

117TH CONGRESS
2D SESSION

S. 4310

To allow employers to offer pension-linked emergency savings accounts for financial emergencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2022

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

A BILL

To allow employers to offer pension-linked emergency savings accounts for financial emergencies, and for other purposes.

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 Savings
5 Act of 2022”.

6 **SEC. 2. EMERGENCY SAVINGS ACCOUNTS LINKED TO DE-**
7 **FINED CONTRIBUTION PLANS.**

8 (a) EMPLOYEE PENSION BENEFIT PLANS.—Section
9 3 of the Employee Retirement Income Security Act (29
10 U.S.C. 1002) is amended—

1 (1) in paragraph (2)(A), by inserting after the
 2 first sentence the following: “A pension plan may in-
 3 clude a pension-linked emergency savings account.”;
 4 and

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

6 “(45) PENSION-LINKED EMERGENCY SAVINGS
 7 ACCOUNT.—The term ‘pension-linked emergency sav-
 8 ings account’ means an account established or main-
 9 tained by a sponsor of a defined contribution plan
 10 for purposes of offering or providing a participant of
 11 such plan the opportunity to maintain a short-term
 12 savings account that—

13 “(A) is offered as part of such defined con-
 14 tribution plan;

15 “(B) accepts only—

16 “(i) participant contributions which
 17 are treated in the same manner as Roth
 18 contributions for purposes of inclusion in
 19 gross income; and

20 “(ii) employer contributions which are
 21 includible in gross income of the partici-
 22 pant for purposes of the Internal Revenue
 23 Code of 1986; and

24 “(C) meets the requirements of part 8 of
 25 subtitle B.”.

1 (b) PENSION-LINKED EMERGENCY SAVINGS AC-
2 COUNTS.—

3 (1) IN GENERAL.—Subtitle B of title I of the
4 Employee Retirement Income Security Act (29
5 U.S.C. 1021 et seq.) is amended by adding at the
6 end the following:

7 **“PART 8—PENSION-LINKED EMERGENCY**
8 **SAVINGS ACCOUNTS**

9 **“SEC. 801. PENSION-LINKED EMERGENCY SAVINGS AC-**
10 **COUNTS.**

11 “(a) IN GENERAL.—A plan sponsor of a defined con-
12 tribution plan may make available to participants of such
13 pension plan a pension-linked emergency savings account.
14 A plan sponsor that offers participants a pension-linked
15 emergency savings account may deduct amounts from
16 each participating employee’s compensation in accordance
17 with subsection (c) and deposit such amounts, and any
18 employer contributions under such subsection, to an ac-
19 count that meets the requirements of subsection (b).

20 “(b) ACCOUNT REQUIREMENTS.—

21 “(1) IN GENERAL.—A pension-linked emer-
22 gency savings account offered in accordance with
23 subsection (a) shall—

24 “(A) not have a minimum account balance
25 requirement;

1 “(B) allow for withdrawal by the partici-
2 pant of the account balance, in whole or in part
3 at the discretion of the participant, at least
4 once per calendar month and for distribution of
5 such withdrawal to the participant as soon as
6 practicable but, other than in exceptional cir-
7 cumstances, not later than 1 week from the
8 date on which the participant elects to make
9 such withdrawal;

10 “(C) be held as cash, in an interest-bearing
11 deposit account, or in an investment or insur-
12 ance product designed to preserve principal and
13 provide a reasonable rate of return, whether or
14 not such return is guaranteed, consistent with
15 liquidity; and

16 “(D) not be subject to—

17 “(i) any unreasonable fees, restric-
18 tions, expenses, or charges in connection
19 with such pension-linked emergency sav-
20 ings account; and

21 “(ii) any fees in connection with the
22 withdrawal of funds from such pension-
23 linked emergency savings account other
24 than reasonable reimbursement fees im-
25 posed for paper mailings and the handling

1 of paper checks related to such pension-
2 linked emergency savings account.

3 “(2) ESTABLISHMENT AND TERMINATION OF
4 ACCOUNT.—

5 “(A) ESTABLISHMENT OF ACCOUNT.—The
6 establishment of a pension-linked emergency
7 savings account shall be included in the defined
8 contribution plan document of the associated
9 defined contribution plan.

10 “(B) TERMINATION OF ACCOUNT.—A plan
11 sponsor may terminate the pension-linked emer-
12 gency savings account feature of an associated
13 defined contribution plan at any time. Such ter-
14 mination shall be treated as if a termination of
15 employment had occurred in accordance with
16 subsection (d), except the reasonable time de-
17 scribed in such subsection shall be as soon as
18 practicable not later than 60 days after the
19 date of such termination of the pension-linked
20 emergency savings account feature of such asso-
21 ciated defined contribution plan.

22 “(c) ACCOUNT CONTRIBUTIONS.—

23 “(1) EMPLOYER CONTRIBUTIONS.—

24 “(A) IN GENERAL.—Subject to the max-
25 imum account balance under paragraph (3), a

plan sponsor may, without regard to any election otherwise by a participant, deposit to the pension-linked emergency savings account of the participant an amount in addition to the amount contributed by the participant under paragraph (2).

“(B) EMPLOYER CONTRIBUTIONS.—Employer contributions shall be included in the gross income of a participant for purposes of the Internal Revenue Code of 1986.

“(2) PARTICIPANT CONTRIBUTIONS.—

“(A) IN GENERAL.—Subject to the maximum account balance under paragraph (3)—

“(i) a plan sponsor may automatically enroll a participant in the pension-linked emergency savings account at a participant contribution rate selected by the plan sponsor, which, unless the participant affirmatively elects a different percentage of the compensation of the participant to be contributed to the pension-linked emergency savings account, may not exceed 3 percent of the compensation of the participant; or

“(ii) a participant may enroll in the pension-linked emergency savings account

1 at a participant contribution rate selected
 2 by the participant.

3 “(B) CONTROL OF TRANSFER.—A partici-
 4 pant, at any time (subject to such reasonable
 5 advance notice as is required by the plan ad-
 6 ministrator), may—

7 “(i) adjust the participant contribu-
 8 tion rate under subparagraph (A) to the
 9 pension-linked emergency savings account
 10 of the participant; or

11 “(ii) opt out of or pause for a speci-
 12 fied period of time such contributions.

13 “(C) ADJUSTMENT OF PARTICIPANT CON-
 14 TRIBUTION RATE BY PLAN SPONSOR.—A plan
 15 sponsor may adjust the participant contribution
 16 rate selected by such plan sponsor described in
 17 subparagraph (A)(i) not more than once annu-
 18 ally.

19 “(3) ACCOUNT LIMITS.—

20 “(A) IN GENERAL.—Subject to subpara-
 21 graph (B), no contributions under paragraphs
 22 (1) and (2) shall be accepted to the extent such
 23 contributions would cause the balance of the
 24 pension-linked emergency savings account to ex-
 25 ceed the lesser of—

1 “(i) \$2,500; or

2 “(ii) an amount determined by the
3 plan sponsor of the pension-linked emer-
4 gency savings account.

5 In the case of contributions made in taxable
6 years beginning after December 1, 2023, the
7 Secretary shall adjust the amount under clause
8 (i) at the same time and in the same manner
9 as the adjustment made by the Secretary of the
10 Treasury under section 415(d) of the Internal
11 Revenue Code of 1986, except that the base pe-
12 riod shall be the calendar quarter beginning
13 July 1, 2022. Any increase under the preceding
14 sentence which is not a multiple of \$100 shall
15 be rounded to the next lowest multiple of \$100.

16 “(B) EXCESS CONTRIBUTIONS DIRECTED
17 TO PLAN.—To the extent any elected contribu-
18 tions under paragraphs (1) and (2) to the pen-
19 sion-linked emergency savings account of a par-
20 ticipant for a taxable year would cause the bal-
21 ance of the pension-linked emergency savings
22 account to exceed the maximum account bal-
23 ance described in subparagraph (A)—

24 “(i) the participant may be treated as
25 having elected to increase the participant’s

1 contributions to the associated defined con-
 2 tribution plan by an amount not more than
 3 the rate at which contributions were being
 4 made to the pension-linked emergency sav-
 5 ings account; and

6 “(ii) any such contributions shall be
 7 treated as elective deferrals (as such term
 8 is defined in section 402(g)(3) of the Inter-
 9 nal Revenue Code of 1986) under such
 10 plan and shall be contributed to the plan
 11 on behalf of the participant instead of to
 12 the pension-linked emergency savings ac-
 13 count.

14 “(4) DISCLOSURE BY PLAN SPONSOR OF
 15 TRANSFER.—

16 “(A) IN GENERAL.—Not less than 15 days
 17 prior to the date on which the first transfer
 18 under this subsection occurs, the percentage of
 19 compensation and amount of the participant’s
 20 compensation transferred under paragraph (1)
 21 is adjusted, or the plan sponsor adjusts the per-
 22 centage of compensation of the automatic par-
 23 ticipant contribution under paragraph (2)(A)(i),
 24 the plan sponsor shall provide to the participant
 25 notice of—

1 “(i) the purpose of the account being
2 for short-term, emergency savings;

3 “(ii) the amount of the intended con-
4 tribution or the change in the percentage
5 of the compensation of the participant of
6 such contribution;

7 “(iii) in accordance with paragraph
8 (2)(B), the instructions on how to—

9 “(I) adjust the participant con-
10 tribution rate under paragraph (2)(A)
11 to the pension-linked emergency sav-
12 ings account of the participant; or

13 “(II) opt out of or pause for a
14 specified period of time such contribu-
15 tions;

16 “(iv) how such contributions will be
17 invested;

18 “(v) the limits on, and tax treatment
19 of, such contributions;

20 “(vi) any fees, expenses, or charges
21 associated with such pension-linked emer-
22 gency savings account; and

23 “(vii) procedures for participant with-
24 draws from such pension-linked emer-

1 agency savings account, including any limits
2 on frequency.

3 “(B) CONSOLIDATED NOTICES.—The re-
4 quired notices under subparagraph (A) may be
5 included with any other notice under this Act,
6 including under section 404(c)(5)(B) or
7 514(e)(3), or under section 401(k)(13)(E) or
8 414(w)(4) of the Internal Revenue Code of
9 1986, if such other notice is provided to the
10 participant not less than 15 days prior to the
11 date described in such subparagraph and not
12 more than 60 days prior to the date on which
13 the first transfer under this subsection occurs.

14 “(5) EMPLOYER MATCHING CONTRIBUTIONS TO
15 A DEFINED CONTRIBUTION PLAN FOR EMPLOYEE
16 CONTRIBUTIONS TO A PENSION-LINKED EMERGENCY
17 SAVINGS ACCOUNT.—

18 “(A) IN GENERAL.—If an employer makes
19 any matching contributions to a defined con-
20 tribution plan of which a pension-linked emer-
21 gency savings account is part—

22 “(i) any contribution under paragraph
23 (2) to a pension-linked emergency savings
24 account of the participant shall be treated
25 as an elective deferral for purposes of

1 matching contributions by such employer
2 to such defined contribution plan; and

3 “(ii) such employer shall make match-
4 ing contributions on behalf of such partici-
5 pant to the associated defined contribution
6 plan on account of such contributions
7 under paragraph (2) at the same rate as
8 any other matching contribution on ac-
9 count of an elective deferral by such par-
10 ticipant.

11 To the extent any such matching contribution
12 exceeds the maximum account balance under
13 paragraph (3)(A), such contributions shall be
14 contributed to the plan as provided in para-
15 graph (3)(B).

16 “(B) DEFINITIONS.—For purposes of sub-
17 paragraph (A), the terms ‘matching contribu-
18 tion’ and ‘elective deferral’ shall have the mean-
19 ings given such terms in section 401(m)(4) of
20 the Internal Revenue Code of 1986.

21 “(d) ACCOUNT BALANCE AFTER TERMINATION OF
22 EMPLOYMENT.—Upon termination of employment of the
23 participant, the pension-linked emergency savings account
24 of such participant shall—

1 “(1) allow, as relevant, for transfer by the par-
 2 ticipant of the account balance of such account, in
 3 whole or in part, into the designated Roth account
 4 (within the meaning of section 402A of the Internal
 5 Revenue Code of 1986) of the participant under the
 6 associated defined contribution plan; and

7 “(2) for any amounts in such account not
 8 transferred under paragraph (1), make such
 9 amounts available within a reasonable time not later
 10 than the earlier of the date on which the employer
 11 contributing to the plan makes the final compensa-
 12 tion payment related to such employment or 60 days
 13 after the date of such termination—

14 “(A) to the participant or the beneficiary;
 15 or

16 “(B) as a direct rollover to a Roth IRA (as
 17 defined in section 408A(b) of the Internal Rev-
 18 enue Code of 1986) of such participant.

19 “(e) COORDINATION WITH PLAN HARDSHIP
 20 RULES.—Under the terms of the plan of which a pension-
 21 linked emergency savings account is a part, a participant
 22 shall be required to withdraw all amounts in a pension-
 23 linked emergency savings account of the participant before
 24 receiving any plan distribution which is based on financial
 25 hardship or any loan from the plan.

1 **“SEC. 802. ANNUAL NOTICE FOR PENSION-LINKED EMER-**
2 **GENCY SAVINGS ACCOUNT.**

3 “(a) IN GENERAL.—At least annually, the plan spon-
4 sor of a pension-linked emergency savings account shall
5 provide to the pension-linked emergency savings account
6 participant a notice containing such information as the
7 Secretary may require, including a description of—

8 “(1) the purpose and tax treatment of the pen-
9 sion-linked emergency savings account and contribu-
10 tions;

11 “(2) procedures for opting out of the pension-
12 linked emergency savings account, changing partici-
13 pant contribution rates for such account, and mak-
14 ing withdrawals from such account, and limits on
15 contributions and withdrawals;

16 “(3) designated investment options for amounts
17 contributed to the pension-linked emergency savings
18 account;

19 “(4) the options under section 801(d) for the
20 account balance of the pension-linked emergency
21 savings account after termination of the employment
22 of the participant;

23 “(5) any fees, expenses, or charges associated
24 with such pension-linked emergency savings account;
25 and

1 “(6) the amount that a participant has contrib-
2 uted to the pension-linked emergency savings ac-
3 count and the amount the plan sponsor has contrib-
4 uted to such pension-linked emergency savings ac-
5 count for the plan year, and the account balance.

6 “(b) CONSOLIDATED NOTICES.—The required notice
7 under subparagraph (A) may be included with any other
8 notice under this Act if such other notice is provided to
9 the participant at least annually.

10 **“SEC. 803. PREEMPTION OF STATE ANTI-GARNISHMENT**
11 **LAWS.**

12 “Notwithstanding any other provision of law, this
13 part shall supersede any law of a State which would di-
14 rectly or indirectly prohibit or restrict the use of an auto-
15 matic contribution arrangement, in accordance with sec-
16 tion 801(c)(2), for a pension-linked emergency savings ac-
17 count. The Secretary may promulgate regulations to es-
18 tablish minimum standards that such an arrangement
19 would be required to satisfy in order for this subsection
20 to apply with respect to such an account.

21 **“SEC. 804. REPORTING AND DISCLOSURE REQUIREMENTS.**

22 ““The Secretary shall prescribe such regulations as
23 may be necessary to address reporting and disclosure re-
24 quirements for pension-linked emergency savings accounts
25 in order to prevent unnecessary reporting and disclosure

1 for such accounts under this Act, including for purposes
 2 of any reporting or disclosure related to pension plans re-
 3 quired by this title or title IV or under the Internal Rev-
 4 enue Code of 1986.

5 **“SEC. 805. REPORT TO CONGRESS ON MAXIMUM ACCOUNT**
 6 **BALANCE LIMITS.**

7 “The Secretary of Labor and the Secretary of the
 8 Treasury shall—

9 “(1) conduct a study on the use of emergency
 10 savings from a pension-linked emergency savings ac-
 11 count regarding—

12 “(A) whether the maximum account bal-
 13 ance under section 801(c)(3) is sufficient;

14 “(B) whether the limitation on contribu-
 15 tions under sections 801(c)(2)(A)(i) are appro-
 16 priate; and

17 “(C) the participation rate of such ac-
 18 counts by plan sponsors and participants and
 19 the resulting impact on participant retirement
 20 savings, including the impact on retirement sav-
 21 ings leakage and the effect of such accounts on
 22 retirement plan participation by low- and mod-
 23 erate-income households; and

24 “(2) not later than 7 years after the date of en-
 25 actment of the Emergency Savings Act of 2022, sub-

1 mit to Congress a report on the findings of the
2 study under paragraph (1).”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1 of the Employee Retirement In-
5 come Security Act of 1974 (29 U.S.C. 1001 note) is
6 amended by inserting after the item relating to sec-
7 tion 734 the following new items:

“PART 8. PENSION-LINKED EMERGENCY SAVINGS ACCOUNTS

“801. Pension-linked emergency savings accounts.

“802. Annual notice for pension-linked emergency savings account.

“803. Preemption of State anti-garnishment laws.

“804. Reporting and disclosure requirements.

“805. Report to Congress on maximum account balance limits.”.

8 (c) REPORTING FOR A PENSION-LINKED EMER-
9 GENCY SAVINGS ACCOUNT.—

10 (1) ALTERNATIVE METHODS OF COMPLI-
11 ANCE.—Section 110(a) of the Employee Retirement
12 Income Security Act (29 U.S.C. 1030(a)) is amend-
13 ed by inserting “(including pension-linked emergency
14 savings accounts offered in conjunction with a pen-
15 sion plan)” after “class of pension plans”.

16 (2) MINIMIZED REPORTING BURDEN FOR PEN-
17 SION-LINKED EMERGENCY SAVINGS ACCOUNTS.—
18 Section 101 of such Act (29 U.S.C. 1021) is amend-
19 ed—

20 (A) by redesignating subsection (n) as sub-
21 section (o); and

1 (B) by inserting after subsection (m) the
 2 following:

3 “(n) PENSION-LINKED EMERGENCY SAVINGS AC-
 4 COUNTS.—

5 “(1) IN GENERAL.—The requirements of sub-
 6 section (a) shall not apply to a pension-linked emer-
 7 gency savings account made available under section
 8 801.

9 “(2) SIMPLIFIED REPORTING.—Nothing in this
 10 subsection shall preclude the Secretary from pro-
 11 viding, by regulations or otherwise, simplified report-
 12 ing procedures or requirements for such a pension-
 13 linked emergency savings account.”.

14 (d) FIDUCIARY DUTY.—Section 404(c) of the Em-
 15 ployee Retirement Income Security Act (29 U.S.C.
 16 1104(c)) is amended by adding at the end the following:

17 “(6) DEFAULT INVESTMENT ARRANGEMENTS
 18 FOR A PENSION-LINKED EMERGENCY SAVINGS AC-
 19 COUNT.—For purposes of paragraph (1), a partici-
 20 pant in a pension-linked emergency savings account
 21 shall be treated as exercising control over the assets
 22 in the account with respect to the amount of con-
 23 tributions and earnings which are invested in accord-
 24 ance with section 801(b)(1)(C).”.

1 (e) TAX TREATMENT OF PENSION-LINKED EMER-
 2 GENCY SAVINGS ACCOUNTS.—

3 (1) IN GENERAL.—Subpart A of part I of sub-
 4 chapter D of chapter 1 of the Internal Revenue Code
 5 of 1986 is amended by inserting after section 409A
 6 the following new section:

7 **“SEC. 409B. PENSION-LINKED EMERGENCY SAVINGS AC-**
 8 **COUNTS.**

9 “(a) IN GENERAL.—Any pension-linked emergency
 10 savings account established pursuant to section 801 of the
 11 Employee Retirement Income Security Act of 1974 shall
 12 be treated for purposes of this title as provided in this
 13 section.

14 “(b) TREATMENT AS AFTER-TAX CONTRIBUTIONS.—
 15 Any contribution to a pension-linked emergency savings
 16 account shall be—

17 “(1) an employee contribution, or

18 “(2) if made by an employer, shall be includible
 19 in gross income of the employee.

20 “(c) PLAN QUALIFICATIONS.—Any plan of which a
 21 pension-linked emergency savings account is a part shall
 22 not be treated as failing to meet any requirement of this
 23 chapter solely by reason of including such account, or sole-
 24 ly by reason of allowing distributions from such account

1 in a manner consistent with section 801(b)(1)(B) of the
 2 Employee Retirement Income Security Act of 1974.

3 “(d) COORDINATION WITH PLAN.—

4 “(1) IN GENERAL.—No distribution of amounts
 5 from a pension-linked emergency savings account
 6 shall be contributed or rolled over to any eligible re-
 7 tirement plan (as defined in section 402(c)(8)(B))
 8 except as provided in paragraph (2).

9 “(2) ROLLOVER ON TERMINATION OF EMPLOY-
 10 MENT.—Upon termination of employment of the
 11 participant with the employer sponsoring the plan of
 12 which a pension-linked emergency savings account is
 13 part, the account balance of such account may be
 14 contributed to—

15 “(A) a designated Roth account (within
 16 the meaning of section 402A) of the partici-
 17 pant, or

18 “(B) a Roth IRA of the participant,
 19 in accordance with section 801(d) of the Employee
 20 Retirement Income Security Act of 1974. Such con-
 21 tribution shall be treated in the same manner as a
 22 rollover contribution to which section 402A(c)(4) ap-
 23 plies or as a qualified rollover contribution within
 24 the meaning of section 408A(e), whichever is appli-
 25 cable, except that subparagraph (F) of section

1 408A(d)(3) shall not apply to such contribution (in-
 2 cluding by reason of section 402A(c)(4)(D)).

3 “(e) COORDINATION WITH NONDISCRIMINATION RE-
 4 QUIREMENTS AND CONTRIBUTION LIMITATIONS.—For
 5 purposes of paragraphs (4) and (30) of section 401(a),
 6 paragraphs (3), (12), and (13) of section 401(k), section
 7 401(m), section 403(b)(1)(E), and section 415, contribu-
 8 tions to a pension-linked emergency savings account—

9 “(1) shall be treated as elective deferrals, and

10 “(2) shall be aggregated with contributions to
 11 the plan of which such account is a part.

12 “(f) HARDSHIP RULES.—A plan of which a pension-
 13 linked emergency savings account is a part shall not be
 14 treated as failing to meet any requirement of this chapter
 15 solely because under the terms of the plan a participant
 16 is required to withdraw all amounts in a pension-linked
 17 emergency savings account of the participant before re-
 18 ceiving any distribution which is based on financial hard-
 19 ship or any loan from the plan.

20 “(g) EXEMPTION FROM ADDITIONAL TAX ON EARLY
 21 DISTRIBUTIONS.—A pension-linked emergency savings ac-
 22 count shall not be treated as a qualified retirement plan
 23 for purposes of section 72(t).

24 “(h) TREATMENT OF EARNINGS.—Any earnings on
 25 contributions to a pension-linked emergency savings ac-

1 count shall not be included in gross income, and distribu-
 2 tions from such account shall not be subject to with-
 3 holding.”.

4 (2) BASIS RECOVERY.—Section 72(d) of such
 5 Code is amended by adding at the end the following
 6 new paragraph:

7 “(3) TREATMENT OF CONTRIBUTIONS TO A
 8 PENSION-LINKED EMERGENCY SAVINGS ACCOUNT.—
 9 For purposes of this section, contributions to a pen-
 10 sion-linked emergency savings account to which sec-
 11 tion 409B applies (and any income allocable thereto)
 12 may be treated as a separate contract.”.

13 (3) CLERICAL AMENDMENT.—The table of sec-
 14 tions for subpart A of part I of subchapter D of
 15 chapter 1 of such Code is amended by inserting
 16 after the item relating to section 409A the following
 17 new item:

“Sec. 409B. Pension-linked emergency savings accounts.”.

18 (f) JOINT REGULATORY AUTHORITY.—The Secretary
 19 of Labor and the Secretary of the Treasury (or a delegate
 20 of either such Secretary) shall have authority to issue joint
 21 regulations or other guidance, or to coordinate in devel-
 22 oping regulations or other guidance, to carry out the pur-
 23 poses of this Act, including adjustment of the maximum
 24 benefit under section 801(c)(3) of the Employee Retire-
 25 ment Income Security Act, as added by this Act, to ac-

- 1 count for inflation, as well as expansion of corrections pro-
- 2 grams, if necessary.

