

AMENDMENT NO. 5202

Calendar No. \_\_\_\_\_

Purpose: ~~To expand the authority of bankruptcy courts to limit retention bonuses and severance pay to corporate insiders.~~

IN THE SENATE OF THE UNITED STATES—109th CONGRESS,  
1st Session

**S. 256**

To amend title 11 of the United States Code, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by  
\_\_\_\_\_

Viz:

1 On page 202, between lines 12 and 13, insert the fol-  
2 lowing:

3 **SEC. 331. LIMITATION ON RETENTION BONUSES, SEVER-**  
4 **ANCE PAY, AND CERTAIN OTHER PAYMENTS.**

5 Section 503 of title 11, United States Code, is  
6 amended by adding at the end the following:

7 “(e) Notwithstanding subsection (b), there shall nei-  
8 ther be allowed, nor paid—

1           “(1) a transfer made to, or an obligation in-  
2       curred for the benefit of, an insider of the debtor for  
3       the purpose of inducing such person to remain with  
4       the debtor’s business, absent a finding by the court  
5       based on evidence in the record that—

6           “(A) the transfer or obligation is essential  
7       to retention of the person because the individual  
8       has a bona fide job offer from another business  
9       at the same or greater rate of compensation;

10          “(B) the services provided by the person  
11       are essential to the survival of the business; and

12          “(C) either—

13               “(i) the amount of the transfer made  
14               to, or obligation incurred for the benefit of,  
15               the person is not greater than an amount  
16               equal to 10 times the amount of the mean  
17               transfer or obligation of a similar kind  
18               given to nonmanagement employees for  
19               any purpose during the calendar year in  
20               which the transfer is made or the obliga-  
21               tion is incurred; or

22               “(ii) if no such similar transfers were  
23               made to, or obligations were incurred for  
24               the benefit of, such nonmanagement em-  
25               ployees during such calendar year, the

1 amount of the transfer or obligation is not  
2 greater than an amount equal to 25 per-  
3 cent of the amount of any similar transfer  
4 or obligation made to or incurred for the  
5 benefit of such insider for any purpose  
6 during the calendar year before the year in  
7 which such transfer is made or obligation  
8 is incurred;

9 “(2) a severance payment to an insider of the  
10 debtor, unless—

11 “(A) the payment is part of a program  
12 that is generally applicable to all full-time em-  
13 ployees; and

14 “(B) the amount of the payment is not  
15 greater than 10 times the amount of the mean  
16 severance pay given to nonmanagement employ-  
17 ees during the calendar year in which the pay-  
18 ment is made; or

19 “(3) other transfers or obligations that are out-  
20 side the ordinary course of business and not justified  
21 by the facts and circumstances of the case, including  
22 transfers made to, or obligations incurred for the  
23 benefit of, officers, managers, or consultants hired  
24 after the date of the filing of the petition.”.