To amend title 11 and title 29, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, to protect the health benefits of employees and retirees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2014

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

A BILL

To amend title 11 and title 29, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, to protect the health benefits of employees and retirees, and for other purposes.

Be it enacted by the Senate and House of Representa-

ives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

(a) Short Title.—This Act may be cited as the “Bankruptcy Fairness and Employee Benefits Protection Act of 2014”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title.

TITLE I—FAIRNESS FOR EMPLOYEES AND RETIREES IN CORPORATE BANKRUPTCIES

Sec. 101. Prohibition of unfair reductions to employee and retiree benefits.
Sec. 102. Payment of insurance benefits to retirees.
Sec. 103. Fair treatment of compensation.
Sec. 104. Venue; change of venue.
Sec. 105. Protection of benefits in chapter 9 bankruptcy.
Sec. 106. Requirement to make pension contributions.

TITLE II—PROTECTION OF EMPLOYEE AND RETIREE HEALTH BENEFITS

Sec. 201. Notification of extent to which health benefits can be modified or terminated.
Sec. 203. Comptroller General report.

7 TITLE I—FAIRNESS FOR EMPLOYEES AND RETIREES IN CORPORATE BANKRUPTCIES

SEC. 101. PROHIBITION OF UNFAIR REDUCTIONS TO EMPLOYEE AND RETIREE BENEFITS.

(a) Collective Bargaining Agreements.—Section 1113 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking “necessary modifications in the employees benefits and protections that are necessary to permit the
reorganization of the debtor” and insert “minimum modifications in the employees benefits and protections that are necessary to prevent the liquidation of the debtor”; and

(B) by adding at the end the following:

“(3)(A) If the proposal made under paragraph (1) provides for a modification of the health insurance benefits of employees of the debtor, the proposal shall provide for a modification of the health insurance benefits of officers and directors of the debtor—

“(i) to, at a minimum, be comparable to the modification of health insurance benefits of employees of the debtor; and

“(ii) such that the health insurance benefits of officers and directors are not more generous than those of employees of the debtor.

“(B) If the proposal made under paragraph (1) provides for a modification of any benefit of employees of the debtor other than health insurance benefits, including wages and pension benefits, the proposal shall provide for a modification of such benefit of officers and directors of the debtor that is, at a minimum, in an amount equal to the percentage by
which such benefit of employees of the debtor was modified.”;

(2) in subsection (c)—

(A) in paragraph (1), by striking “subsection (b)(1)” and inserting “paragraphs (1) and (3) of subsection (b)”;

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(C) by inserting after paragraph (1) the following:

“(2) the debtor established by clear and convincing evidence that any modification of the benefits and protections of an employee of the debtor proposed under subsection (b)(1) is the minimum modification necessary to prevent the liquidation of the debtor;”; and

(3) by adding at the end the following:

“(g) The rejection of a collective bargaining agreement under this section constitutes a breach of the agreement, and shall entitle employees of the debtor to a claim for damages.”.

(b) Health Insurance Benefits of Retired Employees.—Section 1114 of title 11, United States Code, is amended—

(1) in subsection (f)—
(A) in paragraph (1)(A), by striking “necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor” and insert “minimum modifications in the retiree benefits that are necessary to prevent the liquidation of the debtor”; and

(B) by adding at the end the following:

“(3) If the proposal made under paragraph (1) provides for a modification of the health insurance benefits of retired employees of the debtor, the proposal shall provide for a modification of the health insurance benefits of officers and directors of the debtor—

“(A) to, at a minimum, be comparable to the modification of health insurance benefits of retired employees of the debtor; and

“(B) such that the health insurance benefits of officers and directors are not more generous than those of retired employees of the debtor.”; and

(2) in subsection (g)(3), by striking “necessary to permit the reorganization of the debtor” and insert “the minimum modification necessary to prevent the liquidation of the debtor”.

---

VerDate Mar 15 2010 03:54 Jun 05, 2014 Jkt 039200 PO 00000 Frm 00005 Fmt 6652 Sfmt 6201 E:\BILLS\S2418.IS S2418rfrederick on DSK6VPTVN1PROD with BILLS
SEC. 102. PAYMENT OF INSURANCE BENEFITS TO RETIREES.

(a) In General.—Section 1114(j) of title 11, United States Code, is amended to read as follows:

“(j)(1) No claim for retiree benefits shall be limited by section 502(b)(7).

“(2)(A) A retired employee whose retiree benefits are modified under subsection (e)(1) or (g) shall have a claim in an amount equal to the value of the retiree benefits lost as a result of the modification, which shall be reduced by the amount paid by a debtor under subparagraph (B).

“(B)(i) In accordance with section 1129(a)(13)(B), a debtor shall pay a retired employee with a claim under subparagraph (A)—

“(I) cash in an amount equal to the 2-year cost of premiums for continuation coverage (as defined in section 602 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162)) for the retired employee under section 602(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(3)); or

“(II) if the retired employee is not eligible for continuation coverage, cash in an amount equal to the 2-year cost of premiums for a comparable health insurance plan offered through a State Exchange, Federally Facilitated Exchange, or Federal-State Exchange.
Partnership Exchange established under the Patient Protection and Affordable Care Act (42 U.S.C. 18001 et seq.).

“(ii) Notwithstanding clause (i), if the court determines it to be in the interest of fairness and equity, the court may require a debtor to pay a retired employee with a claim under subparagraph (A) cash in an amount equal to the cost of premiums for continuation coverage under clause (i)(I) or for a comparable health insurance plan under clause (i)(II) for a period of more than 2 years.

“(iii) The amount paid by a debtor under this subparagraph shall not exceed the amount of the claim under subparagraph (A).

“(C) Any amount of the claim under subparagraph (A) that is not paid under subparagraph (B) shall be a general unsecured claim.”.

(b) CONFIRMATION OF PLAN.—Section 1129(a)(13) of title 11, United States Code, is amended to read as follows:

“(13) The plan provides—

“(A) for the continuation, after the effective date of the plan, of the payment of all retiree benefits (as defined in section 1114(a)), at the level established pursuant to subsection (e)(1) or (g) of section 1114, at any time before
the confirmation of the plan, for the duration of
the period the debtor has obligated itself to pro-
vide such benefits; and

“(B) that the holder of a claim under sec-

tion 1114(j)(2)(A) shall receive from the debt-
or, on the effective date of the plan, cash equal
to the amount calculated under section
1114(j)(2)(B).”.

SEC. 103. FAIR TREATMENT OF COMPENSATION.

(a) Prohibition of Bonus Payments.—Section

503(c) of title 11, United States Code, is amended—

(1) in paragraph (2)(B), by striking “or” at the end;

(2) by redesignating paragraph (3) as para-

graph (4); and

(3) by inserting after paragraph (2) the fol-

lowing:

“(3) a bonus payment to an insider of the debt-
or, including an incentive-based bonus payment; or”.

(b) Increased Priority Claim Amount for Em-

ployee Wages and Benefits.—Section 507(a) of title

11, United States Code, is amended—

(1) in paragraph (4)—

(A) by striking “$10,000” and inserting

“$25,000”; and
(B) by striking “180 days” and inserting “1 year”; and

(2) in paragraph (5)—

(A) in subparagraph (A), by striking “180 days” and inserting “1 year”; and

(B) in subparagraph (B)(i), by striking “$10,000” and inserting “$25,000”.

(c) RECOVERY OF EXCESS COMPENSATION.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

“(j) The court, upon motion of a party in interest, may prohibit a transfer of compensation made to an insider of the debtor within 1 year before the date on which the petition is filed if the court finds, after notice and hearing, that the transfer—

“(1) was not made in the ordinary course of business; or

“(2) resulted in unjust enrichment.”.

SEC. 104. VENUE; CHANGE OF VENUE.

Chapter 87 of title 28, United States Code, is amended—

(1) by amending section 1408 to read as follows:
§ 1408. Venue of cases under title 11

“Except as provided in section 1410, a case under title 11 shall be commenced in the district court for the district in which the largest share of employees, retired employees, physical assets, and operations of the person or entity that is the subject of the case were located in the year immediately preceding the commencement of the case.”; and

(2) in section 1412, by striking “to a district court for another district” and inserting “to the district court for the district in which the principal place of business in the United States of the person or entity that is the subject of the case was located in the year immediately preceding the commencement of the case”.

SEC. 105. PROTECTION OF BENEFITS IN CHAPTER 9 BANKRUPTCY.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting “507(a)(4), 507(a)(5),” after “507(a)(2)”; (2) by inserting “1113, 1114,” after “1111(b)”; and

(3) by inserting “1129(a)(13),” after “1129(a)(10)”.

S 2418 IS
SEC. 106. REQUIREMENT TO MAKE PENSION CONTRIBUTIONS.

(a) REQUIREMENT TO PAY MINIMUM FUNDING CONTRIBUTIONS.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"§1117. Duty of debtor in possession to make required pension contributions

“(a) DEFINITIONS.—In this section—

“(1) the term ‘pension plan’ has the meaning given that term under section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and

“(2) the term ‘required pension contributions’ means contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code of 1986 and sections 302 and 303 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 and 1083), including any required installment contributions.

“(b) REQUIREMENT.—A debtor in possession that sponsors a pension plan or is a member of the controlled group with respect to such a plan, or the trustee of the debtor in possession, shall—
“(1) make all required pension contributions to
the pension plan that become due after the filing of
the petition; and

“(2) make such contributions on or before the
due dates specified in section 430(j) of the Internal
Revenue Code and section 303(j) of the Employee
1083(j)).”.

(b) TREATMENT AS ADMINISTRATIVE EXPENSES.—
Section 503(b) of title 11, United States Code, is amend-
ed—

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

(2) in paragraph (9), by striking the period at
the end and inserting “; and”;

(3) by adding at the end the following:

“(10) any required pension contributions under
section 1117 due to be made after the filing of the
petition that are unpaid.”.

(e) PERFECTION OF STATUTORY LIENS FOR MISSED
PENSION CONTRIBUTIONS.—Section 362(b) of title 11,
United States Code, is amended—

(1) in paragraph (27), by striking “and” at the
end;
(2) in paragraph (28), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(29) under subsection (a), of any act to perfect, or to maintain or continue the perfection of, a statutory lien imposed by section 430(k) of the Internal Revenue Code of 1986 or section 303(k) of the Employee Retirement Income Security Act (29 U.S.C. 1083(k)) (which shall not be voidable under section 545 of this title), for failure to make contribution payments required under those sections, without regard to whether such contributions became due or whether such lien arose before or after the filing of the petition.”.

TITLE II—PROTECTION OF EMPLOYEE AND RETIREE HEALTH BENEFITS

SEC. 201. NOTIFICATION OF EXTENT TO WHICH HEALTH BENEFITS CAN BE MODIFIED OR TERMINATED.

(a) Inclusion in Summary Plan Description.—Section 102(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022) is amended by inserting “; in the case of a group health plan (as so defined), whether the provisions of the plan permit the plan sponsor
or any employer participating in the plan to unilaterally modify or terminate the benefits under the plan with respect to employees, retired employees, and beneficiaries, and when and to what extent benefits under the plan are fully vested with respect to employees, retired employees, and beneficiaries” after “the name and address of such issuer”.

(b) PRESUMPTION THAT RETIRED EMPLOYEE HEALTH BENEFITS CANNOT BE MODIFIED OR TERMINATED.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

“(n) In the case of a suit brought under this title by a participant or beneficiary relating to benefits of a retired employee or the dependents of a retired employee under a group health plan (as defined in section 733(a)(1)), the presumption for purposes of such suit shall be that as of the date an employee retires or completes 20 years of service with the employer, benefits available under the plan during retirement of the employee are fully vested and cannot be modified or terminated for the life of the employee or, if longer, the life of the employee’s spouse. This presumption can be overcome only upon a showing, by clear and convincing evidence, that the terms of the group health plan allow for a modification or termi-
nation of benefits available under the plan and that the employee, prior to becoming a participant in the plan, was made aware, in clear and unambiguous terms, that the plan allowed for such modification or termination of benefits.”.

SEC. 202. PROTECTION OF RETIREES UNDER CERTAIN COLLECTIVELY BARGAINED AGREEMENTS.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

“(h) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby the organization and employer agree to modify the terms of any previous agreement in a manner that would result in a reduction or termination of retiree health insurance benefits provided to an employee or a dependent of an employee under the previous agreement, if such modification of the terms of the previous agreement occurs after the date on which the employee retires.”.

SEC. 203. COMPTROLLER GENERAL REPORT.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report
on the strategies that corporations use to avoid obligations to pay promised employee and retiree benefits.

(b) CONTENTS.—The report under subsection (a) shall include a discussion of—

(1) the use of spin-offs, mergers, subsidiaries, bankruptcies, asset sales, and other strategies to avoid obligations to pay promised employee and retiree benefits;

(2) the impact of such avoidance on the financial, physical, and mental well-being of employees and retirees;

(3) the impact on Federal and State budgets when employers terminate or reduce the benefits of employees and retirees, including the costs that are incurred when employees and retirees seek assistance from Federal and State government programs and services as a result of the termination or reduction of their employment-related benefits; and

(4) recommendations to prevent corporations from evading contractual obligations to pay employee and retiree benefits.