

116TH CONGRESS  
2D SESSION

# H. R. 7370

To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2020

Mr. NADLER (for himself, Mr. NORCROSS, Mr. CICILLINE, Mrs. DEMINGS, Mr. JOHNSON of Georgia, Ms. JAYAPAL, Ms. SCANLON, Ms. DEAN, and Ms. GARCIA of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

7 (b) TABLE OF CONTENTS.—The table of contents of  
8 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-

1       ruptcy cases have not kept pace with the increasing  
2       and broader use of bankruptcy by businesses in all  
3       sectors of the economy. However, while protections  
4       for employees and retirees in bankruptcy cases have  
5       eroded, management compensation plans devised for  
6       those in charge of troubled businesses have become  
7       more prevalent and are escaping adequate scrutiny.

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

12      **TITLE I—IMPROVING RECOV-**  
13      **ERIES FOR EMPLOYEES AND**  
14      **RETIREEES**

15      **SEC. 101. INCREASED WAGE PRIORITY.**

16      Section 507(a) of title 11, United States Code, is  
17      amended—

18               (1) in paragraph (4)—

19                       (A) by redesignating subparagraphs (A)  
20                       and (B) as clauses (i) and (ii), respectively;

21                       (B) in the matter preceding clause (i), as  
22                       so redesignated, by inserting “(A)” before  
23                       “Fourth”;

1 (C) in subparagraph (A), as so designated,  
2 in the matter preceding clause (i), as so reded-  
3 ignated—

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

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

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

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

12 “(B) Severance pay described in subpara-  
13 graph (A)(i) shall be deemed earned in full  
14 upon the layoff or termination of employment  
15 of the individual to whom the severance is  
16 owed.”; and

17 (2) in paragraph (5)—

18 (A) in subparagraph (A)—

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

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

23 (B) by striking subparagraph (B) and in-  
24 serting the following:

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

4 **SEC. 102. CLAIM FOR STOCK VALUE LOSSES IN DEFINED**  
5 **CONTRIBUTION PLANS.**

6           Section 101(5) of title 11, United States Code, is  
7 amended—

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

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

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

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

15                         “(i) the equity securities are held in a  
16                         defined contribution plan (within the  
17                         meaning of section 3(34) of the Employee  
18                         Retirement Income Security Act of 1974  
19                         (29 U.S.C. 1002(34))) for the benefit of  
20                         an individual who is not an insider, a sen-  
21                         ior executive officer, or any of the 20 high-  
22                         est compensated employees of the debtor  
23                         who are not insiders or senior executive of-  
24                         ficers;

1           “(ii) the equity securities were attrib-  
2           utable to either employer contributions by  
3           the debtor or an affiliate of the debtor, or  
4           elective deferrals (within the meaning of  
5           section 402(g) of the Internal Revenue  
6           Code of 1986), and any earnings thereon;  
7           and

8           “(iii) an employer or plan sponsor  
9           who has commenced a case under this title  
10          has committed fraud with respect to such  
11          plan or has otherwise breached a duty to  
12          the participant that has proximately  
13          caused the loss of value.”.

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

16          Section 503(b) of title 11, United States Code, is  
17 amended—

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

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

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

23           “(10) severance pay owed to employees of the  
24          debtor (other than to an insider of the debtor, a sen-  
25          ior executive officer of the debtor, the 20 highest

1 compensated employees of the debtor who are not in-  
2 siders or senior executive officers, any department or  
3 division manager of the debtor, or any consultant  
4 providing services to the debtor), under a plan, pro-  
5 gram, or policy generally applicable to employees of  
6 the debtor (but not under an individual contract of  
7 employment), or owed pursuant to a collective bar-  
8 gaining agreement, for layoff or termination on or  
9 after the date of the filing of the petition, which pay  
10 shall be deemed earned in full upon such layoff or  
11 termination of employment; and

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

15 **SEC. 104. FINANCIAL RETURNS FOR EMPLOYEES AND RE-**  
16 **TIREES.**

17 Section 1129(a) of title 11, United States Code, is  
18 amended—

19 (1) by striking paragraph (13) and inserting  
20 the following:

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

23 “(A) provides for the continuation after  
24 the effective date of the plan of payment of all  
25 retiree benefits at the level established pursuant

1 to subsection (e)(1)(B) or (g) of section 1114  
2 at any time before the date of confirmation of  
3 the plan, for the duration of the period for  
4 which the debtor has obligated itself to provide  
5 such benefits, or if no modifications are made  
6 before confirmation of the plan, the continu-  
7 ation of all such retiree benefits maintained or  
8 established in whole or in part by the debtor be-  
9 fore the date of the filing of the petition; and

10 “(B) provides for recovery of claims arising  
11 from the modification of retiree benefits or for  
12 other financial returns, as negotiated by the  
13 debtor and the authorized representative (to the  
14 extent that such returns are paid under, rather  
15 than outside of, a plan).”; and

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

17 “(17) The plan provides for recovery of dam-  
18 ages payable for the rejection of a collective bar-  
19 gaining agreement, or for other financial returns as  
20 negotiated by the debtor and the authorized rep-  
21 resentative under section 1113 (to the extent that  
22 such returns are paid under, rather than outside of,  
23 a plan).”.



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

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

9 **TITLE II—REDUCING EMPLOY-**  
 10 **EES’ AND RETIREES’ LOSSES**

11 **SEC. 201. REJECTION OF COLLECTIVE BARGAINING AGREE-**  
 12 **MENTS.**

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

16 “(a) The debtor in possession, or the trustee if one  
 17 has been appointed under this chapter, other than as pro-  
 18 vided in section 103(m) for collective bargaining agree-  
 19 ments covered by the Railway Labor Act (45 U.S.C. 151  
 20 et seq.), may reject a collective bargaining agreement only  
 21 in accordance with this section. In this section, a reference  
 22 to the trustee includes the debtor in possession.

23 “(b) No provision of this title shall be construed to  
 24 permit the trustee to unilaterally terminate or alter any  
 25 provision of a collective bargaining agreement before com-  
 26 plying with this section. The trustee shall timely pay all

1 monetary obligations arising under the terms of the collec-  
2 tive bargaining agreement. Any such payment required to  
3 be made before a plan confirmed under section 1129 is  
4 effective has the status of an allowed administrative ex-  
5 pense under section 503.

6 “(c)(1) If the trustee seeks modification of a collec-  
7 tive bargaining agreement, the trustee shall provide notice  
8 to the labor organization representing the employees cov-  
9 ered by the collective bargaining agreement that modifica-  
10 tions are being proposed under this section, and shall  
11 promptly provide an initial proposal for modifications to  
12 the collective bargaining agreement. Thereafter, the trust-  
13 ee shall confer in good faith with the labor organization,  
14 at reasonable times and for a reasonable period in light  
15 of the complexity of the case, in attempting to reach mutu-  
16 ally acceptable modifications of the collective bargaining  
17 agreement.

18 “(2) The initial proposal and subsequent proposals  
19 by the trustee for modification of a collective bargaining  
20 agreement shall be based upon a business plan for the re-  
21 organization of the debtor, and shall reflect the most com-  
22 plete and reliable information available. The trustee shall  
23 provide to the labor organization all information that is  
24 relevant for negotiations. The court may enter a protective  
25 order to prevent the disclosure of information if disclosure

1 could compromise the position of the debtor with respect  
2 to the competitors in the industry of the debtor, subject  
3 to the needs of the labor organization to evaluate the pro-  
4 posals of the trustee and any application for rejection of  
5 the collective bargaining agreement or for interim relief  
6 pursuant to this section.

7 “(3) In consideration of Federal policy encouraging  
8 the practice and process of collective bargaining and in  
9 recognition of the bargained-for expectations of the em-  
10 ployees covered by the collective bargaining agreement,  
11 modifications proposed by the trustee—

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

16 “(B) shall be limited to modifications designed  
17 to achieve a specified aggregate financial contribu-  
18 tion for the employees covered by the collective bar-  
19 gaining agreement (taking into consideration any  
20 labor cost savings negotiated within the 12-month  
21 period before the filing of the petition), and shall be  
22 not more than the minimum savings essential to per-  
23 mit the debtor to exit bankruptcy, such that con-  
24 firmation of a plan of reorganization is not likely to  
25 be followed by the liquidation, or the need for fur-

1       ther financial reorganization, of the debtor (or any  
2       successor to the debtor) in the short term; and

3               “(C) shall not be disproportionate or overly bur-  
4       den the employees covered by the collective bar-  
5       gaining agreement, either in the amount of the cost  
6       savings sought from such employees or the nature of  
7       the modifications.

8       “(d)(1) If, after a period of negotiations, the trustee  
9       and the labor organization have not reached an agreement  
10      over mutually satisfactory modifications, and further ne-  
11      gotiations are not likely to produce mutually satisfactory  
12      modifications, the trustee may file a motion seeking rejec-  
13      tion of the collective bargaining agreement after notice  
14      and a hearing. Absent agreement of the parties, no such  
15      hearing shall be held before the expiration of the 21-day  
16      period beginning on the date on which notice of the hear-  
17      ing is provided to the labor organization representing the  
18      employees covered by the collective bargaining agreement.  
19      Only the debtor and the labor organization may appear  
20      and be heard at such hearing. An application for rejection  
21      shall seek rejection effective upon the entry of an order  
22      granting the relief.

23       “(2) In consideration of Federal policy encouraging  
24      the practice and process of collective bargaining and in  
25      recognition of the bargained-for expectations of the em-

1 ployees covered by the collective bargaining agreement, the  
2 court may grant a motion seeking rejection of a collective  
3 bargaining agreement only if, based on clear and con-  
4 vincing evidence—

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

7           “(B) the court has considered alternative pro-  
8 posals by the labor organization and has concluded  
9 that such proposals do not meet the requirements of  
10 subsection (c)(3)(B);

11           “(C) the court finds that further negotiations  
12 regarding the proposal of the trustee or an alter-  
13 native proposal by the labor organization are not  
14 likely to produce an agreement;

15           “(D) the court finds that implementation of the  
16 proposal of the trustee shall not—

17           “(i) cause a material diminution in the  
18 purchasing power of the employees covered by  
19 the collective bargaining agreement;

20           “(ii) adversely affect the ability of the  
21 debtor to retain an experienced and qualified  
22 workforce; or

23           “(iii) impair the labor relations of the  
24 debtor such that the ability to achieve a feasible  
25 reorganization would be compromised; and

1           “(E) the court concludes that rejection of the  
2           collective bargaining agreement and immediate im-  
3           plementation of the proposal of the trustee is essen-  
4           tial to permit the debtor to exit bankruptcy, such  
5           that confirmation of a plan of reorganization is not  
6           likely to be followed by liquidation, or the need for  
7           further financial reorganization, of the debtor (or  
8           any successor to the debtor) in the short term.

9           “(3) If, during the bankruptcy, the trustee has imple-  
10          mented a program of incentive pay, bonuses, or other fi-  
11          nancial returns for an insider of the debtor, a senior execu-  
12          tive officer of the debtor, any of the 20 highest com-  
13          pensated employees of the debtor who are not insiders or  
14          senior executive officers, any department or division man-  
15          ager of the debtor, or any consultant providing services  
16          to the debtor, or such a program was implemented within  
17          180 days before the date of the filing of the petition, the  
18          court shall presume that the trustee has failed to satisfy  
19          the requirements of subsection (c)(3)(C).

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

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

13       “(e) During a period during which a collective bar-  
14 gaining agreement at issue under this section continues  
15 in effect and a motion for rejection of the collective bar-  
16 gaining agreement has been filed, if essential to the con-  
17 tinuation of the business of the debtor or in order to avoid  
18 irreparable damage to the estate, the court, after notice  
19 and a hearing, may authorize the trustee to implement  
20 interim changes in the terms, conditions, wages, benefits,  
21 or work rules provided by the collective bargaining agree-  
22 ment. Any hearing under this subsection shall be sched-  
23 uled in accordance with the needs of the trustee. The im-  
24 plementation of such interim changes shall not render the

1 application for rejection moot and may be authorized for  
2 not more than 14 days in total.

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

7 “(2) Notwithstanding paragraph (1), solely for pur-  
8 poses of determining and allowing a claim arising from  
9 the rejection of a collective bargaining agreement, rejec-  
10 tion shall be treated as rejection of an executory contract  
11 under section 365(g) and shall be allowed or disallowed  
12 in accordance with section 502(g)(1). No claim for rejec-  
13 tion damages shall be limited by section 502(b)(7). Eco-  
14 nomic self-help by a labor organization shall be permitted  
15 upon a court order granting a motion to reject a collective  
16 bargaining agreement under subsection (d) or pursuant to  
17 subsection (e), and no provision of this title or of any other  
18 provision of Federal or State law may be construed to the  
19 contrary.

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

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



1 **SEC. 202. PAYMENT OF INSURANCE BENEFITS TO RETIRED**  
2 **EMPLOYEES.**

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

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

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

12 (3) by striking subsection (f) and inserting the  
13 following:

14 “(f)(1) If a trustee seeks modification of retiree bene-  
15 fits, the trustee shall provide a notice to the authorized  
16 representative that modifications are being proposed pur-  
17 suant to this section, and shall promptly provide an initial  
18 proposal. Thereafter, the trustee shall confer in good faith  
19 with the authorized representative at reasonable times and  
20 for a reasonable period in light of the complexity of the  
21 case in attempting to reach mutually satisfactory modi-  
22 fications.

23 “(2) The initial proposal and subsequent proposals  
24 by the trustee shall be based upon a business plan for the  
25 reorganization of the debtor and shall reflect the most  
26 complete and reliable information available. The trustee

1 shall provide to the authorized representative all informa-  
2 tion that is relevant for the negotiations. The court may  
3 enter a protective order to prevent the disclosure of infor-  
4 mation if disclosure could compromise the position of the  
5 debtor with respect to the competitors in the industry of  
6 the debtor, subject to the needs of the authorized rep-  
7 resentative to evaluate the proposals of the trustee and  
8 an application pursuant to subsection (g) or (h).

9 “(3) Modifications proposed by the trustee—

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

14 “(B) shall be limited to modifications that are  
15 designed to achieve a specified aggregate financial  
16 contribution for the retiree group represented by the  
17 authorized representative (taking into consideration  
18 any cost savings implemented within the 12-month  
19 period before the date of filing of the petition with  
20 respect to the retiree group), and shall be no more  
21 than the minimum savings essential to permit the  
22 debtor to exit bankruptcy, such that confirmation of  
23 a plan of reorganization is not likely to be followed  
24 by the liquidation, or the need for further financial

1 reorganization, of the debtor (or any successor to  
2 the debtor) in the short term; and

3 “(C) shall not be disproportionate or overly bur-  
4 den the retiree group, either in the amount of the  
5 cost savings sought from such group or the nature  
6 of the modifications.”;

7 (4) in subsection (g)—

8 (A) by striking the subsection designation  
9 and all that follows through the semicolon at  
10 the end of paragraph (3) and inserting the fol-  
11 lowing:

12 “(g)(1) If, after a period of negotiations, the trustee  
13 and the authorized representative have not reached agree-  
14 ment over mutually satisfactory modifications and further  
15 negotiations are not likely to produce mutually satisfac-  
16 tory modifications, the trustee may file a motion seeking  
17 modifications in the payment of retiree benefits after no-  
18 tice and a hearing. Absent agreement of the parties, no  
19 such hearing shall be held before the expiration of the 21-  
20 day period beginning on the date on which notice of the  
21 hearing is provided to the authorized representative. Only  
22 the debtor and the authorized representative may appear  
23 and be heard at such hearing.

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

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

6               “(B) the court has considered alternative pro-  
7 posals by the authorized representative and has de-  
8 termined that such proposals do not meet the re-  
9 quirements of subsection (f)(3)(B);

10              “(C) the court finds that further negotiations  
11 regarding the proposal of the trustee or an alter-  
12 native proposal by the authorized representative are  
13 not likely to produce a mutually satisfactory agree-  
14 ment;

15              “(D) the court finds that implementation of the  
16 proposal shall not cause irreparable harm to the af-  
17 fected retirees; and

18              “(E) the court concludes that an order granting  
19 the motion and immediate implementation of the  
20 proposal of the trustee is essential to permit the  
21 debtor to exit bankruptcy, such that confirmation of  
22 a plan of reorganization is not likely to be followed  
23 by liquidation, or the need for further financial reor-  
24 ganization, of the debtor (or a successor to the debt-  
25 or) in the short term.

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

12                       (B) in the matter following paragraph

13               (3)—

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

16               “(4) In no case”; and

17                       (ii) by striking “is consistent with the  
18 standard set forth in paragraph (3)” and  
19 inserting “assures that all creditors, the  
20 debtor, and all of the affected parties are  
21 treated fairly and equitably, and is clearly  
22 favored by the balance of the equities”;

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

1           (6) by striking subsection (k) and redesignating  
2           subsections (l) and (m) as subsections (k) and (l),  
3           respectively.

4 **SEC. 203. PROTECTION OF EMPLOYEE BENEFITS IN A SALE**  
5 **OF ASSETS.**

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

10           “(q)(1) In approving a sale or lease of property of  
11 the estate under this section or a plan under chapter 11,  
12 the court shall give substantial weight to the extent to  
13 which a prospective purchaser or lessee of the property  
14 will—

15           “(A) preserve the jobs of the employees of the  
16 debtor;

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

19           “(C) assume or match the pension and health  
20 benefit obligations of the debtor to the retirees of  
21 the debtor.

22           “(2) If there are two or more offers to purchase or  
23 lease property of the estate under this section or a plan  
24 under chapter 11, the court shall approve the offer of the  
25 prospective purchaser or lessee that will best carry out the

1 actions described in subparagraphs (A) through (C) of  
2 paragraph (1).”.

3 (b) CHAPTER 11 PLANS.—Section 1129(a) of title  
4 11, United States Code is amended by adding at the end  
5 the following:

6 “(17) If the plan provides for the sale of all or  
7 substantially all of the property of the estate, the  
8 plan requires the purchaser of the sale to carry out  
9 the actions described in subparagraphs (A) through  
10 (C) of section 363(q)(1).”.

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

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

14 “(l) The court shall allow a claim asserted by an ac-  
15 tive or retired participant, or by a labor organization rep-  
16 resenting such participants, in a defined benefit plan ter-  
17 minated under section 4041 or 4042 of the Employee Re-  
18 tirement Income Security Act of 1974 (29 U.S.C. 1341,  
19 1342), for any shortfall in pension benefits accrued as of  
20 the effective date of the termination of such pension plan  
21 as a result of the termination of the plan and limitations  
22 upon the payment of benefits imposed pursuant to section  
23 4022 of that Act (29 U.S.C. 1342), notwithstanding any  
24 claim asserted and collected by the Pension Benefit Guar-  
25 anty Corporation with respect to such termination.

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

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

11       Section 506(e) of title 11, United States Code, is  
12 amended—

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

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

15             “(2) If one or more employees of the debtor  
16 have not received wages, accrued vacation, sever-  
17 ance, or any other compensation owed under a plan,  
18 program, policy or practice of the debtor, or pursu-  
19 ant to the terms of a collective bargaining agree-  
20 ment, for services rendered on or after the date of  
21 the commencement of the case, or the debtor has not  
22 made a contribution due under an employee benefit  
23 plan on or after the date of the commencement of  
24 the case, such unpaid obligations shall be deemed  
25 reasonable, necessary costs and expenses of pre-



1 serving, or disposing of, property securing an al-  
2 lowed secured claim and benefitting the holder of the  
3 allowed secured claim, and shall be recovered by the  
4 trustee for payment to the employees or the em-  
5 ployee benefit plan, as applicable, even if the trustee,  
6 or a successor or predecessor in interest has other-  
7 wise waived the provisions of this subsection under  
8 an agreement with the holder of the allowed secured  
9 claim or a successor or predecessor in interest.”.

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

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

13 (1) by inserting before section 1101 the fol-  
14 lowing: “1100. Statement of purpose A debtor com-  
15 mencing a case under this chapter shall have as its  
16 principal purpose the reorganization of its business  
17 to preserve going concern value to the maximum ex-  
18 tent possible through the productive use of its assets  
19 and the preservation of jobs that will sustain produc-  
20 tive economic activity.”;

21 (2) in section 1129—

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

24 “(18) The debtor has demonstrated that the re-  
25 organization preserves going concern value to the

1 maximum extent possible through the productive use  
2 of the assets of the debtor and preserves jobs that  
3 sustain productive economic activity.”; and

4 (B) in subsection (c)—

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

6 (ii) by striking the last sentence and

7 inserting the following:

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

11 “(A) consider the extent to which each  
12 plan would preserve going concern value  
13 through the productive use of the assets of the  
14 debtor and the preservation of jobs that sustain  
15 productive economic activity; and

16 “(B) confirm the plan that better serves  
17 such interests.

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

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

“1100. Statement of purpose.”.

1 **SEC. 207. TERMINATION OF EXCLUSIVITY.**

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

4 “(3) For purposes of this subsection, cause for  
5 reducing the 120-day period or the 180-day period  
6 includes—

7 “(A) the filing of a motion pursuant to  
8 section 1113 seeking rejection of a collective  
9 bargaining agreement if a plan based upon an  
10 alternative proposal by the labor organization is  
11 reasonably likely to be confirmed within a rea-  
12 sonable time; and

13 “(B) the proposed filing of a plan by a  
14 proponent other than the debtor, which incor-  
15 porates the terms of a settlement with a labor  
16 organization if such plan is reasonably likely to  
17 be confirmed within a reasonable time.”.

18 **TITLE III—RESTRICTING EXECU-**  
19 **TIVE COMPENSATION PRO-**  
20 **GRAMS**

21 **SEC. 301. EXECUTIVE COMPENSATION UPON EXIT FROM**  
22 **BANKRUPTCY.**

23 Section 1129(a) of title 11, United States Code, is  
24 amended—

25 (1) in paragraph (4)—

26 (A) by adding “(A)” after “(4)”;

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

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

5 “(B)(i) Subject to clause (ii), the plan does  
6 not provide for payments or other distributions  
7 to, or for the benefit of, an insider of the debt-  
8 or, a senior executive officer of the debtor, any  
9 of the 20 highest compensated employees of the  
10 debtor who are not insiders or senior executive  
11 officers, any department or division manager of  
12 the debtor, or any consultant providing services  
13 to the debtor, unless—

14 “(I) the payments or other distribu-  
15 tions are part of a program that is gen-  
16 erally applicable to all full-time employees  
17 of the debtor; and

18 “(II) the payments or distributions do  
19 not exceed the compensation limits estab-  
20 lished in section 503(c)(1) in comparison  
21 to the nonmanagement workforce of the  
22 debtor.

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

1 (2) in paragraph (5)—

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

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

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

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

10 “(i) reasonable when compared to in-  
11 dividuals holding comparable positions at  
12 comparable companies in the same indus-  
13 try as the debtor;

14 “(ii) not more than the amount cor-  
15 responding to the 50th percentile of the  
16 compensation of the individuals described  
17 in clause (i); and

18 “(iii) not excessive or disproportionate  
19 in light of economic losses of the non-  
20 management workforce of the debtor.”.

21 **SEC. 302. LIMITATIONS ON EXECUTIVE COMPENSATION EN-**  
22 **HANCEMENTS.**

23 Section 503(e) of title 11, United States Code, is  
24 amended—

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

4           (2) in paragraph (1)—

5           (A) in the matter preceding subparagraph

6           (A)—

7           (i) by inserting “, a senior executive  
8 officer of the debtor, any the 20 highest  
9 compensated employees of the debtor who  
10 are not insiders or senior executive officers,  
11 any department or division manager of the  
12 debtor, or any consultant providing serv-  
13 ices to the debtor” before “for the pur-  
14 pose”; and

15           (ii) by inserting “or for the payment  
16 of performance or incentive compensation,  
17 or a bonus of any kind, or other financial  
18 returns designed to replace or enhance in-  
19 centive, stock, or other compensation in ef-  
20 fect before the date of the commencement  
21 of the case,” after “remain with the debt-  
22 or’s business,”;

23           (B) by amending subparagraph (A) to read

24 as follows:

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

4           (C) by striking subparagraph (B);

5           (D) by redesignating subparagraph (C) as  
6 subparagraph (B);

7           (E) in subparagraph (B), as so redesign-  
8 dated—

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

11           (ii) in clause (ii)—

12           (I) by striking “25” and insert-  
13 ing “10”; and

14           (II) by striking “insider” and in-  
15 serting “person”;

16           (3) in paragraph (2)—

17           (A) in the matter preceding subparagraph  
18 (A), by inserting “, a senior executive officer of  
19 the debtor, any of the 20 highest compensated  
20 employees of the debtor who are not insiders or  
21 senior executive officers, any department or di-  
22 vision manager of the debtor, or any consultant  
23 providing services to the debtor,” before “, un-  
24 less”; and

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

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

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

16 **SEC. 303. PROHIBITION AGAINST SPECIAL COMPENSATION**  
17 **PAYMENTS.**

18 Section 363 of title 11, United States Code, is  
19 amended—

20 (1) in subsection (b), by adding at the end the  
21 following:

22 “(3) No plan, program, or other transfer or ob-  
23 ligation to, or for the benefit of, an insider of the  
24 debtor, a senior executive officer of the debtor, the  
25 20 highest compensated employees of the debtor who



1 are not insiders or senior executive officers, any de-  
2 partment or division manager of the debtor, or any  
3 consultant providing services to the debtor shall be  
4 approved if the debtor has, on or after the date that  
5 is 1 year before the date of the filing of the peti-  
6 tion—

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

10 “(B) modified any plan, program, policy,  
11 or practice described in subparagraph (A) in  
12 order to reduce benefits under the plan, pro-  
13 gram, policy, or practice.”; and

14 (2) in subsection (c)—

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

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

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

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

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

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

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

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

17 “(r) No plan, fund, program, or contract to provide  
18 retiree benefits for insiders of the debtor, senior executive  
19 officers of the debtor, or the 20 highest compensated em-  
20 ployees of the debtor who are not insiders or senior execu-  
21 tive officers shall be assumed if the debtor has obtained  
22 relief under subsection (g) or (h) of section 1114 to impose  
23 reductions in retiree benefits or under subsection (d) or  
24 (e) of section 1113 to impose reductions in the health ben-  
25 efits of active employees of the debtor, or has otherwise  
26 reduced or eliminated health benefits for employees or re-

1 tirees of the debtor on are after the date that is 1 year  
2 before the date of the commencement of the case.”.

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

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

“563. Recovery of executive compensation.

7 “(a) If a debtor has obtained relief under section  
8 1113(d) or section 1114(g), by which the debtor reduces  
9 the cost of its obligations under a collective bargaining  
10 agreement or a plan, fund, or program for retiree benefits  
11 (as defined in section 1114(a)), the court, in granting re-  
12 lief, shall determine the percentage diminution in the value  
13 of the obligations when compared to the obligations of the  
14 debtor under the collective bargaining agreement, or with  
15 respect to retiree benefits, as of the date of the commence-  
16 ment of the case under this title before granting such re-  
17 lief. In making its determination, the court shall include  
18 reductions in benefits, if any, as a result of the termi-  
19 nation pursuant to section 4041 or 4042 of the Employee  
20 Retirement Income Security Act of 1974 (29 U.S.C. 1341,  
21 1342), of a defined benefit plan administered by the debt-  
22 or, or for which the debtor is a contributing employer, ef-  
23 fective at any time on or after 180 days before the date  
24 of the commencement of a case under this title. The court

1 shall not take into account pension benefits paid or pay-  
2 able under that Act as a result of any such termination.

3       “(b) If a defined benefit pension plan administered  
4 by the debtor, or for which the debtor is a contributing  
5 employer, has been terminated pursuant to section 4041  
6 or 4042 of the Employee Retirement Income Security Act  
7 of 1974 (29 U.S.C. 1341, 1342), effective at any time on  
8 or after 180 days before the date of the commencement  
9 of a case under this title, but a debtor has not obtained  
10 relief under section 1113(d), or section 1114(g), the court,  
11 upon motion of a party in interest, shall determine the  
12 percentage diminution in the value of benefit obligations  
13 when compared to the total benefit liabilities before such  
14 termination. The court shall not take into account pension  
15 benefits paid or payable under title IV of the Employee  
16 Retirement Income Security Act of 1974 (29 U.S.C. 1301  
17 et seq.) as a result of any such termination.

18       “(c) Upon the determination of the percentage dimi-  
19 nution in value under subsection (a) or (b), the estate shall  
20 have a claim for the return of the same percentage of the  
21 compensation paid, directly or indirectly (including any  
22 transfer to a self-settled trust or similar device, or to a  
23 nonqualified deferred compensation plan under section  
24 409A(d)(1) of the Internal Revenue Code of 1986) to any  
25 officer of the debtor serving as member of the board of

1 directors of the debtor within the year before the date of  
2 the commencement of the case, and any individual serving  
3 as chairman or lead director of the board of directors at  
4 the time of the granting of relief under section 1113 or  
5 1114 or, if no such relief has been granted, the termi-  
6 nation of the defined benefit plan.

7 “(d) The trustee or a committee appointed pursuant  
8 to section 1102 may commence an action to recover such  
9 claims, except that if neither the trustee nor such com-  
10 mittee commences an action to recover such claim by the  
11 first date set for the hearing on the confirmation of plan  
12 under section 1129, any party in interest may apply to  
13 the court for authority to recover such claim for the ben-  
14 efit of the estate. The costs of recovery shall be borne by  
15 the estate.

16 “(e) The court shall not award postpetition com-  
17 pensation under section 503(c) or otherwise to any person  
18 subject to subsection (c) of this section if there is a reason-  
19 able likelihood that such compensation is intended to reim-  
20 burse or replace compensation recovered by the estate  
21 under this section.”.

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

“563. Recovery of executive compensation.”.

## 1    **TITLE IV—OTHER PROVISIONS**

### 2    **SEC. 401. UNION PROOF OF CLAIM.**

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

### 6    **SEC. 402. EXCEPTION FROM AUTOMATIC STAY.**

7           Section 362(b) of title 11, United States Code, is  
8 amended—

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

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

13           (3) by inserting after paragraph (28) the fol-  
14 lowing:

15           “(29) of the commencement or continuation of  
16 a grievance, arbitration, or similar dispute resolution  
17 proceeding established by a collective bargaining  
18 agreement that was or could have been commenced  
19 against the debtor before the filing of a case under  
20 this title, or the payment or enforcement of an  
21 award or settlement under such proceeding.”.

### 22    **SEC. 403. EFFECT ON COLLECTIVE BARGAINING AGREE-** 23                           **MENTS UNDER THE RAILWAY LABOR ACT.**

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

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

○