

107TH CONGRESS
2D SESSION

H. R. 3623

To amend title I of the Employee Retirement Income Security Act of 1974 to prohibit knowing misrepresentations by fiduciaries of 401(k) plans which may induce participants and beneficiaries to act contrary to their own best interest in controlling the assets in their own accounts, and to amend title 11 of the United States Code to protect claims based on such misrepresentations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2002

Mr. BENTSEN introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, 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

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to prohibit knowing misrepresentations by fiduciaries of 401(k) plans which may induce participants and beneficiaries to act contrary to their own best interest in controlling the assets in their own accounts, and to amend title 11 of the United States Code to protect claims based on such misrepresentations.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Employee Savings Pro-
3 tection Act of 2002”.

4 **SEC. 2. PROHIBITION OF MISREPRESENTATIONS BY PLAN**
5 **FIDUCIARIES RELATING TO THE PRESENT OR**
6 **EXPECTED VALUATION OF EMPLOYER SECUR-**
7 **ITIES.**

8 (a) IN GENERAL.—Section 404(a) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1104(a)) is amended by adding at the end the following
11 new paragraph:

12 “(3) Any knowing misrepresentation by a fiduciary
13 of an individual account plan that includes a cash or de-
14 ferred arrangement (as defined in section 401(k)(2) of the
15 Internal Revenue Code of 1986) to a participant or bene-
16 ficiary under the plan relating to the present or expected
17 valuation of employer securities that—

18 “(A) was made at a time reasonably contem-
19 poraneous with a period of decisionmaking by the
20 participant or beneficiary in the exercise of his or
21 her control over the assets in his or her account, or

22 “(B) could otherwise be reasonably perceived as
23 likely to induce decisions that were made by the par-
24 ticipant or beneficiary in the exercise of his or her
25 control over such assets,

1 shall be treated as a failure by the fiduciary to discharge
2 the fiduciary's duties with respect to a plan in accordance
3 with the preceding provisions of this subsection.”.

4 (b) LIABILITY FOR MISREPRESENTATION.—Section
5 404(c) of such Act (29 U.S.C. 1104(c)) is amended by
6 adding at the end the following new paragraph:

7 “(4) In the case of an individual account plan that
8 includes a cash or deferred arrangement (as defined in
9 section 401(k)(2) of the Internal Revenue Code of 1986),
10 paragraph (1)(B) shall not apply in connection with any
11 loss which results from any exercise of control by a partici-
12 pant or beneficiary over the assets in his or her account
13 undertaken in reliance on a misrepresentation described
14 in paragraph (a)(3).”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply with respect to misrepresentations
17 made on or after January 1, 2000.

18 **SEC. 3. PROTECTION OF CERTAIN EMPLOYEE CLAIMS IN**
19 **BANKRUPTCY.**

20 (a) AMENDMENTS.—Title 11 of the United States
21 Code is amended—

22 (1) in section 507(a) by adding at the end the
23 following:

24 “(10) Tenth, allowed unsecured claims arising
25 under part 4 of subtitle B of title I of the Employee

1 Retirement Income Security Act of 1974 by oper-
2 ation of section 404(c)(4) of such Act for failures by
3 fiduciaries to discharge their duties as described in
4 section 404(a)(3) of such Act.”; and

5 (2) in section 1129(a)(9)(B) by striking “or
6 507(a)(7)” and inserting “507(a)(7), or
7 507(a)(10)”.

8 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
9 MENTS.—The amendments made by subsection (a) shall
10 take effect on January 1, 2000, and shall apply with re-
11 spect to cases commenced under title 11 of the United
12 States Code on or after such date.

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