

106TH CONGRESS
1ST SESSION

S. 1979

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide that restrictions on application of State laws to pension benefits shall not apply to State laws prohibiting individuals from benefiting from crimes involving the death of pension plan participants.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 1999

Mr. CONRAD (for himself and Mr. MOYNIHAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide that restrictions on application of State laws to pension benefits shall not apply to State laws prohibiting individuals from benefiting from crimes involving the death of pension plan participants.

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. PENSION PLANS SUBJECT TO STATE LAWS**
 2 **PROHIBITING INDIVIDUALS FROM BENE-**
 3 **FITING FROM CRIMES INVOLVING DEATH OF**
 4 **A PARTICIPANT.**

5 (a) AMENDMENT OF INTERNAL REVENUE CODE.—

6 (1) IN GENERAL.—Section 401 of the Internal
 7 Revenue Code of 1986 (relating to qualified pension,
 8 profit-sharing, and stock bonus plans) is amended by
 9 redesignating subsection (o) as subsection (p) and
 10 by inserting after subsection (n) the following new
 11 subsection:

12 “(o) APPLICATION OF STATE LAWS PROHIBITING IN-
 13 DIVIDUALS FROM BENEFITING FROM CRIMES INVOLVING
 14 DEATH OF A PARTICIPANT.—

15 “(1) IN GENERAL.—If a State law provides that
 16 benefits payable with respect to a participant under
 17 a plan shall not be paid to a beneficiary if the bene-
 18 ficiary has been convicted of a crime involving the
 19 death of the participant, then—

20 “(A) the State law shall apply to payment
 21 of benefits under the plan, and

22 “(B) notwithstanding paragraph (11) or
 23 (13) of subsection (a), such benefits shall be
 24 payable—

25 “(i) in accordance with the terms of a
 26 qualified State order, or

1 “(ii) if there is no such order, in the
2 same manner as such benefits would be
3 payable under the terms of the plan if the
4 beneficiary were deceased.

5 “(2) QUALIFIED STATE ORDER.—For purposes
6 of this subsection, the term ‘qualified State order’
7 means—

8 “(A) any State law which creates the right
9 of 1 or more individuals to receive all or part
10 of the benefits payable with respect to a partici-
11 pant under a plan if the beneficiary is convicted
12 of a crime involving the death of the partici-
13 pant, or

14 “(B) any qualified criminal restitution
15 order.

16 “(3) QUALIFIED CRIMINAL RESTITUTION
17 ORDER.—The term ‘qualified criminal restitution
18 order’ means a judgment, order, or decree—

19 “(A) which is issued by a State court in
20 connection with a criminal conviction of a bene-
21 ficiary under a plan involving the death of the
22 participant whose benefits are the subject of the
23 judgment, order, or decree,

1 “(B)(i) which creates or recognizes a right
2 to attach all or a portion of the benefits payable
3 with respect to the participant under a plan, or

4 “(ii) which creates or recognizes the exist-
5 ence of a victim’s right to, or assigns to a vic-
6 tim the right to, receive all or a part of those
7 benefits, and

8 “(C) with respect to which the require-
9 ments of paragraphs (2) and (3) of section
10 414(p) are met (determined after application of
11 section 414(p)(4)), except that in applying such
12 paragraphs, the term ‘criminal restitution
13 order’ shall be substituted for the term ‘domes-
14 tic relations order’.

15 “(4) PLAN AND FIDUCIARY.—The provisions of
16 paragraphs (6) and (7) of section 414(p) shall apply
17 to any plan administrator or fiduciary of a plan to
18 which this paragraph applies.

19 “(5) SPECIAL RULES.—Rules similar to the
20 rules of paragraphs (9), (10), (11), and (12) of sec-
21 tion 414(p) shall apply for purposes of this sub-
22 section.”

23 (2) TAX TREATMENT OF DISTRIBUTIONS.—

1 (A) Section 402(e)(1) of such Code is
2 amended by adding at the end the following
3 new subparagraph:

4 “(C) CRIMINAL RESTITUTION ORDERS.—
5 Rules similar to the rules of subparagraphs (A)
6 and (B) shall apply to payments or distribu-
7 tions to individual pursuant to qualified State
8 orders described in section 401(o).”

9 (B) Section 72(m)(10) of such Code is
10 amended—

11 (i) by adding at the end the following
12 new sentence: “The preceding sentence
13 shall also apply to payments or distribu-
14 tions made to individuals pursuant to a
15 qualified State order described in section
16 401(o).”, and

17 (ii) by inserting “or qualified State or-
18 ders” after “orders” in the heading.

19 (C) Subparagraph (J) of section 402(d)(4)
20 of such Code is amended by adding at the end
21 the following new sentence: “This subparagraph
22 shall also apply to any distributions or pay-
23 ments to individuals pursuant to a qualified
24 State order described in section 401(o).”

1 (b) AMENDMENTS TO ERISA.—Section 514(b) of the
 2 Employee Retirement Income Security Act of 1974 is
 3 amended by redesignating paragraph (9) as paragraph
 4 (10) and by adding at the end the following new para-
 5 graph:

6 “(9)(A) If a State law provides that benefits payable
 7 with respect to a participant under a plan shall not be
 8 paid to a beneficiary if the beneficiary has been convicted
 9 of a crime involving the death of the participant, then—

10 “(i) subsection (a) shall not apply to the State
 11 law and such law shall apply to payment of benefits
 12 under the plan, and

13 “(ii) notwithstanding section 205 or 206(d),
 14 such benefits shall be payable—

15 “(I) in accordance with the terms of a
 16 qualified State order, or

17 “(II) if there is no such order, in the same
 18 manner as such benefits would be payable
 19 under the terms of the plan if the beneficiary
 20 were deceased.

21 “(B) For purposes of this paragraph, the term ‘quali-
 22 fied State order’ means—

23 “(i) any State law which creates the right of 1
 24 or more individuals to receive all or part of the bene-
 25 fits payable with respect to a participant under a

1 plan if the beneficiary is convicted of a crime involv-
 2 ing the death of the participant, or

3 “(ii) any qualified criminal restitution order.

4 “(C) The term ‘qualified criminal restitution order’
 5 means a judgment, order, or decree—

6 “(i) which is issued by a State court in connec-
 7 tion with a criminal conviction of a beneficiary under
 8 a plan involving the death of the participant whose
 9 benefits are the subject of the judgment, order, or
 10 decree,

11 “(ii)(I) which creates or recognizes a right to
 12 attach all or a portion of the benefits payable with
 13 respect to the participant under a plan, or

14 “(II) which creates or recognizes the existence
 15 of a victim’s right to, or assigns to a victim the right
 16 to, receive all or a part of those benefits, and

17 “(iii) with respect to which the requirements of
 18 subparagraphs (C) and (D) of section 206(d)(3) are
 19 met (determined after application of section
 20 206(d)(3)(E)), except that in applying such para-
 21 graphs, the term ‘criminal restitution order’ shall be
 22 substituted for the term ‘domestic relations order’.

23 “(D) The provisions of subparagraphs (G), (H), and
 24 (I) of section 206(d)(3) shall apply to any plan adminis-

1 trator or fiduciary of a plan to which this paragraph ap-
2 plies.

3 “(E) Rules similar to the rules of subparagraphs (J),
4 (M), and (N) of section 206(D)(3) shall apply for purposes
5 of this subsection.”

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply on and after the date of the enact-
8 ment of this Act.

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