



2nd Session, 40th Parliament,
57-58 Elizabeth II, 2009

THE SENATE OF CANADA

BILL S-245

An Act to amend the Bankruptcy and Insolvency Act and other Acts
(unfunded pension plan liabilities)

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; 1992,
c. 27, s. 2

BANKRUPTCY AND INSOLVENCY ACT

1. (1) Clause 60(1.5)(a)(ii)(A) of the *Bankruptcy and Insolvency Act* is replaced by the following:

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that were required to be paid by the employer to the fund, and

(2) Clause 60(1.5)(a)(iii)(A) of the Act is replaced by the following:

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

2. The Act is amended by adding the following after subsection 81.3(1):

Security for
termination or
severance pay

81.3 (1.1) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed termination and severance pay by a bankrupt, less any amount paid by the trustee or by a receiver for that termination or severance pay, is secured as of the date of the bankruptcy by security on the bankrupt's current assets as of the date of the bankruptcy.

Security for
termination or
severance pay

3. The Act is amended by adding the following after subsection 81.4(1):

81.4 (1.1) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed termination and severance pay by a person who is subject to a receivership, less any amount paid by a receiver or trustee for that termination or severance pay, is secured by security on the person's current assets that are in the possession or under the control of the receiver.

4. (1) Subparagraph 81.5(1)(b)(i) of the Act is replaced by the following:

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that were required to be paid by the employer to the fund, and

(2) Subparagraph 81.5(1)(c)(i) of the Act is replaced by the following:

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

5. (1) Subparagraph 81.6(1)(b)(i) of the Act is replaced by the following:

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that were required to be paid by the employer to the fund, and

(2) Subparagraph 81.6(1)(c)(i) of the Act is replaced by the following:

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

R.S., c. C-44;
1994, c. 24, s. 1(F)

CANADA BUSINESS CORPORATIONS ACT

6. The *Canada Business Corporations Act* is amended by adding the following after section 119:

Claim against directors of corporation	119.1 (1) Any former employee of a bankrupt corporation, or a trade union acting on behalf of such an employee, may file a claim with the Minister of Labour in accordance with this section against the directors of the corporation for recovery of all debts referred to in subsection 119(1).
Appointment of adjudicator	(2) The Minister of Labour shall, upon receipt of a claim referred to in subsection (1), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate the claim.
Powers of adjudicator	(3) The adjudicator may, in relation to any claim before the adjudicator, <ul style="list-style-type: none"> (a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the adjudicator deems requisite to the full investigation and consideration of any claim; (b) administer oaths and solemn affirmations; and (c) receive and accept such evidence and information on oath, affidavit or otherwise as the adjudicator sees fit, whether or not it would be admissible in a court of law.
Functions of adjudicator	(4) The adjudicator shall <ul style="list-style-type: none"> (a) hear the claim within 30 days after it is filed; (b) determine the procedure to be followed, while giving full opportunity to the parties to present evidence and make submissions; (c) consider all information relating to the claim; (d) decide, on a balance of probabilities, whether the claim is valid; and (e) within 30 days after hearing the claim, send a copy of the decision with the reasons for the decision to each party and to the Minister of Labour.
Order of adjudicator	(5) If an adjudicator decides in accordance with paragraph (4)(d) that a former employee has a valid claim against the director or directors of a corporation, the adjudicator shall, by order, require the director or directors to <ul style="list-style-type: none"> (a) pay the former employee compensation not exceeding the amount of money that would, but for the bankruptcy, have been owed by the corporation to the former employee; and (b) do any other like thing that it deems equitable and that would remedy or counteract the consequences of the bankruptcy for the former employee.

Decision not reviewable

(6) Every order of an adjudicator made under this section is final and shall not be questioned or reviewed in any court.

No review by certiorari, etc.

(7) No order shall be made, process entered or proceeding taken in any court, whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise, to question, review, prohibit or restrain an adjudicator in any proceedings of the adjudicator under this section.

Enforcement of orders

(8) Any person affected by an order of an adjudicator under subsection (5), or the Minister of Labour on the request of any such person, may, after 14 days from the date on which the order is made, or from the date specified in the order for compliance, whichever is the later date, file in the Federal Court a copy of the order, exclusive of the reasons for the order.

Registration in Court

(9) Once filed in the Federal Court under subsection (8), an order of an adjudicator shall be registered by the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order were a judgment obtained in that Court.

R.S., c. C-36

COMPANIES' CREDITORS ARRANGEMENT ACT

7. (1) Clause 6(6)(a)(ii)(A) of the *Companies' Creditors Arrangement Act* is replaced by the following:

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that were required to be paid by the employer to the fund, and

(2) Clause 6(6)(a)(iii)(A) of the Act is replaced by the following:

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, and any amount considered to meet the standards for solvency determined in accordance with section 9 of those Regulations, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

1996, c. 23

EMPLOYMENT INSURANCE ACT

8. Section 19 of the *Employment Insurance Act* is amended by adding the following after subsection (4):

Proceeds from property of bankrupt

(5) Payments made to a claimant out of proceeds realized from the property of a bankrupt or by the government of Canada or of a province in the event of a bankruptcy shall not be deducted under this section.

2005, c. 47, s. 1

WAGE EARNER PROTECTION PROGRAM ACT

9. Section 4 of the *Wage Earner Protection Program Act* is replaced by the following:

Establishment

4. The Wage Earner Protection Program is established to make payments to individuals in respect of wages owed to them by employers

(a) who are bankrupt or subject to a receivership; or

(b) who have made a proposal under Part III of the *Bankruptcy and Insolvency Act* or a compromise or an arrangement under the *Companies' Creditors Arrangement Act*.

COMING INTO FORCE

Coming into force

10. (1) Subject to subsection (2), sections 8 and 9 of this Act come into force on a day to be fixed by order of the Governor in Council.

Royal
recommendation

(2) No order may be made under subsection (1) unless the appropriation of moneys for the purposes of this Act has been recommended by the Governor General and such moneys have been appropriated by Parliament.
