

105TH CONGRESS
1ST SESSION

H. R. 1142

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1997

Mrs. MALONEY of New York (for herself, Mr. RAMSTAD, Ms. NORTON, and Mr. SMITH of New Jersey) 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 of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “ERISA Child Abuse
3 Accountability Act of 1997”.

4 **SEC. 2. AMENDMENTS TO TITLE I OF THE EMPLOYEE RE-**
5 **TIREMENT INCOME SECURITY ACT OF 1974.**

6 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-
7 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sec-
8 tion 206(d)(3)(A) of the Employee Retirement Income Se-
9 curity Act of 1974 (29 U.S.C. 1056(d)(3)(A)) is amend-
10 ed—

11 (1) by inserting “or a child abuse order” after
12 “a domestic relations order”;

13 (2) by inserting “or a qualified child abuse
14 order” after “a qualified domestic relations order”;
15 and

16 (3) by inserting “or any qualified child abuse
17 order” after “any qualified domestic relations
18 order”.

19 (b) QUALIFIED CHILD ABUSE ORDERS.—Section
20 206(d)(3)(B) of such Act (29 U.S.C. 1056(d)(3)(B)) is
21 amended—

22 (1) in clause (i), by striking “the term” and in-
23 serting “The term”, and by striking “, and” at the
24 end and inserting a period;

25 (2) in clause (ii), by striking “the term” and in-
26 serting “The term”; and

1 (3) by adding at the end the following new
2 clauses:

3 “(iii) The term ‘qualified child abuse order’
4 means a child abuse order—

5 “(I) which creates or recognizes the
6 existence of an alternate payee’s right to,
7 or assigns to an alternate payee the right
8 to, receive all or a portion of the benefits
9 payable with respect to a participant under
10 a plan, and

11 “(II) with respect to which the re-
12 quirements of subparagraphs (C) and (D)
13 are met.

14 “(iv) The term ‘child abuse order’ means
15 any court order or other similar process for the
16 enforcement of a judgment rendered against a
17 participant or beneficiary under a plan for
18 physically, sexually, or emotionally abusing a
19 child. For purposes of this clause—

20 “(I) The term ‘judgment rendered for
21 physically, sexually, or emotionally abusing
22 a child’ means any legal claim perfected
23 through a final enforceable judgment,
24 which claim is based in whole or in part
25 upon the physical, sexual, or emotional

1 abuse of a child, whether or not that abuse
2 is accompanied by other actionable wrong-
3 doing, such as sexual exploitation or gross
4 negligence.

5 “(II) The term ‘child’ means an indi-
6 vidual under 18 years of age.”.

7 (c) EXEMPTION FROM PREEMPTION.—Section
8 514(b)(7) of such Act (29 U.S.C. 1144(b)(7)) is amended
9 by inserting “or qualified child abuse orders (within the
10 meaning of section 206(d)(3)(B)(iii))” before the period.

11 (d) CONFORMING AMENDMENTS.—Section 206(d)(3)
12 of such Act (29 U.S.C. 1056(d)(3)) is amended—

13 (1) in subparagraph (C), by inserting “or child
14 abuse order” after “A domestic relations order”;

15 (2) in subparagraph (D), by inserting “or child
16 abuse order” after “A domestic relations order”;

17 (3) in subparagraph (E)(i), by inserting “or
18 child abuse order” after “A domestic relations
19 order”;

20 (4) in subparagraph (G)(i), by inserting “or
21 child abuse order” after “any domestic relations
22 order”, by inserting “or child abuse orders” in sub-
23 clause (I) after “domestic relations orders”, and by
24 inserting “or a qualified child abuse order” in sub-

1 clause (II) after “a qualified domestic relations
2 order”;

3 (5) in subparagraph (G)(ii), by inserting “and
4 child abuse orders” after “domestic relations or-
5 ders”, by inserting “or child abuse order” after “do-
6 mestic relations order” each place it appears in sub-
7 clauses (II) and (III);

8 (6) in subparagraph (H)(i), by inserting “or
9 whether a child abuse order is a qualified child
10 abuse order” after “whether a domestic relations
11 order is a qualified domestic relations order”, and by
12 inserting “or a qualified child abuse order” after “to
13 be a qualified domestic relations order”;

14 (7) in subparagraph (H)(ii), by inserting “or a
15 qualified child abuse order” after “a qualified do-
16 mestic relations order”;

17 (8) in subparagraph (H)(iii), by inserting “or a
18 qualified child abuse order” after “a qualified do-
19 mestic relations order” each place it appears in sub-
20 clauses (I) and (II);

21 (9) in subparagraph (H)(iv), by inserting “or a
22 qualified child abuse order” after “a qualified do-
23 mestic relations order”;

1 (10) in subparagraph (H)(v), by inserting “or
2 child abuse order” after “the domestic relations
3 order”;

4 (11) in subparagraph (I)(i), by inserting “or
5 child abuse order” after “a domestic relations
6 order”, and by inserting “or qualified child abuse
7 order” after “a qualified domestic relations order”;

8 (12) in subparagraph (J), by inserting “or a
9 qualified child abuse order” after “a qualified do-
10 mestic relations order”;

11 (13) in subparagraph (K), by inserting “or
12 child abuse order” after “a domestic relations
13 order”; and

14 (14) in subparagraph (M), by inserting “or a
15 qualified child abuse order” after “a qualified do-
16 mestic relations order”.

17 **SEC. 3. AMENDMENTS TO THE INTERNAL REVENUE CODE**
18 **OF 1986.**

19 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-
20 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sub-
21 paragraph (B) of section 401(a)(13) of the Internal Reve-
22 nue Code of 1986 (relating to assignment of benefits) is
23 amended—

1 (1) by inserting “OR CHILD ABUSE ORDERS”
2 after “DOMESTIC RELATIONS ORDERS” in the
3 heading;

4 (2) by inserting “or a child abuse order” after
5 “a domestic relations order”; and

6 (3) by inserting “or a qualified child abuse
7 order” after “a qualified domestic relations order”.

8 (b) QUALIFIED CHILD ABUSE ORDERS.—Paragraph
9 (1) of section 414(p) of such Code (defining qualified do-
10 mestic relations order) is amended—

11 (1) in the heading, by inserting “AND QUALI-
12 FIED CHILD ABUSE ORDER” after “ORDER”; and

13 (2) by adding at the end the following new sub-
14 paragraphs:

15 “(C) QUALIFIED CHILD ABUSE ORDER.—
16 The term ‘qualified child abuse order’ means a
17 child abuse order—

18 “(i) which creates or recognizes the
19 existence of an alternate payee’s right to,
20 or assigns to an alternate payee the right
21 to, receive all or a portion of the benefits
22 payable with respect to a participant under
23 a plan, and

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

4 “(D) CHILD ABUSE ORDER.—

5 “(i) IN GENERAL.—The term ‘child
6 abuse order’ means any court order or
7 other similar process for the enforcement
8 of a judgment rendered against a partici-
9 pant or beneficiary under a plan for phys-
10 ically, sexually, or emotionally abusing a
11 child.

12 “(ii) DEFINITIONS.—For purposes of
13 this subparagraph—

14 “(I) The term ‘judgment ren-
15 dered for physically, sexually, or emo-
16 tionally abusing a child’ means any
17 legal claim perfected through a final
18 enforceable judgment, which claim is
19 based in whole or in part upon the
20 physical, sexual, or emotional abuse of
21 a child, whether or not that abuse is
22 accompanied by other actionable
23 wrongdoing, such as sexual exploi-
24 tation or gross negligence.

1 “(II) The term ‘child’ means an
2 individual under 18 years of age.”.

3 (c) CONFORMING AMENDMENTS.—Subsection (p) of
4 section 414 of such Code is amended—

5 (1) in paragraph (2), by inserting “or child
6 abuse order” after “A domestic relations order”;

7 (2) in paragraph (3), by inserting “or child
8 abuse order” after “A domestic relations order”;

9 (3) in paragraph (4)(A), by inserting “or child
10 abuse order” after “a domestic relations order”;

11 (4) in paragraph (6)(A), by inserting “or child
12 abuse order” after “any domestic relations order”,
13 by inserting “or child abuse orders” in clause (i)
14 after “domestic relations orders”, and by inserting
15 “or a qualified child abuse order” in clause (ii) after
16 “a qualified domestic relations order”;

17 (5) in paragraph (6)(B), by inserting “and
18 child abuse orders” after “domestic relations or-
19 ders”;

20 (6) in paragraph (7)(A), by inserting “or
21 whether a child abuse order is a qualified child
22 abuse order” after “whether a domestic relations
23 order is a qualified domestic relations order”, and by
24 inserting “or a qualified child abuse order” after “to
25 be a qualified domestic relations order”;

1 (7) in paragraph (7)(B), by inserting “OR
2 QUALIFIED CHILD SUPPORT ORDER” in the heading
3 after “QUALIFIED DOMESTIC RELATIONS ORDER”,
4 and by inserting “or a qualified child abuse order”
5 after “a qualified domestic relations order”;

6 (8) in paragraph (7)(C), by inserting “or a
7 qualified child abuse order” after “a qualified do-
8 mestic relations order” each place it appears in
9 clauses (i) and (ii);

10 (9) in paragraph (7)(D), by inserting “or a
11 qualified child abuse order” after “a qualified do-
12 mestic relations order”;

13 (10) in paragraph (7)(E), by inserting “or child
14 abuse order” after “the domestic relations order”;

15 (11) in paragraph (8), by inserting “or child
16 abuse order” after “a domestic relations order”;

17 (12) in paragraph (9), by inserting “or a quali-
18 fied child abuse order” after “a qualified domestic
19 relations order”;

20 (13) in paragraph (10), by inserting “or a
21 qualified child abuse order” after “a qualified do-
22 mestic relations order”; and

23 (14) in paragraph (11), by inserting “or a
24 qualified child abuse order” after “pursuant to a
25 qualified domestic relations order”, and by inserting

1 “or a child abuse order” after “pursuant to a do-
2 mestic relations order”.

3 (d) TAX TREATMENT OF DISTRIBUTIONS PURSUANT
4 TO QUALIFIED CHILD ABUSE ORDERS.—

5 (1) ALTERNATE PAYEE MUST INCLUDE BENE-
6 FITS IN GROSS INCOME.—Paragraph (1) of section
7 402(e) of such Code (relating to alternate payee
8 under qualified domestic relations order treated as
9 distributee) is amended by inserting “or a qualified
10 child abuse order (as defined in section 414(p))”
11 after “a qualified domestic relations order (as de-
12 fined in section 414(p))” each place it appears.

13 (2) ALLOCATION OF INVESTMENT IN THE CON-
14 TRACT.—Paragraph (10) of section 72(m) of such
15 Code (relating to determination of investment in the
16 contract in the case of qualified domestic relations
17 orders) is amended—

18 (A) in the heading, by inserting “AND
19 QUALIFIED CHILD ABUSE ORDERS” after
20 “QUALIFIED DOMESTIC RELATIONS ORDERS”;
21 and

22 (B) by inserting “or a qualified child abuse
23 order (as defined in section 414(p))” after “a
24 qualified domestic relations order (as defined in
25 section 414(p))”.

1 (3) CLARIFICATION OF ELIGIBILITY OF PARTIC-
2 IPANT FOR LUMP SUM TREATMENT.—

3 (A) Subparagraph (H) of section 402(d)(4)
4 of such Code (relating to balance to credit of
5 employee not to include amounts payable under
6 qualified domestic relations order) is amend-
7 ed—

8 (i) in the heading, by inserting “OR
9 QUALIFIED CHILD ABUSE ORDER” after
10 “QUALIFIED DOMESTIC RELATIONS
11 ORDER”; and

12 (ii) by inserting “or a qualified child
13 abuse order (within the meaning of section
14 414(p))” after “a qualified domestic rela-
15 tions order (within the meaning of section
16 414(p))”.

17 (B) Subparagraph (J) of section 402(d)(4)
18 of such Code is amended by inserting “, or
19 under a qualified child abuse order (within the
20 meaning of section 414(p)) of the balance to
21 the credit of an alternate payee,” after “former
22 spouse of the employee”.

23 **SEC. 4. EFFECTIVE DATE.**

24 The amendments made by this Act shall take effect
25 on January 1, 1998, except that, in the case of a child

1 abuse order entered before such date, the plan adminis-
2 trator—

3 (1) shall treat such order as a qualified child
4 abuse order if such administrator is paying benefits
5 pursuant to such order on such date, and

6 (2) may treat any other such order entered be-
7 fore such date as a qualified child abuse order even
8 if such order does not meet the requirements of such
9 amendments.

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