

117TH CONGRESS
2D SESSION

S. 4613

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duty of plan administrators to select and maintain investments based solely on pecuniary factors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2022

Mr. BRAUN (for himself, Mr. BURR, Mr. TUBERVILLE, Mr. MARSHALL, Ms. LUMMIS, Mr. WICKER, Mr. DAINES, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duty of plan administrators to select and maintain investments based solely on pecuniary factors, 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.**

4 This Act may be cited as the “Maximize Americans’
5 Retirement Security Act”.

1 **SEC. 2. FIDUCIARY DUTY REGARDING THE CONSIDERATION**
2 **OF CERTAIN FACTORS IN INVESTMENT DECISIONS FOR EMPLOYEE BENEFIT PLANS.**
3

4 (a) IN GENERAL.—Subsection (a) of section 404 of
5 the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 1104) is amended by adding at the end the
7 following new paragraph:

8 “(3)(A) The duties under paragraph (1) shall include
9 the duty to select and maintain investments based, except
10 as provided in subparagraph (B), solely on pecuniary fac-
11 tors.

12 “(B) Notwithstanding subparagraph (A), when
13 choosing between or among investment alternatives that
14 a fiduciary is unable to distinguish on the basis of pecu-
15 niary factors alone, the fiduciary may use non-pecuniary
16 factors as the deciding factor in the selection or mainte-
17 nance of an investment if the fiduciary furnishes to par-
18 ticipants documentation on the following:

19 “(i) Why pecuniary factors were not sufficient
20 to select or maintain the investment.

21 “(ii) How the investment compares to the alter-
22 native investments with regard to—

23 “(I) the composition of the investments of
24 the plan with regard to diversification;

25 “(II) the liquidity and current return of
26 the investments of the plan relative to the an-

1 anticipated cash flow requirements of the plan;
 2 and

3 “(III) the projected return of the invest-
 4 ments of the plan relative to the funding objec-
 5 tives of the plan.

6 “(iii) How the chosen non-pecuniary factor is
 7 consistent with the interests of participants and
 8 beneficiaries in their retirement income or financial
 9 benefits under the plan.

10 “(C) For purposes of this paragraph, the term ‘pecu-
 11 niary factor’ means a factor that a fiduciary prudently de-
 12 termines is expected to have a material effect on the risk
 13 or return of an investment based on appropriate invest-
 14 ment horizons consistent with the plan’s investment objec-
 15 tives and the plan’s funding policy established pursuant
 16 to section 402(b)(1).’”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to investments made after the date
 19 that is 60 days after the date of enactment of this Act.

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