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PROVISIONS AFFECTING SAVINGS PLAN IN S 256, THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005 (Descriptions Provided by House Committee on the Judiciary)

Revised April 18, 2005

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL- Section 522 of title 11, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (2)--

(i) in subparagraph (A), by striking 'and' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting '; and';

(iii) by adding at the end the following:

'(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.'; and

(iv) by striking '(2)(A) any property' and inserting:

'(3) Property listed in this paragraph is--

'(A) any property';

(B) by striking paragraph (1) and inserting:

'(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.';

(C) by striking '(b) Notwithstanding' and inserting '(b)(1) Notwithstanding';

(D) by striking 'paragraph (2)' each place it appears and inserting 'paragraph (3)';

(E) by striking 'paragraph (1)' each place it appears and inserting 'paragraph (2)';

(F) by striking 'Such property is--'; and

(G) by adding at the end the following:

'(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

'(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

'(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that--

'(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

'(ii) (I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

`(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

`(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

`(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

`(ii) A distribution described in this clause is an amount that--

`(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

`(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.'; and

(2) in subsection (d)--

(A) in the matter preceding paragraph (1), by striking `subsection (b)(1)' and inserting `subsection (b)(2)'; and

(B) by adding at the end the following:

`(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.'

The intent of section 224 is to expand the protection for tax-favored retirement plans or arrangements that may not be already protected under Bankruptcy Code section 541(c)(2) pursuant to Patterson v. Shumate, or other state or federal law. Subsection (a) of section 224 of the Act amends section 522 of the Bankruptcy Code to permit a debtor to exempt certain retirement funds to the extent those monies are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code and that have received a favorable determination pursuant to Internal Revenue Code section 7805 that is in effect as of the date of the commencement of the case. If the retirement monies are in a retirement fund that has not received a favorable determination, those monies are exempt if the debtor demonstrates that no prior unfavorable determination has been made by a court or the Internal Revenue Service, and the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code. If the retirement fund fails to be in substantial compliance with applicable requirements of the Internal Revenue Code, the debtor may claim the retirement funds as exempt if he or she is not materially responsible for such failure. This section also applies to certain direct transfers and rollover distributions. In addition, this provision ensures that the specified retirement funds are exempt under state as well as federal law.

(b) AUTOMATIC STAY- Section 362(b) of title 11, United States Code, is amended--

(1) in paragraph (17), by striking `or' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

`(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer--

`(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

`(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;'

Section 224(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(b) further provides that this exception may not be used to cause any loan made under a governmental plan under section 414(d) or a contract or account under section 403(b) of the Internal Revenue Code to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

(c) EXCEPTIONS TO DISCHARGE- Section 523(a) of title 11, United States Code, as amended by section 215, is amended by inserting after paragraph (17) the following:

“(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under--

“(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

“(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or'.

Section 224(c) amends Bankruptcy Code section 523(a) to except from discharge any amount owed by the debtor to a pension, profit-sharing, stock bonus, or other plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) under a loan authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(c) further provides that this exception to discharge may not be used to cause any loan made under a governmental plan under section 414(d) or a contract or account under section 403(b) of the Internal Revenue Code to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

(d) PLAN CONTENTS- Section 1322 of title 11, United States Code, is amended by adding at the end the following:

“(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute ‘disposable income’ under section 1325.’.

Section 224(d) amends Bankruptcy Code section 1322 to provide that a chapter 13 plan may not materially alter the terms of a loan described in section 362(b)(19) and that any amounts required to repay such loan shall not constitute “disposable income” under section 1325 of the Bankruptcy Code. Section 224(e) amends section 522 of the Bankruptcy Code to impose a \$1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor’s interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interests of justice.

(e) ASSET LIMITATION-

(1) LIMITATION- Section 522 of title 11, United States Code, is amended by adding at the end the following:

`(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed \$1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.'

(2) ADJUSTMENT OF DOLLAR AMOUNTS- Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting `522(n),' after `522(d),'

Section 224(e) amends section 522 of the Bankruptcy Code to impose a \$1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor's interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interests of justice.

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS- Section 541 of title 11, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (4), by striking `or' at the end;

(B) by redesignating paragraph (5) as paragraph (9); and

(C) by inserting after paragraph (4) the following:

`(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

`(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

`(B) only to the extent that such funds--

`(i) are not pledged or promised to any entity in connection with any extension of credit; and

`(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

`(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;

`(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

`(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

`(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in

the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

`(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$5,000;'; and

(2) by adding at the end the following:

`(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.'

(b) DEBTOR'S DUTIES- Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

`(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).'

Subsection (a) of section 225 of the Act amends section 541 of the Bankruptcy Code to provide that funds placed not later than 365 days before the filing of the bankruptcy case in a education individual retirement account are not property of the estate if certain criteria are met. First, the designated beneficiary of such account must be a child, stepchild, grandchild or step-grandchild of the debtor for the taxable year during which funds were placed in the account. A legally adopted child or a foster child, under certain circumstances, may also qualify as a designated beneficiary. Second, such funds may not be pledged or promised to an entity in connection with any extension of credit and they may not be excess contributions (as described in section 4973(e) of the Internal Revenue Code). Funds deposited between 720 days and 365 days before the filing date are protected to the extent they do not exceed \$5,000. Similar criteria apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed to a qualified state tuition plan under section 529(b)(1)(A) of the Internal Revenue Code. Section 225(b) amends Bankruptcy Code section 521 to require a debtor to file with the court a record of any interest that the debtor has in an education individual retirement account or qualified state tuition program.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding after paragraph (6), as added by section 225(a)(1)(C), the following:

`(7) any amount--

`(A) withheld by an employer from the wages of employees for payment as contributions--

`(i) to--

`(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

`(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

`(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

`(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

`(B) received by an employer from employees for payment as contributions--

`(i) to--

- `(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;
- `(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
- `(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

`(ii) to a health insurance plan regulated by State law whether or not subject to such title;'

Section 323 of the Act amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code. Section 323 also excludes as property of the estate funds withheld by an employer from the wages of its employees for payment as contributions to health insurance plans regulated by State law.

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL- Section 521(a) of title 11, United States Code, as amended by sections 106 and 304, is amended--

- (1) in paragraph (5), by striking `and' at the end;
- (2) in paragraph (6), by striking the period at the end and inserting `; and'; and
- (3) by adding after paragraph (6) the following:
 - `(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.'

(b) DUTIES OF TRUSTEES- Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended--

- (1) in paragraph (10), by striking `and' at the end; and
- (2) by adding at the end the following:
 - `(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and'

(c) CONFORMING AMENDMENT- Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

- `(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;'

Subsection (a) of section 446 of the Act amends Bankruptcy Code section 521(a) to require a debtor, unless a trustee is serving in the case, to serve as the administrator (as defined in the Employee Retirement Income Security Act) of an employee benefit plan if the debtor served in such capacity at the time the case was filed. Section 446(b) amends Bankruptcy Code section 704 to require the chapter 7 trustee to perform the obligations of such administrator in a case where the debtor or an entity designated by the debtor was required to perform such obligations. Section 446(c) amends Bankruptcy Code section 1106(a) to require a chapter 11 trustee to perform these obligations.

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended--

- (1) by striking `appoint' and inserting `order the appointment of', and
- (2) by adding at the end the following: `The United States trustee shall appoint any such committee.'.

This provision amends section 1114(d) of the Bankruptcy Code to clarify that it is the responsibility of the United States trustee to appoint members to a committee of retired employees.

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended--

- (1) in paragraph (4) by striking `90' and inserting `180', and
- (2) in paragraphs (4) and (5) by striking `\$4,000' and inserting `\$10,000'.

Section 1401 of the Act amends Bankruptcy Code section 507(a) to provide heightened protections for employees by increasing the monetary cap on wage and employee benefit claims entitled to priority under the Bankruptcy Code from \$4,650 to \$10,000 and lengthens the reachback period for wage claims from 90 days to 180 days. As few employees will continue working without pay for an extended period, the principal effect of extending the time period to 180 days is that a greater portion of unpaid vacation, severance, and sick leave pay will be entitled to priority payment.

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended--

- (1) in subsections (a) and (b) by striking `one year' and inserting `2 years',
- (2) in subsection (a)--

- (A) by inserting `(including any transfer to or for the benefit of an insider under an employment contract)' after `transfer' the 1st place it appears, and
- (B) by inserting `(including any obligation to or for the benefit of an insider under an employment contract)' after `obligation' the 1st place it appears, and

- (3) in subsection (a)(1)(B)(ii)--

- (A) in subclause (II) by striking `or' at the end,
- (B) in subclause (III) by striking the period at the end and inserting `; or', and
- (C) by adding at the end the following:

`(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.'.

- (4) by adding at the end the following:

`(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if--

- `(A) such transfer was made to a self-settled trust or similar device;
- `(B) such transfer was by the debtor;
- `(C) the debtor is a beneficiary of such trust or similar device; and
- `(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

`(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by--

- `(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or
- `(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f)'.

Section 1402 of the Act amends section 548 of the Bankruptcy Code to enhance the recovery of avoidable transfers and excessive pre-petition compensation, such as bonuses, paid to insiders of a debtor. It effectuates two changes to

current law that would make it easier for a trustee to avoid pre-petition transfers. First, section 1402(1) extends the one-year reach-back period for fraudulent transfers to two years. Second, section 1402(2) amends Bankruptcy Code section 548(a) to clarify that it permits the recovery of any transfer to or an obligation incurred for the benefit of an insider under an employment contract, under certain conditions. In addition, section 1402 adds a new provision to section 548 authorizing a bankruptcy trustee to avoid any transfer of an interest of the debtor in property that was made on or within the ten-year period preceding the filing of the debtor's bankruptcy case if: (a) the transfer was made to a self-settled trust or similar device; (b) the transfer was made by the debtor; (c) the debtor is a beneficiary of such trust or similar device; and (d) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted. For purposes of this provision, a transfer includes a transfer made in anticipation of any money judgment, criminal fine, or similar obligation or which the debtor believed would be incurred as a result of: (1) a violation of federal or state securities laws, regulations, or orders; or (2) fraud, deceit, or manipulation in fiduciary capacity or in connection with the purchase or sale of a security under specified provisions of the federal securities laws.

SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended--

- (1) by redesignating subsection (l) as subsection (m), and
- (2) by inserting after subsection (k) the following:

“(1) 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.’.

Current bankruptcy law prevents a chapter 11 debtor from unilaterally modifying certain retiree benefits, such as health insurance, during the pendency of the bankruptcy case unless an authorized retiree representative is appointed and agrees to the modification, or the court authorizes the modification. Section 1403 amends Bankruptcy Code section 1114 to prevent debtors from evading these requirements by terminating retiree benefit plans on the eve of bankruptcy. The amendment would require retroactive reinstatement of retiree benefits that were modified within 180 days before the debtor filed for bankruptcy protection, unless the court finds that the balance of the equities clearly favors the modification.

SEC. 1404. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

- (a) PREPETITION AND POSTPETITION EFFECT- Section 523(a)(19)(B) of title 11, United States Code, is amended by inserting ‘, before, on, or after the date on which the petition was filed,’ after ‘results’.
- (b) EFFECTIVE DATE UPON ENACTMENT OF SARBANES-OXLEY ACT- The amendment made by subsection (a) is effective beginning July 30, 2002.

Bankruptcy Code section 523(a)(19) makes certain debts nondischargeable that result from the violation of any Federal securities law, state securities law, or any regulation or order issued under such Federal or state securities law nondischargeable. Section 1404 amends Bankruptcy Code section 523(a)(19)(B) to provide that it applies to debts that result before, on, or after the date on which the petition was filed from any judgment, order, consent order, decree, settlement agreement, or from any court or administrative order for damages or for other specified payments owed by the debtor. Section 1404 is effective as of July 30, 2002.

SEC. 1405. APPOINTMENT OF TRUSTEE IN CASES OF SUSPECTED FRAUD.

Section 1104 of title 11, United States Code, is amended by adding at the end the following:

“(e) The United States trustee shall move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief

executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting.'

Section 1405 amends Bankruptcy Code section 1104 to require the United States trustee to move for the appointment of a trustee if there are reasonable grounds to suspect that current members of a chapter 11 debtor's governing body, chief executive officer, chief financial officer, or members of the debtor's governing body who selected the debtor's chief executive officer or chief financial officer participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting.

SEC. 1406. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE- Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS-

(1) IN GENERAL- except as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD- The amendment made by section 1402(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

Section 1406 provides that title XIV, with the exception of one provision, takes effect on the date of enactment of this Act and the amendments apply only to cases commenced after such date. The exception applies to section 1402(1) of the Act, which applies only to cases commenced under the Bankruptcy Code more than one year after the date of enactment of this Act.