

118TH CONGRESS
1ST SESSION

S. 427

To prohibit the Secretary of Labor from constraining the range or type of investments that may be offered to participants and beneficiaries of individual retirement accounts who exercise control over the assets in such accounts.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. TUBERVILLE (for himself, Ms. LUMMIS, Mr. BRAUN, Mr. SCOTT of Florida, and Mrs. BRITT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit the Secretary of Labor from constraining the range or type of investments that may be offered to participants and beneficiaries of individual retirement accounts who exercise control over the assets in such accounts.

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 “Financial Freedom Act
5 of 2023”.

1 **SEC. 2. FIDUCIARY DUTIES WITH RESPECT TO PENSION**
2 **PLAN INVESTMENTS.**

3 Section 404(a) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1104(a)) is amended by
5 adding at the end the following:

6 “(3)(A) In the case of a pension plan that provides
7 for individual accounts and permits a participant or bene-
8 ficiary to exercise control over the assets in the partici-
9 pant’s or beneficiary’s account, nothing in paragraph
10 (1)—

11 “(i) requires a fiduciary to select, or prohibits
12 a fiduciary from selecting, any particular type of in-
13 vestment alternative, provided that a fiduciary pro-
14 vides the participant or beneficiary an opportunity to
15 choose, from a broad range of investment alter-
16 natives, the manner in which some or all of the as-
17 sets of the participant’s or beneficiary’s account are
18 invested, according to regulations prescribed by the
19 Secretary; or

20 “(ii) requires that any particular type of invest-
21 ment be either favored or disfavored, other than on
22 the basis of the investment’s risk-return characteris-
23 tics, in the context of the plan fiduciary’s objective
24 of providing investment alternatives suitable for pro-
25 viding benefits for participants and beneficiaries.

1 “(B) In the event that a fiduciary selects a self-di-
2 rected brokerage window as an investment alternative for
3 a plan described in subparagraph (A)—

4 “(i) the Secretary shall not issue any regula-
5 tions or subregulatory guidance constraining or pro-
6 hibiting the range or type of investments that may
7 be offered through such brokerage window;

8 “(ii) subsection (c) shall apply to such self-di-
9 rected brokerage window; and

10 “(iii) the diversification requirement of para-
11 graph (1)(C) and the prudence requirement of para-
12 graph (1)(B) are not violated by the fiduciary’s se-
13 lection of a self-directed brokerage window as an in-
14 vestment alternative or as a result of the exercise of
15 a participant or beneficiary’s control over the assets
16 in such self-directed brokerage window.”.

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