

105TH CONGRESS  
1ST SESSION

# H. R. 2562

To promote accuracy in the determination of amounts of private pension plan benefits and contributions.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1997

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To promote accuracy in the determination of amounts of private pension plan benefits and contributions.

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 “Pension Beneficiary  
5 Rights Act of 1997”.

6 **SEC. 2. ALTERNATIVE DISPUTE RESOLUTION OF PENSION**

7 **BENEFIT CLAIMS.**

8 (a) IN GENERAL.—Section 503 of the Employee Re-  
9 tirement Income Security Act of 1974 (29 U.S.C. 1133)  
10 is amended—

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1           (1) by adding at the end of the heading the fol-  
2           lowing: “AND ARBITRATION OF PENSION CLAIMS”;

3           (2) by inserting “(a)” after “SEC. 503.”; and

4           (3) by adding at the end the following new sub-  
5           section:

6           “(b)(1) Any claim of a participant or beneficiary  
7           against an employee pension benefit plan with respect to  
8           benefits under such plan remaining unresolved, after op-  
9           portunity for review provided under subsection (a) has  
10          been exercised, may be resolved through arbitration, upon  
11          the request of the participant or beneficiary which is filed  
12          with the Secretary, in such form and manner as shall be  
13          prescribed by regulation and within the 60-day period  
14          after the participant or beneficiary has received written  
15          notice from the plan of the completion of such review. The  
16          filing of a request for arbitration under this section with  
17          respect to any claim shall constitute a waiver of any right  
18          to review of such claim other than as provided in this sub-  
19          section.

20          “(2) An arbitration proceeding under this subsection  
21          shall be conducted in accordance with fair and equitable  
22          procedures to be prescribed by the Secretary. Individuals  
23          serving as arbitrators under this section shall be selected  
24          by the Secretary from employees of the Department of  
25          Labor or, to the extent considered by the Secretary more

1 cost-effective, from individuals whose services are acquired  
2 from other sources. If the parties have not provided by  
3 agreement for the costs of the arbitration, including arbi-  
4 trator’s fees, the arbitrator shall assess such fees, in an  
5 amount for each party not to exceed \$500. The arbitrator  
6 may also award to prevailing participants and bene-  
7 ficiaries reasonable attorney’s fees and pre-judgment in-  
8 terest on unpaid benefits. The award may require payment  
9 of punitive damages by any party if the arbitrator finds  
10 that any failure by the party with respect to unpaid bene-  
11 fits constitutes willful misconduct.

12 “(3) Any arbitration proceedings under this sub-  
13 section shall, to the extent consistent with this title, be  
14 conducted in the same manner, subject to the same limita-  
15 tions, carried out with the same powers (including sub-  
16 pena power), and enforced in the United States courts as  
17 an arbitration proceeding carried out under title 9, United  
18 States Code, as if such arbitration had been entered into  
19 by the parties by mutual agreement. Any arbitration  
20 award which is not appealed under paragraph (4) may be  
21 reviewed only pursuant to sections 9 through 13 of such  
22 title 9.

23 “(4)(A) Upon completion of the arbitration proceed-  
24 ings in favor of one of the parties, a party aggrieved by  
25 the arbitrator’s award may bring an action in an appro-

1 p r i a t e United States district court to vacate or modify the  
2 award. Any action under this paragraph must be brought  
3 no later than 30 days after the date of the issuance of  
4 the arbitrator’s award, and in such action, the findings  
5 of fact shall be subject to de novo review.

6 “(B) The district courts of the United States shall  
7 have exclusive jurisdiction of an action under this para-  
8 graph without regard to the amount in controversy.

9 “(C) An action under this section may be brought  
10 in the district where the plan is administered or where  
11 a defendant resides or does business, and process may be  
12 served in any district where a defendant resides, does busi-  
13 ness, or may be found.

14 “(D) In any action under this paragraph, the court  
15 may award all or a portion of the costs and expenses in-  
16 curred in connection with such action, including reason-  
17 able attorney’s fees, to a prevailing participant or bene-  
18 ficiary.

19 “(E) A copy of the complaint in any action under  
20 this paragraph shall be served upon the Secretary by cer-  
21 tified mail. The Secretary may intervene in any such ac-  
22 tion.”.

23 (b) CONFORMING AMENDMENT.—The item relating  
24 to section 503 in the table of contents in section 1 of such  
25 Act is amended to read as follows:

“Sec. 503. Claims procedure and arbitration of pension claims.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to claims arising on  
3 or after the date of the enactment of this Act.

4 **SEC. 3. PRE-JUDGMENT INTEREST ON UNPAID BENEFITS;**  
5 **PUNITIVE DAMAGES FOR WILLFUL MIS-**  
6 **CONDUCT.**

7 (a) PRE-JUDGMENT INTEREST.—Section  
8 502(a)(1)(B) of the Employee Retirement Income Secu-  
9 rity Act of 1974 (29 U.S.C. 1132(a)(1)(B)) is amended  
10 by inserting “(together with reasonable pre-judgment in-  
11 terest on unpaid pension plan benefits)” after “to recover  
12 benefits due to him under the terms of his plan”.

13 (b) ATTORNEY FEES AND COSTS OF ACTION.—Sec-  
14 tion 502(g) of such Act (29 U.S.C. 1132(g)) is amended—

15 (1) in paragraph (1), by inserting “or (3)”  
16 after “paragraph (2)”; and

17 (2) by adding at the end the following new  
18 paragraph:

19 “(3) In any action or settlement proceeding under  
20 this title with respect to an employee pension benefit plan  
21 brought by a participant or beneficiary under such plan  
22 in which the participant or beneficiary prevails or substan-  
23 tially prevails, the participant or beneficiary shall be enti-  
24 tled to reasonable attorney’s fees, reasonable expert wit-  
25 ness fees, and other reasonable costs relating to the action.

1 Fees to which the participant or beneficiary is entitled  
2 under the paragraph shall be at generally prevailing hour-  
3 ly rates.”.

4 (c) PUNITIVE DAMAGES FOR WILLFUL MIS-  
5 CONDUCT.—Section 502(c) of such Act (29 U.S.C.  
6 1132(c)) is amended—

7 (1) by redesignating paragraph (6) as para-  
8 graph (7); and

9 (2) by inserting after paragraph (5) the follow-  
10 ing new paragraph:

11 “(6) In any case in which any party consisting of the  
12 plan sponsor, the plan administrator, or any other fidu-  
13 ciary of a pension plan knowingly and willfully acts or fails  
14 to act for the purpose of depriving a participant or bene-  
15 ficiary of the full and timely payment of a benefit under  
16 the plan in violation of the terms of the plan or this title,  
17 such party may, in the court’s discretion, be jointly and  
18 severally liable to such participant or beneficiary, in any  
19 action brought under subsection (a)(1)(B), for punitive  
20 damages in addition to any other remedy available to such  
21 participant or beneficiary.”.

22 (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply with respect to causes of action  
24 arising on or after the date of the enactment of this Act.

1 **SEC. 4. ANNUAL REPORTS TO PARTICIPANTS AND BENE-**  
2 **FICIARIES IN UNDERSTANDABLE LANGUAGE.**

3 (a) IN GENERAL.—Section 104(b) of the Employee  
4 Retirement Income Security Act of 1974 (29 U.S.C.  
5 1024(b)) is amended to read as follows:

6 “(b)(1) Within 210 days after the close of each plan  
7 year, the administrator shall furnish to each participant,  
8 and to each beneficiary receiving benefits under the plan—

9 “(A) a copy of the statements and schedules,  
10 for such plan, described in subparagraphs (A) and  
11 (B) of section 103(b)(3);

12 “(B) a report containing—

13 “(i) a description of all investments and  
14 assets of the plan, including their value;

15 “(ii) the names and positions of all of the  
16 trustees of the plan, and the time remaining be-  
17 fore the expiration of their term;

18 “(iii) a description of the method of trustee  
19 selection;

20 “(iv) a description of any changes in in-  
21 vestment policy of the plan during the fiscal  
22 year; and

23 “(v) an evaluation of the long-term sol-  
24 vency of the plan, including the number of par-  
25 ticipants and beneficiaries and a summary of  
26 their benefits, and a projection of the amount

1 of benefits expected to be paid for the fifth,  
2 tenth, and fifteenth plan year following the date  
3 of the publication of the report;

4 “(C) any other material (including the percent-  
5 age determined under section 103(d)(11)) as is nec-  
6 essary to fairly summarize the latest annual report;  
7 and

8 “(D) information on where participants and  
9 beneficiary may receive assistance with respect to  
10 the plan.

11 Such information shall be written and calculated to be un-  
12 derstood by the average plan participant, and shall be suf-  
13 ficiently accurate and comprehensive to reasonably apprise  
14 such participants and beneficiaries of their rights and obli-  
15 gations under the plan.

16 “(2) The administrator shall make copies of the plan  
17 description and the latest annual report and the bargain-  
18 ing agreement, trust agreement, contract, or other instru-  
19 ments under which the plan was established or is operated  
20 available for examination by any plan participant or bene-  
21 ficiary in the principal office of the administrator and in  
22 such other places as may be necessary to make available  
23 all pertinent information to all participants (including  
24 such places as the Secretary may prescribe by regula-  
25 tions).

1       “(3) The administrator shall, upon written request  
2 of any participant or beneficiary, furnish a copy of the  
3 latest annual report, any terminal report, the bargaining  
4 agreement, trust agreement, contract, or other instru-  
5 ments under which the plan is established or operated.  
6 The administrator may make a reasonable charge to cover  
7 the cost of furnishing such complete copies. The Secretary  
8 may by regulation prescribe the maximum amount which  
9 will constitute a reasonable charge under the preceding  
10 sentence.”.

11       (b) CONFORMING AMENDMENTS.—

12             (1) Section 101(a) of such Act (29 U.S.C.  
13 1021(a)) is amended to read as follows—

14       “SEC. 101. (a) The administrator of each employee  
15 benefit plan shall cause to be furnished in accordance with  
16 section 104(b) to each participant covered under the plan  
17 and to each beneficiary who is receiving benefits under the  
18 plan the information described in sections 104(b)(1) and  
19 105(a) and (c).”.

20             (2) Section 101(b) of such Act (29 U.S.C.  
21 1021(b)) is amended by striking paragraph (1) and  
22 redesignating paragraphs (2), (3), (4), and (5), as  
23 paragraphs (1), (2), (3), and (4), respectively.

24             (3) Section 102(a)(1) of such Act (29 U.S.C.  
25 1022(a)(1)) is amended to read as follows:

1       “SEC. 102. (a)(1) A report shall be furnished to par-  
2 ticipants and beneficiaries as provided in section 104(b).”.

3           (4) Section 102(b) of such Act (29 U.S.C.  
4 1022(b)) is amended by striking “and summary plan  
5 description” and inserting “report”.

6           (5) Section 103(a)(3)(A) of such Act (29  
7 U.S.C. 1023 (a)(3)(A)) is amended in the second  
8 sentence by striking “104(b)(3)” and inserting  
9 “104(b)(1) (A) and (C)”.

10          (6) Section 104(a)(1)(C) of such Act (29  
11 U.S.C. 1024(a)(1)(C)) is amended to read as fol-  
12 lows:

13           “(C) a copy of the materials required to be fur-  
14 nished to participants and beneficiaries pursuant to  
15 subsection (b)(1) of this section; and”.

16          (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply with respect to plan years begin-  
18 ning on or after January 1, 1998.

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