) by striking “within 180 days”;
19 and

20 (iii) by striking “or the date of the
21 cessation of the debtor’s business, which-
22 ever occurs first,”; and

23 (D) by adding at the end the following:

24 “(B) Severance pay described in subpara-
25 graph (A)(i) shall be deemed earned in full

1 upon the layoff or termination of employment
2 of the individual to whom the severance is
3 owed.”; and

4 (2) in paragraph (5)—

5 (A) in subparagraph (A)—

6 (i) by striking “within 180 days”; and

7 (ii) by striking “or the date of the
8 cessation of the debtor’s business, which-
9 ever occurs first”; and

10 (B) by striking subparagraph (B) and in-
11 serting the following:

12 “(B) for each such plan, to the extent of
13 the number of employees covered by each such
14 plan, multiplied by \$20,000.”.

15 **SEC. 102. CLAIM FOR STOCK VALUE LOSSES IN DEFINED**
16 **CONTRIBUTION PLANS.**

17 Section 101(5) of title 11, United States Code, is
18 amended—

19 (1) in subparagraph (A), by striking “or” at
20 the end;

21 (2) in subparagraph (B), by striking the period
22 at the end and inserting “; or”; and

23 (3) by adding at the end the following:

24 “(C) right or interest in equity securities
25 of the debtor, or an affiliate of the debtor, if—

1 “(i) the equity securities are held in a
2 defined contribution plan (within the
3 meaning of section 3(34) of the Employee
4 Retirement Income Security Act of 1974
5 (29 U.S.C. 1002(34))) for the benefit of
6 an individual who is not an insider, a sen-
7 ior executive officer, or any of the 20 high-
8 est compensated employees of the debtor
9 who are not insiders or senior executive of-
10 ficers;

11 “(ii) the equity securities were attrib-
12 utable to either employer contributions by
13 the debtor or an affiliate of the debtor, or
14 elective deferrals (within the meaning of
15 section 402(g) of the Internal Revenue
16 Code of 1986), and any earnings thereon;
17 and

18 “(iii) an employer or plan sponsor
19 who has commenced a case under this title
20 has committed fraud with respect to such
21 plan or has otherwise breached a duty to
22 the participant that has proximately
23 caused the loss of value.”.

1 **SEC. 103. PRIORITY FOR SEVERANCE PAY AND CONTRIBU-**
2 **TIONS TO EMPLOYEE BENEFIT PLANS.**

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

5 (1) in paragraph (8)(B), by striking “and” at
6 the end;

7 (2) in paragraph (9), by striking the period and
8 inserting a semicolon; and

9 (3) by adding at the end the following:

10 “(10) severance pay owed to employees of the
11 debtor (other than to an insider of the debtor, a sen-
12 ior executive officer of the debtor, the 20 highest
13 compensated employees of the debtor who are not in-
14 siders or senior executive officers, any department or
15 division manager of the debtor, or any consultant
16 providing services to the debtor), under a plan, pro-
17 gram, or policy generally applicable to employees of
18 the debtor (but not under an individual contract of
19 employment), or owed pursuant to a collective bar-
20 gaining agreement, for layoff or termination on or
21 after the date of the filing of the petition, which pay
22 shall be deemed earned in full upon such layoff or
23 termination of employment; and

24 “(11) any contribution to an employee benefit
25 plan that is due on or after the date of the filing of
26 the petition; and”.

1 **SEC. 104. FINANCIAL RETURNS FOR EMPLOYEES AND RE-**
2 **TIREES.**

3 Section 1129(a) of title 11, United States Code, is
4 amended—

5 (1) by striking paragraph (13) and inserting
6 the following:

7 “(13) With respect to retiree benefits, as that
8 term is defined in section 1114(a), the plan—

9 “(A) provides for the continuation after
10 the effective date of the plan of payment of all
11 retiree benefits at the level established pursuant
12 to subsection (e)(1)(B) or (g) of section 1114
13 at any time before the date of confirmation of
14 the plan, for the duration of the period for
15 which the debtor has obligated itself to provide
16 such benefits, or if no modifications are made
17 before confirmation of the plan, the continu-
18 ation of all such retiree benefits maintained or
19 established in whole or in part by the debtor be-
20 fore the date of the filing of the petition; and

21 “(B) provides for recovery of claims arising
22 from the modification of retiree benefits or for
23 other financial returns, as negotiated by the
24 debtor and the authorized representative (to the
25 extent that such returns are paid under, rather
26 than outside of, a plan).”; and

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

2 “(17) The plan provides for recovery of dam-
3 ages payable for the rejection of a collective bar-
4 gaining agreement, or for other financial returns as
5 negotiated by the debtor and the authorized rep-
6 resentative under section 1113 (to the extent that
7 such returns are paid under, rather than outside of,
8 a plan).”.

9 **SEC. 105. PRIORITY FOR WARN ACT DAMAGES.**

10 Section 503(b)(1)(A)(ii) of title 11, United States
11 Code, is amended by inserting “any back pay, civil pen-
12 alty, or damages for a violation of any Federal or State
13 labor and employment law, including the Worker Adjust-
14 ment and Retraining Notification Act (29 U.S.C. 2101 et
15 seq.) and any comparable State law,” before “wages and
16 benefits”.

17 **TITLE II—REDUCING EMPLOY-**
18 **EES’ AND RETIREES’ LOSSES**

19 **SEC. 201. REJECTION OF COLLECTIVE BARGAINING AGREE-**
20 **MENTS.**

21 Section 1113 of title 11, United States Code, is
22 amended by striking subsections (a) through (f) and in-
23 serting the following:

24 “(a) The debtor in possession, or the trustee if one
25 has been appointed under this chapter, other than as pro-

1 vided in section 103(m) for collective bargaining agree-
2 ments covered by the Railway Labor Act (45 U.S.C. 151
3 et seq.), may reject a collective bargaining agreement only
4 in accordance with this section. In this section, a reference
5 to the trustee includes the debtor in possession.

6 “(b) No provision of this title shall be construed to
7 permit the trustee to unilaterally terminate or alter any
8 provision of a collective bargaining agreement before com-
9 plying with this section. The trustee shall timely pay all
10 monetary obligations arising under the terms of the collec-
11 tive bargaining agreement. Any such payment required to
12 be made before a plan confirmed under section 1129 is
13 effective has the status of an allowed administrative ex-
14 pense under section 503.

15 “(c)(1) If the trustee seeks modification of a collec-
16 tive bargaining agreement, the trustee shall provide notice
17 to the labor organization representing the employees cov-
18 ered by the collective bargaining agreement that modifica-
19 tions are being proposed under this section, and shall
20 promptly provide an initial proposal for modifications to
21 the collective bargaining agreement. Thereafter, the trust-
22 ee shall confer in good faith with the labor organization,
23 at reasonable times and for a reasonable period in light
24 of the complexity of the case, in attempting to reach mutu-

1 ally acceptable modifications of the collective bargaining
2 agreement.

3 “(2) The initial proposal and subsequent proposals
4 by the trustee for modification of a collective bargaining
5 agreement shall be based upon a business plan for the re-
6 organization of the debtor, and shall reflect the most com-
7 plete and reliable information available. The trustee shall
8 provide to the labor organization all information that is
9 relevant for negotiations. The court may enter a protective
10 order to prevent the disclosure of information if disclosure
11 could compromise the position of the debtor with respect
12 to the competitors in the industry of the debtor, subject
13 to the needs of the labor organization to evaluate the pro-
14 posals of the trustee and any application for rejection of
15 the collective bargaining agreement or for interim relief
16 pursuant to this section.

17 “(3) In consideration of Federal policy encouraging
18 the practice and process of collective bargaining and in
19 recognition of the bargained-for expectations of the em-
20 ployees covered by the collective bargaining agreement,
21 modifications proposed by the trustee—

22 “(A) shall be proposed only as part of a pro-
23 gram of workforce and nonworkforce cost savings
24 devised for the reorganization of the debtor, includ-
25 ing savings in management personnel costs;

1 “(B) shall be limited to modifications designed
2 to achieve a specified aggregate financial contribu-
3 tion for the employees covered by the collective bar-
4 gaining agreement (taking into consideration any
5 labor cost savings negotiated within the 12-month
6 period before the filing of the petition), and shall be
7 not more than the minimum savings essential to per-
8 mit the debtor to exit bankruptcy, such that con-
9 firmation of a plan of reorganization is not likely to
10 be followed by the liquidation, or the need for fur-
11 ther financial reorganization, of the debtor (or any
12 successor to the debtor) in the short term; and

13 “(C) shall not be disproportionate or overly bur-
14 den the employees covered by the collective bar-
15 gaining agreement, either in the amount of the cost
16 savings sought from such employees or the nature of
17 the modifications.

18 “(d)(1) If, after a period of negotiations, the trustee
19 and the labor organization have not reached an agreement
20 over mutually satisfactory modifications, and further ne-
21 gotiations are not likely to produce mutually satisfactory
22 modifications, the trustee may file a motion seeking rejec-
23 tion of the collective bargaining agreement after notice
24 and a hearing. Absent agreement of the parties, no such
25 hearing shall be held before the expiration of the 21-day

1 period beginning on the date on which notice of the hear-
2 ing is provided to the labor organization representing the
3 employees covered by the collective bargaining agreement.
4 Only the debtor and the labor organization may appear
5 and be heard at such hearing. An application for rejection
6 shall seek rejection effective upon the entry of an order
7 granting the relief.

8 “(2) In consideration of Federal policy encouraging
9 the practice and process of collective bargaining and in
10 recognition of the bargained-for expectations of the em-
11 ployees covered by the collective bargaining agreement, the
12 court may grant a motion seeking rejection of a collective
13 bargaining agreement only if, based on clear and con-
14 vincing evidence—

15 “(A) the court finds that the trustee has com-
16 plied with the requirements of subsection (c);

17 “(B) the court has considered alternative pro-
18 posals by the labor organization and has concluded
19 that such proposals do not meet the requirements of
20 subsection (c)(3)(B);

21 “(C) the court finds that further negotiations
22 regarding the proposal of the trustee or an alter-
23 native proposal by the labor organization are not
24 likely to produce an agreement;

1 “(D) the court finds that implementation of the
2 proposal of the trustee shall not—

3 “(i) cause a material diminution in the
4 purchasing power of the employees covered by
5 the collective bargaining agreement;

6 “(ii) adversely affect the ability of the
7 debtor to retain an experienced and qualified
8 workforce; or

9 “(iii) impair the labor relations of the
10 debtor such that the ability to achieve a feasible
11 reorganization would be compromised; and

12 “(E) the court concludes that rejection of the
13 collective bargaining agreement and immediate im-
14 plementation of the proposal of the trustee is essen-
15 tial to permit the debtor to exit bankruptcy, such
16 that confirmation of a plan of reorganization is not
17 likely to be followed by liquidation, or the need for
18 further financial reorganization, of the debtor (or
19 any successor to the debtor) in the short term.

20 “(3) If, during the bankruptcy, the trustee has imple-
21 mented a program of incentive pay, bonuses, or other fi-
22 nancial returns for an insider of the debtor, a senior exec-
23 utive officer of the debtor, any of the 20 highest com-
24 pensated employees of the debtor who are not insiders or
25 senior executive officers, any department or division man-

1 ager of the debtor, or any consultant providing services
2 to the debtor, or such a program was implemented within
3 180 days before the date of the filing of the petition, the
4 court shall presume that the trustee has failed to satisfy
5 the requirements of subsection (c)(3)(C).

6 “(4) In no case shall the court enter an order reject-
7 ing a collective bargaining agreement that would result in
8 modifications to a level lower than the level proposed by
9 the trustee in the proposal found by the court to have com-
10 plied with the requirements of this section.

11 “(5) At any time after the date on which an order
12 rejecting a collective bargaining agreement is entered, or
13 in the case of a collective bargaining agreement entered
14 into between the trustee and the labor organization pro-
15 viding mutually satisfactory modifications, at any time
16 after that collective bargaining agreement has been en-
17 tered into, the labor organization may apply to the court
18 for an order seeking an increase in the level of wages or
19 benefits, or relief from working conditions, based upon
20 changed circumstances. The court shall grant the request
21 only if the increase or other relief is not inconsistent with
22 the standard set forth in paragraph (2)(E).

23 “(e) During a period during which a collective bar-
24 gaining agreement at issue under this section continues
25 in effect and a motion for rejection of the collective bar-

1 gaining agreement has been filed, if essential to the con-
2 tinuation of the business of the debtor or in order to avoid
3 irreparable damage to the estate, the court, after notice
4 and a hearing, may authorize the trustee to implement
5 interim changes in the terms, conditions, wages, benefits,
6 or work rules provided by the collective bargaining agree-
7 ment. Any hearing under this subsection shall be sched-
8 uled in accordance with the needs of the trustee. The im-
9 plementation of such interim changes shall not render the
10 application for rejection moot and may be authorized for
11 not more than 14 days in total.

12 “(f)(1) Rejection of a collective bargaining agreement
13 constitutes a breach of the collective bargaining agree-
14 ment, and shall be effective no earlier than the entry of
15 an order granting such relief.

16 “(2) Notwithstanding paragraph (1), solely for pur-
17 poses of determining and allowing a claim arising from
18 the rejection of a collective bargaining agreement, rejec-
19 tion shall be treated as rejection of an executory contract
20 under section 365(g) and shall be allowed or disallowed
21 in accordance with section 502(g)(1). No claim for rejec-
22 tion damages shall be limited by section 502(b)(7). Eco-
23 nomic self-help by a labor organization shall be permitted
24 upon a court order granting a motion to reject a collective
25 bargaining agreement under subsection (d) or pursuant to

1 subsection (e), and no provision of this title or of any other
2 provision of Federal or State law may be construed to the
3 contrary.

4 “(g) The trustee shall provide for the reasonable fees
5 and costs incurred by a labor organization under this sec-
6 tion, upon request and after notice and a hearing.

7 “(h) A collective bargaining agreement that is as-
8 sumed shall be assumed in accordance with section 365.”.

9 **SEC. 202. PAYMENT OF INSURANCE BENEFITS TO RETIRED**
10 **EMPLOYEES.**

11 Section 1114 of title 11, United States Code, is
12 amended—

13 (1) in subsection (a), by inserting “, without re-
14 gard to whether the debtor asserts a right to unilat-
15 erally modify such payments under such plan, fund,
16 or program” before the period at the end;

17 (2) in subsection (b)(2), by inserting “, and a
18 labor organization serving as the authorized rep-
19 resentative under subsection (c)(1),” after “section”;

20 (3) by striking subsection (f) and inserting the
21 following:

22 “(f)(1) If a trustee seeks modification of retiree bene-
23 fits, the trustee shall provide a notice to the authorized
24 representative that modifications are being proposed pur-
25 suant to this section, and shall promptly provide an initial

1 proposal. Thereafter, the trustee shall confer in good faith
2 with the authorized representative at reasonable times and
3 for a reasonable period in light of the complexity of the
4 case in attempting to reach mutually satisfactory modi-
5 fications.

6 “(2) The initial proposal and subsequent proposals
7 by the trustee shall be based upon a business plan for the
8 reorganization of the debtor and shall reflect the most
9 complete and reliable information available. The trustee
10 shall provide to the authorized representative all informa-
11 tion that is relevant for the negotiations. The court may
12 enter a protective order to prevent the disclosure of infor-
13 mation if disclosure could compromise the position of the
14 debtor with respect to the competitors in the industry of
15 the debtor, subject to the needs of the authorized rep-
16 resentative to evaluate the proposals of the trustee and
17 an application pursuant to subsection (g) or (h).

18 “(3) Modifications proposed by the trustee—

19 “(A) shall be proposed only as part of a pro-
20 gram of workforce and nonworkforce cost savings
21 devised for the reorganization of the debtor, includ-
22 ing savings in management personnel costs;

23 “(B) shall be limited to modifications that are
24 designed to achieve a specified aggregate financial
25 contribution for the retiree group represented by the

1 authorized representative (taking into consideration
2 any cost savings implemented within the 12-month
3 period before the date of filing of the petition with
4 respect to the retiree group), and shall be no more
5 than the minimum savings essential to permit the
6 debtor to exit bankruptcy, such that confirmation of
7 a plan of reorganization is not likely to be followed
8 by the liquidation, or the need for further financial
9 reorganization, of the debtor (or any successor to
10 the debtor) in the short term; and

11 “(C) shall not be disproportionate or overly bur-
12 den the retiree group, either in the amount of the
13 cost savings sought from such group or the nature
14 of the modifications.”;

15 (4) in subsection (g)—

16 (A) by striking the subsection designation
17 and all that follows through the semicolon at
18 the end of paragraph (3) and inserting the fol-
19 lowing:

20 “(g)(1) If, after a period of negotiations, the trustee
21 and the authorized representative have not reached agree-
22 ment over mutually satisfactory modifications and further
23 negotiations are not likely to produce mutually satisfac-
24 tory modifications, the trustee may file a motion seeking
25 modifications in the payment of retiree benefits after no-

1 tice and a hearing. Absent agreement of the parties, no
2 such hearing shall be held before the expiration of the 21-
3 day period beginning on the date on which notice of the
4 hearing is provided to the authorized representative. Only
5 the debtor and the authorized representative may appear
6 and be heard at such hearing.

7 “(2) The court may grant a motion to modify the
8 payment of retiree benefits only if, based on clear and con-
9 vincing evidence—

10 “(A) the court finds that the trustee has com-
11 plied with the requirements of subsection (f);

12 “(B) the court has considered alternative pro-
13 posals by the authorized representative and has de-
14 termined that such proposals do not meet the re-
15 quirements of subsection (f)(3)(B);

16 “(C) the court finds that further negotiations
17 regarding the proposal of the trustee or an alter-
18 native proposal by the authorized representative are
19 not likely to produce a mutually satisfactory agree-
20 ment;

21 “(D) the court finds that implementation of the
22 proposal shall not cause irreparable harm to the af-
23 fected retirees; and

24 “(E) the court concludes that an order granting
25 the motion and immediate implementation of the

1 proposal of the trustee is essential to permit the
2 debtor to exit bankruptcy, such that confirmation of
3 a plan of reorganization is not likely to be followed
4 by liquidation, or the need for further financial reor-
5 ganization, of the debtor (or a successor to the debt-
6 or) in the short term.

7 “(3) If, during the bankruptcy, a trustee has imple-
8 mented a program of incentive pay, bonuses, or other fi-
9 nancial returns for insiders of the debtor, senior executive
10 officers of the debtor, the 20 highest compensated employ-
11 ees of the debtor who are not insiders or senior executive
12 officers, any department or division managers of the debt-
13 or, or any consultants providing services to the debtor, or
14 such a program was implemented within 180 days before
15 the date of the filing of the petition, the court shall pre-
16 sume that the trustee has failed to satisfy the require-
17 ments of subsection (f)(3)(C).”; and

18 (B) in the matter following paragraph

19 (3)—

20 (i) by striking “except that in no
21 case” and inserting the following:

22 “(4) In no case”; and

23 (ii) by striking “is consistent with the
24 standard set forth in paragraph (3)” and
25 inserting “assures that all creditors, the

1 debtor, and all of the affected parties are
2 treated fairly and equitably, and is clearly
3 favored by the balance of the equities”;

4 (5) in subsection (h)(1), by inserting “for a pe-
5 riod of not longer than 14 days” before the period;
6 and

7 (6) by striking subsection (k) and redesignating
8 subsections (l) and (m) as subsections (k) and (l),
9 respectively.

10 **SEC. 203. PROTECTION OF EMPLOYEE BENEFITS IN A SALE**
11 **OF ASSETS.**

12 (a) REQUIREMENT TO PRESERVE JOBS AND MAIN-
13 TAIN TERMS AND CONDITIONS OF EMPLOYMENT.—Sec-
14 tion 363 of title 11, United States Code, is amended by
15 adding at the end the following:

16 “(q)(1) In approving a sale or lease of property of
17 the estate under this section or a plan under chapter 11,
18 the court shall give substantial weight to the extent to
19 which a prospective purchaser or lessee of the property
20 will—

21 “(A) preserve the jobs of the employees of the
22 debtor;

23 “(B) maintain the terms and conditions of em-
24 ployment of the employees of the debtor; and

1 “(C) assume or match the pension and health
2 benefit obligations of the debtor to the retirees of
3 the debtor.

4 “(2) If there are two or more offers to purchase or
5 lease property of the estate under this section or a plan
6 under chapter 11, the court shall approve the offer of the
7 prospective purchaser or lessee that will best carry out the
8 actions described in subparagraphs (A) through (C) of
9 paragraph (1).”.

10 (b) CHAPTER 11 PLANS.—Section 1129(a) of title
11 11, United States Code is amended by adding at the end
12 the following:

13 “(17) If the plan provides for the sale of all or
14 substantially all of the property of the estate, the
15 plan requires the purchaser of the sale to carry out
16 the actions described in subparagraphs (A) through
17 (C) of section 363(q)(1).”.

18 **SEC. 204. CLAIM FOR PENSION LOSSES.**

19 Section 502 of title 11, United States Code, is
20 amended by adding at the end the following:

21 “(l) The court shall allow a claim asserted by an ac-
22 tive or retired participant, or by a labor organization rep-
23 resenting such participants, in a defined benefit plan ter-
24 minated under section 4041 or 4042 of the Employee Re-
25 tirement Income Security Act of 1974 (29 U.S.C. 1341,

1 1342), for any shortfall in pension benefits accrued as of
2 the effective date of the termination of such pension plan
3 as a result of the termination of the plan and limitations
4 upon the payment of benefits imposed pursuant to section
5 4022 of that Act (29 U.S.C. 1342), notwithstanding any
6 claim asserted and collected by the Pension Benefit Guar-
7 anty Corporation with respect to such termination.

8 “(m) The court shall allow a claim of a kind described
9 in section 101(5)(C) by an active or retired participant
10 in a defined contribution plan (within the meaning of sec-
11 tion 3(34) of the Employee Retirement Income Security
12 Act of 1974 (29 U.S.C. 1002(34))), or by a labor organi-
13 zation representing such participants. The amount of such
14 claim shall be measured by the market value of the stock
15 at the time of contribution to, or purchase by, the plan
16 and the value as of the commencement of the case.”.

17 **SEC. 205. PAYMENTS BY SECURED LENDER.**

18 Section 506(c) of title 11, United States Code, is
19 amended—

20 (1) by adding “(1)” after “(c)”; and

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

22 “(2) If one or more employees of the debtor
23 have not received wages, accrued vacation, sever-
24 ance, or any other compensation owed under a plan,
25 program, policy or practice of the debtor, or pursu-

1 ant to the terms of a collective bargaining agree-
2 ment, for services rendered on or after the date of
3 the commencement of the case, or the debtor has not
4 made a contribution due under an employee benefit
5 plan on or after the date of the commencement of
6 the case, such unpaid obligations shall be deemed
7 reasonable, necessary costs and expenses of pre-
8 serving, or disposing of, property securing an al-
9 lowed secured claim and benefitting the holder of the
10 allowed secured claim, and shall be recovered by the
11 trustee for payment to the employees or the em-
12 ployee benefit plan, as applicable, even if the trustee,
13 or a successor or predecessor in interest has other-
14 wise waived the provisions of this subsection under
15 an agreement with the holder of the allowed secured
16 claim or a successor or predecessor in interest.”.

17 **SEC. 206. PRESERVATION OF JOBS AND BENEFITS.**

18 Chapter 11 of title 11, United States Code, is amend-
19 ed—

20 (1) by inserting before section 1101 the fol-
21 lowing: “1100. Statement of purpose A debtor com-
22 mencing a case under this chapter shall have as its
23 principal purpose the reorganization of its business
24 to preserve going concern value to the maximum ex-
25 tent possible through the productive use of its assets

1 and the preservation of jobs that will sustain produc-
2 tive economic activity.”;

3 (2) in section 1129—

4 (A) in subsection (a), as amended by sec-
5 tion 104, by adding at the end the following:

6 “(18) The debtor has demonstrated that the re-
7 organization preserves going concern value to the
8 maximum extent possible through the productive use
9 of the assets of the debtor and preserves jobs that
10 sustain productive economic activity.”; and

11 (B) in subsection (c)—

12 (i) by inserting “(1)” after “(c)”; and

13 (ii) by striking the last sentence and
14 inserting the following:

15 “(2) If the requirements of subsections (a) and
16 (b) are met with respect to more than 1 plan, the
17 court shall, in determining which plan to confirm—

18 “(A) consider the extent to which each
19 plan would preserve going concern value
20 through the productive use of the assets of the
21 debtor and the preservation of jobs that sustain
22 productive economic activity; and

23 “(B) confirm the plan that better serves
24 such interests.

1 “(3) A plan that incorporates the terms of a
2 settlement with a labor organization representing
3 employees of the debtor shall presumptively con-
4 stitute the plan that satisfies this subsection.”; and

5 (3) in the table of sections, by inserting before
6 the item relating to section 1101 the following:

“1100. Statement of purpose.”.

7 **SEC. 207. TERMINATION OF EXCLUSIVITY.**

8 Section 1121(d) of title 11, United States Code, is
9 amended by adding at the end the following:

10 “(3) For purposes of this subsection, cause for
11 reducing the 120-day period or the 180-day period
12 includes—

13 “(A) the filing of a motion pursuant to
14 section 1113 seeking rejection of a collective
15 bargaining agreement if a plan based upon an
16 alternative proposal by the labor organization is
17 reasonably likely to be confirmed within a rea-
18 sonable time; and

19 “(B) the proposed filing of a plan by a
20 proponent other than the debtor, which incor-
21 porates the terms of a settlement with a labor
22 organization if such plan is reasonably likely to
23 be confirmed within a reasonable time.”.

1 **TITLE III—RESTRICTING EXECU-**
2 **TIVE COMPENSATION PRO-**
3 **GRAMS**

4 **SEC. 301. EXECUTIVE COMPENSATION UPON EXIT FROM**
5 **BANKRUPTCY.**

6 Section 1129(a) of title 11, United States Code, is
7 amended—

8 (1) in paragraph (4)—

9 (A) by adding “(A)” after “(4)”;

10 (B) in subparagraph (A), as so designated,
11 by striking “Any payment” and inserting “Sub-
12 ject to subparagraph (B), any payment”; and

13 (C) by adding at the end the following:

14 “(B)(i) Subject to clause (ii), the plan does
15 not provide for payments or other distributions
16 to, or for the benefit of, an insider of the debt-
17 or, a senior executive officer of the debtor, any
18 of the 20 highest compensated employees of the
19 debtor who are not insiders or senior executive
20 officers, any department or division manager of
21 the debtor, or any consultant providing services
22 to the debtor, unless—

23 “(I) the payments or other distribu-
24 tions are part of a program that is gen-

1 erally applicable to all full-time employees
2 of the debtor; and

3 “(II) the payments or distributions do
4 not exceed the compensation limits estab-
5 lished in section 503(c)(1) in comparison
6 to the nonmanagement workforce of the
7 debtor.

8 “(ii) The requirement under clause (i)
9 shall not apply to the compensation described in
10 paragraph (5)(C).”; and

11 (2) in paragraph (5)—

12 (A) in subparagraph (A)(ii), by striking
13 “and” at the end;

14 (B) in subparagraph (B), by striking the
15 period at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(C) the compensation disclosed under
18 subparagraph (B) has been approved by, or is
19 subject to the approval of, the court as—

20 “(i) reasonable when compared to in-
21 dividuals holding comparable positions at
22 comparable companies in the same indus-
23 try as the debtor;

24 “(ii) not more than the amount cor-
25 responding to the 50th percentile of the

1 compensation of the individuals described
2 in clause (i); and

3 “(iii) not excessive or disproportionate
4 in light of economic losses of the non-
5 management workforce of the debtor.”.

6 **SEC. 302. LIMITATIONS ON EXECUTIVE COMPENSATION EN-**
7 **HANCEMENTS.**

8 Section 503(e) of title 11, United States Code, is
9 amended—

10 (1) In the matter preceding paragraph (1), by
11 inserting “and subject to section 363(b)(3)” after
12 “subsection (b)”;

13 (2) in paragraph (1)—

14 (A) in the matter preceding subparagraph

15 (A)—

16 (i) by inserting “, a senior executive
17 officer of the debtor, any the 20 highest
18 compensated employees of the debtor who
19 are not insiders or senior executive officers,
20 any department or division manager of the
21 debtor, or any consultant providing serv-
22 ices to the debtor” before “for the pur-
23 pose”; and

24 (ii) by inserting “or for the payment
25 of performance or incentive compensation,

1 or a bonus of any kind, or other financial
2 returns designed to replace or enhance in-
3 centive, stock, or other compensation in ef-
4 fect before the date of the commencement
5 of the case,” after “remain with the debt-
6 or’s business,”;

7 (B) by amending subparagraph (A) to read
8 as follows:

9 “(A) the transfer or obligation is part of a
10 program that is generally applicable to all full-
11 time employees of the debtor; and”;

12 (C) by striking subparagraph (B);

13 (D) by redesignating subparagraph (C) as
14 subparagraph (B);

15 (E) in subparagraph (B), as so redesign-
16 nated—

17 (i) in clause (i), by striking “10” and
18 inserting “2”; and

19 (ii) in clause (ii)—

20 (I) by striking “25” and insert-
21 ing “10”; and

22 (II) by striking “insider” and in-
23 sserting “person”;

24 (3) in paragraph (2)—

1 (A) in the matter preceding subparagraph
2 (A), by inserting “, a senior executive officer of
3 the debtor, any of the 20 highest compensated
4 employees of the debtor who are not insiders or
5 senior executive officers, any department or di-
6 vision manager of the debtor, or any consultant
7 providing services to the debtor,” before “, un-
8 less”; and

9 (B) in subparagraph (B), by striking “10”
10 and inserting “2”; and

11 (4) by amending paragraph (3) to read as fol-
12 lows:

13 “(3) other transfers or obligations to, or for the
14 benefit of, an insider of the debtor, a senior execu-
15 tive officer of the debtor, the 20 highest com-
16 pensated employees of the debtor who are not insid-
17 ers or senior executive officers, any department or
18 division manager of the debtor, or any consultant
19 providing services to the debtor that are outside of
20 the ordinary course of business, except as part of a
21 plan of reorganization and subject to the approval of
22 the court under paragraphs (4) and (5) of section
23 1129(a).”.

1 **SEC. 303. PROHIBITION AGAINST SPECIAL COMPENSATION**
2 **PAYMENTS.**

3 Section 363 of title 11, United States Code, is
4 amended—

5 (1) in subsection (b), by adding at the end the
6 following:

7 “(3) No plan, program, or other transfer or ob-
8 ligation to, or for the benefit of, an insider of the
9 debtor, a senior executive officer of the debtor, the
10 20 highest compensated employees of the debtor who
11 are not insiders or senior executive officers, any de-
12 partment or division manager of the debtor, or any
13 consultant providing services to the debtor shall be
14 approved if the debtor has, on or after the date that
15 is 1 year before the date of the filing of the peti-
16 tion—

17 “(A) discontinued any plan, program, pol-
18 icy, or practice of paying severance pay to the
19 nonmanagement workforce of the debtor; or

20 “(B) modified any plan, program, policy,
21 or practice described in subparagraph (A) in
22 order to reduce benefits under the plan, pro-
23 gram, policy, or practice.”; and

24 (2) in subsection (c)—

1 (A) in paragraph (1), by striking “If the
2 business” and inserting “Except as provided in
3 paragraph (5), if the business”; and

4 (B) by adding at the end the following:

5 “(5) In the case of a transaction that is a
6 transfer or obligation described in paragraphs (1)
7 through (3) of section 503(c), the trustee shall ob-
8 tain the prior approval of the court after notice and
9 an opportunity for a hearing.”.

10 **SEC. 304. ASSUMPTION OF EXECUTIVE BENEFIT PLANS.**

11 Section 365 of title 11, United States Code, is
12 amended—

13 (1) in subsection (a), by striking “and (d)” and
14 inserting “(d), (q), and (r)”; and

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

16 “(q) No deferred compensation arrangement for the
17 benefit of an insider of the debtor, a senior executive offi-
18 cer of the debtor, or any of the 20 highest compensated
19 employees of the debtor who are not insiders or senior ex-
20 ecutive officers shall be assumed if a defined benefit plan
21 for employees of the debtor has been terminated pursuant
22 to section 4041 or 4042 of the Employee Retirement In-
23 come Security Act of 1974 (29 U.S.C. 1341, 1342), on
24 or after the date that is 1 year before the date of the com-
25 mencement of the case.

1 “(r) No plan, fund, program, or contract to provide
2 retiree benefits for insiders of the debtor, senior executive
3 officers of the debtor, or the 20 highest compensated em-
4 ployees of the debtor who are not insiders or senior execu-
5 tive officers shall be assumed if the debtor has obtained
6 relief under subsection (g) or (h) of section 1114 to impose
7 reductions in retiree benefits or under subsection (d) or
8 (e) of section 1113 to impose reductions in the health ben-
9 efits of active employees of the debtor, or has otherwise
10 reduced or eliminated health benefits for employees or re-
11 tirees of the debtor on or after the date that is 1 year
12 before the date of the commencement of the case.”.

13 **SEC. 305. RECOVERY OF EXECUTIVE COMPENSATION.**

14 (a) IN GENERAL.—Subchapter III of chapter 5 of
15 title 11, United States Code, is amended by inserting after
16 section 562 the following:

 “563. Recovery of executive compensation.

17 “(a) If a debtor has obtained relief under section
18 1113(d) or section 1114(g), by which the debtor reduces
19 the cost of its obligations under a collective bargaining
20 agreement or a plan, fund, or program for retiree benefits
21 (as defined in section 1114(a)), the court, in granting re-
22 lief, shall determine the percentage diminution in the value
23 of the obligations when compared to the obligations of the
24 debtor under the collective bargaining agreement, or with
25 respect to retiree benefits, as of the date of the commence-

1 ment of the case under this title before granting such re-
2 lief. In making its determination, the court shall include
3 reductions in benefits, if any, as a result of the termi-
4 nation pursuant to section 4041 or 4042 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C. 1341,
6 1342), of a defined benefit plan administered by the debt-
7 or, or for which the debtor is a contributing employer, ef-
8 fective at any time on or after 180 days before the date
9 of the commencement of a case under this title. The court
10 shall not take into account pension benefits paid or pay-
11 able under that Act as a result of any such termination.

12 “(b) If a defined benefit pension plan administered
13 by the debtor, or for which the debtor is a contributing
14 employer, has been terminated pursuant to section 4041
15 or 4042 of the Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1341, 1342), effective at any time on
17 or after 180 days before the date of the commencement
18 of a case under this title, but a debtor has not obtained
19 relief under section 1113(d), or section 1114(g), the court,
20 upon motion of a party in interest, shall determine the
21 percentage diminution in the value of benefit obligations
22 when compared to the total benefit liabilities before such
23 termination. The court shall not take into account pension
24 benefits paid or payable under title IV of the Employee

1 Retirement Income Security Act of 1974 (29 U.S.C. 1301
2 et seq.) as a result of any such termination.

3 “(c) Upon the determination of the percentage dimi-
4 nution in value under subsection (a) or (b), the estate shall
5 have a claim for the return of the same percentage of the
6 compensation paid, directly or indirectly (including any
7 transfer to a self-settled trust or similar device, or to a
8 nonqualified deferred compensation plan under section
9 409A(d)(1) of the Internal Revenue Code of 1986) to any
10 officer of the debtor serving as member of the board of
11 directors of the debtor within the year before the date of
12 the commencement of the case, and any individual serving
13 as chairman or lead director of the board of directors at
14 the time of the granting of relief under section 1113 or
15 1114 or, if no such relief has been granted, the termi-
16 nation of the defined benefit plan.

17 “(d) The trustee or a committee appointed pursuant
18 to section 1102 may commence an action to recover such
19 claims, except that if neither the trustee nor such com-
20 mittee commences an action to recover such claim by the
21 first date set for the hearing on the confirmation of plan
22 under section 1129, any party in interest may apply to
23 the court for authority to recover such claim for the ben-
24 efit of the estate. The costs of recovery shall be borne by
25 the estate.

1 “(e) The court shall not award postpetition com-
2 pensation under section 503(c) or otherwise to any person
3 subject to subsection (c) of this section if there is a reason-
4 able likelihood that such compensation is intended to reim-
5 burse or replace compensation recovered by the estate
6 under this section.”.

7 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
8 The table of sections for chapter 5 of title 11, United
9 States Code, is amended by inserting after the item relat-
10 ing to section 562 the following:

 “563. Recovery of executive compensation.”.

11 **TITLE IV—OTHER PROVISIONS**

12 **SEC. 401. UNION PROOF OF CLAIM.**

13 Section 501(a) of title 11, United States Code, is
14 amended by inserting “, including a labor organization,”
15 after “A creditor”.

16 **SEC. 402. EXCEPTION FROM AUTOMATIC STAY.**

17 Section 362(b) of title 11, United States Code, is
18 amended—

19 (1) in paragraph (27), by striking “and” at the
20 end;

21 (2) in paragraph (28), by striking the period at
22 the end and inserting “; and”; and

23 (3) by inserting after paragraph (28) the fol-
24 lowing:

1 “(29) of the commencement or continuation of
2 a grievance, arbitration, or similar dispute resolution
3 proceeding established by a collective bargaining
4 agreement that was or could have been commenced
5 against the debtor before the filing of a case under
6 this title, or the payment or enforcement of an
7 award or settlement under such proceeding.”.

8 **SEC. 403. EFFECT ON COLLECTIVE BARGAINING AGREE-**
9 **MENTS UNDER THE RAILWAY LABOR ACT.**

10 Section 103 of title 11, United States Code, is
11 amended by adding at the end the following:

12 “(m) Notwithstanding sections 365, 1113, or 1114,
13 neither the court nor the trustee may change the wages,
14 working conditions, or retirement benefits of an employee
15 or a retiree of the debtor established by a collective bar-
16 gaining agreement that is subject to the Railway Labor
17 Act (45 U.S.C. 151 et seq.), except in accordance with
18 section 6 of that Act (45 U.S.C. 156).”.

