

113TH CONGRESS
2D SESSION

S. 2418

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.

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

1 **SECTION 1. SHORT TITLE.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Bankruptcy Fairness and Employee Benefits Protection
 4 Act of 2014”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 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. 202. Protection of retirees under certain collectively bargained agreements.
- Sec. 203. Comptroller General report.

7 **TITLE I—FAIRNESS FOR EM-**
 8 **PLOYEES AND RETIREES IN**
 9 **CORPORATE BANKRUPTCIES**

10 **SEC. 101. PROHIBITION OF UNFAIR REDUCTIONS TO EM-**
 11 **PLOYEE AND RETIREE BENEFITS.**

12 (a) **COLLECTIVE BARGAINING AGREEMENTS.**—Sec-
 13 tion 1113 of title 11, United States Code, is amended—

14 (1) in subsection (b)—

15 (A) in paragraph (1)(A), by striking “nec-
 16 essary modifications in the employees benefits
 17 and protections that are necessary to permit the

1 reorganization of the debtor” and insert “min-
2 imum modifications in the employees benefits
3 and protections that are necessary to prevent
4 the liquidation of the debtor”; and

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

6 “(3)(A) If the proposal made under paragraph
7 (1) provides for a modification of the health insur-
8 ance benefits of employees of the debtor, the pro-
9 posal shall provide for a modification of the health
10 insurance benefits of officers and directors of the
11 debtor—

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

15 “(ii) such that the health insurance bene-
16 fits of officers and directors are not more gen-
17 erous than those of employees of the debtor.

18 “(B) If the proposal made under paragraph (1)
19 provides for a modification of any benefit of employ-
20 ees of the debtor other than health insurance bene-
21 fits, including wages and pension benefits, the pro-
22 posal shall provide for a modification of such benefit
23 of officers and directors of the debtor that is, at a
24 minimum, in an amount equal to the percentage by

1 which such benefit of employees of the debtor was
2 modified.”;

3 (2) in subsection (c)—

4 (A) in paragraph (1), by striking “sub-
5 section (b)(1)” and inserting “paragraphs (1)
6 and (3) of subsection (b)”;

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

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

11 “(2) the debtor established by clear and con-
12 vincing evidence that any modification of the bene-
13 fits and protections of an employee of the debtor
14 proposed under subsection (b)(1) is the minimum
15 modification necessary to prevent the liquidation of
16 the debtor;” and

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

18 “(g) The rejection of a collective bargaining agree-
19 ment under this section constitutes a breach of the agree-
20 ment, and shall entitle employees of the debtor to a claim
21 for damages.”.

22 (b) HEALTH INSURANCE BENEFITS OF RETIRED
23 EMPLOYEES.—Section 1114 of title 11, United States
24 Code, is amended—

25 (1) in subsection (f)—

1 (A) in paragraph (1)(A), by striking “nec-
2 essary modifications in the retiree benefits that
3 are necessary to permit the reorganization of
4 the debtor” and insert “minimum modifications
5 in the retiree benefits that are necessary to pre-
6 vent the liquidation of the debtor”; and

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

8 “(3) If the proposal made under paragraph (1) pro-
9 vides for a modification of the health insurance benefits
10 of retired employees of the debtor, the proposal shall pro-
11 vide for a modification of the health insurance benefits of
12 officers and directors of the debtor—

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

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

19 (2) in subsection (g)(3), by striking “necessary
20 to permit the reorganization of the debtor” and in-
21 sert “the minimum modification necessary to pre-
22 vent the liquidation of the debtor”.

1 **SEC. 102. PAYMENT OF INSURANCE BENEFITS TO RETIR-**
2 **EES.**

3 (a) IN GENERAL.—Section 1114(j) of title 11, United
4 States Code, is amended to read as follows:

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

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

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

15 “(I) cash in an amount equal to the 2-year cost
16 of premiums for continuation coverage (as defined in
17 section 602 of the Employee Retirement Income Se-
18 curity Act of 1974 (29 U.S.C. 1162)) for the retired
19 employee under section 602(3) of the Employee Re-
20 tirement Income Security Act of 1974 (29 U.S.C.
21 1162(3)); or

22 “(II) if the retired employee is not eligible for
23 continuation coverage, cash in an amount equal to
24 the 2-year cost of premiums for a comparable health
25 insurance plan offered through a State Exchange,
26 Federally Facilitated Exchange, or Federal-State

1 Partnership Exchange established under the Patient
2 Protection and Affordable Care Act (42 U.S.C.
3 18001 et seq.).

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

11 “(iii) The amount paid by a debtor under this sub-
12 paragraph shall not exceed the amount of the claim under
13 subparagraph (A).

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

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

20 “(13) The plan provides—

21 “(A) for the continuation, after the effec-
22 tive date of the plan, of the payment of all re-
23 tiree benefits (as defined in section 1114(a)), at
24 the level established pursuant to subsection
25 (e)(1) or (g) of section 1114, at any time before

1 the confirmation of the plan, for the duration of
2 the period the debtor has obligated itself to pro-
3 vide such benefits; and

4 “(B) that the holder of a claim under sec-
5 tion 1114(j)(2)(A) shall receive from the debt-
6 or, on the effective date of the plan, cash equal
7 to the amount calculated under section
8 1114(j)(2)(B).”.

9 **SEC. 103. FAIR TREATMENT OF COMPENSATION.**

10 (a) PROHIBITION OF BONUS PAYMENTS.—Section
11 503(c) of title 11, United States Code, is amended—

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

14 (2) by redesignating paragraph (3) as para-
15 graph (4); and

16 (3) by inserting after paragraph (2) the fol-
17 lowing:

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

20 (b) INCREASED PRIORITY CLAIM AMOUNT FOR EM-
21 PLOYEE WAGES AND BENEFITS.—Section 507(a) of title

22 11, United States Code, is amended—

23 (1) in paragraph (4)—

24 (A) by striking “\$10,000” and inserting
25 “\$25,000”; and

1 (B) by striking “180 days” and inserting
2 “1 year”; and

3 (2) in paragraph (5)—

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

6 (B) in subparagraph (B)(i), by striking
7 “\$10,000” and inserting “\$25,000”.

8 (c) RECOVERY OF EXCESS COMPENSATION.—Section
9 547 of title 11, United States Code, is amended by adding
10 at the end the following:

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

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

18 “(2) resulted in unjust enrichment.”.

19 **SEC. 104. VENUE; CHANGE OF VENUE.**

20 Chapter 87 of title 28, United States Code, is amend-
21 ed—

22 (1) by amending section 1408 to read as fol-
23 lows:

1 **“§ 1408. Venue of cases under title 11**

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

9 (2) in section 1412, by striking “to a district
10 court for another district” and inserting “to the dis-
11 trict court for the district in which the principal
12 place of business in the United States of the person
13 or entity that is the subject of the case was located
14 in the year immediately preceding the commence-
15 ment of the case”.

16 **SEC. 105. PROTECTION OF BENEFITS IN CHAPTER 9 BANK-**
17 **RUPTCY.**

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

20 (1) by inserting “507(a)(4), 507(a)(5),” after
21 “507(a)(2)”;

22 (2) by inserting “1113, 1114,” after
23 “1111(b)”;

24 (3) by inserting “1129(a)(13),” after
25 “1129(a)(10)”.

1 **SEC. 106. REQUIREMENT TO MAKE PENSION CONTRIBU-**
 2 **TIONS.**

3 (a) REQUIREMENT TO PAY MINIMUM FUNDING CON-
 4 TRIBUTIONS.—Subchapter I of chapter 11 of title 11,
 5 United States Code, is amended by adding at the end the
 6 following:

7 **“§ 1117. Duty of debtor in possession to make re-**
 8 **quired pension contributions**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘pension plan’ has the meaning
 11 given that term under section 3 of the Employee Re-
 12 tirement Income Security Act of 1974 (29 U.S.C.
 13 1002); and

14 “(2) the term ‘required pension contributions’
 15 means contributions necessary to satisfy the min-
 16 imum funding standards under sections 412 and
 17 430 of the Internal Revenue Code of 1986 and sec-
 18 tions 302 and 303 of the Employee Retirement In-
 19 come Security Act of 1974 (29 U.S.C. 1082 and
 20 1083), including any required installment contribu-
 21 tions.

22 “(b) REQUIREMENT.—A debtor in possession that
 23 sponsors a pension plan or is a member of the controlled
 24 group with respect to such a plan, or the trustee of the
 25 debtor in possession, shall—

1 “(1) make all required pension contributions to
2 the pension plan that become due after the filing of
3 the petition; and

4 “(2) make such contributions on or before the
5 due dates specified in section 430(j) of the Internal
6 Revenue Code and section 303(j) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1083(j)).”.

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

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

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

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

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

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

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

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

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

4 “(29) under subsection (a), of any act to per-
5 fect, or to maintain or continue the perfection of, a
6 statutory lien imposed by section 430(k) of the In-
7 ternal Revenue Code of 1986 or section 303(k) of
8 the Employee Retirement Income Security Act (29
9 U.S.C. 1083(k)) (which shall not be voidable under
10 section 545 of this title), for failure to make con-
11 tribution payments required under those sections,
12 without regard to whether such contributions be-
13 came due or whether such lien arose before or after
14 the filing of the petition.”.

15 **TITLE II—PROTECTION OF EM-**
16 **PLOYEE AND RETIREE**
17 **HEALTH BENEFITS**

18 **SEC. 201. NOTIFICATION OF EXTENT TO WHICH HEALTH**
19 **BENEFITS CAN BE MODIFIED OR TERMI-**
20 **NATED.**

21 (a) INCLUSION IN SUMMARY PLAN DESCRIPTION.—

22 Section 102(b) of the Employee Retirement Income Secu-
23 rity Act of 1974 (29 U.S.C. 1022) is amended by inserting
24 “; in the case of a group health plan (as so defined),
25 whether the provisions of the plan permit the plan sponsor

1 or any employer participating in the plan to unilaterally
2 modify or terminate the benefits under the plan with re-
3 spect to employees, retired employees, and beneficiaries,
4 and when and to what extent benefits under the plan are
5 fully vested with respect to employees, retired employees,
6 and beneficiaries” after “the name and address of such
7 issuer”.

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

13 “(n) In the case of a suit brought under this title
14 by a participant or beneficiary relating to benefits of a
15 retired employee or the dependents of a retired employee
16 under a group health plan (as defined in section
17 733(a)(1)), the presumption for purposes of such suit
18 shall be that as of the date an employee retires or com-
19 pletes 20 years of service with the employer, benefits avail-
20 able under the plan during retirement of the employee are
21 fully vested and cannot be modified or terminated for the
22 life of the employee or, if longer, the life of the employee’s
23 spouse. This presumption can be overcome only upon a
24 showing, by clear and convincing evidence, that the terms
25 of the group health plan allow for a modification or termi-

1 nation of benefits available under the plan and that the
2 employee, prior to becoming a participant in the plan, was
3 made aware, in clear and unambiguous terms, that the
4 plan allowed for such modification or termination of bene-
5 fits.”.

6 **SEC. 202. PROTECTION OF RETIREES UNDER CERTAIN COL-**
7 **LECTIVELY BARGAINED AGREEMENTS.**

8 Section 8 of the National Labor Relations Act (29
9 U.S.C. 158) is amended by adding at the end the fol-
10 lowing:

11 “(h) It shall be an unfair labor practice for any labor
12 organization and any employer to enter into any contract
13 or agreement, express or implied, whereby the organiza-
14 tion and employer agree to modify the terms of any pre-
15 vious agreement in a manner that would result in a reduc-
16 tion or termination of retiree health insurance benefits
17 provided to an employee or a dependent of an employee
18 under the previous agreement, if such modification of the
19 terms of the previous agreement occurs after the date on
20 which the employee retires.”.

21 **SEC. 203. COMPTROLLER GENERAL REPORT.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of enactment of this Act, the Comptroller General
24 of the United States shall submit to Congress a report

1 on the strategies that corporations use to avoid obligations
2 to pay promised employee and retiree benefits.

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

5 (1) the use of spin-offs, mergers, subsidiaries,
6 bankruptcies, asset sales, and other strategies to
7 avoid obligations to pay promised employee and re-
8 tiree benefits;

9 (2) the impact of such avoidance on the finan-
10 cial, physical, and mental well-being of employees
11 and retirees;

12 (3) the impact on Federal and State budgets
13 when employers terminate or reduce the benefits of
14 employees and retirees, including the costs that are
15 incurred when employees and retirees seek assist-
16 ance from Federal and State government programs
17 and services as a result of the termination or reduc-
18 tion of their employment-related benefits; and

19 (4) recommendations to prevent corporations
20 from evading contractual obligations to pay em-
21 ployee and retiree benefits.

○