

109TH CONGRESS
2D SESSION

S. 2556

To amend title 11, United States Code, with respect to reform of executive compensation in corporate bankruptcies.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 11, United States Code, with respect to reform of executive compensation in corporate 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.**

4 This Act may be cited as the “Fairness and Account-
5 ability in Reorganizations Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) it is becoming more common for corpora-
9 tions that file for bankruptcy protection under chap-
10 ter 11 of title 11, United States Code, to ask for

1 great sacrifices from workers, retirees, creditors, and
 2 former shareholders, while executives provide them-
 3 selves with generous bonuses and other forms of lu-
 4 crative compensation;

5 (2) in the case of one company, an executive
 6 pay package for key employees would have given ex-
 7 ecutives and managers \$510,000,000 in compensa-
 8 tion, while rank-and-file workers were asked to take
 9 large wage cuts or forced to lose their jobs;

10 (3) decency requires that the highly paid not
 11 seek to enrich themselves on the backs of working
 12 families;

13 (4) some bankruptcies involve companies with
 14 both foreign and domestic operations, and judges
 15 need to be able to evaluate the entirety of the oper-
 16 ations when deciding whether sacrifices by American
 17 workers and retirees are necessary; and

18 (5) there is a need for fairness and account-
 19 ability and a new partnership for the future of the
 20 American workforce.

21 **SEC. 3. EXECUTIVE COMPENSATION.**

22 Section 1129(a)(5) of title 11, United States Code,
 23 is amended—

24 (1) in subparagraph (A)(ii), by striking “and”
 25 at the end; and

1 (2) in subparagraph (B), by striking the period
 2 at the end and inserting the following: “; and

3 “(C) the compensation disclosed pursuant to
 4 subparagraph (B) has been approved by, or is sub-
 5 ject to the approval of, the court, as reasonable.”.

6 **SEC. 4. LIMITATIONS ON COMPENSATION ENHANCEMENTS.**

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

9 (1) in paragraph (1), by inserting “, or for the
 10 payment of a performance, incentive, or other bonus,
 11 or any other compensation enhancement” after “re-
 12 main with the debtor’s business”; and

13 (2) by striking paragraph (3) and inserting the
 14 following:

15 “(3) other transfers or obligations, whether or
 16 not outside of the ordinary course of business, to or
 17 for the benefit of officers, managers, or consultants
 18 retained by the debtor, before or after the filing of
 19 the petition, in the absence of a finding by the court
 20 based upon evidence in the record, and without def-
 21 erence to the debtor’s request for such payments,
 22 that such transfers or obligations are essential to the
 23 survival of the business or (in the case of a liquida-
 24 tion of some or all of the debtors’ assets) essential
 25 to the orderly liquidation and maximization of value

1 of the assets of the debtor, in either case, because
 2 of the essential nature of the services provided, and
 3 then only to the extent that the court finds those
 4 transfers or obligations are reasonable under the cir-
 5 cumstances of the case.”.

6 **SEC. 5. TREATMENT OF FOREIGN AFFILIATES.**

7 (a) COLLECTIVE BARGAINING AGREEMENTS.—Sec-
 8 tion 1113(d) of title 11, United States Code, is amended
 9 by adding at the end the following:

10 “(4) FOREIGN AFFILIATES.—In determining whether
 11 the proposal required by subsection (b)(1) provides for
 12 those necessary modifications in employee benefits and
 13 protections that are necessary to permit the reorganization
 14 of the debtor and assures that all creditors, the debtor,
 15 and all affected parties are treated fairly and equitably,
 16 the court shall take into account the ongoing impact on
 17 the debtor of the debtor’s relationship with all subsidiaries
 18 and affiliates, regardless of whether any such subsidiary
 19 or affiliate is domestic or nondomestic, or whether any
 20 such subsidiary or affiliate is a debtor entity.”.

21 (b) RETIREE HEALTH BENEFITS.—Section 1114 of
 22 title 11, United States Code, is amended by adding at the
 23 end the following:

24 “(n) RETIREE HEALTH BENEFITS; FOREIGN AFFILI-
 25 ATES.—In determining whether the proposal required by

1 subsection (f)(1)(A) provides for those necessary modifica-
2 tions in retiree benefits that are necessary to permit the
3 reorganization of the debtor and assures that all creditors,
4 the debtor, and all affected parties are treated fairly and
5 equitably, the court shall take into account the ongoing
6 impact on the debtor of the debtor's relationship with all
7 subsidiaries and affiliates, regardless of whether any such
8 subsidiary or affiliate is domestic or nondomestic, or
9 whether any such subsidiary or affiliate is a debtor enti-
10 ty.”.

11 **SEC. 6. EFFECTIVE DATE.**

12 Notwithstanding any other provision of law, the
13 amendments made by this Act shall apply to any case
14 under chapter 11 of title 11, United States Code, filed
15 or pending on or after October 1, 2005.

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