

**Redline of the United States Bankruptcy Code (11 U.S.C.) reflecting amendments proposed in H.R. 7370, the Protecting Employees and Retirees in Business Bankruptcies Act of 2020 (PERBB)<sup>1</sup>**  
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**§101. Definitions** [PERBB §102. Claim for stock value losses in defined contribution plans]

In this title the following definitions shall apply: . . .

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; ~~or~~

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured; ~~or~~

(C) right or interest in equity securities of the debtor, or an affiliate of the debtor, if—

(i) the equity securities are held in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34))) for the benefit of an individual who is not an insider, a senior executive officer, or any of the 20 highest compensated employees of the debtor who are not insiders or senior executive officers;

(ii) the equity securities were attributable to either employer contributions by the debtor or an affiliate of the debtor, or elective deferrals (within the meaning of section 402(g) of the Internal Revenue Code of 1986), and any earnings thereon; and

(iii) an employer or plan sponsor who has commenced a case under this case has committed fraud with respect to such plan or has otherwise breached a duty to the participant that has proximately caused the loss of value.

...

**§103. Applicability of chapters** [PERBB §403. Effect on collective bargaining agreements under the Railway Labor Act]

...

(m) Notwithstanding sections 365, 1113, or 1114, neither the court nor the trustee may change the wages, working conditions, or retirement benefits of an employee or a retiree of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act (45 U.S.C. 15 et seq.), except in accordance with section 6 of that Act (45 U.S.C. 156).

**§363. Use, sale, or lease of property** [PERBB §203. Protection of employee benefits in a sale of assets; §303. Prohibition against special compensation payments]

(a) In this section, "cash collateral" means . . .

(b) (1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless— . . .

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then— . . .

<sup>1</sup> 11 U.S.C. accessed at <https://uscode.house.gov/browse/prelim@title11/> (current through Pub. L. 116–182, Oct. 21, 2020, accessed Oct. 31, 2020); based on H.R. 7370 text as introduced into the House on June 25, 2020, available at <https://www.congress.gov/116/bills/hr7370/BILLS-116hr7370ih.pdf> (last accessed Oct. 31, 2020).

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(3) No plan, program, or other transfer or obligation to, or for the benefit of, an insider of the debtor, a senior executive officer of the debtor, the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor shall be approved if the debtor has, on or after the date that is 1 year before the date of the filing of the petition—

(A) discontinued any plan, program, policy, or practice of paying severance pay to the nonmanagement workforce of the debtor; or

(B) modified any plan, program, policy, or practice described in subparagraph (A) in order to reduce benefits under the plan, program, policy, or practice.

(c) (1) Except as provided in paragraph (5), If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2)–(4) [provisions governing use, sale, and lease of cash collateral]

(5) In the case of a transaction that is a transfer or obligation described in paragraphs (1) through (3) of section 503(c), the trustee shall obtain the prior approval of the court after notice and an opportunity for a hearing.

...

(q) (1) In approving a sale or lease of property of the estate under this section or a plan under chapter 11, the court shall give substantial weight to the extent to which a prospective purchaser or lessee of the property will—

(A) preserve the jobs of the employees of the debtor;

(B) maintain the terms and conditions of employment of the employees of the debtor; and

(C) assume or match the pension and health benefit obligations of the debtor to the retirees of the debtor.

(2) If there are two or more offers to purchase or lease property of the estate under this section or a plan under chapter 11, the court shall approve the offer of the prospective purchaser or lessee that will best carry out the actions described in subparagraphs (A) through (C) of paragraph (1).

### **§362. Automatic stay [PERBB §402. Exception from automatic stay]**

(a) Except as provided in subsection (b) of this section, a [bankruptcy petition], operates as a stay, applicable to all entities . . .

(b) The filing of a petition . . . does not operate as a stay— . . .

(29) of the commencement or continuation of a grievance, arbitration, or similar dispute resolution proceeding established by a collective bargaining agreement that was or could have been commenced against the debtor before the filing of a case under this title, or the payment or enforcement of an award of settlement under such proceeding.

...

### **§365. Executory contracts and unexpired leases [PERBB §304. Assumption of executive benefit plans]**

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), ~~and (d)~~, (q), and (r) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

...

(q) No deferred compensation arrangement for the benefit of an insider of the debtor, a senior executive officer of the debtor, or any of the 20 highest compensated employees of the debtor who are not insiders or senior executive officers shall be assumed if a defined benefit plan for employees of the debtor has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341, 1342), on or after the date that is 1 year before the date of the commencement of the case.

(r) No plan, fund, program, or contract to provide retiree benefits for insiders of the debtor, senior executive officers of the debtor, or the 20 highest compensated employees of the debtor who are not insiders or senior executive officers shall be assumed if the debtor has obtained relief under subsection (g) or (h) of section 1114 to impose reductions in retiree benefits or under subsection (d) or (e) of section 1113 to impose reductions in the health benefits of active employees of the debtor, or has otherwise reduced or eliminated health benefits for employees or retirees of the debtor on are [sic] after the date that is 1 year before the date of the commencement of the case.

**§501. Filing of proofs of claims or interests** [PERBB §401. Union proof of claim]

(a) A creditor, including a labor organization, or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

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**§502. Allowance of claims or interests** [PERBB §204. Claim for pension losses]

...

(l) The court shall allow a claim asserted by an active or retired participant, or by a labor organization representing such participants, in a defined benefit plan terminated under section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341, 1342), for any shortfall in pension benefits accrued as of the effective date of the termination of such pension plan as a result of the termination of the plan and limitations upon the payment of benefits imposed pursuant to section 4022 of that Act (29 U.S.C. 1342), notwithstanding any claim asserted and collected by the Pension Benefit Guaranty Corporation with respect to such termination.

(m) The court shall allow a claim of a kind described in section 101(5)(C) by an active or retired participant in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34))), or by a labor organization representing such participants. The amount of such claim shall be measured by the market value of the stock at the time of contribution to, or purchase by, the plan and the value as of the commencement of the case.

**§503. Allowance of administrative expenses** [PERBB §103. Priority for severance pay and contributions to employee benefit plans; §105. Priority for WARN Act damages; §302. Limitations on executive compensation enhancements]

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

(ii) any back pay, civil penalty, or damages for a violation of any Federal or State labor and employment law, including the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) and any comparable State law, wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

...

(10) severance pay owed to employees of the debtor (other than to an insider of the debtor, a senior executive officer of the debtor, the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor), under a plan, program, or policy generally applicable to employees of the debtor (but not under an individual contract of employment), or owed pursuant to a collective bargaining agreement, for layoff or termination on or after the date of the filing of the petition, which pay shall be deemed earned in full upon such layoff or termination of employment; and  
(11) any contribution to an employee benefit plan that is due on or after the date of filing of the petition; and

(c) Notwithstanding subsection (b) and subject to section 363(b)(3), there shall neither be allowed, nor paid—

(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor, a senior executive officer of the debtor, any [of] the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor for the purpose of inducing such person to remain with the debtor's business, or for the payment of performance or incentive compensation, or a bonus of any kind, or other financial returns designed to replace or enhance incentive, stock, or other compensation in effect before the date of the commencement of the case, absent a finding by the court based on evidence in the record that—

(A) the transfer or obligation is part of a program that is generally applicable to all full-time employees of the debtor-essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation; and

~~(B) the services provided by the person are essential to the survival of the business; and~~  
~~(C) either—~~

(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to ~~102~~ times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to ~~25~~10 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such ~~insider-person~~ for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

(2) a severance payment to an insider of the debtor, a senior executive officer of the debtor, any of the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor, unless—

(A) the payment is part of a program that is generally applicable to all full-time employees; and

(B) the amount of the payment is not greater than ~~102~~ times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

(3) other transfers or obligations to, or for the benefit of, an insider of the debtor, a senior executive officer of the debtor, the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor that are outside of the ordinary course of business, except as part of a plan of reorganization and subject to the approval of the court under

~~paragraphs (4) and (5) of section 1129(a) and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.~~

**§506. Determination of secured status** [PERBB §205. Payments by secured lender]

- ...
- (c) (1) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.
- (2) If one or more employees of the debtor have not received wages, accrued vacation, severance, or any other compensation owed under a plan, program, policy or practice of the debtor, or pursuant to the terms of a collective bargaining agreement, for services rendered on or after the date of the commencement of the case, or the debtor has not made a contribution due under an employee benefit plan on or after the date of the commencement of the case, such unpaid obligations shall be deemed reasonable, necessary costs and expenses of preserving, or disposing of, property securing an allowed secured claim and benefitting the holder of the allowed secured claim, and shall be recovered by the trustee for payment to the employees or the employee benefit plan, as applicable, even if the trustee, or a successor or predecessor in interest has otherwise waived the provisions of this subsection under an agreement with the holder of the allowed secured claim or a successor or predecessor in interest.
- ...

**§507. Priorities** [PERBB §101. Increased wage priority]

- (a) The following expenses and claims have priority in the following order:
- (1) First: (A) Allowed unsecured claims for domestic support obligations . . .
- (2) Second, administrative expenses allowed under section 503(b) of this title . . .
- (3) Third, unsecured claims allowed under section 502(f) of this title.
- (4) (A) Fourth, allowed unsecured claims, but only to the extent of \$[13,650]<sup>3</sup> \$20,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—
- (A*i*) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B*ii*) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.
- (B) Severance pay described in subparagraph (A)(i) shall be deemed earned in full upon the layoff or termination of employment of the individual to whom the severance is owed.
- (5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—
- (A) arising from services rendered ~~within 180 days~~ before the date of the filing of the petition ~~or the date of the cessation of the debtor's business, whichever occurs first~~; but only
- (B) for each such plan, to the extent of—
- (i) the number of employees covered by each such plan, multiplied by \$[13,650]<sup>3</sup> \$20,000; less

<sup>3</sup> As adjusted from \$10,000, by notice of Judicial Conference of the U.S. dated Feb. 5, 2019, effective Apr. 1, 2019.

~~(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.~~

**§563. Recovery of executive compensation [PERBB §305]**

~~(a) If a debtor has obtained relief under section 1113(d) or section 1114(g), by which the debtor reduces the cost of its obligations under a collective bargaining agreement or a plan, fund, or program for retiree benefits (as defined in section 1114(a)), the court, in granting relief, shall determine the percentage diminution in the value of the obligations when compared to the obligations of the debtor under the collective bargaining agreement, or with respect to retiree benefits, as of the date of the commencement of the case under this title before granting such relief. In making its determination, the court shall include reductions in benefits, if any, as a result of the termination pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341, 1342), of a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, effective at any time on or after 180 days before the date of the commencement of a case under this title. The court shall not take into account pension benefits paid or payable under that Act as a result of any such termination.~~

~~(b) If a defined benefit pension plan administered by the debtor, or for which the debtor is a contributing employer, has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341, 1342), effective at any time on or after 180 days before the date of the commencement of a case under this title, but a debtor has not obtained relief under section 1113(d), or section 1114(g), the court, upon motion of a party in interest, shall determine the percentage diminution in the value of benefit obligations when compared to the total benefit liabilities before such termination. The court shall not take into account pension benefits paid or payable under title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) as a result of any such termination.~~

~~(c) Upon the determination of the percentage diminution in value under subsection (a) or (b), the estate shall have a claim for the return of the same percentage of the compensation paid, directly or indirectly (including any transfer to a self-settled trust or similar device, or to a nonqualified deferred compensation plan under section 409A(d)(1) of the Internal Revenue Code of 1986) to any officer of the debtor serving as member of the board of directors of the debtor within the year before the date of the commencement of the case, and any individual serving as chairman or lead director of the board of directors at the time of the granting of relief under section 1113 or 1114 or, if no such relief has been granted, the termination of the defined benefit plan.~~

~~(d) The trustee or a committee appointed pursuant to section 1102 may commence an action to recover such claims, except that if neither the trustee nor such committee commences an action to recover such claim by the first date set for the hearing on the confirmation of plan under section 1129, any party in interest may apply to the court for authority to recover such claim for the benefit of the estate. The costs of recovery shall be borne by the estate.~~

~~(e) The court shall not award postpetition compensation under section 503(c) or otherwise to any person subject to subsection (c) of this section if there is a reasonable likelihood that such compensation is intended to reimburse or replace compensation recovered by the estate under this section.~~

**§1100. Statement of purpose [PERBB §206. Preservation of jobs and benefits]**

~~A debtor commencing a case under this chapter shall have as its principal purpose the reorganization of its business to preserve going concern value to the maximum extent possible through the productive use of its assets and the preservation of jobs that will sustain productive economic activity.~~

**§1113. Rejection of collective bargaining agreements [PERBB §201]**

~~(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee as provided in section 103(m) for collective bargaining agreements a case covered by~~

~~subchapter IV of this chapter and by title I of the Railway Labor Act (45 U.S.C. 151 et seq.), may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.~~

~~(hereinafter in this section, a reference to the "trustee" shall include a debtor in possession).~~

~~(b) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to before complying in accordance with the provisions of this section. The trustee shall timely pay all monetary obligations arising under the terms of the collective bargaining agreement. Any such payment required to be made before a plan confirmed under section 1129 is effective has the status of an allowed administrative expense under section 503.~~

~~(b)(1) Subsequent to filing a petition and prior to filing an application. If the trustee seeking rejection or modification of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall— provide notice to the authorized labor organization representative of the employees covered by such the collective bargaining agreement that modifications are being proposed under this section, and shall promptly provide an (A) make a initial proposal for modifications to the collective bargaining agreement. to the authorized representative of the employees covered by such agreement. Thereafter (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith with the labor organization, at reasonable times and for a reasonable period in light of the complexity of the case, in attempting to reach mutually satisfactory acceptable modifications of such the collective bargaining agreement.~~

~~(2) The initial proposal and subsequent proposals by the trustee for modification of a collective bargaining agreement shall be based upon a business plan for the reorganization of the debtor, and shall reflect the most complete and reliable information available at the time of such proposal. The trustee shall (B) provide, subject to subsection (d)(3), to the representative of the employees labor organization with all such relevant information that is relevant to negotiations as is necessary to evaluate the proposal. (3) The court may enter such a protective orders as may be necessary to prevent disclosure of information provided to such representative where if such disclosure could compromise the position of the debtor with respect to its the competitors in the industry of the debtor in which it is engaged, consistent with subject to the needs of the authorized representative of the employee labor organization to evaluate the proposals of the trustee's proposal and the any application for rejection of the collective bargaining agreement or for interim relief pursuant to this section.~~

~~(3) In consideration of Federal policy encouraging the practice and process of collective bargaining and in recognition of the bargained-for expectations of the employees covered by the collective bargaining agreement, modifications proposed by the trustee—~~

~~(A) shall be proposed only as part of a program of workforce and nonworkforce cost savings devised for the reorganization of the debtor, including savings in management personnel costs;~~

~~(B) shall be limited to modifications designed to achieve a specified aggregate financial contribution for the employees covered by the collective bargaining agreement (taking into consideration any labor cost savings negotiated within the 12-month period before filing of the petition), and shall be not more than the which provides for those necessary modifications in the employees benefits and protections minimum savings that are necessary essential to permit the reorganization of the debtor to exit bankruptcy, such that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor (or any successor to the debtor) in the short-term and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and~~

(C) shall not be disproportionate or overly burden the employees covered by the collective bargaining agreement, either in the amount of the cost savings sought from such employees or the nature of the modifications.

~~(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.~~

~~(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.~~

(ed) (1) If, after a period of negotiations, the trustee and the labor organization have not reached an agreement over mutually satisfactory modifications, and further negotiations are not likely to produce mutually satisfactory modifications, the trustee may file a motion seeking rejection of the collective bargaining agreement after notice and a hearing. Absent agreement of the parties, no such hearing shall (1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application before the expiration of the 21-day period beginning on the date on which notice of the hearing is provided to the labor organization representing the employees covered by the collective bargaining agreement. All interested parties Only the debtor and the labor organization may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree. (2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application. An application for rejection shall seek rejection effective upon the entry of an order granting relief. (2) In consideration of Federal policy encouraging the practice and process of collective bargaining and in recognition of the bargained-for expectations of the employees covered by the collective bargaining agreement, the court shall approve may grant an application motion for seeking rejection of a collective bargaining agreement only if, based on clear and convincing evidence—

(A) the court finds that—(1) the trustee has, prior to the hearing, made a proposal that fulfills complied with the requirements of subsection (b)(1c);

(2B) the court has considered alternative proposals by the authorized representative of the employees labor organization and has concluded that such proposals do not meet the requirements of subsection (c)(3)(B) has refused to accept such proposal without good cause; and

(C) the court finds that further negotiations regarding the proposal of the trustee or an alternative proposal of the labor organization are not likely to produce an agreement;

(3) the balance of the equities clearly favors rejection of such agreement.

(D) the court finds that implementation of the proposal of the trustee shall not—

(i) cause a material diminution in the purchasing power of the employees covered by the collective bargaining agreement;

(ii) adversely affect the ability of the debtor to retain an experienced and qualified workforce; or

(iii) impair the labor relations of the debtor such that the ability to achieve a feasible reorganization would be comprised; and

(E) the court concludes that rejection of the collective bargaining agreement and immediate implementation of the proposal of the trustee is essential to permit the debtor to exit bankruptcy, such that confirmation of a plan of reorganization is not likely to be followed by liquidation, or the need for further financial reorganization, of the debtor (or any successor to the debtor) in the short term.

(3) If, during the bankruptcy, the trustee has implemented a program of incentive pay, bonuses, or other financial returns for an insider of the debtor, a senior executive officer of the debtor, any of the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor, or such a program was implemented within 180 days before the date of the filing of the petition, the court shall presume that the trustee has failed to satisfy the requirements of subsection (c)(3)(C).

(4) In no case shall the court enter an order rejecting a collective bargaining agreement that would result in modifications to a level lower than the level proposed by the trustee in the proposal found by the court to have complied with the requirements of this section.

(5) At any time after the date on which an order rejecting a collective bargaining agreement is entered, or in the case of a collective bargaining agreement entered into between the trustee and the labor organization providing mutually satisfactory modifications, at any time after that collective bargaining agreement has been entered into, the labor organization may apply to the court for an order seeking an increase in the level of wages or benefits, or relief from working conditions, based upon changed circumstances. The court shall grant the request only if the increase or other relief is not inconsistent with the standard set forth in paragraph (2)(E).

~~(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.~~

~~(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.~~

(e) If ~~d~~During a period ~~when during which the a~~ collective bargaining agreement ~~at issue under this section~~ continues in effect ~~and a motion for rejection of the collective bargaining agreement has been filed,~~ and if essential to the continuation of the ~~business of the debtor's business,~~ or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement. Any hearing under this ~~paragraph-subsection~~ shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot ~~and may be authorized for not more than 14 days in total.~~

(f) (1) Rejection of a collective bargaining agreement constitutes a breach of the collective bargaining agreement, and shall be effective no earlier than the entry of an order granting such relief.

(2) Notwithstanding paragraph (1), solely for purposes of determining and allowing a claim arising from the rejection of a collective bargaining agreement, rejection shall be treated as a rejection of an executory contract under section 365(g) and shall be allowed or disallowed in accordance with section 502(g)(1). No claim for rejection damages shall be limited by section 502(b)(7). Economic self-help by a labor organization shall be permitted upon a court order granting a motion to reject a collective bargaining agreement under subsection (d) or pursuant to

subsection (e), and no provision of this title or of any other provision of Federal or State law may be construed to the contrary.

(g) The trustee shall provide for the reasonable fees and costs incurred by a labor organization under this section, upon request and after a notice and hearing.

(h) A collective bargaining agreement that is assumed shall be assumed in accordance with section 365.

~~(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.~~

#### **§1114. Payment of insurance benefits to retired employees [PERBB §202]**

(a) For purposes of this section, the term “retiree benefits” means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title, without regard to whether the debtor asserts a right to unilaterally modify such payments under such plan, fund, or program.

(b) (1) For purposes of this section, the term “authorized representative” means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

(2) Committees of retired employees appointed by the court pursuant to this section, and a labor organization serving as the authorized representative under subsection (c)(1), shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(13) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

(c) (1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless . . .

(2) In cases where the labor organization referred to in paragraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to paragraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall order the appointment of a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement. The United States trustee shall appoint any such committee.

(e) (1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee . . . (hereinafter in this section “trustee” shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

- (f) (1) ~~Subsequent to filing a petition and prior to filing an application~~ If a trustee seeks ~~modification of the retiree benefits, the trustee shall— provide a notice to the authorized representative of the retirees that modifications are being proposed pursuant to this section, and shall promptly~~ (A) ~~make provide an initial proposal to the authorized representative of the retirees.~~ ~~Thereafter~~ (2) ~~During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith with the authorized representative at reasonable times and for a reasonable period in light of the complexity of the case in attempting to reach mutually satisfactory modifications of such retiree benefits.~~ (2) ~~The initial proposal and subsequent proposals by the trustee shall be based upon a business plan for the reorganization of the debtor and shall reflect the most complete and reliable information available at the time of such proposal. The trustee shall~~ (B) ~~provide, subject to subsection (k)(3), to the authorized representative of the retirees with such all relevant information that is relevant for the negotiations as is necessary to evaluate the proposal.~~ (3) ~~The court may enter such a protective orders to prevent the disclosure of information provided to such representative where such if disclosure could compromise the position of the debtor with respect to its the competitors in the industry of the debtor in which it is engaged, consistent with~~ subject to the needs of the authorized representative of the retirees to evaluate the proposals of the trustee's proposal and the an application pursuant to subsection (g) or (h). ~~for modification, as may be necessary~~
- (3) Modifications proposed by the trustee —

(A) shall be proposed only as part of a program of workforce and nonworkforce cost savings devised for the reorganization of the debtor, including savings in management personnel costs;

(B) shall be limited to modifications that are designed to achieve a specified aggregate financial contribution for the retiree group represented by the authorized representative (taking into consideration any cost savings implemented within the 12-month period before the date of filing of the petition with respect to the retiree group), and shall be no more than the ~~which provides for those necessary modifications in the retiree benefits~~ minimum savings that are necessary ~~essential~~ to permit the reorganization of the debtor to exit bankruptcy, such that confirmation of a plan of reorganization is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor (or any successor to the debtor) in the short term and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(C) shall not be disproportionate or overly burden the retiree group, either in the amount of the cost savings sought from such group or the nature of the modifications.

~~(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.~~

~~(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.~~

- (g) (1) ~~If, after a period of negotiations, the trustee and the authorized representative have not reached agreement over mutually satisfactory modifications and further negotiations are not likely to produce mutually satisfactory modifications, the trustee may file a motion seeking~~

~~modifications in the payment of retiree benefits after notice and a hearing. Absent agreement of the parties, no such hearing shall (1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application before the expiration of the 21-day period beginning on the date on which notice of the hearing is provided to the authorized representative. All interested parties Only the debtor and the authorized representative may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.~~

~~(2) The court shall enter~~ may grant an order motion to providing for modification modify in the payment of retiree benefits only if, based on clear and convincing evidence—

~~(A) the court finds that—(1) the trustee has, prior to the hearing, made a proposal that fulfills~~ complied with the requirements of subsection (f);

~~(2B) the court has considered alternative proposals by the authorized representative of the retirees and has determined that such proposals do not meet the requirements of subsection (f)(3)(B) has refused to accept such proposal without good cause; and~~

~~(C) the court finds that further negotiations regarding the proposal of the trustee or an alternative proposal of the authorized representative are not likely to produce a mutually satisfactory agreement;~~

~~(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably; and is clearly favored by the balance of the equities;~~

~~(D) the court finds that implementation of the proposal shall not cause irreparable harm to the affected retirees; and~~

~~(E) the court concludes that an order granting the motion and immediate implementation of the proposal of the trustee is essential to permit the debtor to exit bankruptcy, such that confirmation of a plan of reorganization is not likely to be followed by liquidation, or the need for further financial reorganization, of the debtor (or any successor to the debtor) in the short term.~~

~~(3) If, during the bankruptcy, a trustee has implemented a program of incentive pay, bonuses, or other financial returns for insiders of the debtor, senior executive officers of the debtor, the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division managers of the debtor, or any consultants providing services to the debtor, or such a program was implemented within 180 days before the date of the filing of the petition, the court shall presume that the trustee has failed to satisfy the requirements of subsection (f)(3)(C).~~

~~except that i~~ In no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however,* That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought ~~is consistent with the standard set forth in paragraph (3) assures that all creditors, the debtors, and all the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities: *Provided further,* That neither the trustee nor the authorized representative is precluded from making more than one motion for a modification order governed by this subsection.~~

(h) (1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the

court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits for a period of not longer than 14 days.

(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

(3) The implementation of such interim changes does not render the motion for modification moot.

(i) No retiree benefits paid between the filing of the petition and the time a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

(j) No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

~~(k) (1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.~~

~~(2) The court shall rule on such application for modification within ninety days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within ninety days after the date of the commencement of the hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.~~

~~(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.~~

~~(k)~~ If the debtor, during the 180-day period ending on the date of the filing of the petition—

(1) modified retiree benefits; and

(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.

~~(m)~~ This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds \$250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

### **§1121. Who may file a plan** [PERBB §207. Termination of exclusivity]

(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

- (1) a trustee has been appointed under this chapter;
- (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
- (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d) (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

- (2) (A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.
- (B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

(3) For purposes of this subsection, cause for reducing the 120-day period or the 180-day period includes—

- (A) the filing of a motion pursuant to section 1113 seeking rejection of a collective bargaining agreement if a plan based upon an alternative proposal by the labor organization is reasonably likely to be confirmed within a reasonable time; and
- (B) the proposed filing of a plan by a proponent other than the debtor, which incorporates the terms of a settlement with a labor organization if such plan is reasonably likely to be confirmed within a reasonable time.

(e) In a small business case— [different rules apply]

**§1129. Confirmation of plan** [PERBB §104. Financial returns for employees and retirees; §203. Protection of employee benefits in a sale of assets; §206. Preservation of jobs and benefits; §301. Executive compensation upon exit from bankruptcy]

(a) The court shall confirm a plan only if all of the following requirements are met: . . .

(4) (A) Subject to subparagraph (B), Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(B) (i) Subject to clause (ii), the plan does not provide for payments or other distributions to, or for the benefit of, an insider of the debtor, a senior executive officer of the debtor, any of the 20 highest compensated employees of the debtor who are not insiders or senior executive officers, any department or division manager of the debtor, or any consultant providing services to the debtor, unless—

- (I) the payments or other distributions are part of a program that is generally applicable to all full-time employees of the debtor; and
- (II) the payments or distributions do not exceed the compensation limits established in section 503(c)(1) in comparison to the nonmanagement workforce of the debtor.

(ii) The requirement under clause (i) shall not apply to compensation described in paragraph 5(C).

(5) (A) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer,

or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and  
(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; ~~and~~

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider; ~~and~~

(C) the compensation disclosed under subparagraph (B) has been approved by, or is subject to the approval of, the court as—

(i) reasonable when compared to individuals holding comparable positions at comparable companies in the same industry as the debtor,

(ii) not more than the amount corresponding to the 50th percentile of the compensation of the individuals described in clause (i); and

(iii) not excessive or disproportionate in light of the economic losses of the non-management workforce of the debtor.

...  
(13) With respect to retiree benefits, as that term is defined in section 1114(a) of this title, ~~the~~ the plan—

(A) provides for the continuation after ~~its~~ the effective date of the plan of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior ~~to~~ before the date of confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits, or if no modifications are made before the confirmation of the plan, the continuation of all such retiree benefits maintained or established in whole or in part by the debtor before the date of the filing of the petition; and-

(B) provides for recovery of claims arising from the modification of retiree benefits or for other financial returns, as negotiated by the debtor and the authorized representative (to the extent that such returns are paid under, rather than outside of, a plan).

...  
(17) The plan provides for recovery of damages payable for the rejection of a collective bargaining agreement, or for other financial returns as negotiated by the debtor and the authorized representative under section 1113 (to the extent that such returns are paid under, rather than outside of, a plan).

(17) If the plan provides for the sale of all or substantially all of the property of the estate, the plan requires the purchaser of the sale to carry out the actions described in subparagraphs (A) through (C) of section 363(q)(1).<sup>4</sup>

(18) The debtor has demonstrated that the reorganization preserves going concern value to the maximum extent possible through the productive use of the assets of the debtor and preserves jobs that sustain productive economic activity.

(b) . . .

(c) (1) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title.

(2) If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall, ~~consider the preferences of creditors and equity security holders in~~ determining which plan to confirm—

<sup>4</sup> H.R. 7370 as introduced proposes two different new 1129(a)(17) paragraphs, in §104(2) and §203(b).

(A) consider the extent to which each plan would preserve going concern value through the productive use of the assets of the debtor and the preservation of jobs that sustain productive economic activity; and

(B) confirm the plan that better serves such interests.

(3) A plan that incorporates the terms of a settlement with a labor organization representing employees of the debtor shall presumptively constitute the plan that satisfies this subsection.

#### **Legend for Redline**

Addition

~~Deletion~~ (of original or moved text)

Moves: ~~Moved from~~ Moved to ~~Moved to and deleted~~

[Notes]