

104TH CONGRESS  
2D SESSION

# H. R. 4237

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or substantial reduction of retiree health benefits, to require a preponderance of evidence for termination or substantial reduction of retiree health benefits, and to allow courts to use extrinsic evidence in determining the intent of a plan.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1996

Mr. BARRETT of Wisconsin introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or substantial reduction of retiree health benefits, to require a preponderance of evidence for termination or substantial reduction of retiree health benefits, and to allow courts to use extrinsic evidence in determining the intent of a plan.

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. PROCEDURES GOVERNING RETIREE HEALTH**  
2 **BENEFITS.**

3 (a) IN GENERAL.—Part 5 of subtitle B of title I of  
4 the Employee Retirement Income Security Act of 1974  
5 (29 U.S.C. 1131 et seq.) is amended by adding at the end  
6 the following new section:

7 **“SEC. 516. PROCEDURES GOVERNING THE TERMINATION**  
8 **OR SUBSTANTIAL REDUCTION OF RETIREE**  
9 **HEALTH BENEFITS.**

10 “(a) TERMINATION OR SUBSTANTIAL REDUCTION OF  
11 RETIREE HEALTH BENEFITS.—A plan or plan sponsor  
12 may terminate or substantially reduce retiree health bene-  
13 fits under an employee welfare benefit plan, or plan or  
14 plan sponsor payments in connection with such benefits  
15 only in accordance with the provisions of this section.

16 “(b) PROPOSAL REQUIREMENT.—

17 “(1) Prior to terminating or substantially re-  
18 ducing retiree health benefits or plan or plan spon-  
19 sor payments in connection with such benefits, a  
20 plan sponsor shall—

21 “(A) petition a court of competent jurisdic-  
22 tion for the appointment of an authorized rep-  
23 resentative for the retirees whose benefits may  
24 be terminated or substantially reduced;

25 “(B) make a proposal to the authorized  
26 representative of the retirees covered by the

1 plan, based on the most complete and reliable  
2 information available at the time of such pro-  
3 posal, which assures that all of the affected par-  
4 ties are treated fairly and equitably; and

5 “(C) provide, subject to subsection (c)(2),  
6 the representative of the retirees with such rel-  
7 evant information as is necessary to evaluate  
8 the proposal.

9 “(2) During the period beginning on the date of  
10 the making of a proposal provided for in paragraph  
11 (1) and ending on the date of the hearing provided  
12 for in subsection (c)(1), the plan sponsor shall meet,  
13 at reasonable times, with the authorized representa-  
14 tive to confer in good faith in attempting to reach  
15 mutually satisfactory modifications of such plan.

16 “(3) For purposes of this section the term ‘au-  
17 thorized representative’ means the authorized rep-  
18 resentative designated pursuant to subparagraph (A)  
19 for persons receiving any retiree benefits covered by  
20 a collective bargaining agreement or subparagraph  
21 (B) in the case of persons receiving retiree benefits  
22 not covered by such agreement.

23 “(A) A labor organization shall be the au-  
24 thorized representative of those persons receiv-  
25 ing any retiree benefits covered by any collective

1 bargaining agreement to which that labor orga-  
2 nization is signatory, unless (i) such labor orga-  
3 nization elects not to serve as the authorized  
4 representative of such person, or (ii) the court,  
5 upon a motion by any participant or bene-  
6 ficiary, after notice and hearing, determines  
7 that different representation of such persons is  
8 appropriate. In cases where the labor organiza-  
9 tion elects not to serve as the authorized rep-  
10 resentative of those persons receiving any re-  
11 tiree benefits covered by any collective bargain-  
12 ing agreement to which that labor organization  
13 is signatory, or in cases where the court finds  
14 different representation of such persons appro-  
15 priate, the court, upon a motion by any partici-  
16 pant or beneficiary, and after notice and a  
17 hearing, shall appoint an authorized representa-  
18 tive of retired employees if the plan or plan  
19 sponsor seeks to terminate or substantially re-  
20 duce the retiree benefits or if the court other-  
21 wise determines that such appointment is ap-  
22 propriate, from among such persons.

23 “(B) The court, upon a motion by any par-  
24 ticipant or beneficiary, and after notice and a  
25 hearing, shall appoint an authorized representa-

1           tive of retired employees if the plan or plan  
2           sponsor seeks to terminate or substantially re-  
3           duce the retiree benefits or if the court other-  
4           wise determines that it is appropriate, to ap-  
5           point an authorized representative of those per-  
6           sons receiving any retiree benefits not covered  
7           by a collective bargaining agreement.

8           “(4) The court may order a plan sponsor to pay  
9           reasonable expenses to the authorized representative.

10          “(c) HEARINGS.—

11           “(1) If an action is brought by any participant  
12           or beneficiary to enjoin or otherwise modify such ter-  
13           mination or substantial reduction, the court without  
14           requirement of any additional showing shall order  
15           the plan and plan sponsor to maintain the retiree  
16           health benefits and payments at the level in effect  
17           immediately before the termination or substantial re-  
18           duction while the action is pending in any court. No  
19           security or other undertaking shall be required of  
20           any participant or beneficiary as a condition for is-  
21           suanace of such relief. In addition, the court shall  
22           schedule a hearing to be held not later than fourteen  
23           days after the date of the filing of such action. All  
24           interested parties may appear and be heard at such  
25           hearing. Adequate notice shall be provided to such

1 parties at least ten days before the date of such  
2 hearings. The court may extend the time for the  
3 commencement of such hearing for a period not ex-  
4 ceeding seven days where the circumstances of the  
5 case, and the interests of justice require such exten-  
6 sion, or for additional periods of time to which the  
7 plan sponsor and representative agree.

8 “(2) The court may enter such protective or-  
9 ders, consistent with the need of the authorized rep-  
10 resentative of the retiree to evaluate the proposal of  
11 the plan sponsor to substantially reduce or terminate  
12 retiree health benefits or plan or plan sponsor pay-  
13 ments in connection with such benefits.

14 “(3) If retiree health benefits under an em-  
15 ployee welfare benefit plan or plan or plan sponsor  
16 payments in connection with such benefits are to be  
17 or have been terminated or substantially reduced,  
18 and an action is brought by any participant or bene-  
19 ficiary to enjoin or otherwise modify such termi-  
20 nation or substantial reduction, the court shall take  
21 into account extrinsic evidence to determine the in-  
22 tent of the plan.

23 “(4) If the terms of an employee welfare benefit  
24 plan, summary plan description, or other materials  
25 distributed to employees at any time before a par-

1 participant's retirement or disability, are silent or are  
2 ambiguous, either on their face or after consider-  
3 ation of extrinsic evidence, as to whether retiree  
4 health benefits and payments may be terminated or  
5 substantially reduced for a participant and his or  
6 her beneficiaries after the participant's retirement or  
7 disability, then the benefits and payments shall not  
8 be terminated or substantially reduced for the par-  
9 ticipant and his or her beneficiaries unless the plan  
10 or plan sponsor establishes by a preponderance of  
11 the evidence that the summary plan description or  
12 other materials about retiree benefits—

13           “(A) were distributed to the participant at  
14           least 90 days in advance of retirement or dis-  
15           ability;

16           “(B) did not promise retiree health bene-  
17           fits for the lifetime of the participant and his  
18           or her spouse; and

19           “(C) clearly and specifically disclosed that  
20           the plan allowed such termination or substantial  
21           reduction as to the participant after the time of  
22           his or her retirement or disability.

23 The disclosure described in subparagraph (C) must have  
24 been made prominently and in language which can be un-  
25 derstood by the average plan participant.

1           “(5) The court shall approve a substantial re-  
2           duction or termination of retiree health benefits or  
3           plan or plan sponsor payments in connection with  
4           such benefits only if the court finds that—

5                   “(A) the collective bargaining agreement  
6                   explicitly provides for a substantial reduction or  
7                   termination of such benefits; or

8                   “(B)(i) the plan sponsor has, prior to the  
9                   hearing, made a proposal that fulfills the re-  
10                  quirements of subsection (b)(1);

11                  “(ii) the authorized representative of the  
12                  employees has refused to accept such proposal  
13                  without good cause; and

14                  “(iii) the balance of the equities clearly fa-  
15                  vors substantially reducing or terminating re-  
16                  tiree health benefits or plan or plan sponsor  
17                  payments in connection with such benefits.

18           “(d) RETIREE HEALTH BENEFITS.—For the pur-  
19           poses of this section, the term ‘retiree health benefits’  
20           means health benefits (including coverage) which are pro-  
21           vided to—

22                   “(1) retired or disabled employees who, imme-  
23                   diately before the termination or substantial reduc-  
24                   tion, have a reasonable expectation to receive such  
25                   benefits upon retirement or becoming disabled; and



1           “(2) their spouses or dependents.”.

2           (b) CONFORMING AMENDMENT.—The table of con-  
3 tents in section 1 of such Act is amended by inserting  
4 after the item relating to section 515 the following new  
5 item:

          “Sec. 516. Procedures governing termination and substantial reduction of retiree  
          health benefits.”

6           (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to actions relating to terminations  
8 or substantial reductions of retiree health benefits which  
9 are pending or brought, on or after August 1, 1996.

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