

3<sup>rd</sup> Session, 40<sup>th</sup> Parliament,

58 Elizabeth II, 2010

SENATE OF CANADA

**BILL S-2XX**

An Act to amend the Bankruptcy and Insolvency Act and other Acts (protection of beneficiaries of a long term disability benefits plan)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. B-3

**BANKRUPTCY AND INSOLVENCY ACT**

**1. Subsection 2(1) of the *Bankruptcy and Insolvency Act* is amended by adding the following in alphabetical order:**

“disability benefits plan”

“disability benefits plan” means a self-insured long term disability benefits plan or a long term disability insurance plan, whether or not regulated by an Act of Parliament or of the legislature of a province.

“disability benefits plan beneficiaries”

“disability benefits plan beneficiaries” means the employees of a bankrupt employer or of an employer subject to a receivership who participated or participate in a disability benefits plan established by their employer and who are receiving disability benefits on the date of bankruptcy of the employer or on the first day on which there was a receiver in relation to the employer.

“disability benefits plan liabilities”

## **Draft 03 / RAA January 2010**

“disability benefits plan liabilities” means the amounts of money—determined using the standards of practice adopted by the Canadian Institute of Actuaries—required to fully fund the commitment of the disability benefits plan to pay the

- (a) replacement income;
- (b) health benefits; and
- (c) defined pension plan accruals during the long term disability period prior to retirement.

### **2. The Act is amended by adding the following after subsection 60(1.5):**

Proposals by employers — disability benefits plan

(1.51) No proposal in respect of an employer who participated or participates in a disability benefits plan for its employees shall be approved by the court unless

- (a) the proposal provides for the payment of the amount equal to the disability benefits plan liabilities that are unpaid to the fund established for the purpose of the disability benefits plan; and
- (b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

### **3. The Act is amended by adding the following after subsection 81.4:**

Security for unpaid amounts re disability benefits plans — bankruptcy

**81.41** (1) If the bankrupt is an employer who participated or participates in a disability benefits plan for the bankrupt’s employees, the following amounts that are unpaid on the date of bankruptcy to the fund established for the purpose of the disability benefits plan are secured by security on all the assets of the bankrupt in an amount equal to the disability benefits plan liabilities.

Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the bankrupt’s assets, regardless of when that other claim, right, charge or security arose, except

- (a) rights under sections 81.1 and 81.2;
- (b) amounts referred to in subsection 67(3) that have been deemed to be held in trust; and

## Draft 03 / RAA January 2010

(c) securities under sections 81.3 and 81.4.

### Liability of trustee

(3) If the trustee disposes of assets covered by the security, the trustee is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the disability pension plan in respect of those amounts.

### Establishment of a disability benefits plan by the trustee

(4) If the assets of the employer referred to in subsection (1) are sufficient, the trustee shall establish a disability benefits plan for the disability benefits plan beneficiaries of the employer by the assignment of the amounts referred to in that subsection to a life insurance company authorized to establish group disability benefits plans.

### Sinking fund

(5) Where it is impracticable to establish a plan through a life insurance company under subsection (4), the trustee shall deposit those amounts in a bank in order to create a sinking fund to pay benefits to the disability benefits plan beneficiaries.

### Security for unpaid amounts re disability benefits plans — receivership

**81.42** (1) If a person who is subject to a receivership is an employer who participated or participates in a disability benefits plan for the person's employees, the following amounts that are unpaid immediately before the first day on which there was a receiver in relation to the person are secured by security on all the person's assets in an amount equal to the disability benefits plan liabilities.

### Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the person's assets, regardless of when that other claim, right, charge or security arose, except rights under sections 81.1 and 81.2 and securities under sections 81.3 and 81.4.

### Liability of receiver

(3) If the receiver disposes of assets covered by the security, the receiver is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the disability benefits plan in respect of those amounts.

### Establishment of a disability benefits plan by the receiver

**Draft 03 / RAA January 2010**

(4) If the assets of the employer referred to in subsection (1) are sufficient, the receiver shall establish a disability benefits plan for the disability benefits plan beneficiaries of the employer by the assignment of the amounts referred to in that subsection to a life insurance company authorized to establish group disability benefits plans.

Sinking fund

(5) Where it is impracticable to establish a plan through a life insurance company under subsection (4), the receiver shall deposit those amounts in a bank in order to create a sinking fund to pay benefits to the disability benefits plan beneficiaries.

Definitions

(6) The following definitions apply in this section.

“person who is subject to a receivership”

“person who is subject to a receivership” means a person any of whose property is in the possession or under the control of a receiver.

“receiver”

“receiver” means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1).

R.S., c. C-36

**COMPANIES’ CREDITORS ARRANGEMENT ACT**

**4. Subsection 2(1) of the *Companies’ Creditors Arrangement Act* is amended by adding the following in alphabetical order:**

“disability benefits plan”

“disability benefits plan” means a self-insured long term disability benefits plan or a long term disability insurance plan, whether or not regulated by an Act of Parliament or of the legislature of a province.

“disability benefits plan liabilities”

“disability benefits plan liabilities” means the amounts of money—determined using the standards of practice adopted by the Canadian Institute of Actuaries—required to fully fund the commitment of the disability benefits plan to pay the

(a) replacement income;

(b) health benefits; and

(c) defined pension plan accruals during the long term disability period prior to retirement.

**5. The Act is amended by adding the following after subsection 3(1):**

Exception — disability benefits plans

(1.1) Notwithstanding subsection (1), this Act applies in respect of a debtor company or affiliated debtor companies even if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is less than \$5,000,000, if the claims include those of beneficiaries of a disability benefits plan.

**6. The Act is amended by adding the following after subsection 6(7):**

Restriction — disability benefits plan

(7.1) If the company participated or participates in a disability benefits plan for its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of an amount equal to the disability benefits plan liabilities that are unpaid to the fund established for the purpose of the disability benefits plan; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

R.S., c. C-44

**CANADA BUSINESS CORPORATIONS ACT**

**7. Subsection 2(1) of the *Canada Business Corporations Act* is amended by adding the following in alphabetical order:**

“disability benefits plan”

“disability benefits plan” means a self-insured long term disability benefits plan or a long term disability insurance plan, whether or not regulated by an Act of Parliament or of the legislature of a province.

“employer’s contribution”

“employer’s contribution” means the amounts of money—determined using the standards of practice adopted by the Canadian Institute of Actuaries—required to fully fund the commitment of the disability benefits plan to pay the

(a) replacement income;

**Draft 03 / RAA January 2010**

(b) health benefits; and

(c) defined pension plan accruals during the long term disability period prior to retirement.

**8. The Act is amended by adding the following after section 119:**

**119.1** (1) The directors and officers of a corporation are jointly and severally, or solidarily, liable, while they are such directors and officers respectively, to pay the employer's contributions to the disability benefits plan for the employees of the corporation.

Contribution

(2) A director or officer of a corporation who has satisfied a claim under this section is entitled to contribution from the other directors and officers who were liable for the claim.

Definition

(3) For the purposes of this section, "employer" means a corporation that participated or participates in a disability benefits plan for its employees.

**9. The Act is amended by adding the following after section 251:**

Offence — directors and officers

**251.1** (1) Every person commits an offence who is a director or officer of an employer that fails to make the employer's contribution.

Offence — corporation

(2) Every person commits an offence who is an employer that fails to make the employer's contribution.

Punishment — directors and officers

(3) Every person who commits an offence under subsection (1) is liable on summary conviction to a fine of not more than five hundred thousand dollars.

Punishment — corporation

(4) Every person that commits an offence under subsection (2) is liable on summary conviction to a fine of not more than one million dollars.

Definition

(5) For the purposes of this section, “employer” means a corporation that participated or participates in a disability benefits plan for its employees.

R.S., c. L-2

**CANADA LABOUR CODE**

**10. Section 166 of the *Canada Labour Code* is amended by adding the following in alphabetical order:**

“disability benefits plan”

“disability benefits plan” means a self-insured long term disability benefits plan or a long term disability insurance plan, whether or not regulated by an Act of Parliament or of the legislature of a province.

“employer’s contribution”

“employer’s contribution” means the amounts of money—determined using the standards of practice adopted by the Canadian Institute of Actuaries—required to fully fund the commitment of the disability benefits plan to pay the

(a) replacement income;

(b) health benefits; and

(c) defined pension plan accruals during the long term disability period prior to retirement.

**11. The Act is amended by adding the following after section 251.19:**

*Disability Benefits Plans*

**251.2** (1) The directors and officers of a corporation are jointly and severally, or solidarily, liable, while they are such directors and officers respectively, to pay the employer’s contributions to the disability benefits plan for the employees of the corporation.

Contribution

(2) The director or officer of a corporation who has satisfied a claim under this section is entitled to contribution from the other directors and officers who were liable for the claim.

Definition

**Draft 03 / RAA January 2010**

(3) For the purposes of this section, “employer” means a corporation that participated or participates in a disability benefits plan for its employees.

**12. The Act is amended by adding the following after section 256:**

Offence — directors and officers

**256.1** (1) Every person commits an offence who is a director or officer of an employer that fails to make the employer’s contribution.

Offence — corporation

(2) Every person commits an offence who is an employer that fails to make the employer’s contribution.

Punishment — directors and officers

(3) Every person who commits an offence under subsection (1) is liable on summary conviction to a fine of not more than five hundred thousand dollars.

Punishment — corporation

(4) Every person that commits an offence under subsection (2) is liable on summary conviction to a fine of not more than one million dollars.

Definition

(5) For the purposes of this section, “employer” means a corporation that participated or participates in a disability benefits plan for its employees.