

105TH CONGRESS  
1ST SESSION

# H. R. 1142

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1997

Mrs. MALONEY of New York (for herself, Mr. RAMSTAD, Ms. NORTON, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

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1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “ERISA Child Abuse  
3 Accountability Act of 1997”.

4 **SEC. 2. AMENDMENTS TO TITLE I OF THE EMPLOYEE RE-**  
5 **TIREMENT INCOME SECURITY ACT OF 1974.**

6 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-  
7 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sec-  
8 tion 206(d)(3)(A) of the Employee Retirement Income Se-  
9 curity Act of 1974 (29 U.S.C. 1056(d)(3)(A)) is amend-  
10 ed—

11 (1) by inserting “or a child abuse order” after  
12 “a domestic relations order”;

13 (2) by inserting “or a qualified child abuse  
14 order” after “a qualified domestic relations order”;  
15 and

16 (3) by inserting “or any qualified child abuse  
17 order” after “any qualified domestic relations  
18 order”.

19 (b) QUALIFIED CHILD ABUSE ORDERS.—Section  
20 206(d)(3)(B) of such Act (29 U.S.C. 1056(d)(3)(B)) is  
21 amended—

22 (1) in clause (i), by striking “the term” and in-  
23 serting “The term”, and by striking “, and” at the  
24 end and inserting a period;

25 (2) in clause (ii), by striking “the term” and in-  
26 serting “The term”; and

1           (3) by adding at the end the following new  
2 clauses:

3           “(iii) The term ‘qualified child abuse order’  
4 means a child abuse order—

5           “(I) which creates or recognizes the  
6 existence of an alternate payee’s right to,  
7 or assigns to an alternate payee the right  
8 to, receive all or a portion of the benefits  
9 payable with respect to a participant under  
10 a plan, and

11           “(II) with respect to which the re-  
12 quirements of subparagraphs (C) and (D)  
13 are met.

14           “(iv) The term ‘child abuse order’ means  
15 any court order or other similar process for the  
16 enforcement of a judgment rendered against a  
17 participant or beneficiary under a plan for  
18 physically, sexually, or emotionally abusing a  
19 child. For purposes of this clause—

20           “(I) The term ‘judgment rendered for  
21 physically, sexually, or emotionally abusing  
22 a child’ means any legal claim perfected  
23 through a final enforceable judgment,  
24 which claim is based in whole or in part  
25 upon the physical, sexual, or emotional

1                   abuse of a child, whether or not that abuse  
 2                   is accompanied by other actionable wrong-  
 3                   doing, such as sexual exploitation or gross  
 4                   negligence.

5                   “(II) The term ‘child’ means an indi-  
 6                   vidual under 18 years of age.”.

7           (c) EXEMPTION FROM PREEMPTION.—Section  
 8 514(b)(7) of such Act (29 U.S.C. 1144(b)(7)) is amended  
 9 by inserting “or qualified child abuse orders (within the  
 10 meaning of section 206(d)(3)(B)(iii))” before the period.

11          (d) CONFORMING AMENDMENTS.—Section 206(d)(3)  
 12 of such Act (29 U.S.C. 1056(d)(3)) is amended—

13               (1) in subparagraph (C), by inserting “or child  
 14 abuse order” after “A domestic relations order”;

15               (2) in subparagraph (D), by inserting “or child  
 16 abuse order” after “A domestic relations order”;

17               (3) in subparagraph (E)(i), by inserting “or  
 18 child abuse order” after “A domestic relations  
 19 order”;

20               (4) in subparagraph (G)(i), by inserting “or  
 21 child abuse order” after “any domestic relations  
 22 order”, by inserting “or child abuse orders” in sub-  
 23 clause (I) after “domestic relations orders”, and by  
 24 inserting “or a qualified child abuse order” in sub-

1 clause (II) after “a qualified domestic relations  
2 order”;

3 (5) in subparagraph (G)(ii), by inserting “and  
4 child abuse orders” after “domestic relations or-  
5 ders”, by inserting “or child abuse order” after “do-  
6 mestic relations order” each place it appears in sub-  
7 clauses (II) and (III);

8 (6) in subparagraph (H)(i), by inserting “or  
9 whether a child abuse order is a qualified child  
10 abuse order” after “whether a domestic relations  
11 order is a qualified domestic relations order”, and by  
12 inserting “or a qualified child abuse order” after “to  
13 be a qualified domestic relations order”;

14 (7) in subparagraph (H)(ii), by inserting “or a  
15 qualified child abuse order” after “a qualified do-  
16 mestic relations order”;

17 (8) in subparagraph (H)(iii), by inserting “or a  
18 qualified child abuse order” after “a qualified do-  
19 mestic relations order” each place it appears in sub-  
20 clauses (I) and (II);

21 (9) in subparagraph (H)(iv), by inserting “or a  
22 qualified child abuse order” after “a qualified do-  
23 mestic relations order”;

1           (10) in subparagraph (H)(v), by inserting “or  
2       child abuse order” after “the domestic relations  
3       order”;

4           (11) in subparagraph (I)(i), by inserting “or  
5       child abuse order” after “a domestic relations  
6       order”, and by inserting “or qualified child abuse  
7       order” after “a qualified domestic relations order”;

8           (12) in subparagraph (J), by inserting “or a  
9       qualified child abuse order” after “a qualified do-  
10      mestic relations order”;

11          (13) in subparagraph (K), by inserting “or  
12      child abuse order” after “a domestic relations  
13      order”; and

14          (14) in subparagraph (M), by inserting “or a  
15      qualified child abuse order” after “a qualified do-  
16      mestic relations order”.

17 **SEC. 3. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
18 **OF 1986.**

19       (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-  
20      FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sub-  
21      paragraph (B) of section 401(a)(13) of the Internal Reve-  
22      nue Code of 1986 (relating to assignment of benefits) is  
23      amended—

1           (1) by inserting “OR CHILD ABUSE ORDERS”  
2       after “DOMESTIC RELATIONS ORDERS” in the  
3       heading;

4           (2) by inserting “or a child abuse order” after  
5       “a domestic relations order”; and

6           (3) by inserting “or a qualified child abuse  
7       order” after “a qualified domestic relations order”.

8       (b) QUALIFIED CHILD ABUSE ORDERS.—Paragraph  
9       (1) of section 414(p) of such Code (defining qualified do-  
10      mestic relations order) is amended—

11           (1) in the heading, by inserting “AND QUALI-  
12      FIED CHILD ABUSE ORDER” after “ORDER”; and

13           (2) by adding at the end the following new sub-  
14      paragraphs:

15                   “(C) QUALIFIED CHILD ABUSE ORDER.—  
16           The term ‘qualified child abuse order’ means a  
17           child abuse order—

18                           “(i) which creates or recognizes the  
19                           existence of an alternate payee’s right to,  
20                           or assigns to an alternate payee the right  
21                           to, receive all or a portion of the benefits  
22                           payable with respect to a participant under  
23                           a plan, and

1           “(ii) with respect to which the re-  
2           quirements of paragraphs (2) and (3) are  
3           met.

4           “(D) CHILD ABUSE ORDER.—

5           “(i) IN GENERAL.—The term ‘child  
6           abuse order’ means any court order or  
7           other similar process for the enforcement  
8           of a judgment rendered against a partici-  
9           pant or beneficiary under a plan for phys-  
10          ically, sexually, or emotionally abusing a  
11          child.

12          “(ii) DEFINITIONS.—For purposes of  
13          this subparagraph—

14               “(I) The term ‘judgment ren-  
15               dered for physically, sexually, or emo-  
16               tionally abusing a child’ means any  
17               legal claim perfected through a final  
18               enforceable judgment, which claim is  
19               based in whole or in part upon the  
20               physical, sexual, or emotional abuse of  
21               a child, whether or not that abuse is  
22               accompanied by other actionable  
23               wrongdoing, such as sexual exploi-  
24               tation or gross negligence.



1                   “(II) The term ‘child’ means an  
2                   individual under 18 years of age.”.

3           (c) CONFORMING AMENDMENTS.—Subsection (p) of  
4 section 414 of such Code is amended—

5           (1) in paragraph (2), by inserting “or child  
6           abuse order” after “A domestic relations order”;

7           (2) in paragraph (3), by inserting “or child  
8           abuse order” after “A domestic relations order”;

9           (3) in paragraph (4)(A), by inserting “or child  
10          abuse order” after “a domestic relations order”;

11          (4) in paragraph (6)(A), by inserting “or child  
12          abuse order” after “any domestic relations order”,  
13          by inserting “or child abuse orders” in clause (i)  
14          after “domestic relations orders”, and by inserting  
15          “or a qualified child abuse order” in clause (ii) after  
16          “a qualified domestic relations order”;

17          (5) in paragraph (6)(B), by inserting “and  
18          child abuse orders” after “domestic relations or-  
19          ders”;

20          (6) in paragraph (7)(A), by inserting “or  
21          whether a child abuse order is a qualified child  
22          abuse order” after “whether a domestic relations  
23          order is a qualified domestic relations order”, and by  
24          inserting “or a qualified child abuse order” after “to  
25          be a qualified domestic relations order”;

1           (7) in paragraph (7)(B), by inserting “OR  
2       QUALIFIED CHILD SUPPORT ORDER” in the heading  
3       after “QUALIFIED DOMESTIC RELATIONS ORDER”,  
4       and by inserting “or a qualified child abuse order”  
5       after “a qualified domestic relations order”;

6           (8) in paragraph (7)(C), by inserting “or a  
7       qualified child abuse order” after “a qualified do-  
8       mestic relations order” each place it appears in  
9       clauses (i) and (ii);

10          (9) in paragraph (7)(D), by inserting “or a  
11       qualified child abuse order” after “a qualified do-  
12       mestic relations order”;

13          (10) in paragraph (7)(E), by inserting “or child  
14       abuse order” after “the domestic relations order”;

15          (11) in paragraph (8), by inserting “or child  
16       abuse order” after “a domestic relations order”;

17          (12) in paragraph (9), by inserting “or a quali-  
18       fied child abuse order” after “a qualified domestic  
19       relations order”;

20          (13) in paragraph (10), by inserting “or a  
21       qualified child abuse order” after “a qualified do-  
22       mestic relations order”; and

23          (14) in paragraph (11), by inserting “or a  
24       qualified child abuse order” after “pursuant to a  
25       qualified domestic relations order”, and by inserting

1 “or a child abuse order” after “pursuant to a do-  
2 mestic relations order”.

3 (d) TAX TREATMENT OF DISTRIBUTIONS PURSUANT  
4 TO QUALIFIED CHILD ABUSE ORDERS.—

5 (1) ALTERNATE PAYEE MUST INCLUDE BENE-  
6 FITS IN GROSS INCOME.—Paragraph (1) of section  
7 402(e) of such Code (relating to alternate payee  
8 under qualified domestic relations order treated as  
9 distributee) is amended by inserting “or a qualified  
10 child abuse order (as defined in section 414(p))”  
11 after “a qualified domestic relations order (as de-  
12 fined in section 414(p))” each place it appears.

13 (2) ALLOCATION OF INVESTMENT IN THE CON-  
14 TRACT.—Paragraph (10) of section 72(m) of such  
15 Code (relating to determination of investment in the  
16 contract in the case of qualified domestic relations  
17 orders) is amended—

18 (A) in the heading, by inserting “AND  
19 QUALIFIED CHILD ABUSE ORDERS” after  
20 “QUALIFIED DOMESTIC RELATIONS ORDERS”;  
21 and

22 (B) by inserting “or a qualified child abuse  
23 order (as defined in section 414(p))” after “a  
24 qualified domestic relations order (as defined in  
25 section 414(p))”.

1           (3) CLARIFICATION OF ELIGIBILITY OF PARTIC-  
2           IPANT FOR LUMP SUM TREATMENT.—

3           (A) Subparagraph (H) of section 402(d)(4)  
4           of such Code (relating to balance to credit of  
5           employee not to include amounts payable under  
6           qualified domestic relations order) is amend-  
7           ed—

8                   (i) in the heading, by inserting “OR  
9                   QUALIFIED CHILD ABUSE ORDER” after  
10                  “QUALIFIED DOMESTIC RELATIONS  
11                  ORDER”; and

12                  (ii) by inserting “or a qualified child  
13                  abuse order (within the meaning of section  
14                  414(p))” after “a qualified domestic rela-  
15                  tions order (within the meaning of section  
16                  414(p))”.

17           (B) Subparagraph (J) of section 402(d)(4)  
18           of such Code is amended by inserting “, or  
19           under a qualified child abuse order (within the  
20           meaning of section 414(p)) of the balance to  
21           the credit of an alternate payee,” after “former  
22           spouse of the employee”.

23 **SEC. 4. EFFECTIVE DATE.**

24           The amendments made by this Act shall take effect  
25           on January 1, 1998, except that, in the case of a child

1 abuse order entered before such date, the plan adminis-  
2 trator—

3           (1) shall treat such order as a qualified child  
4 abuse order if such administrator is paying benefits  
5 pursuant to such order on such date, and

6           (2) may treat any other such order entered be-  
7 fore such date as a qualified child abuse order even  
8 if such order does not meet the requirements of such  
9 amendments.

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