

117TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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 “Securing Employee  
5 Retirement Returns Act”.

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

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 (including  
10 designated investment alternatives for purposes of a de-  
11 fined contribution plan) based, except as provided in sub-  
12 paragraph (B) or (C), solely on pecuniary factors.

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

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

22 “(ii) How the chosen non-pecuniary factor is  
23 consistent with the interests of participants and  
24 beneficiaries in their retirement income or financial  
25 benefits under the plan.

1           “(C) Notwithstanding subparagraph (A), when se-  
2 lecting or maintaining designated investment alternatives  
3 for purposes of a defined contribution plan that permits  
4 a participant or beneficiary to choose from a broad range  
5 of designated investment alternatives, a fiduciary may se-  
6 lect or maintain an investment in an investment fund,  
7 product, or model portfolio that considers, or indicates the  
8 use of, non-pecuniary factors, if—

9           “(i) in selecting or maintaining such invest-  
10 ment, the fiduciary otherwise satisfies the duties  
11 under paragraph (1) (including, as applicable, sub-  
12 paragraph (B) of this paragraph); and

13           “(ii) the investment is not added or retained as,  
14 or as a component of, a qualified default investment  
15 alternative of the defined contribution plan.

16           “(D) For purposes of this paragraph:

17           “(i) The term ‘broad range’ has the meaning  
18 given such term in section 2550.404c-1(b)(3) of title  
19 29, Code of Federal Regulations (or successor regu-  
20 lations).

21           “(ii) The term ‘pecuniary factor’ means a factor  
22 that a fiduciary prudently determines is expected to  
23 have a material effect on the risk or return of an in-  
24 vestment based on appropriate investment horizons  
25 consistent with the plan’s investment objectives and

1 the plan's funding policy established pursuant to  
2 section 402(b)(1).

3 “(iii) The term ‘qualified default investment al-  
4 ternative’ has the meaning given such term in sec-  
5 tion 2550.404e-5(e)(4) of title 29, Code of Federal  
6 Regulations (or successor regulations).”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to investments made after the date  
9 of enactment of this Act.