

105TH CONGRESS  
1ST SESSION

# S. 1307

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits and to extend continuation coverage to retirees and their dependents.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 1997

Mr. DASCHLE introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits and to extend continuation coverage to retirees and their dependents.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Retiree Health Bene-  
5       fits Protection Act”.

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1       **TITLE I—RETIREE HEALTH**  
2       **BENEFITS PROTECTION**

3   **SEC. 101. RULES GOVERNING LITIGATION INVOLVING RE-**  
4       **TIREE HEALTH BENEFITS.**

5       (a) IN GENERAL.—Part 5 of subtitle B of title I of  
6 the Employee Retirement Income Security Act of 1974  
7 (29 U.S.C. 1131 et seq.) is amended by adding at the end  
8 the following new section:

9   **“SEC. 516. RULES GOVERNING LITIGATION INVOLVING RE-**  
10       **TIREE HEALTH BENEFITS.**

11       “(a) MAINTENANCE OF BENEFITS.—

12               “(1) IN GENERAL.—If—

13                       “(A) retiree health benefits or plan or plan  
14                       sponsor payments in connection with such bene-  
15                       fits are to be or have been terminated or re-  
16                       duced under an employee welfare benefit plan;  
17                       and

18                       “(B) an action is brought by any partici-  
19                       pant or beneficiary to enjoin or otherwise mod-  
20                       ify such termination or reduction,

21       the court without requirement of any additional  
22       showing shall promptly order the plan and plan  
23       sponsor to maintain the retiree health benefits and  
24       payments at the level in effect immediately before  
25       the termination or reduction while the action is

1 pending in any court. No security or other undertak-  
2 ing shall be required of any participant or bene-  
3 ficiary as a condition for issuance of such relief. An  
4 order requiring such maintenance of benefits may be  
5 refused or dissolved only upon determination by the  
6 court, on the basis of clear and convincing evidence,  
7 that the action is clearly without merit.

8 “(2) EXCEPTIONS.—Paragraph (1) shall not  
9 apply to any action if—

10 “(A) the termination or reduction of re-  
11 tiree health benefits is substantially similar to  
12 a termination or reduction in health benefits (if  
13 any) provided to current employees which oc-  
14 curs either before, or at or about the same time  
15 as, the termination or reduction of retiree  
16 health benefits, or

17 “(B) the changes in benefits are in connec-  
18 tion with the addition, expansion, or clarifica-  
19 tion of the delivery system, including utilization  
20 review requirements and restrictions, require-  
21 ments that goods or services be obtained  
22 through managed care entities or specified pro-  
23 viders or categories of providers, or other spe-  
24 cial major case management restrictions.

1           “(3) MODIFICATIONS.—Nothing in this section  
2           shall preclude a court from modifying the obligation  
3           of a plan or plan sponsor to the extent retiree bene-  
4           fits are otherwise being paid by the plan sponsor.

5           “(b) BURDEN OF PROOF.—In addition to the relief  
6           authorized in subsection (a) or otherwise available, if, in  
7           any action to which subsection (a)(1) applies, the terms  
8           of the employee welfare benefit plan summary plan de-  
9           scription or, in the absence of such description, other ma-  
10          terials distributed to employees at the time of a partici-  
11          pant’s retirement or disability, are silent or are ambigu-  
12          ous, either on their face or after consideration of extrinsic  
13          evidence, as to whether retiree health benefits and pay-  
14          ments may be terminated or reduced for a participant and  
15          his or her beneficiaries after the participant’s retirement  
16          or disability, then the benefits and payments shall not be  
17          terminated or reduced for the participant and his or her  
18          beneficiaries unless the plan or plan sponsor establishes  
19          by a preponderance of the evidence that the summary plan  
20          description or other materials about retiree benefits—

21                 “(1) were distributed to the participant at least  
22                 90 days in advance of retirement or disability;

23                 “(2) did not promise retiree health benefits for  
24                 the lifetime of the participant and his or her spouse;  
25                 and

1           “(3) clearly and specifically disclosed that the  
2           plan allowed such termination or reduction as to the  
3           participant after the time of his or her retirement or  
4           disability.

5   The disclosure described in paragraph (3) must have been  
6   made prominently and in language which can be under-  
7   stood by the average plan participant.

8           “(c) REPRESENTATION.—Notwithstanding any other  
9   provision of law, an employee representative of any retired  
10   employee or the employee’ spouse or dependents may—

11           “(1) bring an action described in this section on  
12        behalf of such employee, spouse, or dependents; or

13           “(2) appear in such an action on behalf of such  
14        employee, spouse or dependents.

15           “(d) RETIREE HEALTH BENEFITS.—For the pur-  
16   poses of this section, the term ‘retiree health benefits’  
17   means health benefits (including coverage) which are pro-  
18   vided to—

19           “(1) retired or disabled employees who, imme-  
20        diately before the termination or reduction, have a  
21        reasonable expectation to receive such benefits upon  
22        retirement or becoming disabled; and

23           “(2) their spouses or dependents.”

24           “(b) CONFORMING AMENDMENT.—The table of con-  
25   tents in section 1 of such Act is amended by inserting

1 after the item relating to section 515 the following new  
2 item:

“Sec. 516. Rules governing litigation involving retiree health benefits.”

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to actions relating to terminations  
5 or reductions of retiree health benefits which are pending  
6 or brought, on or after January 1, 1998.

## 7 **TITLE II—RETIREE** 8 **CONTINUATION COVERAGE**

### 9 **SEC. 201. EXTENSION OF COBRA CONTINUATION COV-** 10 **ERAGE.**

11 (a) PUBLIC HEALTH SERVICE ACT.—

12 (1) TYPE OF COVERAGE.—

13 (A) IN GENERAL.—Section 2202(1) of the  
14 Public Health Service Act (42 U.S.C. 300bb–  
15 2(1)) is amended—

16 (i) by striking “The coverage” and in-  
17 serting the following:

18 “(A) IN GENERAL.—Except as provided in  
19 subparagraph (B), the coverage”; and

20 (ii) by adding at the end the follow-  
21 ing:

22 “(B) CERTAIN RETIREES.—In the case of  
23 an event described in section 2203(6), the  
24 qualified beneficiary may elect to continue cov-

erage as provided for in subparagraph (A) or  
may elect coverage—

“(i) under any other plan offered by  
the State, political subdivision, agency, or  
instrumentality involved; or

“(ii) notwithstanding paragraphs (4)  
and (5) of section 2741(b), through any  
health insurance issuer offering health in-  
surance coverage (as defined in section  
2791(b)(1)) in the individual market in the  
State.”.

(B) TECHNICAL AMENDMENT.—Section  
2202(2)(D)(i) of the Public Health Service Act  
(42 U.S.C. 300bb–2(2)(D)(i)) is amended by  
striking “covered under any other” and insert-  
ing “except with respect to coverage obtained  
under paragraph (1)(B), covered under any  
other”.

(2) PERIOD OF COVERAGE.—Section  
2202(2)(A) of the Public Health Service Act (42  
U.S.C. 300bb–2(2)(A)) is amended by adding at the  
end thereof the following new clause:

“(v) QUALIFYING EVENT INVOLVING  
SUBSTANTIAL REDUCTION OR ELIMI-  
NATION OF A RETIREE GROUP HEALTH

1                   PLAN.—In the case of an event described  
 2                   in section 2203(6), the date on which such  
 3                   covered qualified beneficiary becomes enti-  
 4                   tled to benefits under title XVIII of the  
 5                   Social Security Act.”.

6                   (3) QUALIFYING EVENT.—Section 2203 of the  
 7                   Public Health Service Act (42 U.S.C. 300bb–3) is  
 8                   amended by adding at the end thereof the following  
 9                   new paragraph:

10                   “(6) The substantial reduction or elimination of  
 11                   group health coverage as a result of plan changes or  
 12                   termination with respect to a qualified beneficiary  
 13                   described in section 2208(3)(A).”.

14                   (4) NOTICE.—Section 2206 of the Public  
 15                   Health Service Act (42 U.S.C. 300bb–6) is amend-  
 16                   ed—

17                   (A) in paragraph (2), by striking “or (4)”  
 18                   and inserting “(4), or (6)”; and

19                   (B) in paragraph (4)(A), by striking “or  
 20                   (4)” and inserting “(4), or (6)”.

21                   (5) DEFINITION.—Section 2208(3) of the Pub-  
 22                   lic Health Service Act (42 U.S.C. 300bb–8(3)) is  
 23                   amended by adding at the end thereof the following  
 24                   new subparagraph:



“(C) SPECIAL RULE FOR RETIREES.—In the case of a qualifying event described in section 2203(6), the term ‘qualified beneficiary’ includes a covered employee who had retired on or before the date of substantial reduction or elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

“(i) as the spouse of the covered employee;

“(ii) as the dependent child of the covered employee; or

“(iii) as the surviving spouse of the covered employee.”.

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT

OF 1974.—

(1) TYPE OF COVERAGE.—

(A) IN GENERAL.—Section 602(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(1)) is amended—

(i) by striking “The coverage” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the coverage”; and

1 (ii) by adding at the end the follow-  
 2 ing:

3 “(B) CERTAIN RETIREES.—In the case of  
 4 an event described in section 603(7), the quali-  
 5 fied beneficiary may elect to continue coverage  
 6 as provided for in subparagraph (A) or may  
 7 elect coverage—

8 “(i) under any other plan maintained  
 9 by the plan sponsor involved; or

10 “(ii) notwithstanding paragraphs (4)  
 11 and (5) of section 2741(b) of the Public  
 12 Health Service Act, through any health in-  
 13 surance issuer offering health insurance  
 14 coverage (as defined in section 2791(b)(1)  
 15 of such Act) in the individual market in  
 16 the State.”.

17 (B) TECHNICAL AMENDMENT.—Section  
 18 602(2)(D)(i) of the Employee Retirement In-  
 19 come Security Act of 1974 (29 U.S.C.  
 20 1162(2)(D)(i)) is amended by striking “covered  
 21 under any other” and inserting “except with re-  
 22 spect to coverage obtained under paragraph  
 23 (1)(B), covered under any other”.

24 (2) PERIOD OF COVERAGE.—Section 602(2)(A)  
 25 of the Employee Retirement Income Security Act of

1 1974 (29 U.S.C. 1162(2)(A)) is amended by adding  
 2 at the end thereof the following new clause:

3 “(vi) QUALIFYING EVENT INVOLVING  
 4 SUBSTANTIAL REDUCTION OR ELIMI-  
 5 NATION OF A GROUP HEALTH PLAN COV-  
 6 ERING RETIREES, SPOUSES AND DEPEND-  
 7 ENTS.—In the case of an event described  
 8 in section 603(7), the date on which such  
 9 covered qualified beneficiary becomes enti-  
 10 tled to benefits under title XVIII of the  
 11 Social Security Act.”.

12 (3) QUALIFYING EVENT.—Section 603 of the  
 13 Employee Retirement Income Security Act of 1974  
 14 (29 U.S.C. 1163) is amended by adding at the end  
 15 thereof the following new paragraph:

16 “(7) The substantial reduction or elimination of  
 17 group health plan coverage as a result of plan  
 18 changes or termination with respect to a qualified  
 19 beneficiary described in section 607(3)(C).”.

20 (4) NOTICE.—Section 606(a) of the Employee  
 21 Retirement Income Security Act of 1974 (29 U.S.C.  
 22 1166) is amended—

23 (A) in paragraph (2), by striking “or (6)”  
 24 and inserting “(6), or (7)”; and

1 (B) in paragraph (4)(A), by striking “or  
 2 (6)” and inserting “(6), or (7)”.

3 (5) DEFINITION.—Section 607(3)(C) of the  
 4 Employee Retirement Income Security Act of 1974  
 5 (29 U.S.C. 1167(2)) is amended by striking  
 6 “603(6)” and inserting “603(6) or 603(7)”.

7 (c) INTERNAL REVENUE CODE OF 1986.—

8 (1) TYPE OF COVERAGE.—

9 (A) IN GENERAL.—Section 4980B(f)(2)(A)  
 10 of the Internal Revenue Code of 1986 is  
 11 amended—

12 (i) by striking “The coverage” and in-  
 13 serting the following:

14 “(i) IN GENERAL.—Except as pro-  
 15 vided in clause (ii), the coverage”; and

16 (ii) by adding at the end the follow-  
 17 ing:

18 “(ii) CERTAIN RETIREES.—In the  
 19 case of an event described in paragraph  
 20 (3)(G), the qualified beneficiary may elect  
 21 to continue coverage as provided for in  
 22 clause (i) or may elect coverage—

23 “(I) under any other plan main-  
 24 tained by the plan sponsor involved;  
 25 or

1 “(II) notwithstanding paragraphs  
 2 (4) and (5) of section 2741(b) of the  
 3 Public Health Service Act, through  
 4 any health insurance issuer offering  
 5 health insurance coverage (as defined  
 6 in section 2791(b)(1) of such Act) in  
 7 the individual market in the State.”.

8 (B) TECHNICAL AMENDMENT.—Section  
 9 4980B(f)(2)(B)(iv)(I) of the Internal Revenue  
 10 Code of 1986 is amended by striking “covered  
 11 under any other” and inserting “except with re-  
 12 spect to coverage obtained under paragraph  
 13 (1)(B), covered under any other”.

14 (2) PERIOD OF COVERAGE.—Section  
 15 4980B(f)(2)(B)(i) of the Internal Revenue Code of  
 16 1986 is amended by adding at the end thereof the  
 17 following new subclause:

18 “(VI) QUALIFYING EVENT IN-  
 19 VOLVING SUBSTANTIAL REDUCTION  
 20 OR ELIMINATION OF A RETIREE  
 21 GROUP HEALTH PLAN.—In the case of  
 22 an event described in paragraph  
 23 (3)(G), the date on which such cov-  
 24 ered qualified beneficiary becomes en-

1                   titled to benefits under title XVIII of  
2                   the Social Security Act.”.

3           (3) QUALIFYING EVENT.—Section 4980B(f)(3)  
4           of the Internal Revenue Code of 1986 is amended by  
5           adding at the end thereof the following new subpara-  
6           graph:

7                   “(G) The substantial reduction or elimi-  
8                   nation of group health coverage as a result of  
9                   plan changes or termination with respect to a  
10                  qualified beneficiary described in subsection  
11                  (g)(1)(D).”.

12          (4) NOTICE.—Section 4980B(f)(6) of the Inter-  
13          nal Revenue Code of 1986 is amended—

14                  (A) in subparagraph (B), by striking “or  
15                  (F)” and inserting “(F), or (G)”; and

16                  (B) in subparagraph (D)(i), by striking  
17                  “or (F)” and inserting “(F), or (G)”.

18          (5) DEFINITION.—Section 4980B(g)(1)(D) of  
19          the Internal Revenue Code of 1986 is amended by  
20          striking “(f)(3)(F)” and inserting “(f)(3)(F) or  
21          (f)(3)(G)”.

22   **SEC. 202. EFFECTIVE DATE.**

23          This title shall take effect as if enacted on January  
24   1, 1998.

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