

116TH CONGRESS
1ST SESSION

S. 2737

To provide protections for pensions in bankruptcy proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2019

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

A BILL

To provide protections for pensions in bankruptcy proceedings, 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 “Stop Looting American
5 Pensions Act of 2019” or the “SLAP Act”.

6 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
7 **COME SECURITY ACT OF 1974 AND THE IN-**
8 **TERNAL REVENUE CODE OF 1986.**

9 (a) MINIMUM FUNDING STANDARD.—

1 (1) AMENDMENT TO THE EMPLOYEE RETIRE-
2 MENT INCOME SECURITY ACT OF 1974.—Section
3 302(a) of the Employee Retirement Income Security
4 Act of 1974 (29 U.S.C. 1082(a)) is amended by
5 adding at the end the following:

6 “(3) CASES UNDER TITLE 11.—A plan shall
7 continue to be required to satisfy the minimum
8 funding standard under paragraph (1) if a case
9 under title 11, United States Code, is commenced
10 with respect to the employer unless the Secretary of
11 the Treasury has waived the requirements of this
12 subsection with respect to the plan under subsection
13 (c).”.

14 (2) AMENDMENT TO THE INTERNAL REVENUE
15 CODE OF 1986.—Section 412(a) of the Internal Rev-
16 enue Code of 1986 is amended by adding at the end
17 the following:

18 “(3) CASES UNDER TITLE 11.—A plan shall
19 continue to be required to satisfy the minimum
20 funding standard under paragraph (1) if a case
21 under title 11, United States Code, is commenced
22 with respect to the employer unless the Secretary
23 has waived the requirements of this subsection with
24 respect to the plan under subsection (c).”.

1 (b) OBLIGATION TO CONTRIBUTE.—Section 4212 of
 2 the Employee Retirement Income Security Act of 1974
 3 (29 U.S.C. 1392) is amended by adding at the end the
 4 following:

5 “(d) A person shall be subject to an obligation to con-
 6 tribute under this part notwithstanding the commence-
 7 ment of a case under title 11, United States Code, with
 8 respect to that person.”.

9 (c) OBLIGATION TO PAY WITHDRAWAL LIABILITY.—
 10 Section 4220(c) of the Employee Retirement Income Secu-
 11 rity Act of 1974 (29 U.S.C. 1399(c)) is amended by add-
 12 ing at the end the following:

13 “(9) An employer shall be subject to an obliga-
 14 tion to make payments of withdrawal liability under
 15 this section notwithstanding the commencement of a
 16 case under title 11, United States Code, with respect
 17 to the employer.”.

18 **SEC. 3. ADMINISTRATIVE EXPENSES AND PRIORITIES IN**
 19 **BANKRUPTCY PROCEEDINGS.**

20 (a) ALLOWANCE OF ADMINISTRATIVE EXPENSES.—

21 (1) IN GENERAL.—Section 503(b) of title 11,
 22 United States Code, is amended—

23 (A) in paragraph (8)(B), by striking
 24 “and”;

1 (B) in paragraph (9), by striking the pe-
 2 riod at the end and inserting a semicolon; and

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

4 “(10) unpaid minimum required contributions,
 5 as defined in section 302(c)(4)(C)(iii)(I) of the Em-
 6 ployee Retirement Income Security Act of 1974 (29
 7 U.S.C. 1082(c)(4)(C)(iii)(I)) and section 4971(c)(4)
 8 of the Internal Revenue Code of 1986; and

9 “(11) withdrawal liability determined under
 10 part 1 of subtitle E of title IV of the Employee Re-
 11 tirement Income Security Act of 1974 (29 U.S.C.
 12 1381 et seq.), including any accelerated payment of
 13 such withdrawal liability under section 4219(c)(5) of
 14 the Employee Retirement Income Security Act of
 15 1974 (29 U.S.C. 1399(c)(5)).”.

16 (2) CONFORMING AMENDMENT RELATING TO
 17 PRIORITIES.—Section 507(a)(5) of title 11, United
 18 States Code, is amended, in the matter preceding
 19 subparagraph (A), by inserting after “contributions
 20 to an employee benefit plan” the following: “, other
 21 than for unpaid minimum required contributions, as
 22 defined in section 302(c)(4)(C)(iii)(I) of the Em-
 23 ployee Retirement Income Security Act of 1974 (29
 24 U.S.C. 1082(c)(4)(C)(iii)(I)) and section 4971(c)(4)
 25 of the Internal Revenue Code of 1986”.

1 (b) INCREASED WAGE PRIORITY.—Section 507(a) of
 2 title 11, United States Code, is amended—

3 (1) in paragraph (4)—

4 (A) by striking “\$10,000” and inserting
 5 “\$20,000”;

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

7 (C) by striking “or the date of the ces-
 8 sation of the debtor’s business, whichever oc-
 9 curs first,”; and

10 (2) in paragraph (5)—

11 (A) in subparagraph (A)—

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

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

16 (B) by striking subparagraph (B) and in-
 17 serting the following:

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

21 **SEC. 4. AUTOMATIC STAY IN BANKRUPTCY PROCEEDINGS.**

22 Section 362(b) of title 11, United States Code, is
 23 amended—

24 (1) in paragraph (27), by striking “and” at the
 25 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 this section, the
5 commencement or continuation of an action or pro-
6 ceeding by the Director of the Pension Benefits
7 Guaranty Corporation to enforce the minimum
8 standard under section 303(k) of the Employment
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1083(k)).”.

11 **SEC. 5. SALES OF PROPERTY IN BANKRUPTCY PRO-**
12 **CEEDINGS.**

13 (a) IN GENERAL.—Section 363 of title 11, United
14 States Code, is amended—

15 (1) in subsection (b)(1), in the matter pre-
16 ceding subparagraph (A), by striking “The trustee”
17 and inserting “Subject to subsection (q), the trust-
18 ee”;

19 (2) in subsection (c)(1), by striking “If the
20 business” and inserting “Subject to subsection (q),
21 if the business”; and

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

23 “(q)(1) Subject to paragraphs (2) and (3), the trust-
24 ee may not sell property of the estate under subsection
25 (b) or (c) unless the trustee is able to demonstrate that—

1 “(A) the sale complies with the provisions of
2 this title;

3 “(B) the sale has been proposed in good faith
4 and not by any means forbidden by the law;

5 “(C) any payment made for services or for costs
6 and expenses in or in connection with the sale is rea-
7 sonable;

8 “(D) if, with respect to the case, there is any
9 fee payable under section 1930 of title 28, the pro-
10 ceeds of the sale will be used to pay that fee; and

11 “(E) with respect to each class of claims or in-
12 terests—

13 “(i) such class has accepted the sale; or

14 “(ii) such class is not impaired by the sale.

15 “(2) The trustee, on request of the proponent of the
16 sale, may sell property of the estate under subsection (b)
17 or (c) if—

18 “(A) all of the applicable requirements of para-
19 graph (1) other than subparagraph (E) are met with
20 respect to a sale of property; and

21 “(B) the sale does not discriminate unfairly,
22 and is fair and equitable, with respect to each class
23 of claims or interests that is impaired under, and
24 has not accepted, the sale.

1 “(3) The trustee may not sell substantially all of the
 2 property of the estate under subsection (b) or (c) during
 3 the 60-day period beginning on the date of the filing of
 4 the petition unless the court determines that—

5 “(A) there is a high likelihood that the value of
 6 the property of the estate will decrease significantly
 7 during that period; and

8 “(B) the requirements under paragraph (1)
 9 have been satisfied with respect to each sale that
 10 would contribute to substantially all of the property
 11 of the estate being sold.”.

12 (b) PROTECTION OF EMPLOYEE BENEFITS IN A
 13 SALE OF ASSETS.—Section 363(b) of title 11, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 “(3)(A) In approving a sale under this subsection, the
 17 court shall consider the extent to which a bidder has of-
 18 fered to maintain existing jobs, preserve terms and condi-
 19 tions of employment, and assume or match pension and
 20 retiree health benefit obligations in determining whether
 21 an offer constitutes the highest or best offer for such prop-
 22 erty.”.

23 **SEC. 6. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

24 Section 548 of title 11, United States Code, is
 25 amended—

1 (1) in subsection (a)(1), in the matter pre-
 2 ceding subparagraph (A), by striking “2 years” and
 3 inserting “6 years”; and

4 (2) in subsection (b), by striking “2 years” and
 5 inserting “6 years”.

6 **SEC. 7. LIMITATIONS ON EXECUTIVE COMPENSATION EN-**
 7 **HANCEMENTS.**

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

10 (1) in paragraph (1), in the matter preceding
 11 subparagraph (A)—

12 (A) by inserting “, a senior executive offi-
 13 cer, or any of the twenty next most highly com-
 14 pensated employees or consultants” after “an
 15 insider”;

16 (B) by inserting “or for the payment of
 17 performance or incentive compensation, or a
 18 bonus of any kind, or other financial returns
 19 designed to replace or enhance incentive, stock,
 20 or other compensation in effect before the date
 21 of the commencement of the case,” after “re-
 22 main with the debtor’s business,”; and

23 (C) by inserting “clear and convincing” be-
 24 fore “evidence in the record”; and

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

3 “(3) other transfers or obligations, to or for the
4 benefit of insiders, senior executive officers, man-
5 agers, or consultants providing services to the debt-
6 or, in the absence of a finding by the court, based
7 upon clear and convincing evidence, and without def-
8 erence to the debtor’s request for such payments,
9 that such transfers or obligations are essential to the
10 survival of the debtor’s business or (in the case of
11 a liquidation of some or all of the debtor’s assets)
12 essential to the orderly liquidation and maximization
13 of value of the assets of the debtor, in either case,
14 because of the essential nature of the services pro-
15 vided, and then only to the extent that the court
16 finds such transfers or obligations are reasonable
17 compared to individuals holding comparable posi-
18 tions at comparable companies in the same industry
19 and not disproportionate in light of economic conces-
20 sions by the debtor’s nonmanagement workforce dur-
21 ing the case.”.

1 **SEC. 8. APPLICABILITY.**

2 This Act and the amendments made by this Act shall
3 apply with respect to any case that is commenced on or
4 after the date of enactment of this Act.

