

108TH CONGRESS
1ST SESSION

H. R. 2222

To amend title I of the Employee Retirement Income Security Act and the Internal Revenue Code to allow for alienation of benefits to satisfy court judgments, decrees, or orders requiring restitution for embezzlement of State or local government funds.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2003

Mr. BUYER 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

A BILL

To amend title I of the Employee Retirement Income Security Act and the Internal Revenue Code to allow for alienation of benefits to satisfy court judgments, decrees, or orders requiring restitution for embezzlement of State or local government funds.

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 “Public Employer’s Res-
5 titution Act of 2003” .

1 **SEC. 2. ALIENATION OF PENSION PLAN BENEFITS TO SAT-**
2 **ISFY COURT JUDGMENTS, DECREES, OR OR-**
3 **DERS REQUIRING RESTITUTION FOR EMBEZ-**
4 **ZLEMENT OF STATE OR LOCAL GOVERNMENT**
5 **FUNDS.**

6 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
7 INCOME SECURITY ACT OF 1974.—

8 (1) IN GENERAL.—Section 206(d) of the Em-
9 ployee Retirement Income Security Act of 1974 (29
10 U.S.C. 1056(d)) is amended by adding at the end
11 the following new paragraph:

12 “(6)(A) Paragraph (1) shall apply to the creation, as-
13 signment, or recognition of a right to any benefit payable
14 with respect to a participant pursuant to an embezzlement
15 restitution order, except that paragraph (1) shall not
16 apply if the order is determined to be a qualified embezzle-
17 ment restitution order. Each pension plan shall provide
18 for the payment of benefits in accordance with the applica-
19 ble requirements of any qualified embezzlement restitution
20 order.

21 “(B) For purposes of this paragraph—

22 “(i) the term ‘qualified embezzlement restitu-
23 tion order’ means an embezzlement restitution
24 order—

25 “(I) which creates or recognizes the exist-
26 ence of an aggrieved State or local govern-

1 ment’s right to, or assigns to an aggrieved
2 State or local government the right to, receive
3 all or a portion of the benefits payable with re-
4 spect to a participant under a plan, and

5 “(II) with respect to which the require-
6 ments of subparagraphs (C) and (D) are met,
7 and

8 “(ii) the term ‘embezzlement restitution order’
9 means an order arising under a judgment of convic-
10 tion of an individual by a court of competent juris-
11 diction of the crime of embezzlement in violation of
12 the applicable laws of the United States or of any
13 State or political subdivision thereof, which provides
14 for restitution to the government of any State or po-
15 litical subdivision thereof of losses sustained by such
16 government in connection with embezzlement of the
17 funds of such government by such individual.

18 “(C) A qualified embezzlement restitution order
19 meets the requirements of this subparagraph only if such
20 order clearly specifies—

21 “(i) the name and the last known mailing ad-
22 dress (if any) of the participant and the name and
23 mailing address of each aggrieved State or local gov-
24 ernment covered by the order,

1 “(ii) the amount or percentage of the partici-
2 pant’s benefits to be paid by the plan to each such
3 aggrieved State or local government, or the manner
4 in which such amount or percentage is to be deter-
5 mined,

6 “(iii) the number of payments or period to
7 which such order applies, and

8 “(iv) each plan to which such order applies.

9 “(D) A qualified embezzlement restitution order
10 meets the requirements of this subparagraph only if such
11 order—

12 “(i) does not require a plan to provide any type
13 or form of benefit, or any option, not otherwise pro-
14 vided under the plan,

15 “(ii) does not require the plan to provide in-
16 creased benefits (determined on the basis of actu-
17 arial value), and

18 “(iii) does not require the payment of benefits
19 to the government of any State or political subdivi-
20 sion thereof which are required to be paid to any
21 other entity—

22 “(I) as an aggrieved State or local govern-
23 ment under another order previously deter-
24 mined to be a qualified embezzlement restituti-
25 on order, or

1 “(II) as an alternate payee under an order
2 previously determined to be a qualified domestic
3 relations order (as defined in paragraph
4 (3)(B)(i)).

5 “(E) The provisions of subparagraphs (E), (G), (H),
6 (I), and (M) of paragraph (3) shall apply for purposes of
7 this paragraph in the same manner and to the same extent
8 as such subparagraphs apply for purposes of paragraph
9 (3), except that—

10 “(i) any reference to a ‘qualified domestic rela-
11 tions order’ or a ‘domestic relations order’ shall be
12 deemed a reference to a qualified embezzlement res-
13 titution order or an embezzlement restitution order,
14 respectively, and

15 “(ii) any reference to an ‘alternate payee’ shall
16 be deemed a reference to an aggrieved State or local
17 government.

18 “(F) Notwithstanding subparagraph (A), paragraph
19 (1) shall apply with respect to the creation, assignment,
20 or recognition of a right to any benefit payable with re-
21 spect to a participant pursuant to any embezzlement res-
22 titution order if the requirements of paragraph (4)(C) are
23 met with respect to the plan. In applying paragraph (4)(C)
24 and paragraph (5) for purposes of this subparagraph—

1 “(i) any reference to an ‘offset’ shall be deemed
2 a reference to the creation, assignment, or recogni-
3 tion of a right to any benefit payable with respect
4 to the participant pursuant to an embezzlement res-
5 titution order,

6 “(ii) any reference to a ‘judgment, order, de-
7 cree, or settlement’ to pay an amount to the plan
8 shall be deemed a reference to the embezzlement res-
9 titution order, and

10 “(iii) any reference to a ‘violation of part 4’ of
11 subtitle B shall be deemed a reference to embezzle-
12 ment in violation of the applicable laws of the
13 United States or of any State or political subdivision
14 thereof.

15 “(G) For purposes of this paragraph, the term ‘ag-
16 grieved State or local government’ means, with respect to
17 any plan participant, the government of a State or a polit-
18 ical subdivision thereof that is recognized by an embezzle-
19 ment restitution order as having a right to receive as res-
20 titution all, or a portion of, the benefits payable under the
21 plan with respect to such participant.

22 “(H) This paragraph shall not apply to any plan to
23 which paragraph (1) does not apply.

1 “(I) In prescribing regulations under this paragraph,
2 the Secretary shall consult with the Secretary of the
3 Treasury.”.

4 (2) CLARIFICATION OF PREEMPTION PROVI-
5 SION.—Paragraph (7) of section 514(b) of such Act
6 (29 U.S.C. 1144(b)(7)) is amended by inserting
7 “qualified embezzlement restitution orders (within
8 the meaning of section 206(d)(6)(B)(i)),” after “sec-
9 tion 206(d)(3)(B)(i)),”.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE
11 CODE OF 1986.—

12 (1) IN GENERAL.—Paragraph (13) of section
13 401(a) of the Internal Revenue Code of 1986 (relat-
14 ing to assignment and alienation) is amended by
15 adding at the end the following new subparagraph:

16 “(E) SPECIAL RULES FOR QUALIFIED EM-
17 BEZZLEMENT RESTITUTION ORDERS.—Sub-
18 paragraph (A) shall not apply with respect to
19 the creation, assignment, or recognition of a
20 right to any benefit payable with respect to a
21 participant pursuant to an embezzlement res-
22 titution order, except that subparagraph (A)
23 shall not apply if the order is determined to be
24 a qualified embezzlement restitution order.”.

1 (2) QUALIFIED EMBEZZLEMENT RESTITUTION
 2 ORDER DEFINED.—Section 414 of such Code (relat-
 3 ing to definitions and special rules) is amended by
 4 adding at the end the following new subsection:

5 “(w) QUALIFIED EMBEZZLEMENT RESTITUTION
 6 ORDER DEFINED.—For purposes of this subsection and
 7 section 401(a)(13)—

8 “(1) IN GENERAL.—

9 “(A) QUALIFIED EMBEZZLEMENT RES-
 10 TITUTION ORDER.—The term ‘qualified embez-
 11 zlement restitution order’ means an embezzle-
 12 ment restitution order—

13 “(i) which creates or recognizes the
 14 existence of an aggrieved State or local
 15 government’s right to, or assigns to an ag-
 16 grieved State or local government the right
 17 to, receive all or a portion of the benefits
 18 payable with respect to a participant under
 19 a plan, and

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

23 “(B) EMBEZZLEMENT RESTITUTION
 24 ORDER.—The term ‘embezzlement restitution
 25 order’ means an order arising under a judg-

1 ment of conviction of an individual by a court
2 of competent jurisdiction of the crime of embez-
3 zlement in violation of the applicable laws of the
4 United States or of any State or political sub-
5 division thereof, which provides for restitution
6 to the government of any State or political sub-
7 division thereof of losses sustained by such gov-
8 ernment in connection with the embezzlement of
9 the funds of such government by such indi-
10 vidual.

11 “(2) ORDER MUST CLEARLY SPECIFY CERTAIN
12 FACTS.—A qualified embezzlement restitution order
13 meets the requirements of this paragraph only if
14 such order clearly specifies—

15 “(A) the name and the last known mailing
16 address (if any) of the participant and the
17 name and mailing address of each aggrieved
18 State or local government covered by the order,

19 “(B) the amount or percentage of the par-
20 ticipant’s benefits to be paid by the plan to
21 each such aggrieved State or local government,
22 or the manner in which such amount or per-
23 centage is to be determined,

24 “(C) the number of payments or period to
25 which such order applies, and

1 “(D) each plan to which such order ap-
2 plies.

3 “(3) ORDER MAY NOT ALTER AMOUNT, FORM,
4 ETC., OF BENEFITS.—A qualified embezzlement res-
5 titution order meets the requirements of this para-
6 graph only if such order—

7 “(A) does not require a plan to provide
8 any type or form of benefit, or any option, not
9 otherwise provided under the plan,

10 “(B) does not require the plan to provide
11 increased benefits (determined on the basis of
12 actuarial value), and

13 “(C) does not require the payment of bene-
14 fits to the government of any State or political
15 subdivision thereof which are required to be
16 paid to any other entity—

17 “(i) as an aggrieved State or local
18 government under another order previously
19 determined to be a qualified embezzlement
20 restitution order, or

21 “(ii) as an alternate payee under an
22 order previously determined to be a quali-
23 fied domestic relations order (as defined in
24 subsection (p)(1)(A)).

1 “(4) APPLICATION OF CERTAIN PROVISIONS.—

2 The provisions of paragraphs (4), (6), (7), (10),
3 (11), and (12) of subsection (p) shall apply for pur-
4 poses of this subsection and section 401(a)(13) in
5 the same manner and to the same extent as such
6 paragraphs apply for purposes of subsection (p) and
7 section 401(a)(13), except that—

8 “(A) any reference to a ‘qualified domestic
9 relations order’ or a ‘domestic relations order’
10 shall be deemed a reference to a qualified em-
11 bezzlement restitution order or an embezzle-
12 ment restitution order, respectively, and

13 “(B) any reference to an ‘alternate payee’
14 shall be deemed a reference to an aggrieved
15 State or local government.

16 “(5) INAPPLICABILITY OF EMBEZZLEMENT RES-
17 TITUTION ORDERS IN THE CASE OF CERTAIN SUR-
18 VIVOR ANNUITY REQUIREMENTS APPLICABLE TO
19 SPOUSE.—Notwithstanding section 401(a)(13)(E),
20 section 401(a)(13)(A) shall apply with respect to the
21 creation, assignment, or recognition of a right to any
22 benefit payable with respect to a participant pursu-
23 ant to any embezzlement restitution order if the re-
24 quirements of section 401(a)(13)(C)(iii) are met
25 with respect to the plan. In applying subparagraphs

1 (C)(iii) and (D) of section 401(a)(13) for purposes
2 of this paragraph—

3 “(A) any reference to an ‘offset’ shall be
4 deemed a reference to the creation, assignment,
5 or recognition of a right to any benefit payable
6 with respect to the participant pursuant to an
7 embezzlement restitution order,

8 “(B) to pay an amount to the plan shall be
9 deemed a reference to the embezzlement restitu-
10 tion order, and

11 “(C) any reference to a ‘violation of part
12 4’ of subtitle B of title I of the Employee Re-
13 tirement Income Security Act of 1974 shall be
14 deemed a reference to embezzlement in violation
15 of the applicable laws of the United States or
16 of any State or political subdivision thereof.

17 “(6) AGGRIEVED STATE OR LOCAL GOVERN-
18 MENT.—The term ‘aggrieved State or local govern-
19 ment’ means, with respect to any plan participant,
20 the government of any State or political subdivision
21 thereof that is recognized by an embezzlement res-
22 titution order as having a right to receive as restitu-
23 tion all, or a portion of, the benefits payable under
24 the plan with respect to such participant.

1 “(7) SUBSECTION NOT TO APPLY TO PLANS TO
2 WHICH SECTION 401(a)(13) DOES NOT APPLY.—This
3 subsection shall not apply to any plan to which sec-
4 tion 401(a)(13) does not apply. For purposes of this
5 title, except as provided in regulations, any distribu-
6 tion from an annuity contract under section 403(b)
7 pursuant to a qualified embezzlement restitution
8 order shall be treated in the same manner as a dis-
9 tribution from a plan to which section 401(a)(13)
10 applies.

11 “(8) CONSULTATION WITH THE SECRETARY.—
12 In prescribing regulations under this subsection and
13 section 401(a)(13), the Secretary of Labor shall con-
14 sult with the Secretary.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this Act shall take effect January 1, 2004.

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