

107TH CONGRESS
2D SESSION

S. 2904

To amend title I of the Employee Retirement Income Security Act of 1974 to provide emergency protection for retiree health benefits.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 2002

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide emergency protection for retiree health benefits.

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 “Emergency Retiree
5 Health Benefits Protection Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Retired participants of group health plans
9 regulated by the Employee Retirement Income Secu-
10 rity Act of 1974 (referred to in this Act as

1 “ERISA”) have been severely harmed by the vir-
2 tually unchecked practices of the sponsors of such
3 plans relating to the post-retirement canceling or re-
4 ducing of post-retirement health benefits that retir-
5 ees counted on receiving for their lifetimes.

6 (2) Widespread post-retirement reductions in
7 retiree health benefits has led to a crisis in retiree
8 health care in which retirees—

9 (A) have been unable to substitute indi-
10 vidual coverage for the group coverage they
11 lost, or, in order to obtain individual coverage,
12 have jeopardized their economic security in re-
13 tirement;

14 (B) because of preexisting medical condi-
15 tions, cannot obtain substitute coverage that
16 they can afford without depleting their life sav-
17 ings or have been unable to obtain adequate
18 medical care or medical care they had relied on
19 to deal with serious illness;

20 (C) have sustained catastrophic illnesses or
21 injuries or otherwise experienced a marked de-
22 terioration in their medical conditions or health
23 as a result of post-retirement changes to their
24 medical benefits;

1 (D) have been transferred indiscriminately
2 into improperly or inadequately managed health
3 maintenance organizations or other managed
4 care entities, resulting in the worsening rather
5 than improvement of prior medical conditions;
6 and

7 (E) in many instances, have failed to ob-
8 tain adequate judicial relief due to highly re-
9 strictive judicial interpretations inconsistent
10 with ERISA's underlying protective purposes.

11 (3) The crisis in retiree health care generated
12 by the plan sponsor practice of post-retirement can-
13 cellations or reductions of previously promised re-
14 tiree health benefits has led to a widespread loss of
15 confidence in the integrity of ERISA-regulated
16 group health plans and the ability of ERISA itself
17 to adequately protect retiree health benefits.

18 (4) A strong and dependable private sector re-
19 tiree health system is necessary to the health of our
20 Nation's senior citizens.

21 (b) PURPOSES.—The purposes of this Act are the fol-
22 lowing:

23 (1) To ensure that the reasonable health benefit
24 expectations of retirees from ERISA-regulated group
25 health plans are fulfilled, to minimize the incidence

1 of prolonged legal disputes arising out of the post-
2 retirement cancellation or reduction of retiree health
3 benefits from such plans, and to prevent further ad-
4 verse effects on retiree health arising from such
5 post-retirement changes.

6 (2) To safeguard retired participants of group
7 health plans subject to ERISA from loss or reduc-
8 tion of their health benefits from such plans by bar-
9 ring plan sponsors from canceling or reducing such
10 benefits after the dates such participants retire and
11 when they no longer are able to absorb such losses
12 or reductions without experiencing adverse effects on
13 their health or finances.

14 (3) To establish an enforceable obligation on
15 the part of sponsors of group health plans to restore
16 health benefits previously taken away from retired
17 participants of such plans to the extent such benefits
18 were canceled or altered after the dates such partici-
19 pants retired if the plan sponsor would not sustain
20 substantial business hardship by restoring such ben-
21 efits.

22 (4) To establish an Emergency Retiree Health
23 Loan Guarantee Program to assist sponsors of
24 group health plans subject to the obligation to re-
25 store retiree health benefits under this Act to obtain

1 credit to assist them in discharging such obligations
 2 by providing retiree health loan guarantees that
 3 would encourage the availability of such credit.

4 **SEC. 3. AMENDMENT OF EMPLOYEE RETIREMENT INCOME**
 5 **SECURITY ACT OF 1974 TO PROVIDE RETIREE**
 6 **HEALTH BENEFIT PROTECTIONS IN GROUP**
 7 **HEALTH PLANS.**

8 (a) IN GENERAL.—Subtitle B of title I of the Em-
 9 ployee Retirement Income Security Act of 1974 (29
 10 U.S.C. 1021 et seq.) is amended by adding at the end
 11 the following:

12 “PART 8—EMERGENCY RETIREE HEALTH BENEFIT
 13 PROTECTIONS

14 **“SEC. 801. DEFINITIONS.**

15 “In this part:

16 “(1) GROUP HEALTH PLAN.—The term ‘group
 17 health plan’ has the meaning given such term in sec-
 18 tion 607(1).

19 “(2) REDUCE.—The term ‘reduce’ or ‘reduc-
 20 tion’, with respect to employee health benefits under
 21 a group health plan, means any action which has the
 22 effect of—

23 “(A) canceling, decreasing, or limiting the
 24 amount, type, level, or form of any benefit or

1 option provided under the plan prior to the ac-
2 tion;

3 “(B) imposing or increasing out-of-pocket
4 costs a retired participant, or his or her bene-
5 ficiary, must pay in order to keep or obtain any
6 benefits that were provided to the participant or
7 beneficiary under the plan prior to the action;
8 or

9 “(C) modifying the manner by which med-
10 ical services are delivered under the plan so
11 that after the action a retired participant, or
12 his or her beneficiary, has less ready access to
13 the delivery of any such medical services than
14 the participant or beneficiary had prior to the
15 action.

16 **“SEC. 802. PROHIBITION AGAINST POST-RETIREMENT RE-**
17 **DUCTIONS OF RETIREE HEALTH BENEFITS**
18 **BY GROUP HEALTH PLANS.**

19 “(a) IN GENERAL.—Notwithstanding any provision
20 of a group health plan that reserves the general power to
21 amend or terminate the plan or that specifically authorizes
22 the plan to make post-retirement reductions in retiree
23 health benefits, a group health plan may not, whether
24 through amendment or otherwise, reduce the benefits pro-

1 vided to a retired participant or his or her beneficiary
2 under the terms of the plan if such reduction of benefits—

3 “(1) occurs after the date the participant re-
4 tired for purposes of the plan; and

5 “(2) reduces benefits that were provided to the
6 participant, or his or her beneficiary, on the day
7 prior to the date the participant retired.

8 “(b) TREATMENT OF PLAN TERMINATION.—

9 “(1) IN GENERAL.—A termination of a group
10 health plan shall be treated as violating the prohibi-
11 tion described in subsection (a) if, after the termi-
12 nation, the plan sponsor of the terminated plan fails
13 to continue to provide to the participants who re-
14 tired prior to the termination and to their bene-
15 ficiaries the same retiree health benefits that were
16 provided prior to the termination.

17 “(2) WAIVER EXCEPTION.—

18 “(A) IN GENERAL.—Paragraph (1) shall
19 not apply to the termination of a group health
20 plan if the Secretary issues a waiver under this
21 paragraph in connection with such termination.

22 “(B) WAIVER.—A group health plan may
23 submit an application to the Secretary for a
24 waiver of the provisions of paragraph (1). The
25 Secretary shall issue such a waiver if the plan

1 sponsor demonstrates to the satisfaction of the
 2 Secretary that such plan sponsor will be unable
 3 to continue operations if such a waiver is not
 4 issued.

5 “(C) REGULATIONS.—The Secretary may
 6 promulgate such regulations as are necessary to
 7 carry out this paragraph.

8 “(c) CONSENT OR AUTHORIZATION BY PARTICI-
 9 PANT.—A reduction of benefits under a group health plan
 10 shall not be considered a violation of this section with re-
 11 spect to a retired participant if—

12 “(1) such participant consents to such reduc-
 13 tion in writing; or

14 “(2) such reduction is authorized with respect
 15 to the retired participant under the terms of 1 or
 16 more agreements that the Secretary determines to
 17 be collective bargaining agreements between 1 or
 18 more employee representatives who were rep-
 19 resenting such participant at the time of the entry
 20 into such agreement and 1 or more employers.

21 **“SEC. 803. ADOPTION BY GROUP HEALTH PLANS OF PROVI-**
 22 **SION BARRING POST-RETIREMENT REDUC-**
 23 **TIONS IN RETIREE HEALTH BENEFITS.**

24 “A group health plan shall contain a provision in the
 25 contract of insurance that expressly prohibits the plan, or

1 any fiduciary of the plan, from reducing the benefits pro-
2 vided under the plan to a retired participant, or his or
3 her beneficiary, if such reduction applies to benefits that
4 were provided to the participant or beneficiary on the day
5 before the date on which the participant retired (for pur-
6 poses of the plan) and such reduction occurs after the par-
7 ticipant's retirement.

8 **“SEC. 804. RESTORATION BY GROUP HEALTH PLANS OF**
9 **BENEFITS REDUCED AFTER RETIREMENT.**

10 “(a) REQUIREMENTS FOR RESTORATION.—

11 “(1) IN GENERAL.—With respect to a retired
12 participant that meets the requirements of para-
13 graph (2), the plan sponsor of the group health plan
14 involved shall provide, in accordance with this sec-
15 tion, the option of benefit restoration to such retired
16 participant.

17 “(2) REQUIREMENTS.—A retired participant is
18 eligible for restoration under this section if—

19 “(A) the retired participant was entitled to
20 benefit coverage under the group health plan in-
21 volved on or after the date of enactment of the
22 Emergency Retiree Health Benefits Protection
23 Act of 2002.

24 “(B) the amount, type, level, or form of
25 any benefits or option provided to the retired

1 participant under the plan on the day before
2 the participant retired was reduced after the
3 participant's date of retirement; and

4 “(C) the retired participant has elected to
5 restore benefits under the plan within the res-
6 toration period prescribed by subsection (c) and
7 in accordance with any procedures established
8 by the plan pursuant to regulations promul-
9 gated the Secretary.

10 “(b) EXCEPTION FOR CERTAIN PLANS.—The res-
11 toration requirement described in subsection (a) shall not
12 apply to any group health plan that provides coverage for
13 less than 100 participants.

14 “(c) RESTORATION PERIOD.—For purposes of this
15 section the term ‘restoration period’ means the period
16 that—

17 “(1) begins not later than 1 year after the date
18 of enactment of the Emergency Retiree Health Ben-
19 efits Protection Act of 2002;

20 “(2) ends not later than 2 years after such
21 date, unless extended by the Secretary pursuant to
22 section 805(g); and

23 “(3) is of not less than 60 days duration.

24 “(d) NOTICE REQUIREMENTS CONCERNING RES-
25 TORATION OF BENEFITS.—Not later than 30 days prior

1 to the commencement of the restoration period relating
2 to a group health plan, such plan shall provide to each
3 retired participant of the plan who meets the requirements
4 of subparagraphs (A) and (B) of subsection (a)(2), a writ-
5 ten notice that contains the following:

6 “(1) A description of all benefits that the re-
7 tired participant is entitled to have restored under
8 this section.

9 “(2) The administrative procedure established
10 under the plan that may be used to submit a claim
11 for the restoration of any such benefits.

12 “(3) An itemization of the value of each such
13 benefit the retired participant is entitled to have re-
14 stored.

15 “(4) A description of any post-retirement in-
16 creases in retiree health benefits the retired partici-
17 pant received that the plan sponsor could rescind if
18 the retired participant asserts a claim for the res-
19 toration of benefits under this section.

20 “(5) An itemization of the value of each retiree
21 health benefit the plan sponsor could rescind and the
22 total value of all such benefits.

23 “(6) If the plan sponsor has filed an application
24 for an exemption under section 805, the date such
25 application was filed, the date notice of such applica-

1 tion was given to retired participants entitled to sub-
 2 mit a claim for the restoration of benefits, and the
 3 status of such application as of the date of the no-
 4 tice sent pursuant to this subsection.

5 “(7) Other information determined by the Sec-
 6 retary to be appropriate.

7 “(e) DEADLINE FOR RESTORATION OF BENEFITS.—
 8 Regardless of any extension that may be granted by the
 9 Secretary pursuant to section 805(g), all benefits required
 10 to be restored under this section shall be restored by the
 11 later of—

12 “(1) three years after the date of enactment of
 13 the Emergency Retiree Health Benefits Protection
 14 Act of 2002; or

15 “(2) the date the plan sponsor files an applica-
 16 tion for an exemption under section 805.

17 **“SEC. 805. EXEMPTION FROM RESTORATION OF BENEFITS**
 18 **REQUIREMENTS.**

19 “(a) AUTHORITY FOR WAIVER OR VARIANCE.—The
 20 Secretary may issue a waiver or variance of the require-
 21 ments of section 804 if the Secretary determines that com-
 22 pliance by the plan sponsor of the group health plan in-
 23 volved with the requirements of section 804 would—

24 “(1) be adverse to the interests of plan partici-
 25 pants in the aggregate;

1 “(2) not be administratively feasible; and

2 “(3) cause substantial business hardship to the
3 plan sponsor.

4 “(b) APPLICATION.—A plan sponsor of a group
5 health plan requesting a waiver or a variance described
6 in subsection (a) may file an application with the Sec-
7 retary at such time and in such manner as the Secretary
8 may require.

9 “(c) FACTORS TAKEN INTO ACCOUNT.—In deter-
10 mining whether a substantial business hardship exists for
11 purposes of subsection (a)(3), the Secretary shall consider
12 whether—

13 “(1) the plan sponsor is operating at an eco-
14 nomic loss;

15 “(2) compliance with the restoration of benefits
16 requirements of section 804 would necessitate sub-
17 stantial future reductions in health benefits provided
18 to participants under the plan or cause a substantial
19 decline in employment with the plan sponsor;

20 “(3) it is reasonable to expect that the plan will
21 be continued only if a waiver or appropriate variance
22 is granted; and

23 “(4) the plan sponsor is eligible to participate
24 in the Retiree Health Loan Guarantee Program es-
25 tablished under section 806 and, if so, whether such

1 participation would not provide a sufficient basis for
2 denying a waiver or variance.

3 “(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

4 “(1) IN GENERAL.—The Secretary shall, prior
5 to granting a waiver or variance under this section,
6 require each applicant to provide evidence satisfac-
7 tory to the Secretary that the applicant has provided
8 timely written notice of the filing of an application
9 for such waiver or variance to each retired partici-
10 pant entitled to submit a claim for the restoration
11 of benefits under the applicant’s restoration plan.

12 “(2) TIMELINESS.—For purposes of paragraph
13 (1), a written notice shall be considered timely if it
14 is provided not later than 60 days prior to the date
15 the plan sponsor files an application for a waiver or
16 variance under this section.

17 “(3) INFORMATION REQUIRED.—The notice de-
18 scribed in paragraph (1) shall include—

19 “(A) information on the specific relief that
20 will be sought by the plan sponsor’s application;

21 “(B) the period of time for which relief is
22 sought; and

23 “(C) any other information that the Sec-
24 retary may require.

1 “(e) EXCEPTION FOR CERTAIN APPLICATIONS.—The
2 Secretary shall not approve an application of a plan spon-
3 sor for a waiver or variance under this section if—

4 “(1) within the 5-year period preceding the date
5 of submission of the application, the plan sponsor
6 could have transferred excess pension assets to a
7 health benefits account within the meaning of sec-
8 tion 420 of the Internal Revenue Code of 1986 (as
9 in effect on the date of the enactment of the Tax
10 Relief Extension Act of 1999) but failed to do so,
11 and the plan sponsor is submitting an application on
12 behalf of such retiree health account; or

13 “(2) the plan sponsor maintains a fully funded
14 pension plan with respect to which—

15 “(A) retired participants eligible to submit
16 a claim for the restoration of benefits under
17 section 804 are also eligible to receive ad hoc
18 cost-of-living adjustment benefits;

19 “(B) the assets of the fully funded pension
20 plan, during the 5-year period preceding the
21 date of submission of the application, on aver-
22 age have exceeded 120 percent of the plan’s li-
23 abilities;

24 “(C) the plan had no minimum funding re-
25 quirement to satisfy within the 5-year period

1 described in subparagraph (B) and the plan
2 sponsor made no minimum funding contribution
3 to the fully funded pension plan during such 5-
4 year period; and

5 “(D) the plan sponsor failed to provide an
6 ad hoc cost-of-living adjustment benefit from
7 the fully funded pension plan during the 5-year
8 period described in subparagraph (B).

9 “(f) PARTICIPATION IN PROCEEDINGS BY RETIRED
10 PLAN PARTICIPANTS.—Each retired participant entitled
11 to submit a claim for the restoration of benefits under sec-
12 tion 804 shall be provided a reasonable opportunity to sub-
13 mit comments or otherwise participate in any proceeding
14 established by the Secretary to determine whether to grant
15 or deny an application for a waiver or variance filed by
16 the retired participant’s plan sponsor under this section.

17 “(g) RUNNING OF RESTORATION PERIOD SUS-
18 PENDED.—The submission of an application for a waiver
19 or variance pursuant to this section shall suspend the run-
20 ning of any relevant restoration period as described in sec-
21 tion 804(c). Where appropriate, the Secretary shall direct
22 the reopening of any relevant restoration period upon the
23 final conclusion of proceedings to determine whether an
24 application should be granted or denied.

1 **“SEC. 806. ESTABLISHMENT OF EMERGENCY RETIREE**
 2 **HEALTH LOAN GUARANTEE PROGRAM.**

3 “(a) ESTABLISHMENT OF EMERGENCY RETIREE
 4 HEALTH LOAN GUARANTEE PROGRAM.—There is estab-
 5 lished a Retiree Health Loan Guarantee Program (in this
 6 section referred to as the ‘Program’) to provide loan guar-
 7 antees to eligible plan sponsors in accordance with this
 8 section. The program shall be administered by a Retiree
 9 Health Loan Guarantee Board (to be established under
 10 subsection (c)).

11 “(b) DEFINITION OF ELIGIBLE PLAN SPONSOR.—As
 12 used in this section, the term ‘eligible plan sponsor’ means
 13 any plan sponsor, as defined in section 3(16)(B), that
 14 maintains a group health plan that is subject to the retiree
 15 health benefits restoration requirements of section 805.

16 “(c) RETIREE HEALTH LOAN GUARANTEE BOARD
 17 MEMBERSHIP.—

18 “(1) IN GENERAL.—There is established a Re-
 19 tiree Health Loan Guarantee Board (in this section
 20 referred to as the ‘Board’), that shall be composed
 21 of—

22 “(A) the Secretary of Labor;

23 “(B) the Secretary of Commerce;

24 “(C) the Secretary of the Treasury;

25 “(D) the Secretary of Health and Human
 26 Services; and

1 “(E) the Chairman of the Council of Eco-
2 nomic Advisers.

3 “(2) CHAIRPERSON.—The Secretary of Labor
4 shall serve as Chairperson of the Board.

5 “(d) LOAN GUARANTEES.—

6 “(1) AUTHORITY.—The Program shall guar-
7 antee loans provided by private banking and invest-
8 ment institutions to eligible plan sponsors for pur-
9 poses of assisting such plan sponsors in meeting
10 their obligations under section 804 if—

11 “(A) such loan guarantees meet the re-
12 quirements of subsection (a);

13 “(B) such loan guarantees are not in ex-
14 cess of amounts provided for in advance in ap-
15 propriation Acts pursuant to paragraph (4);
16 and

17 “(C) such loan guarantees are otherwise in
18 accordance with the procedures, rules, and reg-
19 ulations established by the Board.

20 “(2) TOTAL GUARANTEE LIMIT.—The aggre-
21 gate amount of loans guaranteed and outstanding at
22 any time under this section may not exceed
23 \$5,000,000,000.

24 “(3) INDIVIDUAL GUARANTEE LIMIT.—The ag-
25 gregate amount of loans guaranteed under this sec-

1 tion with respect to a single eligible plan sponsor
2 may not exceed \$5,000,000.

3 “(4) ADDITIONAL COSTS.—For the additional
4 cost of loans guaranteed under this section, includ-
5 ing the costs of modifying loans, as defined in sec-
6 tion 502 of the Congressional Budget Act of 1974
7 (2 U.S.C. 661a), there is authorized to be appro-
8 priated \$200,000,000, to remain available until ex-
9 pended.

10 “(e) REQUIREMENTS FOR LOAN GUARANTEES.—A
11 loan guarantee may be issued under the Program upon
12 application to the Board by an eligible plan sponsor pursu-
13 ant to an agreement to provide a loan to that eligible plan
14 sponsor by a private bank or investment company, if the
15 Board determines that—

16 “(1) credit is not otherwise available to the eli-
17 gible plan sponsor under reasonable terms and con-
18 ditions sufficient to meet its financing needs with re-
19 spect to the restoration of retiree health benefits, as
20 reflected in the financial and business plans of the
21 eligible plan sponsor;

22 “(2) the prospective earning power of the eligi-
23 ble plan sponsor, together with the character and
24 value of the security pledged, provide reasonable as-
25 surances to the institution involved of repayment of

1 the loan to be guaranteed in accordance with the
2 terms of the loan;

3 “(3) the loan to be guaranteed bears interest at
4 a rate determined by the Board to be reasonable,
5 taking into account the current average yield on out-
6 standing obligations of the United States with re-
7 maining periods of maturity comparable to the ma-
8 turity of such loan;

9 “(4) the loan to be guaranteed will materially
10 assist the eligible plan sponsor to discharge its obli-
11 gation to comply with the restoration of benefits re-
12 quirements contained in section 804; and

13 “(5) the eligible plan sponsor has agreed to an
14 audit by the General Accounting Office—

15 “(A) prior to the issuance of the loan
16 guarantee; and

17 “(B) annually while any such guaranteed
18 loan is outstanding.

19 “(f) TERMS AND CONDITIONS OF LOAN GUAR-
20 ANTEE.—

21 “(1) LOAN DURATION.—All loans guaranteed
22 under this section shall be payable in full not later
23 than December 31, 2010, and the terms and condi-
24 tions of each such loan shall provide that the loan

1 may not be amended or any provision thereof waived
2 without the consent of the Board.

3 “(2) LOAN SECURITY.—Any commitment to
4 issue a loan guarantee under this section shall con-
5 tain such affirmative and negative covenants and
6 other protective provisions that the Board deter-
7 mines are appropriate.

8 “(3) FEES.—An eligible plan sponsor receiving
9 a guarantee under this section shall pay to the De-
10 partment of the Treasury a fee in an amount equal
11 to 0.5 percent of the outstanding principal balance
12 of the guaranteed loan.

13 “(g) REPORTS TO CONGRESS.—Not later than Janu-
14 ary 31, 2003, and each January 31 thereafter during the
15 period in which a loan guaranteed under this section is
16 outstanding, the Secretary shall prepare and submit to
17 Congress a report on the activities of the Board.

18 “(h) SALARIES AND ADMINISTRATIVE EXPENSES.—
19 For necessary expenses to administer the Program, there
20 is authorized to be appropriated to the Department of
21 Labor \$10,000,000, to remain available until expended.

22 “(i) TERMINATION OF GUARANTEE AUTHORITY.—
23 The authority of the Board to make commitments to guar-
24 antee loans under this section shall terminate on Decem-
25 ber 31, 2006.

1 “(j) REGULATORY ACTION.—Not later than 90 days
2 after the date of enactment of the Emergency Retiree
3 Health Benefits Protection Act of 2002, the Board shall
4 issue such final procedures, rules, and regulations as may
5 be necessary to carry out this section. In no event shall
6 the Board issue a procedure, rule, or regulation which au-
7 thorizes the Board to approve or deny any application for
8 a loan guarantee more than 270 days after receipt of such
9 application.

10 “(k) EMERGENCY DESIGNATION.—The entire
11 amount made available to carry out this section—

12 “(1) is designated by Congress as an emergency
13 requirement pursuant to section 251(b)(2)(A) of the
14 Balanced Budget and Emergency Deficit Control
15 Act of 1985 (2 U.S.C. 901(b)(2)(A)); and

16 “(2) shall be available only to the extent that
17 an official budget request that includes designation
18 of the entire amount as an emergency requirement
19 (as defined in the Balanced Budget and Emergency
20 Deficit Control Act of 1985) is transmitted by the
21 President to the Congress.

22 **“SEC. 807. EFFECT ON OTHER CLAIMS.**

23 “(a) OTHER CLAIMS UNAFFECTED.—Nothing con-
24 tained in this part shall be construed to alter, impair, or
25 eliminate any claim for retiree health benefits based on

1 conduct alleged to violate the terms of a group health plan,
2 any provision of this Act (other than this part), or both,
3 regardless of whether such conduct occurred prior to, on,
4 or after, the effective date of this part.

5 “(b) OTHER CAUSES OF ACTION NOT AUTHOR-
6 IZED.—Unless the conduct giving rise to a claim for re-
7 tiree health benefits is alleged to violate the provisions of
8 this part, nothing contained in this part shall be construed
9 to authorize any other cause of action for the recovery of
10 retiree health benefits.

11 **“SEC. 808. REGULATIONS.**

12 “The Secretary may promulgate such regulations as
13 may be necessary to carry out this part. The Secretary
14 may promulgate any interim final rules as the Secretary
15 determines are appropriate to carry out this part.

16 **“SEC. 809. ENFORCEMENT.**

17 “The enforcement provisions of sections 501 and 502
18 shall be applicable to this part.”.

19 (b) CIVIL PENALTY SECTION.—Section 502(c) of the
20 Employee Retirement Income Security Act of 1974 (29
21 U.S.C. 1132(e)) is amended by adding at the end the fol-
22 lowing:

23 “(8) The Secretary may assess a civil penalty of not
24 more than \$1,000 for each separate violation of section
25 802, 803, or 804 by any person individually with respect

1 to each participant or beneficiary aggrieved by such viola-
 2 tion.”.

3 (c) CONFORMING AMENDMENT.—The table of con-
 4 tents in section 1 of the Employee Retirement Income Se-
 5 curity Act of 1974 is amended by inserting after the item
 6 relating to section 734 the following new items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“Sec. 801. Definitions.

“Sec. 802. Prohibition against post-retirement reductions of retiree health ben-
 efits by group health plans.

“Sec. 803. Adoption by group health plans of provision barring post-retirement
 reductions in retiree health benefits.

“Sec. 804. Restoration by group health plans of benefits reduced after retire-
 ment.

“Sec. 805. Exemption from restoration of benefits requirements.

“Sec. 806. Establishment of Emergency Retiree Health Loan Guarantee Pro-
 gram.

“Sec. 807. Effect on other claims.

“Sec. 808. Regulations.

“Sec. 809. Enforcement.”.

7 **SEC. 4. SEPARABILITY OF PROVISIONS.**

8 The provisions of section 509 of the Employee Retire-
 9 ment Income Security Act of 1974 (29 U.S.C. 1139) shall
 10 be applicable to this Act and the amendments made by
 11 this Act.

○