



*Kennedy
Voice okf
2/17*

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 “(c) Notwithstanding subsection (b), there shall nei-

8 ther be allowed, nor paid—

defined see 101(31) S.L.C.

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—

*DFO
board management?*

KEEP

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;

*what if there
are 4 of
them? has
a job*

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

*how do
you know
this now?*

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.”.

*what are these people worth?
 20-20 hindsight?*

success bonuses?