

109TH CONGRESS  
1ST SESSION

# S. 329

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2005

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

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## A BILL

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Bankruptcy Fairness  
5       Act”.

1 **SEC. 2. FAIR TREATMENT OF COMPENSATION IN BANK-**  
 2 **RUPTCY.**

3 (a) INCREASED PRIORITY CLAIM AMOUNT FOR EM-  
 4 PLOYEE WAGES AND BENEFITS.—Section 507(a) of title  
 5 11, United States Code, is amended—

6 (1) in paragraph (3)—

7 (A) by striking “\$4,925” and inserting  
 8 “\$15,000”; and

9 (B) by striking “within 90 days”; and

10 (2) in paragraph (4)(B)(i), by striking  
 11 “\$4,925” and inserting “\$15,000”.

12 (b) RECOVERY OF EXCESSIVE COMPENSATION.—Sec-  
 13 tion 547 of title 11, United States Code, is amended by  
 14 adding at the end the following:

15 “(h) The court, on motion of a party of interest, may  
 16 avoid any transfer of compensation made to a present or  
 17 former employee, officer, or member of the board of direc-  
 18 tors of the debtor on or within 90 days before the date  
 19 of the filing of the petition that the court finds, after no-  
 20 tice and a hearing, to be—

21 “(1) out of the ordinary course of business; or

22 “(2) unjust enrichment.”.

23 **SEC. 3. PAYMENT OF INSURANCE BENEFITS OF RETIREES.**

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

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

3       “(2)(A) Each retiree whose benefits are modified pur-  
4 suant to subsection (e)(1) or (g) shall have a claim in an  
5 amount equal to the value of the benefits lost as a result  
6 of such modification. Such claim shall be reduced by the  
7 amount paid by the debtor under subparagraph (B).

8       “(B)(i) In accordance with section 1129(a)(13)(B),  
9 the debtor shall pay the retiree with a claim under sub-  
10 paragraph (A) an amount equal to the cost of 18 months  
11 of premiums on behalf of the retiree and the dependents  
12 of the retiree under section 602(3) of the Employee Re-  
13 tirement Income Security Act of 1974 (29 U.S.C.  
14 1162(3)), which amount shall not exceed the amount of  
15 the claim under subparagraph (A).

16       “(ii) If a retiree under clause (i) is not eligible for  
17 continuation coverage (as defined in section 602 of the  
18 Employee Retirement Income Security Act of 1974), the  
19 Secretary of Labor shall determine the amount to be paid  
20 by the debtor to the retiree based on the 18-month cost  
21 of a comparable health insurance plan.

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

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

4 “(13) The plan provides—

5 “(A) for the continuation after its effective  
6 date of the payment of all retiree benefits (as  
7 defined in section 1114), at the level established  
8 pursuant to subsection (e)(1) or (g) of section  
9 1114, at any time before the confirmation of  
10 the plan, for the duration of the period the  
11 debtor has obligated itself to provide such bene-  
12 fits; and

13 “(B) that the holder of a claim under sec-  
14 tion 1114(j)(2)(A) shall receive from the debt-  
15 or, on the effective date of the plan, cash equal  
16 to the amount calculated under section  
17 1114(j)(2)(B).”.

18 (c) RULEMAKING.—The Secretary of Labor shall pro-  
19 mulgate rules and regulations to carry out the amend-  
20 ments made by this section.

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