

104TH CONGRESS
2D SESSION

S. 1570

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide that the restrictions on the assignment or alienation of pension plan benefits shall not apply to court-ordered criminal fines or victim restitution.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20 (legislative day, FEBRUARY 7), 1996

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

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide that the restrictions on the assignment or alienation of pension plan benefits shall not apply to court-ordered criminal fines or victim restitution.

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. ASSIGNMENT OR ALIENATION OF PENSION**

4 **PLANS FOR PAYMENT OF CRIMINAL FINES**

5 **AND VICTIM RESTITUTION.**

6 (a) AMENDMENTS TO ERISA.—

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

5 “(4)(A) Paragraph (1) shall not apply to a
6 qualified criminal restitution order and each pension
7 plan shall provide for payments in accordance with
8 the applicable requirements of a qualified criminal
9 restitution order.

10 “(B) For purposes of this paragraph, the term
11 ‘qualified criminal restitution order’ means a judg-
12 ment, order, or decree—

13 “(i) which is issued by a Federal or State
14 court in connection with a criminal conviction
15 of a participant under a plan,

16 “(ii) which imposes a criminal fine on the
17 participant or which requires the participant to
18 make restitution to 1 or more victims of the
19 crime for which convicted,

20 “(iii)(I) which creates or recognizes a right
21 to attach all or a portion of the benefits payable
22 with respect to the participant under a plan, or

23 “(II) which creates or recognizes the exist-
24 ence of a victim’s right to, or assigns to a vic-

1 tim the right to, receive all or a part of those
 2 benefits, and

3 “(iv) with respect to which the require-
 4 ments of subparagraphs (C) and (D) of para-
 5 graph (3) are met (determined after application
 6 of paragraph (3)(E)), except that in applying
 7 such subparagraphs, the term ‘criminal restitu-
 8 tion order’ shall be substituted for the term ‘do-
 9 mestic relations order’.

10 “(C) The requirements of subparagraphs (G),
 11 (H), and (I) of paragraph (3) shall apply to any
 12 plan administrator or fiduciary of a plan to which
 13 this paragraph applies.

14 “(D) Rules similar to the rules of subparagraph
 15 (J) and (N) of paragraph (3) shall apply for pur-
 16 poses of this paragraph.”

17 (2) PREEMPTION.—Paragraph (7) of section
 18 514(b) of such Act (29 U.S.C. 1144(b)(7)) is
 19 amended by inserting “or to qualified criminal res-
 20 titution orders (within the meaning of section
 21 206(d)(3)(B))” before the period at the end.

22 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
 23 1986.—

24 (1) IN GENERAL.—Paragraph (13) of section
 25 401(a) of the Internal Revenue Code of 1986 (relat-

1 ing to assignment of benefits) is amended by adding
 2 at the end the following new subparagraph:

3 “(C) SPECIAL RULES FOR CRIMINAL RES-
 4 TITUTION ORDERS.—Subparagraph (A) shall
 5 not apply to a qualified criminal restitution
 6 order (within the meaning of section 414(u)).”

7 (2) QUALIFIED CRIMINAL RESTITUTION
 8 ORDER.—Section 414 of such Code is amended by
 9 adding at the end the following new subsection:

10 “(u) QUALIFIED CRIMINAL RESTITUTION ORDER.—
 11 For purposes of this title—

12 “(1) IN GENERAL.—The term ‘qualified crimi-
 13 nal restitution order’ means a judgment, order, or
 14 decree—

15 “(A) which is issued by a Federal or State
 16 court in connection with a criminal conviction
 17 of a participant under a plan,

18 “(B) which imposes a criminal fine on the
 19 participant or which requires the participant to
 20 make restitution to 1 or more victims of the
 21 crime for which convicted,

22 “(C)(i) which creates or recognizes a right
 23 to attach all or a portion of the benefits payable
 24 with respect to the participant under a plan, or

1 “(ii) which creates or recognizes the exist-
2 ence of a victim’s right to, or assigns to a vic-
3 tim the right to, receive all or a part of those
4 benefits, and

5 “(D) with respect to which the require-
6 ments of paragraphs (2) and (3) of subsection
7 (p) are met (determined after application of
8 subsection (p)(4)), except that in applying such
9 paragraphs, the term ‘criminal restitution
10 order’ shall be substituted for the term ‘domes-
11 tic relations order’.

12 “(2) PLAN AND FIDUCIARY.—The provisions of
13 paragraphs (6) and (7) of subsection (p) shall apply
14 to any plan administrator or fiduciary of a plan to
15 which this paragraph applies.

16 “(3) SPECIAL RULES.—Rules similar to the
17 rules of paragraphs (9), (10), (11), and (12) of sub-
18 section (p) shall apply for purposes of this sub-
19 section.”

20 (3) TAX TREATMENT OF DISTRIBUTIONS.—

21 (A) Section 402(e)(1) is amended by add-
22 ing the end the following new subparagraph:

23 “(C) CRIMINAL RESTITUTION ORDERS.—
24 Rules similar to the rules of subparagraphs (A)
25 and (B) shall apply to payments or distribu-

1 tions to victims of a criminal offense pursuant
2 to a qualified criminal restitution order de-
3 scribed in section 414(u).”

4 (B) Section 72(m)(10) is amended—

5 (i) by adding at the end the following
6 new sentence: “The preceding sentence
7 shall also apply to payments or distribu-
8 tions made to victims of a criminal offense
9 pursuant to a qualified criminal restitution
10 order described in section 414(u).”, and

11 (ii) by inserting “or qualified criminal
12 restitution orders” after “orders” in the
13 heading.

14 (C) Subparagraph (J) of section 402(d)(4)
15 is amended by adding at the end the following
16 new sentence: “This subparagraph shall also
17 apply to any distributions or payments to vic-
18 tims of a criminal offense pursuant to a quali-
19 fied criminal restitution order described in sec-
20 tion 414(u).”

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to qualified criminal restitution or-
23 ders issued on and after the date of the enactment of this
24 Act.

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