

***In the Senate of the United States,***

*January 28, 2004.*

*Resolved*, That the bill from the House of Representatives (H.R. 3108) entitled “An Act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.”, do pass with the following

**AMENDMENT:**

- 1 Page 2, line 3, strike out all after “**SECTION**” and
- 2 insert:
- 3 **1. SHORT TITLE.**
- 4 *This Act may be cited as the “Pension Stability Act”.*

1 **SEC. 2. TEMPORARY REPLACEMENT OF INTEREST RATE ON**  
 2 **30-YEAR TREASURY SECURITIES WITH INTER-**  
 3 **EST RATE ON CONSERVATIVELY INVESTED**  
 4 **LONG-TERM CORPORATE BONDS.**

5 (a) *INTERNAL REVENUE CODE OF 1986.*—

6 (1) *DETERMINATION OF PERMISSIBLE RANGE.*—

7 (A) *IN GENERAL.*—Section 412(b)(5)(B)(ii)  
 8 of the Internal Revenue Code of 1986 is  
 9 amended—

10 (i) in subclause (I), by inserting “or  
 11 (III)” after “subclause (II)”;

12 (ii) by redesignating subclause (II) as  
 13 subclause (III);

14 (iii) by inserting after subclause (I) the  
 15 following new subclause:

16 “(II) *SPECIAL RULE FOR 2004 AND*  
 17 *2005.*—In the case of plan years begin-  
 18 ning in 2004 or 2005, the term ‘per-  
 19 missible range’ means a rate of interest  
 20 which is not above, and not more than  
 21 10 percent below, the weighted average  
 22 of the conservative long-term corporate  
 23 bond rates during the 4-year period  
 24 ending on the last day before the begin-  
 25 ning of the plan year. The Secretary  
 26 shall, by regulation, prescribe a method

1                   for periodically determining conserv-  
 2                   ative long-term bond rates for purposes  
 3                   of this paragraph. Such rates shall re-  
 4                   flect the rates of interest on amounts  
 5                   invested conservatively in long-term  
 6                   corporate bonds and shall be based on  
 7                   the use of 2 or more indices that are in  
 8                   the top 2 quality levels available re-  
 9                   flecting average maturities of 20 years  
 10                  or more.”; and

11                  (iv) in subclause (III), as so  
 12                  redesignated—

13                               (I) by inserting “or (II)” after  
 14                               “subclause (I)” the first place it ap-  
 15                               pears; and

16                               (II) by striking “subclause (I)”  
 17                               the second place it appears and insert-  
 18                               ing “such subclause”.

19                  (2) *DETERMINATION OF CURRENT LIABILITY.*—  
 20                  Section 412(l)(7)(C)(i) of such Code is amended by  
 21                  adding at the end the following new subclause:

22                               “(IV) *SPECIAL RULE FOR 2004*  
 23                               *AND 2005.*—For plan years beginning  
 24                               in 2004 or 2005, notwithstanding sub-  
 25                               clause (I), the rate of interest used to

1                   *determine current liability under this*  
2                   *subsection shall be the rate of interest*  
3                   *under subsection (b)(5).”.*

4                   (3)       *CONFORMING        AMENDMENT.—Section*  
5                   *412(m)(7) of such Code is amended to read as follows:*

6                   “*(7) SPECIAL RULE FOR 2002.—In any case in*  
7                   *which the interest rate used to determine current li-*  
8                   *ability is determined under subsection*  
9                   *(l)(7)(C)(i)(III), for purposes of applying paragraphs*  
10                  *(1) and (4)(B)(ii) for plan years beginning in 2002,*  
11                  *the current liability of the plan for the preceding plan*  
12                  *year shall be redetermined using 120 percent as the*  
13                  *specified percentage determined under subsection*  
14                  *(l)(7)(C)(i)(II).”.*

15                  (4)       *LIMITATION ON CERTAIN ASSUMPTIONS.—*  
16                  *Section 415(b)(2)(E)(ii) of such Code is amended by*  
17                  *inserting “, except that in the case of plan years be-*  
18                  *ginning in 2004 or 2005, ‘5.5 percent’ shall be sub-*  
19                  *stituted for ‘5 percent’ in clause (i)” before the period*  
20                  *at the end.*

21                  (5)       *ELECTION TO DISREGARD MODIFICATION FOR*  
22                  *DEDUCTION PURPOSES.—Section 404(a)(1) of such*  
23                  *Code is amended by adding at the end the following*  
24                  *new subparagraph:*

1           “(F) *ELECTION TO DISREGARD MODIFIED*  
 2           *INTEREST RATE.*—*An employer may elect to dis-*  
 3           *regard subsections (b)(5)(B)(ii)(II) and*  
 4           *(l)(7)(C)(i) of section 412 solely for purposes of*  
 5           *determining the interest rate used in calculating*  
 6           *the maximum amount of the deduction allowable*  
 7           *under this section for contributions to a plan to*  
 8           *which such subsections apply.”*

9           (b) *EMPLOYEE RETIREMENT INCOME SECURITY ACT*  
 10 *OF 1974.*—

11           (1) *DETERMINATION OF PERMISSIBLE RANGE.*—

12           (A) *IN GENERAL.*—*Section 302(b)(5)(B)(ii)*  
 13           *of the Employee Retirement Income Security Act*  
 14           *of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)) is*  
 15           *amended—*

16                   (i) *in subclause (I), by inserting “or*  
 17                   *(III)” after “subclause (II)”;*

18                   (ii) *by redesignating subclause (II) as*  
 19                   *subclause (III);*

20                   (iii) *by inserting after subclause (I) the*  
 21                   *following new subclause:*

22                   “(II) *SPECIAL RULE FOR YEARS 2004*  
 23                   *AND 2005.*—*In the case of plan years begin-*  
 24                   *ning in 2004 or 2005, the term ‘permissible*  
 25                   *range’ means a rate of interest which is not*

1           *above, and not more than 10 percent below,*  
 2           *the weighted average of the conservative*  
 3           *long-term corporate bond rates (as deter-*  
 4           *mined under section 412(b)(5)(B)(ii)(II) of*  
 5           *the Internal Revenue Code of 1986) during*  
 6           *the 4-year period ending on the last day be-*  
 7           *fore the beginning of the plan year.”; and*

8                     *(iv) in subclause (III), as so*  
 9           *redesignated—*

10                    *(I) by inserting “or (II)” after*  
 11                    *“subclause (I)” the first place it ap-*  
 12                    *pears; and*

13                    *(II) by striking “subclause (I)”*  
 14                    *the second place it appears and insert-*  
 15                    *ing “such subclause”.*

16                    (2) *DETERMINATION OF CURRENT LIABILITY.—*  
 17           *Section 302(d)(7)(C)(i) of such Act (29 U.S.C.*  
 18           *1082(d)(7)(C)(i)) is amended by adding at the end*  
 19           *the following new subclause:*

20                    *“(IV) SPECIAL RULE FOR 2004*  
 21                    *AND 2005.—For plan years beginning*  
 22                    *in 2004 or 2005, notwithstanding sub-*  
 23                    *clause (I), the rate of interest used to*  
 24                    *determine current liability under this*

1                    *subsection shall be the rate of interest*  
2                    *under subsection (b)(5).”.*

3                    (3)        *CONFORMING        AMENDMENT.—Section*  
4                    *302(e)(7) of such Act (29 U.S.C. 1082(e)(7)) is*  
5                    *amended to read as follows:*

6                    “(7) *SPECIAL RULE FOR 2002.—In any case in*  
7                    *which the interest rate used to determine current li-*  
8                    *ability is determined under subsection*  
9                    *(d)(7)(C)(i)(III), for purposes of applying paragraphs*  
10                    *(1) and (4)(B)(ii) for plan years beginning in 2002,*  
11                    *the current liability of the plan for the preceding plan*  
12                    *year shall be redetermined using 120 as the specified*  
13                    *percentage determined under subsection*  
14                    *(d)(7)(C)(i)(II).”.*

15                    (4) *PBGC.—Section 4006(a)(3)(E)(iii) of such*  
16                    *Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended by*  
17                    *adding at the end the following new subclause:*

18                    “(V) *In the case of plan years beginning in 2004*  
19                    *or 2005, the annual yield taken into account under*  
20                    *subclause (II) shall be the annual yield computed by*  
21                    *using the conservative long-term corporate bond rate*  
22                    *(as determined under section 412(b)(5)(B)(ii)(II) of*  
23                    *the Internal Revenue Code of 1986) for the month*  
24                    *preceding the month in which the plan year begins.”*

25                    (c) *EFFECTIVE DATES.—*

1           (1) *IN GENERAL.*—*Except as provided in para-*  
2 *graph (2), the amendments made by this section shall*  
3 *apply to plan years beginning after December 31,*  
4 *2003.*

5           (2) *LOOKBACK RULES.*—*For purposes of apply-*  
6 *ing subsections (l)(9)(B)(ii) and (m)(1) of section 412*  
7 *of the Internal Revenue Code of 1986, and subsections*  
8 *(d)(9)(B)(ii) and (e)(1) of section 302 of the Em-*  
9 *ployee Retirement Income Security Act of 1974 to*  
10 *plan years beginning after December 31, 2003, the*  
11 *amendments made by this section may be applied as*  
12 *if such amendments had been in effect for all years*  
13 *beginning before such date.*

14           (3) *TRANSITION RULE FOR SECTION 415 LIMITA-*  
15 *TION.*—*In the case of any participant or beneficiary*  
16 *receiving a distribution after December 31, 2003 and*  
17 *before January 1, 2005, the amount payable under*  
18 *any form of benefit subject to section 417(b)(3) of the*  
19 *Internal Revenue Code of 1986 and subject to adjust-*  
20 *ment under section 415(b)(2)(B) of such Code shall*  
21 *not, solely by reason of the amendment made by sub-*  
22 *section (a)(4), be less than the amount that would*  
23 *have been so payable had the amount payable been*  
24 *determined using the applicable interest rate in effect*



1        *as of the last day of the last plan year beginning be-*  
2        *fore January 1, 2004.*

3        **SEC. 3. ELECTION OF ALTERNATIVE DEFICIT REDUCTION**  
4        **CONTRIBUTION.**

5        *(a) AMENDMENT OF 1986 CODE.—Section 412(l) of the*  
6        *Internal Revenue Code of 1986 (relating to applicability*  
7        *of subsection) is amended by adding at the end the following*  
8        *new paragraph:*

9                    *“(12) ALTERNATIVE INCREASE FOR CERTAIN*  
10                   *PLANS MEETING REQUIREMENTS IN 2000.—*

11                    *“(A) IN GENERAL.—In the case of a defined*  
12                   *benefit plan established and maintained by an*  
13                   *applicable employer, if this subsection did not*  
14                   *apply to the plan for the plan year beginning in*  
15                   *2000 (determined without regard to paragraph*  
16                   *(6)), then, at the election of the employer, the in-*  
17                   *creased amount under paragraph (1) for any ap-*  
18                   *plicable plan year shall be the greater of—*

19                    *“(i) 20 percent (40 percent in the case*  
20                   *of an applicable plan year beginning after*  
21                   *December 27, 2004) of the increased amount*  
22                   *under paragraph (1) determined without re-*  
23                   *gard to this paragraph, or*

24                    *“(ii) the increased amount which*  
25                   *would be determined under paragraph (1) if*

1           *the deficit reduction contribution under*  
2           *paragraph (2) for the applicable plan year*  
3           *were determined without regard to subpara-*  
4           *graphs (A), (B), and (D) of paragraph (2).*

5           “(B) *RESTRICTIONS ON BENEFIT IN-*  
6           *CREASES.—No amendment which increases the*  
7           *liabilities of the plan by reason of any increase*  
8           *in benefits, any change in the accrual of benefits,*  
9           *or any change in the rate at which benefits be-*  
10           *come nonforfeitable shall be adopted during any*  
11           *applicable plan year, unless—*

12                   “(i) *the funded current liability per-*  
13                   *centage (as defined in paragraph (8)(B)) as*  
14                   *of the end of such plan year is projected*  
15                   *(taking into account the effect of the amend-*  
16                   *ment) to be at least 75 percent,*

17                   “(ii) *the amendment provides for an*  
18                   *increase in benefits under a formula which*  
19                   *is not based on a participant’s compensa-*  
20                   *tion, but only if the rate of such increase is*  
21                   *not in excess of the contemporaneous rate of*  
22                   *increase in average wages of participants*  
23                   *covered by the amendment,*

24                   “(iii) *the amendment is required by a*  
25                   *collective bargaining agreement which is in*

1           *effect on the date of enactment of this sub-*  
2           *paragraph, or*

3           *“(iv) the amendment is otherwise de-*  
4           *scribed in subparagraph (A) or (C) of sub-*  
5           *section (f)(2).*

6           *If a plan is amended during any applicable plan*  
7           *year in violation of the preceding sentence, any*  
8           *election under this paragraph shall not apply to*  
9           *any applicable plan year ending on or after the*  
10          *date on which such amendment is adopted.*

11          *“(C) APPLICABLE EMPLOYER.—For pur-*  
12          *poses of this paragraph—*

13                 *“(i) IN GENERAL.—The term ‘applica-*  
14                 *ble employer’ means an employer which*  
15                 *is—*

16                         *“(I) a commercial passenger air-*  
17                         *line,*

18                         *“(II) primarily engaged in the*  
19                         *production or manufacture of a steel*  
20                         *mill product, or the mining or proc-*  
21                         *essing of iron ore or beneficiated iron*  
22                         *ore products, or*

23                         *“(III) an organization described*  
24                         *in section 501(c)(5) and which estab-*

1           lished the plan to which this para-  
2           graph applies on June 30, 1955.

3           “(ii) *OTHER EMPLOYERS MAY APPLY*  
4           *FOR RELIEF.*—

5                   “(I) *IN GENERAL.*—*Except as pro-*  
6                   *vided in subclause (II), an employer*  
7                   *other than an employer described in*  
8                   *clause (i) shall be treated as an appli-*  
9                   *cable employer if the employer files an*  
10                   *application (at such time and in such*  
11                   *manner as the Secretary may pre-*  
12                   *scribe) to be treated as an applicable*  
13                   *employer for purposes of this para-*  
14                   *graph.*

15                   “(II) *EXCEPTION.*—*Subclause (I)*  
16                   *shall not apply to an employer if,*  
17                   *within 90 days of the filing of the ap-*  
18                   *plication, the Secretary determines*  
19                   *(taking into account the application of*  
20                   *this paragraph) that there is a reason-*  
21                   *able likelihood that the employer will*  
22                   *be unable to make future required con-*  
23                   *tributions to the plan in a timely*  
24                   *manner.*

1           “(D) *APPLICABLE PLAN YEAR.*—*For pur-*  
2           *poses of this paragraph—*

3                   “(i) *IN GENERAL.*—*The term ‘applica-*  
4                   *ble plan year’ means any plan year begin-*  
5                   *ning after December 27, 2003, and before*  
6                   *December 28, 2005, for which the employer*  
7                   *elects the application of this paragraph.*

8                   “(ii) *LIMITATION ON NUMBER OF*  
9                   *YEARS WHICH MAY BE ELECTED.*—*An elec-*  
10                   *tion may not be made under this paragraph*  
11                   *with respect to more than 2 plan years.*

12                   “(E) *ELECTION.*—*An election under this*  
13                   *paragraph shall be made at such time and in*  
14                   *such manner as the Secretary may prescribe.”*

15           (b) *AMENDMENT OF ERISA.*—*Section 302(d) of the*  
16           *Employee Retirement Income Security Act of 1974 (29*  
17           *U.S.C. 1082(d)) is amended by adding at the end the fol-*  
18           *lowing new paragraph:*

19                   “(12) *ALTERNATIVE INCREASE FOR CERTAIN*  
20                   *PLANS MEETING REQUIREMENTS IN 2000.*—

21                   “(A) *IN GENERAL.*—*In the case of a defined*  
22                   *benefit plan established and maintained by an*  
23                   *applicable employer, if this subsection did not*  
24                   *apply to the plan for the plan year beginning in*  
25                   *2000 (determined without regard to paragraph*

1           (6)), then, at the election of the employer, the in-  
2           creased amount under paragraph (1) for any ap-  
3           plicable plan year shall be the greater of—

4                   “(i) 20 percent (40 percent in the case  
5                   of an applicable plan year beginning after  
6                   December 27, 2004) of the increased amount  
7                   under paragraph (1) determined without re-  
8                   gard to this paragraph, or

9                   “(ii) the increased amount which  
10                  would be determined under paragraph (1) if  
11                  the deficit reduction contribution under  
12                  paragraph (2) for the applicable plan year  
13                  were determined without regard to subpara-  
14                  graphs (A), (B), and (D) of paragraph (2).

15           “(B) RESTRICTIONS ON BENEFIT IN-  
16           CREASES.—No amendment which increases the  
17           liabilities of the plan by reason of any increase  
18           in benefits, any change in the accrual of benefits,  
19           or any change in the rate at which benefits be-  
20           come nonforfeitable under the plan shall be  
21           adopted during any applicable plan year,  
22           unless—

23                   “(i) the funded current liability per-  
24                   centage (as defined in paragraph (8)(B)) as  
25                   of the end of such plan year is projected

1           *(taking into account the effect of the amend-*  
2           *ment) to be at least 75 percent,*

3           *“(ii) the amendment provides for an*  
4           *increase in benefits under a formula which*  
5           *is not based on a participant’s compensa-*  
6           *tion, but only if the rate of such increase is*  
7           *not in excess of the contemporaneous rate of*  
8           *increase in average wages of participants*  
9           *covered by the amendment,*

10           *“(iii) the amendment is required by a*  
11           *collective bargaining agreement which is in*  
12           *effect on the date of enactment of this sub-*  
13           *paragraph, or*

14           *“(iv) the amendment is otherwise de-*  
15           *scribed in subparagraph (A) or (C) of sec-*  
16           *tion 304(b)(2).*

17           *If a plan is amended during any applicable plan*  
18           *year in violation of the preceding sentence, any*  
19           *election under this paragraph shall not apply to*  
20           *any applicable plan year ending on or after the*  
21           *date on which such amendment is adopted.*

22           *“(C) APPLICABLE EMPLOYER.—For pur-*  
23           *poses of this paragraph—*

1           “(i) *IN GENERAL.*—*The term ‘applica-*  
2           *ble employer’ means an employer which*  
3           *is—*

4                     “(I) *a commercial passenger air-*  
5                     *line,*

6                     “(II) *primarily engaged in the*  
7                     *production or manufacture of a steel*  
8                     *mill product, or the mining or proc-*  
9                     *essing of iron ore or beneficiated iron*  
10                    *ore products, or*

11                   “(III) *an organization described*  
12                   *in section 501(c)(5) of the Internal*  
13                   *Revenue Code of 1986 and which estab-*  
14                   *lished the plan to which this para-*  
15                   *graph applies on June 30, 1955.*

16           “(ii) *OTHER EMPLOYERS MAY APPLY*  
17           *FOR RELIEF.—*

18                   “(I) *IN GENERAL.*—*Except as pro-*  
19                   *vided in subclause (II), an employer*  
20                   *other than an employer described in*  
21                   *clause (i) shall be treated as an appli-*  
22                   *cable employer if the employer files an*  
23                   *application (at such time and in such*  
24                   *manner as the Secretary of the Treas-*  
25                   *ury may prescribe) to be treated as an*



1                    *applicable employer for purposes of*  
2                    *this paragraph.*

3                    “(II) *EXCEPTION.*—Subclause (I)  
4                    *shall not apply to an employer if,*  
5                    *within 90 days of the filing of the ap-*  
6                    *plication, the Secretary of the Treasury*  
7                    *determines (taking into account the*  
8                    *application of this paragraph) that*  
9                    *there is a reasonable likelihood that the*  
10                    *employer will be unable to make future*  
11                    *required contributions to the plan in a*  
12                    *timely manner.*

13                    “(D) *APPLICABLE PLAN YEAR.*—For pur-  
14                    *poses of this paragraph—*

15                    “(i) *IN GENERAL.*—The term ‘*applica-*  
16                    *ble plan year*’ means any plan year begin-  
17                    *ning after December 27, 2003, and before*  
18                    *December 28, 2005, for which the employer*  
19                    *elects the application of this paragraph.*

20                    “(ii) *LIMITATION ON NUMBER OF*  
21                    *YEARS WHICH MAY BE ELECTED.*—An elec-  
22                    *tion may not be made under this paragraph*  
23                    *with respect to more than 2 plan years.*

1           “(E) NOTICE REQUIREMENTS FOR PLANS  
2           ELECTING ALTERNATIVE DEFICIT REDUCTION  
3           CONTRIBUTIONS.—

4           “(i) IN GENERAL.—If an employer  
5           elects an alternative deficit reduction con-  
6           tribution under this paragraph and section  
7           412(l)(12) of the Internal Revenue Code of  
8           1986 for any year, the employer shall pro-  
9           vide, within 30 days (120 days in the case  
10          of an employer described in subparagraph  
11          (C)(ii)) of filing the election for such year,  
12          written notice of the election to participants  
13          and beneficiaries and to the Pension Benefit  
14          Guaranty Corporation.

15          “(ii) NOTICE TO PARTICIPANTS AND  
16          BENEFICIARIES.—The notice under clause  
17          (i) to participants and beneficiaries shall  
18          include with respect to any election—

19                  “(I) the due date of the alternative  
20                  deficit reduction contribution and the  
21                  amount by which such contribution  
22                  was reduced from the amount which  
23                  would have been owed if the election  
24                  were not made, and

1           “(II) a description of the benefits  
2           under the plan which are eligible to be  
3           guaranteed by the Pension Benefit  
4           Guaranty Corporation and an expla-  
5           nation of the limitations on the guar-  
6           antee and the circumstances under  
7           which such limitations apply, includ-  
8           ing the maximum guaranteed monthly  
9           benefits which the Pension Benefit  
10          Guaranty Corporation would pay if  
11          the plan terminated while under-  
12          funded.

13           “(iii) NOTICE TO PBGC.—The notice  
14          under clause (i) to the Pension Benefit  
15          Guaranty Corporation shall include—

16                   “(I) the information described in  
17                   clause (ii)(I),

18                   “(II) the number of years it will  
19                   take to restore the plan to full funding  
20                   if the employer only makes the re-  
21                   quired contributions, and

22                   “(III) information as to how the  
23                   amount by which the plan is under-  
24                   funded compares with the capitaliza-

1                    *tion of the employer making the elec-*  
2                    *tion.*

3                    “(F) *ELECTION.*—*An election under this*  
4                    *paragraph shall be made at such time and in*  
5                    *such manner as the Secretary of the Treasury*  
6                    *may prescribe.”*

7                    (c) *EFFECT OF ELECTION.*—*An election under section*  
8                    *412(l)(12) of the Internal Revenue Code of 1986 or section*  
9                    *302(d)(12) of the Employee Retirement Income Security*  
10                    *Act of 1974 (as added by this section) with respect to a*  
11                    *plan shall not invalidate any obligation (pursuant to a col-*  
12                    *lective bargaining agreement in effect on the date of the elec-*  
13                    *tion) to provide benefits, to change the accrual of benefits,*  
14                    *or to change the rate at which benefits become nonforfeitable*  
15                    *under the plan .*

16                    (d) *PENALTY FOR FAILING TO PROVIDE NOTICE.*—  
17                    *Section 502(c)(3) of the Employee Retirement Income Secu-*  
18                    *rity Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by in-*  
19                    *serting “or who fails to meet the requirements of section*  
20                    *302(d)(12)(E) with respect to any participant or bene-*  
21                    *ficiary” after “101(e)(2)”.*

22                    **SEC. 4. MULTIEMPLOYER PLAN FUNDING NOTICES.**

23                    (a) *IN GENERAL.*—*Section 104 of the Employee Re-*  
24                    *tirement Income Security Act of 1974 (29 U.S.C. 104) is*  
25                    *amended by redesignating subsection (d) as subsection (e)*

1 *and by inserting after subsection (c) the following new sub-*  
2 *section:*

3       “(d) *MULTIEMPLOYER DEFINED BENEFIT PLAN*  
4 *FUNDING NOTICES.*—

5               “(1) *IN GENERAL.*—*The administrator of a de-*  
6 *fin ed benefit plan which is a multiemployer plan*  
7 *shall for each plan year provide a plan funding no-*  
8 *tice to each plan participant and beneficiary, to each*  
9 *labor organization representing such participants or*  
10 *beneficiaries, and to each employer that has an obli-*  
11 *gation to contribute under the plan.*

12               “(2) *INFORMATION CONTAINED IN NOTICES.*—

13                       “(A) *IDENTIFYING INFORMATION.*—*Each no-*  
14 *tice required under paragraph (1) shall contain*  
15 *identifying information, including the name of*  
16 *the plan, the address and phone number of the*  
17 *plan administrator and the plan’s principal ad-*  
18 *ministrative officer, each plan sponsor’s em-*  
19 *ployer identification number, and the plan num-*  
20 *ber of the plan.*

21                       “(B) *SPECIFIC INFORMATION.*—*A plan*  
22 *funding notice under paragraph (1) shall*  
23 *include—*

24                               “(i) *a statement as to whether the*  
25 *plan’s funded current liability percentage*

1           *(as defined in section 302(d)(8)(B)) for the*  
2           *plan year to which the notice relates is at*  
3           *least 100 percent (and, if not, the actual*  
4           *percentage);*

5           *“(ii) a statement of the value of the*  
6           *plan’s assets, the amount of benefit pay-*  
7           *ments, and the ratio of the assets to the*  
8           *payments for the plan year to which the re-*  
9           *port relates;*

10          *“(iii) a summary of the rules gov-*  
11          *erning insolvent multiemployer plans, in-*  
12          *cluding the limitations on benefit payments*  
13          *and any potential benefit reductions and*  
14          *suspensions (and the potential effects of*  
15          *such limitations, reductions, and suspen-*  
16          *sions on the plan); and*

17          *“(iv) a general description of the bene-*  
18          *fits under the plan which are eligible to be*  
19          *guaranteed by the Pension Benefit Guar-*  
20          *anty Corporation, along with an expla-*  
21          *nation of the limitations on the guarantee*  
22          *and the circumstances under which such*  
23          *limitations apply.*

24          *“(C) OTHER INFORMATION.—Each notice*  
25          *under paragraph (1) shall include any addi-*

1           *tional information which the plan administrator*  
2           *elects to include to the extent not inconsistent*  
3           *with regulations prescribed by the Secretary.*

4           “(3) *TIME FOR PROVIDING NOTICE.*—Any notice  
5           *under paragraph (1) shall be provided no later than*  
6           *two months after the deadline (including extensions)*  
7           *for filing the annual report for the plan year to which*  
8           *the notice relates.*

9           “(4) *FORM AND MANNER.*—Any notice under  
10          *paragraph (1)—*

11                 “(A) *shall be provided in a form and man-*  
12                 *ner prescribed in regulations of the Secretary,*

13                 “(B) *shall be written in a manner so as to*  
14                 *be understood by the average plan participant,*  
15                 *and*

16                 “(C) *may be provided in written, electronic,*  
17                 *or other appropriate form to the extent such form*  
18                 *is reasonably accessible to persons to whom the*  
19                 *notice is required to be provided.”*

20          (b) *PENALTIES.*—Section 502(c)(1) of the Employee  
21 *Retirement Income Security Act of 1974 (29 U.S.C.*  
22 *1132(c)(1)) is amended by striking “or section 101(e)(1)”*  
23 *and inserting “, section 101(e)(1), or section 104(d)”.*

24          (c) *REGULATIONS AND MODEL NOTICE.*—The Sec-  
25 *retary of Labor shall, not later than 1 year after the date*

1 of the enactment of this Act, issue regulations (including  
 2 a model notice) necessary to implement the amendments  
 3 made by this section.

4 (d) *EFFECTIVE DATE.*—The amendments made by this  
 5 section shall apply to plan years beginning after December  
 6 31, 2004.

7 **SEC. 5. AMORTIZATION HIATUS FOR NET EXPERIENCE**  
 8 **LOSSES IN MULTIEMPLOYER PLANS.**

9 (a) *AMENDMENTS TO THE EMPLOYEE RETIREMENT*  
 10 *INCOME SECURITY ACT OF 1974.*—

11 (1) *IN GENERAL.*—Section 302(b)(7) of the *Em-*  
 12 *ployee Retirement Income Security Act of 1974* (29  
 13 *U.S.C.1082(b)(7))* is amended by adding at the end  
 14 *the following new subparagraph:*

15 “(F)(i) If a multiemployer plan has a net expe-  
 16 rience loss for any plan year beginning after June 30,  
 17 2002, and before July 1, 2006—

18 “(I) the plan may elect to have the 15-year  
 19 amortization period under paragraph (2)(B)(iv)  
 20 with respect to the loss begin in any plan year  
 21 selected by the plan from among the 3 imme-  
 22 diately succeeding plan years, and

23 “(II) if the plan makes an election under  
 24 subclause (I) for any plan year, the net experi-  
 25 ence loss for the year shall, for purposes of deter-



1            *mining any charge to the funding standard ac-*  
2            *count, or interest, with respect to the loss, be*  
3            *treated in the same manner as if it were a net*  
4            *experience loss occurring in the year selected by*  
5            *the plan under subclause (I) (without regard to*  
6            *any net experience loss or gain otherwise deter-*  
7            *mined for such year).*

8            *Notwithstanding the preceding sentence, a plan may*  
9            *elect to have this subparagraph apply to net experi-*  
10           *ence losses for only 2 plan years beginning after June*  
11           *30, 2002, and before July 1, 2006.*

12           *“(ii) An amendment which increases the liabil-*  
13           *ities of the plan by reason of any increase in benefits,*  
14           *any change in the accrual of benefits, or any change*  
15           *in the rate at which benefits become nonforfeitable*  
16           *under the plan shall not take effect for any plan year*  
17           *in the hiatus period, unless—*

18           *“(I) the funded current liability percentage*  
19           *(as defined in subsection (d)(8)(B)) as of the end*  
20           *of the plan year is projected (taking into account*  
21           *the effect of the amendment) to be at least 75*  
22           *percent,*

23           *“(II) the plan’s actuary certifies that, due*  
24           *to an increase in contribution rates, the normal*  
25           *cost attributable to the benefit increase or other*

1           *change is expected to be fully funded in the year*  
2           *following the year the increase or other change*  
3           *takes effect, and any increase in the plan’s ac-*  
4           *crued liabilities attributable to the benefit in-*  
5           *crease or other change is expected to be fully*  
6           *funded by the end of the third plan year fol-*  
7           *lowing the end of the last hiatus period of the*  
8           *plan, or*

9           *“(III) the plan amendment is otherwise de-*  
10          *scribed in subparagraph (A) or (C) of section*  
11          *304(b)(2).*

12          *“(iii) Clause (ii) shall not apply to an increase*  
13          *in benefits for a group of participants resulting solely*  
14          *from a collectively bargained increase in the contribu-*  
15          *tions made on their behalf.*

16          *“(iv) For purposes of this subparagraph, the*  
17          *term ‘hiatus period’ means any period during which*  
18          *the amortization of a net experience loss is suspended*  
19          *by reason of this subparagraph.*

20          *“(v) Interest accrued on any net experience loss*  
21          *during a hiatus period shall be charged to a reconcili-*  
22          *ation account and not to the funding standard ac-*  
23          *count.*

24          *“(vi) If a plan elects an amortization hiatus*  
25          *under this subparagraph and section 412(b)(7)(F) of*

1       *the Internal Revenue Code of 1986 for any plan year,*  
2       *the plan administrator shall provide, within 30 days*  
3       *of filing the election for such year, written notice of*  
4       *the election to participants and beneficiaries, to each*  
5       *labor organization representing such participants or*  
6       *beneficiaries, and to each employer that has an obli-*  
7       *gation to contribute under the plan. Such notice shall*  
8       *include with respect to any election the amount of the*  
9       *net experience loss to be deferred and the period of the*  
10       *deferral. Such notice shall also include the maximum*  
11       *guaranteed monthly benefits which the Pension Ben-*  
12       *efit Guaranty Corporation would pay if the plan ter-*  
13       *minated while underfunded.*

14               *“(vii) An election under this subparagraph shall*  
15       *be made at such time and in such manner as the Sec-*  
16       *retary, after consultation with the Secretary of the*  
17       *Treasury, may prescribe.”*

18               (2) *PENALTY.—Section 502(c)(4) of such Act (29*  
19       *U.S.C. 1132(c)(4)) is amended to read as follows:*

20               *“(4) The Secretary may assess a civil penalty of*  
21       *not more than \$1,000 a day for each violation by any*  
22       *person of section 302(b)(7)(F)(vi).”*

23       (b) *AMENDMENTS TO THE INTERNAL REVENUE CODE*  
24       *OF 1986.—*

1           (1) *IN GENERAL.*—Section 412(b)(7) of the Inter-  
2           nal Revenue Code of 1986 (relating to special rules  
3           for multiemployer plans) is amended by adding at the  
4           end the following new subparagraph:

5                   “(F) *AMORTIZATION HIATUS.*—

6                           “(i) *IN GENERAL.*—If a multiemployer  
7                           plan has a net experience loss for any plan  
8                           year beginning after June 30, 2002, and be-  
9                           fore July 1, 2006—

10                                   “(I) the plan may elect to have  
11                                   the 15-year amortization period under  
12                                   paragraph (2)(B)(iv) with respect to  
13                                   the loss begin in any plan year selected  
14                                   by the plan from among the 3 imme-  
15                                   diately succeeding plan years, and

16                                   “(II) if the plan makes an election  
17                                   under subclause (I) for any plan year,  
18                                   the net experience loss for the year  
19                                   shall, for purposes of determining any  
20                                   charge to the funding standard ac-  
21                                   count, or interest, with respect to the  
22                                   loss, be treated in the same manner as  
23                                   if it were a net experience loss occur-  
24                                   ring in the year selected by the plan  
25                                   under subclause (I) (without regard to

1           *any net experience loss or gain other-*  
2           *wise determined for such year).*

3           *Notwithstanding the preceding sentence, a*  
4           *plan may elect to have this subparagraph*  
5           *apply to net experience losses for only 2*  
6           *plan years beginning after June 30, 2002,*  
7           *and before July 1, 2006.*

8           “(ii) *RESTRICTIONS ON BENEFIT IN-*  
9           *CREASES.—An amendment which increases*  
10           *the liabilities of the plan by reason of any*  
11           *increase in benefits, any change in the ac-*  
12           *crual of benefits, or any change in the rate*  
13           *at which benefits become nonforfeitable*  
14           *under the plan shall not take effect for any*  
15           *plan year in the hiatus period, unless—*

16           “(I) *the funded current liability*  
17           *percentage (as defined in subsection*  
18           *(l)(8)(B)) as of the end of the plan*  
19           *year is projected (taking into account*  
20           *the effect of the amendment) to be at*  
21           *least 75 percent,*

22           “(II) *the plan’s actuary certifies*  
23           *that, due to an increase in contribu-*  
24           *tion rates, the normal cost attributable*  
25           *to the benefit increase or other change*

1            *is expected to be fully funded in the*  
2            *year following the year in which the*  
3            *increase or other change takes effect,*  
4            *and any increase in the plan's accrued*  
5            *liabilities attributable to the benefit in-*  
6            *crease or other change is expected to be*  
7            *fully funded by the end of the third*  
8            *plan year following the end of the last*  
9            *hiatus period of the plan, or*

10            *“(III) the plan amendment is oth-*  
11            *erwise described in subparagraph (A)*  
12            *or (C) of subsection (f)(2).*

13            *“(iii) COLLECTIVELY BARGAINED IN-*  
14            *CREASES IN CONTRIBUTIONS.—Clause (ii)*  
15            *shall not apply to an increase in benefits*  
16            *for a group of participants resulting solely*  
17            *from a collectively bargained increase in the*  
18            *contributions made on their behalf.*

19            *“(iv) HIATUS PERIOD DEFINED.—For*  
20            *purposes of this subparagraph, the term ‘hi-*  
21            *atus period’ means any period during*  
22            *which the amortization of a net experience*  
23            *loss is suspended by reason of this subpara-*  
24            *graph.*

1                   “(v) *INTEREST ACCRUED DURING HIA-*  
 2                   *TUS.—Interest accrued on any net experi-*  
 3                   *ence loss during a hiatus period shall be*  
 4                   *charged to a reconciliation account and not*  
 5                   *to the funding standard account.*

6                   “(vi) *ELECTION.—An election under*  
 7                   *this subparagraph shall be made at such*  
 8                   *time and in such manner as the Secretary*  
 9                   *of Labor, after consultation with the Sec-*  
 10                   *retary, may prescribe.”*

11                   (2) *QUALIFICATION REQUIREMENT.—Section*  
 12                   *401(a) of such Code is amended by inserting after*  
 13                   *paragraph (34) the following new paragraph:*

14                   “(35) *BENEFIT INCREASES IN CERTAIN MULTI-*  
 15                   *EMPLOYER PLANS.—A trust which is part of a plan*  
 16                   *shall not constitute a qualified trust under this sec-*  
 17                   *tion if the plan adopts an amendment during a hia-*  
 18                   *tus period (within the meaning of section*  
 19                   *412(b)(7)(F)(iv)) which the plan is prohibited from*  
 20                   *adopting by reason of section 412(b)(7)(F)(ii).”*

21 **SEC. 6. 2-YEAR EXTENSION OF TRANSITION RULE TO PEN-**  
 22 **SION FUNDING REQUIREMENTS.**

23                   (a) *IN GENERAL.—Section 769(c) of the Retirement*  
 24                   *Protection Act of 1994, as added by section 1508 of the Tax-*  
 25                   *payer Relief Act of 1997, is amended—*

1           (1) by inserting “except as provided in para-  
2           graph (3),” before “the transition rules”, and

3           (2) by adding at the end the following:

4           “(3) *SPECIAL RULES.*—*In the case of plan years begin-*  
5           *ning in 2004 and 2005, the following transition rules shall*  
6           *apply in lieu of the transition rules described in paragraph*  
7           *(2):*

8                   “(A) *For purposes of section 412(l)(9)(A) of*  
9                   *the Internal Revenue Code of 1986 and section*  
10                   *302(d)(9)(A) of the Employee Retirement Income*  
11                   *Security Act of 1974, the funded current liability*  
12                   *percentage for any plan year shall be treated as*  
13                   *not less than 90 percent.*

14                   “(B) *For purposes of section 412(m) of the*  
15                   *Internal Revenue Code of 1986 and section*  
16                   *302(e) of the Employee Retirement Income Secu-*  
17                   *rity Act of 1974, the funded current liability*  
18                   *percentage for any plan year shall be treated as*  
19                   *not less than 100 percent.*

20                   “(C) *For purposes of determining unfunded*  
21                   *vested benefits under section 4006(a)(3)(E)(iii)*  
22                   *of the Employee Retirement Income Security Act*  
23                   *of 1974, the mortality table shall be the mor-*  
24                   *tality table used by the plan.*”



1       (b) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to plan years beginning after December*  
 3 *31, 2003.*

4 **SEC. 7. PROCEDURES APPLICABLE TO DISPUTES INVOLV-**  
 5 **ING PENSION PLAN WITHDRAWAL LIABILITY.**

6       (a) *IN GENERAL.*—*Section 4221 of the Employee Re-*  
 7 *tirement Income Security Act of 1974 (29 U.S.C. 1401) is*  
 8 *amended by adding at the end the following new subsection:*

9       “(f) *PROCEDURES APPLICABLE TO CERTAIN DIS-*  
 10 *PUTES.*—

11               “(1) *IN GENERAL.*—*If—*

12                       “(A) *a plan sponsor of a plan determines*  
 13 *that—*

14                               “(i) *a complete or partial withdrawal*  
 15 *of an employer has occurred, or*

16                                       “(ii) *an employer is liable for with-*  
 17 *drawal liability payments with respect to*  
 18 *the complete or partial withdrawal of an*  
 19 *employer from the plan,*

20   “(B) *such determination is based in whole*  
 21 *or in part on a finding by the plan sponsor*  
 22 *under section 4212(c) that a principal purpose*  
 23 *of a transaction that occurred before January 1,*  
 24 *1999, was to evade or avoid withdrawal liability*  
 25 *under this subtitle, and*

1           “(C) such transaction occurred at least 5  
2           years before the date of the complete or partial  
3           withdrawal,  
4           then the special rules under paragraph (2) shall be  
5           used in applying subsections (a) and (d) of this sec-  
6           tion and section 4219(c) to the employer.

7           “(2) SPECIAL RULES.—

8           “(A) DETERMINATION.—Notwithstanding  
9           subsection (a)(3)—

10           “(i) a determination by the plan spon-  
11           sor under paragraph (1)(B) shall not be  
12           presumed to be correct, and

13           “(ii) the plan sponsor shall have the  
14           burden to establish, by a preponderance of  
15           the evidence, the elements of the claim under  
16           section 4212(c) that a principal purpose of  
17           the transaction was to evade or avoid with-  
18           drawal liability under this subtitle.

19           Nothing in this subparagraph shall affect the  
20           burden of establishing any other element of a  
21           claim for withdrawal liability under this sub-  
22           title.

23           “(B) PROCEDURE.—Notwithstanding sub-  
24           section (d) and section 4219(c), if an employer  
25           contests the plan sponsor’s determination under

1 paragraph (1) through an arbitration proceeding  
2 pursuant to subsection (a), or through a claim  
3 brought in a court of competent jurisdiction, the  
4 employer shall not be obligated to make any  
5 withdrawal liability payments until a final deci-  
6 sion in the arbitration proceeding, or in court,  
7 upholds the plan sponsor's determination.”.

8 (b) *EFFECTIVE DATE.*—The amendments made by this  
9 section shall apply to any employer that receives a notifica-  
10 tion under section 4219(b)(1) of the Employee Retirement  
11 Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after  
12 October 31, 2003.

13 **SEC. 8. SENSE OF THE SENATE ON STATUS OF PRIVATE**  
14 **PENSION PLANS.**

15 (a) *FINDINGS.*—Congress makes the following findings:

16 (1) *The private pension system is integral to the*  
17 *retirement security of Americans, along with indi-*  
18 *vidual savings and Social Security.*

19 (2) *The Pension Benefit Guaranty Corporation*  
20 *(PBGC) is responsible for insuring the nation's pri-*  
21 *ivate pension system, and currently insures the pen-*  
22 *sions of 34,500,000 participants in 29,500 single-em-*  
23 *ployer plans, and 9,700,000 participants in more*  
24 *than 1,600 multiemployer plans.*

1           (3) *The PBGC announced on January 15, 2004,*  
2           *that it suffered a net loss in fiscal year 2003 of*  
3           *\$7,600,000,000 for single-employer pension plans,*  
4           *bringing the PBGC's deficit to \$11,200,000,000. This*  
5           *deficit is the PBGC's worst on record, three times*  
6           *larger than the \$3,600,000,000 deficit experienced in*  
7           *fiscal year 2002.*

8           (4) *The PBGC also announced that the separate*  
9           *insurance program for multiemployer pension plans*  
10          *sustained a net loss of \$419,000,000 in fiscal year*  
11          *2003, resulting in a fiscal year-end deficit of*  
12          *\$261,000,000. The 2003 multiemployer plan deficit is*  
13          *the first deficit in more than 20 years and is the larg-*  
14          *est deficit on record.*

15          (5) *The PBGC estimates that the total under-*  
16          *funding in multiemployer pension plans is roughly*  
17          *\$100,000,000,000 and in single-employer plans is ap-*  
18          *proximately \$400,000,000,000. This underfunding is*  
19          *due in part to the recent decline in the stock market*  
20          *and low interest rates, but is also due to demographic*  
21          *changes. For example, in 1980, there were four active*  
22          *workers for every one retiree in a multiemployer plan,*  
23          *but in 2002, there was only one active worker for*  
24          *every one retiree.*

1           (6) *This pension plan underfunding is con-*  
2           *centrated in mature and often-declining industries,*  
3           *where plan liabilities will come due sooner.*

4           (7) *Neither the Senate Committee on Finance*  
5           *nor the Senate Committee on Health, Education,*  
6           *Labor and Pensions (HELP), the committees of juris-*  
7           *isdiction over pension matters, has held hearings this*  
8           *Congress nor reported legislation addressing the fund-*  
9           *ing of multiemployer pension plans;*

10          (8) *The Senate is concerned about the current*  
11          *funding status of the private pension system, both*  
12          *single and multi-employer plans;*

13          (9) *The Senate is concerned about the potential*  
14          *liabilities facing the PBGC and, as a result, the po-*  
15          *tential burdens facing healthy pension plans and tax-*  
16          *payers;*

17          (b) *SENSE OF THE SENATE.—It is the sense of the Sen-*  
18          *ate that the Committee on Finance and the Committee on*  
19          *Health, Education, Labor and Pensions should conduct*  
20          *hearings on the status of the multiemployer pension plans,*  
21          *and should work in consultation with the Departments of*  
22          *Labor and Treasury on permanent measures to strengthen*  
23          *the integrity of the private pension system in order to pro-*  
24          *tect the benefits of current and future pension plan bene-*  
25          *ficiaries.*

1 **SEC. 9. EXTENSION OF TRANSFERS OF EXCESS PENSION**  
2 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

3 (a) *AMENDMENT OF INTERNAL REVENUE CODE OF*  
4 *1986.—Paragraph (5) of section 420(b) of the Internal Rev-*  
5 *enue Code of 1986 (relating to expiration) is amended by*  
6 *striking “December 31, 2005” and inserting “December 31,*  
7 *2013”.*

8 (b) *AMENDMENTS OF ERISA.—*

9 (1) *Section 101(e)(3) of the Employee Retirement*  
10 *Income Security Act of 1974 (29 U.S.C. 1021(e)(3))*  
11 *is amended by striking “Tax Relief Extension Act of*  
12 *1999” and inserting “Pension Stability Act”.*

13 (2) *Section 403(c)(1) of such Act (29 U.S.C.*  
14 *1103(c)(1)) is amended by striking “Tax Relief Ex-*  
15 *tension Act of 1999” and inserting “Pension Stability*  
16 *Act”.*

17 (3) *Paragraph (13) of section 408(b) of such Act*  
18 *(29 U.S.C. 1108(b)(3)) is amended—*

19 (A) *by striking “January 1, 2006” and in-*  
20 *serting “January 1, 2014”, and*

21 (B) *by striking “Tax Relief Extension Act*  
22 *of 1999” and inserting “Pension Stability Act”.*

1 **SEC. 10. CLARIFICATION OF EXEMPTION FROM TAX FOR**  
2 **SMALL PROPERTY AND CASUALTY INSUR-**  
3 **ANCE COMPANIES.**

4 (a) *IN GENERAL.*—Section 501(c)(15)(A) of the Inter-  
5 nal Revenue Code of 1986 is amended to read as follows:

6 “(A) Insurance companies (as defined in  
7 section 816(a)) other than life (including inter-  
8 insurers and reciprocal underwriters) if—

9 “(i) the gross receipts for the taxable  
10 year do not exceed \$600,000, and

11 “(ii) more than 50 percent of such  
12 gross receipts consist of premiums.”.

13 (b) *CONTROLLED GROUP RULE.*—Section  
14 501(c)(15)(C) of the Internal Revenue Code of 1986 is  
15 amended by inserting “, except that in applying section  
16 1563 for purposes of section 831(b)(2)(B)(ii), subpara-  
17 graphs (B) and (C) of section 1563(b)(2) shall be dis-  
18 regarded” before the period at the end.

19 (c) *CONFORMING AMENDMENT.*—Clause (i) of section  
20 831(b)(2)(A) of the Internal Revenue Code of 1986 is  
21 amended by striking “exceed \$350,000 but”.

22 (d) *EFFECTIVE DATE.*—The amendments made by this  
23 section shall apply to taxable years beginning after Decem-  
24 ber 31, 2003.

1 **SEC. 11. DEFINITION OF INSURANCE COMPANY FOR SEC-**  
2 **TION 831.**

3 (a) *IN GENERAL.*—Section 831 of the Internal Revenue  
4 Code of 1986 is amended by redesignating subsection (c)  
5 as subsection (d) and by inserting after subsection (b) the  
6 following new subsection:

7 “(c) *INSURANCE COMPANY DEFINED.*—For purposes of  
8 this section, the term ‘insurance company’ has the meaning  
9 given to such term by section 816(a).”.

10 (b) *EFFECTIVE DATE.*—The amendment made by this  
11 section shall apply to taxable years beginning after Decem-  
12 ber 31, 2003.

13 **SEC. 12. FUNDS FOR REBUILDING FISH STOCKS.**

14 Section 105 of the Miscellaneous Appropriations and  
15 Offsets Act, 2004 (division H of the Consolidated appro-  
16 priations Act, 2004) is repealed.

Attest:

Secretary.



108TH CONGRESS  
2D SESSION

**H. R. 3108**

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**AMENDMENT**