\_\_\_ CONGRESS

\_\_\_ Session

**H.R. \_\_\_\_\_\_\_\_\_\_**

To amend title I of the Employee Retirement Income Security Act of

1974 to provide protection for company-provided retiree benefits.

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**A BILL**

To amend title I of the Employee Retirement Income Security Act of 1974 to provide protection for company-provided retiree benefits.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SEC 1. SHORT TITLE

This Act may be cited as the “Retirement Restoration Act of 2023”.

SEC. 2. FINDINGS AND PURPOSE

(a) FINDINGS. – The Congress finds the following:

(1) Retired participants of pension plans regulated by the Employee Retirement Income Security Act of 1974 (ERISA) are at serious risk of pension risk transfers.

(2) Plan sponsors have been offloading their defined benefit plans via pension de-risking transactions and transferring risk to insurance companies that are not subject to ERISA causing retirees to lose all of the uniform protections intended by Congress and subjecting retirees to non-uniform and inconsistent state laws.

(A) Pension de-risking transactions undermine ERISA’s protective purpose and divest retirees of PBGC coverage, deny retirees ready access to the Federal Courts and eliminate important disclosure requirements and fiduciary standards that were afforded pensioners under ERISA.

(B) Once a pension is converted into a group annuity contract, retirees’ pension payments may be subject to creditor claims under non-uniform state laws.

(C) Insurance companies that take over pension payments should be held to the same fiduciary standards Congress intended under ERISA.

(D) Defined benefit Plan Sponsors should not be allowed to escape liability due to the passage of time should an insurance company fail to meet its payment obligations to retirees.

(3) The crisis retirees face due to the loss of earned benefits is being largely ignored. Plan sponsors look to gut retiree earned benefits as they simultaneously raise executive compensation and favor executive, management or other current employee coverage and benefits, even though retiree coverage was earned and bargained for in exchange for lower salaries and other cash or cash equivalent compensation. This practice has led to a wide-spread loss of confidence in the integrity of ERISA-regulated group retirement plans.

(b) PURPOSE –

(1) IN GENERAL. – The purpose of this Act is to ensure that retiree earned benefits are protected as intended by Congress under ERISA, to minimize the cost, expense, incidence and uncertainty associated with prolonged legal disputes arising out of the post-retirement cancellation or reduction of earned retiree pensions.

(2) FUTURE SAFEGUARDS AND ENFORCEABLE OBLIGATIONS. – To carry out the purpose described in paragraph (1), the provisions of this Act safeguard retiree pensions by limiting the extent to which plan sponsors can cancel, offload or reduce earned pension benefits after the dates such participants retire and when they no longer are able to absorb such losses or reductions without experiencing adverse effects on their finances.

PART 4 – FIDUCIARY DUTIES

(e) SAFE HARBOR FOR ANNUITY SELECTION

Sec. 404 shall be amended to include the additions of the underlined subsections below:

(B) with respect to each insurer identified under subparagraph (A) –

(i) considers the financial capability of such insurer to satisfy its obligations under the guaranteed retirement income contract taking into consideration:

A. Whether or not the selected insurer is properly reserved under Statutory Accounting Principles (“SAP”) in all States where the insurer does business taking into consideration the extent to which the selected insurer has taken credit for reinsurance with wholly owned captive reinsurers or affiliates that do not file annual statements in accordance with SAP.

B. Whether or not the selected insurer has significant exposure to affiliated reinsurers located outside of the United States.

(2) FINANCIAL CAPABILITY OF THE INSURER

Sec. 404 shall be amended to include the additions of the underlined subsections below:

A fiduciary will be deemed to satisfy the requirements of paragraphs (1) (B)(i) and (1)(C) (i) if-

1. the fiduciary obtains written representations from the insurer that—

(ii) the insurer, at the time of selection and for each of the immediately preceding 7 plan years—

(III) the insurer has not taken reserve relief credit for reinsurance with wholly owned captive reinsurers or affiliates that do not file audited financial statements in accordance with the laws of the domiciliary State of the insurer under applicable statutory accounting principles (“SAP”);

(IV) the insurer maintains (and has maintained) reserves which satisfy all of the statutory requirements of all States where the insurer does business; and

(V) the insurer is not an impaired insurer or is not operating under an order of supervision, rehabilitation, or liquidation;

SEC. 413 LIMITATIONS ON ACTIONS.

Sec. 413 shall be amended to include the addition of subsection (3) below:

(3)

All statutes of limitations are tolled with respect to all pension de-risking transactions involving the purchase of a group annuity contract for some or all plan participants that is governed under state law until such time as the last pension benefit payment is made.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act.