

107TH CONGRESS  
1ST SESSION

# S. 1386

To amend the Internal Revenue Code of 1986 to provide for the equitable operation of welfare benefit plans for employees, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. SANTORUM introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 to provide for the equitable operation of welfare benefit plans for employees, and for other purposes.

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; TABLE OF CONTENTS; AMEND-**  
4 **MENT TO 1986 CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Employee Welfare Benefit Equity Act of 2001”.

7 (b) TABLE OF CONTENTS.—The table of contents is  
8 as follows:

Sec. 1. Short title; table of contents; amendment to 1986 Code.

TITLE I—CERTAIN WELFARE BENEFIT PLANS

- Sec. 101. Modification of definition of ten-or-more employer plans.  
 Sec. 102. Clarification of deduction limits for certain collectively bargained plans.  
 Sec. 103. Clarification of standards for section 501(c)(9) approval.  
 Sec. 104. Tax shelter provisions not to apply.  
 Sec. 105. Effective dates.

## TITLE II—ENFORCEMENT PROVISIONS

- Sec. 201. Clarification of section 4976.  
 Sec. 202. Effective date.

1       (c) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or a repeal of, a section or other provision, the ref-  
 5 erence shall be considered to be made to a section or other  
 6 provision of the Internal Revenue Code of 1986.

## 7       **TITLE I—CERTAIN WELFARE** 8       **BENEFIT PLANS**

### 9       **SEC. 101. MODIFICATION OF DEFINITION OF TEN-OR-MORE** 10       **EMPLOYER PLANS.**

11       (a) ADDITIONAL REQUIREMENTS.—Paragraph  
 12 (6)(B) of section 419A(f) (relating to the exception for  
 13 10 or more employer plans) is amended by striking “and”  
 14 at the end of clause (i), by striking the period at the end  
 15 of clause (ii) and inserting a comma, and by adding at  
 16 the end the following new clauses:

17                       “(iii) which meets the requirements of  
 18                       section 505(b)(1) with respect to all bene-  
 19                       fits provided by the plan,

1 “(iv) which has obtained a favorable  
 2 determination from the Secretary that  
 3 such plan (or a predecessor plan) is an or-  
 4 ganization described in section 501(c)(9),  
 5 and

6 “(v) under which no severance pay  
 7 benefit is provided.”

8 (b) CLARIFICATION OF EXPERIENCE RATING.—

9 (1) IN GENERAL.—Paragraph (6)(A) of section  
 10 419A(f) (relating to the exception for 10 or more  
 11 employer plans) is amended by striking the second  
 12 sentence and inserting the following: “The preceding  
 13 sentence shall not apply to any plan which is an ex-  
 14 perience-rated plan.”

15 (2) EXPERIENCE-RATED PLAN.—Section  
 16 419A(f)(6) is amended by adding at the end the fol-  
 17 lowing new subparagraph:

18 “(C) EXPERIENCE-RATED PLAN.—For  
 19 purposes of this paragraph—

20 “(i) IN GENERAL.—The term ‘experi-  
 21 ence-rated plan’ means a plan which deter-  
 22 mines contributions by individual employ-  
 23 ers on the basis of actual gain or loss expe-  
 24 rience.

1 “(ii) EXCEPTION FOR GUARANTEED  
2 BENEFIT PLAN.—

3 “(I) IN GENERAL.—The term  
4 ‘experience-rated plan’ shall not in-  
5 clude a guaranteed benefit plan.

6 “(II) GUARANTEED BENEFIT  
7 PLAN.—The term ‘guaranteed benefit  
8 plan’ means a plan the benefits of  
9 which are funded with insurance con-  
10 tracts or are otherwise determinable  
11 and payable to a participant without  
12 reference to, or limitation by, the  
13 amount of contributions to the plan  
14 attributable to any contributing em-  
15 ployer. A plan shall not fail to be  
16 treated as a guaranteed benefit plan  
17 solely because benefits may be limited  
18 or denied in the event a contributing  
19 employer fails to pay premiums or as-  
20 sessments required by the plan as a  
21 condition of continued participation.”

22 (c) SINGLE PLAN REQUIREMENT.—Section  
23 419A(f)(6), as amended by subsections (a) and (b), is  
24 amended—

1 (1) by striking “means a plan” in subparagraph  
2 (B) and inserting “means a single plan”, and

3 (2) by adding at the end the following:

4 “(D) SINGLE PLAN.—For purposes of this  
5 paragraph, the term ‘single plan’ means a writ-  
6 ten plan or series of related written plans the  
7 terms of which provide that—

8 “(i) all assets of the plan or plans,  
9 whether maintained under 1 or more  
10 trusts, accounts, or other arrangements  
11 and without regard to the method of ac-  
12 counting of the plan or plans, are available  
13 to pay benefits of all participants without  
14 regard to the participant’s contributing  
15 employer, and

16 “(ii) the method of accounting of the  
17 plan or plans may not operate to limit or  
18 reduce the benefits payable to a participant  
19 at any time before the withdrawal of the  
20 participant’s employer from the plan or the  
21 termination of any benefit arrangement  
22 under the plan.”

1 **SEC. 102. CLARIFICATION OF DEDUCTION LIMITS FOR CER-**  
 2 **TAIN COLLECTIVELY BARGAINED PLANS.**

3 Paragraph (5) of section 419A(f) (relating to the de-  
 4 ductions limits for certain collectively bargained plans) is  
 5 amended by adding at the end the following flush sen-  
 6 tences:

7 “Subparagraph (B) shall not apply to any plan  
 8 maintained pursuant to an agreement between em-  
 9 ployee representatives and 1 or more employers un-  
 10 less the taxpayer applies for, and the Secretary  
 11 issues, a determination that such agreement is a  
 12 bona fide collective bargaining agreement and that  
 13 the welfare benefits provided under the agreement  
 14 were the subject of good faith bargaining between  
 15 employee representatives and such employer or em-  
 16 ployers. The Secretary may issue regulations to  
 17 carry out the purposes of the preceding sentence.”

18 **SEC. 103. CLARIFICATION OF STANDARDS FOR SECTION**  
 19 **501(c)(9) APPROVAL.**

20 Section 505 is amended by adding at the end the fol-  
 21 lowing new subsection:

22 “(d) CLARIFICATION OF STANDARDS FOR EXEMP-  
 23 TION.—

24 “(1) MEMBERSHIP.—An organization shall not  
 25 fail to be treated as an organization described in  
 26 paragraph (9) of section 501(c) solely because its

1 membership includes employees or other allowable  
 2 participants who—

3 “(A) reside or work in different geographic  
 4 locales, or

5 “(B) do not work in the same industrial or  
 6 employment classification.

7 “(2) FUNDING.—An organization described in  
 8 paragraph (9) or (20) of section 501(c) shall not be  
 9 treated as discriminatory solely because life insur-  
 10 ance or other benefits provided by the organization  
 11 are funded with different types of products, con-  
 12 tracts, investments, or other funding methods of  
 13 varying costs, but only if the plan under which such  
 14 benefits are provided meets the requirements of sub-  
 15 section (b).”

16 **SEC. 104. TAX SHELTER PROVISIONS NOT TO APPLY.**

17 Section 419 (relating to treatment of funded welfare  
 18 benefit plans) is amended by adding at the end the fol-  
 19 lowing:

20 “(h) TAX SHELTER RULES NOT TO APPLY.—For  
 21 purposes of this title, a welfare benefit fund meeting all  
 22 applicable requirements of this title shall not be treated  
 23 as a tax shelter or corporate tax shelter.”

1 **SEC. 105. EFFECTIVE DATES.**

2 (a) IN GENERAL.—The amendments made by this  
3 title shall apply to contributions to a welfare benefit fund  
4 made after the date of the enactment of this Act.

5 (b) TAX SHELTER RULES.—The amendment made  
6 by section 104 shall take effect as if included in the  
7 amendments made by section 1028 of the Taxpayer Relief  
8 Act of 1997.

9 **TITLE II—ENFORCEMENT**  
10 **PROVISIONS**

11 **SEC. 201. CLARIFICATION OF SECTION 4976.**

12 Section 4976 (relating to excise taxes with respect to  
13 funded welfare benefit plans) is amended to read as fol-  
14 lows:

15 **“SEC. 4976. TAXES WITH RESPECT TO FUNDED WELFARE**  
16 **BENEFIT PLANS.**

17 **“(a) IMPOSITION OF TAX.—**

18 **“(1) GENERAL RULE.—If—**

19 **“(A) an employer maintains a welfare ben-**  
20 **efit fund, and**

21 **“(B) there is—**

22 **“(i) a disqualified benefit provided or**  
23 **funded during any taxable year, or**

24 **“(ii) a premature termination of such**  
25 **plan,**

1       there is hereby imposed on such employer a tax in  
2       the amount determined under paragraph (2).

3               “(2) AMOUNT OF TAX.—The amount of the tax  
4       imposed by paragraph (1) shall be equal to—

5               “(A) in the case of a taxable event under  
6       paragraph (1)(B)(i), 100 percent of—

7               “(i) the amount of the disqualified  
8       benefit provided, or

9               “(ii) the amount of the funding of the  
10       disqualified benefit, and

11              “(B) in the case of a taxable event under  
12       paragraph (1)(B)(ii), 100 percent of all con-  
13       tributions to the fund before the termination.

14       “(b) DISQUALIFIED BENEFIT.—For purposes of sub-  
15       section (a)—

16              “(1) IN GENERAL.—The term ‘disqualified ben-  
17       efit’ means—

18              “(A) any post-retirement medical benefit  
19       or life insurance benefit provided with respect  
20       to a key employee if a separate account is re-  
21       quired to be established for such employee  
22       under section 419A(d) and such payment is not  
23       from such account,

24              “(B) any post-retirement medical benefit  
25       or life insurance benefit provided or funded

1 with respect to an individual in whose favor dis-  
 2 crimination is prohibited unless the plan meets  
 3 the requirements of section 505(b) with respect  
 4 to such benefit (whether or not such require-  
 5 ments apply to such plan), and

6 “(C) any portion of a welfare benefit fund  
 7 reverting to the benefit of the employer.

8 “(2) EXCEPTION FOR COLLECTIVE BARGAINING  
 9 PLANS.—Paragraph (1)(B) shall not apply to any  
 10 plan maintained pursuant to an agreement between  
 11 employee representatives and 1 or more employers if  
 12 the Secretary finds that such agreement is a collec-  
 13 tive bargaining agreement and that the benefits re-  
 14 ferred to in paragraph (1)(B) were the subject of  
 15 good faith bargaining between such employee rep-  
 16 resentatives and such employer or employers.

17 “(3) EXCEPTION FOR NONDEDUCTIBLE CON-  
 18 TRIBUTIONS.—Paragraph (1)(C) shall not apply to  
 19 any amount attributable to a contribution to the  
 20 fund which is not allowable as a deduction under  
 21 section 419 for the taxable year or any prior taxable  
 22 year (and such contribution shall not be included in  
 23 any carryover under section 419(d)).

24 “(4) EXCEPTION FOR CERTAIN AMOUNTS  
 25 CHARGED AGAINST EXISTING RESERVE.—Subpara-

1       graphs (A) and (B) of paragraph (1) shall not apply  
 2       to post-retirement benefits charged against an exist-  
 3       ing reserve for post-retirement medical or life insur-  
 4       ance benefits (as defined in section 512(a)(3)(E)) or  
 5       charged against the income on such reserve.

6       “(c) PREMATURE TERMINATION.—For purposes of  
 7 subsection (a)—

8               “(1) IN GENERAL.—The term ‘premature ter-  
 9       mination’ means a termination event which occurs  
 10       on or before the date which is 6 years after the first  
 11       contribution to a welfare benefit fund which benefits  
 12       any highly compensated employee.

13              “(2) EXCEPTION FOR INSOLVENCY, ETC.—  
 14       Paragraph (1) shall not apply to any termination  
 15       event which occurs by reason of the insolvency of the  
 16       employer or for such other reasons as the Secretary  
 17       may by regulation determine are not likely to result  
 18       in abuse.

19              “(3) TERMINATION EVENT.—For purposes of  
 20       this subsection—

21                      “(A) IN GENERAL.—The term ‘termination  
 22       event’ means—

23                              “(i) the termination of a welfare ben-  
 24       efit fund,

1 “(ii) the withdrawal of an employer  
 2 from a welfare benefit fund to which more  
 3 than 1 employer contributes, or

4 “(iii) any other action which is de-  
 5 signed to cause, directly or indirectly, a  
 6 distribution of any asset from a welfare  
 7 benefit fund to a highly compensated em-  
 8 ployee.

9 “(B) EXCEPTION FOR BONA FIDE BENE-  
 10 FITS.—Subparagraph (A) shall not apply to any  
 11 bona fide benefit (other than a severance ben-  
 12 efit) paid from a welfare benefit fund which is  
 13 available to all employees on a nondiscrim-  
 14 inatory basis and payable pursuant to the terms  
 15 of a written plan.

16 “(d) DEFINITIONS.—For purposes of this section—

17 “(1) IN GENERAL.—Except as otherwise pro-  
 18 vided, the terms used in this section shall have the  
 19 same respective meanings as when used in subpart  
 20 D of part I of subchapter D of chapter 1.

21 “(2) POST-RETIREMENT BENEFIT.—

22 “(A) IN GENERAL.—The term ‘post-retire-  
 23 ment benefit’ means any benefit or distribution  
 24 which is reasonably determined to be paid, pro-

1 vided, or made available to a participant on or  
2 after normal retirement age.

3 “(B) NORMAL RETIREMENT AGE.—The  
4 term ‘normal retirement age’ shall have the  
5 same meaning given the term in section 3(24)  
6 of the Employee Retirement Income Security  
7 Act of 1974, but in no event shall such date be  
8 later than the latest normal retirement age de-  
9 fined in any qualified retirement plan of the  
10 employer maintaining the welfare benefit fund  
11 which benefits such individual.

12 “(C) PRESUMPTION IN THE CASE OF PER-  
13 MANENT LIFE INSURANCE.—In the case of a  
14 welfare benefit fund which provides a life insur-  
15 ance benefit for an employee, any contributions  
16 to the fund for life insurance benefits in excess  
17 of the cumulative projected cost of providing  
18 the employee permanent whole life insurance,  
19 calculated on the basis level premiums for each  
20 for each year before a normal retirement age,  
21 shall be treated as funding a post-retirement  
22 benefit.”

1 **SEC. 202. EFFECTIVE DATE.**

2       The amendments made by this title shall apply to  
3 benefits provided, and terminations occurring, after the  
4 date of the enactment of this Act.

