

108TH CONGRESS  
1ST SESSION

# H. R. 2222

To amend title I of the Employee Retirement Income Security Act and the Internal Revenue Code to allow for alienation of benefits to satisfy court judgments, decrees, or orders requiring restitution for embezzlement of State or local government funds.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2003

Mr. BUYER 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

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## A BILL

To amend title I of the Employee Retirement Income Security Act and the Internal Revenue Code to allow for alienation of benefits to satisfy court judgments, decrees, or orders requiring restitution for embezzlement of State or local government funds.

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 “Public Employer’s Res-  
5       titution Act of 2003” .

1 **SEC. 2. ALIENATION OF PENSION PLAN BENEFITS TO SAT-**  
2 **ISFY COURT JUDGMENTS, DECREES, OR OR-**  
3 **DERS REQUIRING RESTITUTION FOR EMBEZ-**  
4 **ZLEMENT OF STATE OR LOCAL GOVERNMENT**  
5 **FUNDS.**

6 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT  
7 INCOME SECURITY ACT OF 1974.—

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

12 “(6)(A) Paragraph (1) shall apply to the creation, as-  
13 signment, or recognition of a right to any benefit payable  
14 with respect to a participant pursuant to an embezzlement  
15 restitution order, except that paragraph (1) shall not  
16 apply if the order is determined to be a qualified embezzle-  
17 ment restitution order. Each pension plan shall provide  
18 for the payment of benefits in accordance with the applica-  
19 ble requirements of any qualified embezzlement restitution  
20 order.

21 “(B) For purposes of this paragraph—

22 “(i) the term ‘qualified embezzlement restitu-  
23 tion order’ means an embezzlement restitution  
24 order—

25 “(I) which creates or recognizes the exist-  
26 ence of an aggrieved State or local govern-

1           ment’s right to, or assigns to an aggrieved  
2           State or local government the right to, receive  
3           all or a portion of the benefits payable with re-  
4           spect to a participant under a plan, and

5                   “(II) with respect to which the require-  
6           ments of subparagraphs (C) and (D) are met,  
7           and

8                   “(ii) the term ‘embezzlement restitution order’  
9           means an order arising under a judgment of convic-  
10          tion of an individual by a court of competent juris-  
11          diction of the crime of embezzlement in violation of  
12          the applicable laws of the United States or of any  
13          State or political subdivision thereof, which provides  
14          for restitution to the government of any State or po-  
15          litical subdivision thereof of losses sustained by such  
16          government in connection with embezzlement of the  
17          funds of such government by such individual.

18          “(C) A qualified embezzlement restitution order  
19          meets the requirements of this subparagraph only if such  
20          order clearly specifies—

21                   “(i) the name and the last known mailing ad-  
22          dress (if any) of the participant and the name and  
23          mailing address of each aggrieved State or local gov-  
24          ernment covered by the order,

1           “(ii) the amount or percentage of the partici-  
2           pant’s benefits to be paid by the plan to each such  
3           aggrieved State or local government, or the manner  
4           in which such amount or percentage is to be deter-  
5           mined,

6           “(iii) the number of payments or period to  
7           which such order applies, and

8           “(iv) each plan to which such order applies.

9           “(D) A qualified embezzlement restitution order  
10          meets the requirements of this subparagraph only if such  
11          order—

12           “(i) does not require a plan to provide any type  
13           or form of benefit, or any option, not otherwise pro-  
14           vided under the plan,

15           “(ii) does not require the plan to provide in-  
16           creased benefits (determined on the basis of actu-  
17           arial value), and

18           “(iii) does not require the payment of benefits  
19           to the government of any State or political subdivi-  
20           sion thereof which are required to be paid to any  
21           other entity—

22           “(I) as an aggrieved State or local govern-  
23           ment under another order previously deter-  
24           mined to be a qualified embezzlement restituti-  
25           on order, or

1           “(II) as an alternate payee under an order  
2           previously determined to be a qualified domestic  
3           relations order (as defined in paragraph  
4           (3)(B)(i)).

5           “(E) The provisions of subparagraphs (E), (G), (H),  
6 (I), and (M) of paragraph (3) shall apply for purposes of  
7 this paragraph in the same manner and to the same extent  
8 as such subparagraphs apply for purposes of paragraph  
9 (3), except that—

10           “(i) any reference to a ‘qualified domestic rela-  
11           tions order’ or a ‘domestic relations order’ shall be  
12           deemed a reference to a qualified embezzlement res-  
13           titution order or an embezzlement restitution order,  
14           respectively, and

15           “(ii) any reference to an ‘alternate payee’ shall  
16           be deemed a reference to an aggrieved State or local  
17           government.

18           “(F) Notwithstanding subparagraph (A), paragraph  
19 (1) shall apply with respect to the creation, assignment,  
20 or recognition of a right to any benefit payable with re-  
21 spect to a participant pursuant to any embezzlement res-  
22 titution order if the requirements of paragraph (4)(C) are  
23 met with respect to the plan. In applying paragraph (4)(C)  
24 and paragraph (5) for purposes of this subparagraph—

1           “(i) any reference to an ‘offset’ shall be deemed  
2           a reference to the creation, assignment, or recogni-  
3           tion of a right to any benefit payable with respect  
4           to the participant pursuant to an embezzlement res-  
5           titution order,

6           “(ii) any reference to a ‘judgment, order, de-  
7           cree, or settlement’ to pay an amount to the plan  
8           shall be deemed a reference to the embezzlement res-  
9           titution order, and

10           “(iii) any reference to a ‘violation of part 4’ of  
11           subtitle B shall be deemed a reference to embezzle-  
12           ment in violation of the applicable laws of the  
13           United States or of any State or political subdivision  
14           thereof.

15           “(G) For purposes of this paragraph, the term ‘ag-  
16           grieved State or local government’ means, with respect to  
17           any plan participant, the government of a State or a polit-  
18           ical subdivision thereof that is recognized by an embezzle-  
19           ment restitution order as having a right to receive as res-  
20           titution all, or a portion of, the benefits payable under the  
21           plan with respect to such participant.

22           “(H) This paragraph shall not apply to any plan to  
23           which paragraph (1) does not apply.

1 “(I) In prescribing regulations under this paragraph,  
2 the Secretary shall consult with the Secretary of the  
3 Treasury.”.

4 (2) CLARIFICATION OF PREEMPTION PROVI-  
5 SION.—Paragraph (7) of section 514(b) of such Act  
6 (29 U.S.C. 1144(b)(7)) is amended by inserting  
7 “qualified embezzlement restitution orders (within  
8 the meaning of section 206(d)(6)(B)(i),” after “sec-  
9 tion 206(d)(3)(B)(i),”.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE  
11 CODE OF 1986.—

12 (1) IN GENERAL.—Paragraph (13) of section  
13 401(a) of the Internal Revenue Code of 1986 (relat-  
14 ing to assignment and alienation) is amended by  
15 adding at the end the following new subparagraph:

16 “(E) SPECIAL RULES FOR QUALIFIED EM-  
17 BEZZLEMENT RESTITUTION ORDERS.—Sub-  
18 paragraph (A) shall not apply with respect to  
19 the creation, assignment, or recognition of a  
20 right to any benefit payable with respect to a  
21 participant pursuant to an embezzlement res-  
22 titution order, except that subparagraph (A)  
23 shall not apply if the order is determined to be  
24 a qualified embezzlement restitution order.”.

1           (2) QUALIFIED EMBEZZLEMENT RESTITUTION  
2           ORDER DEFINED.—Section 414 of such Code (relat-  
3           ing to definitions and special rules) is amended by  
4           adding at the end the following new subsection:

5           “(w) QUALIFIED EMBEZZLEMENT RESTITUTION  
6           ORDER DEFINED.—For purposes of this subsection and  
7           section 401(a)(13)—

8           “(1) IN GENERAL.—

9           “(A) QUALIFIED EMBEZZLEMENT RES-  
10           TITUTION ORDER.—The term ‘qualified embez-  
11           zlement restitution order’ means an embezze-  
12           ment restitution order—

13                   “(i) which creates or recognizes the  
14                   existence of an aggrieved State or local  
15                   government’s right to, or assigns to an ag-  
16                   grieved State or local government the right  
17                   to, receive all or a portion of the benefits  
18                   payable with respect to a participant under  
19                   a plan, and

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

23           “(B) EMBEZZLEMENT RESTITUTION  
24           ORDER.—The term ‘embezzlement restitution  
25           order’ means an order arising under a judg-

1           ment of conviction of an individual by a court  
2           of competent jurisdiction of the crime of embez-  
3           zlement in violation of the applicable laws of the  
4           United States or of any State or political sub-  
5           division thereof, which provides for restitution  
6           to the government of any State or political sub-  
7           division thereof of losses sustained by such gov-  
8           ernment in connection with the embezzlement of  
9           the funds of such government by such indi-  
10          vidual.

11           “(2) ORDER MUST CLEARLY SPECIFY CERTAIN  
12          FACTS.—A qualified embezzlement restitution order  
13          meets the requirements of this paragraph only if  
14          such order clearly specifies—

15                 “(A) the name and the last known mailing  
16                 address (if any) of the participant and the  
17                 name and mailing address of each aggrieved  
18                 State or local government covered by the order,

19                 “(B) the amount or percentage of the par-  
20                 ticipant’s benefits to be paid by the plan to  
21                 each such aggrieved State or local government,  
22                 or the manner in which such amount or per-  
23                 centage is to be determined,

24                 “(C) the number of payments or period to  
25                 which such order applies, and

1           “(D) each plan to which such order ap-  
2           plies.

3           “(3) ORDER MAY NOT ALTER AMOUNT, FORM,  
4           ETC., OF BENEFITS.—A qualified embezzlement res-  
5           titution order meets the requirements of this para-  
6           graph only if such order—

7           “(A) does not require a plan to provide  
8           any type or form of benefit, or any option, not  
9           otherwise provided under the plan,

10          “(B) does not require the plan to provide  
11          increased benefits (determined on the basis of  
12          actuarial value), and

13          “(C) does not require the payment of bene-  
14          fits to the government of any State or political  
15          subdivision thereof which are required to be  
16          paid to any other entity—

17          “(i) as an aggrieved State or local  
18          government under another order previously  
19          determined to be a qualified embezzlement  
20          restitution order, or

21          “(ii) as an alternate payee under an  
22          order previously determined to be a quali-  
23          fied domestic relations order (as defined in  
24          subsection (p)(1)(A)).

1           “(4) APPLICATION OF CERTAIN PROVISIONS.—

2           The provisions of paragraphs (4), (6), (7), (10),  
3           (11), and (12) of subsection (p) shall apply for pur-  
4           poses of this subsection and section 401(a)(13) in  
5           the same manner and to the same extent as such  
6           paragraphs apply for purposes of subsection (p) and  
7           section 401(a)(13), except that—

8                   “(A) any reference to a ‘qualified domestic  
9                   relations order’ or a ‘domestic relations order’  
10                  shall be deemed a reference to a qualified em-  
11                  bezzlement restitution order or an embezzle-  
12                  ment restitution order, respectively, and

13                   “(B) any reference to an ‘alternate payee’  
14                  shall be deemed a reference to an aggrieved  
15                  State or local government.

16           “(5) INAPPLICABILITY OF EMBEZZLEMENT RES-  
17           TITUTION ORDERS IN THE CASE OF CERTAIN SUR-  
18           VIVOR ANNUITY REQUIREMENTS APPLICABLE TO  
19           SPOUSE.—Notwithstanding section 401(a)(13)(E),  
20           section 401(a)(13)(A) shall apply with respect to the  
21           creation, assignment, or recognition of a right to any  
22           benefit payable with respect to a participant pursu-  
23           ant to any embezzlement restitution order if the re-  
24           quirements of section 401(a)(13)(C)(iii) are met  
25           with respect to the plan. In applying subparagraphs

1 (C)(iii) and (D) of section 401(a)(13) for purposes  
2 of this paragraph—

3 “(A) any reference to an ‘offset’ shall be  
4 deemed a reference to the creation, assignment,  
5 or recognition of a right to any benefit payable  
6 with respect to the participant pursuant to an  
7 embezzlement restitution order,

8 “(B) to pay an amount to the plan shall be  
9 deemed a reference to the embezzlement restitu-  
10 tion order, and

11 “(C) any reference to a ‘violation of part  
12 4’ of subtitle B of title I of the Employee Re-  
13 tirement Income Security Act of 1974 shall be  
14 deemed a reference to embezzlement in violation  
15 of the applicable laws of the United States or  
16 of any State or political subdivision thereof.

17 “(6) AGGRIEVED STATE OR LOCAL GOVERN-  
18 MENT.—The term ‘aggrieved State or local govern-  
19 ment’ means, with respect to any plan participant,  
20 the government of any State or political subdivision  
21 thereof that is recognized by an embezzlement res-  
22 titution order as having a right to receive as restitu-  
23 tion all, or a portion of, the benefits payable under  
24 the plan with respect to such participant.

1           “(7) SUBSECTION NOT TO APPLY TO PLANS TO  
2           WHICH SECTION 401(a)(13) DOES NOT APPLY.—This  
3           subsection shall not apply to any plan to which sec-  
4           tion 401(a)(13) does not apply. For purposes of this  
5           title, except as provided in regulations, any distribu-  
6           tion from an annuity contract under section 403(b)  
7           pursuant to a qualified embezzlement restitution  
8           order shall be treated in the same manner as a dis-  
9           tribution from a plan to which section 401(a)(13)  
10          applies.

11           “(8) CONSULTATION WITH THE SECRETARY.—  
12          In prescribing regulations under this subsection and  
13          section 401(a)(13), the Secretary of Labor shall con-  
14          sult with the Secretary.”.

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this Act shall take effect January 1, 2004.

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