

117TH CONGRESS
2D SESSION

S. 4973

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duties regarding asset classes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2022

Mr. TOOMEY (for himself, Mr. SCOTT of South Carolina, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duties regarding asset classes.

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 “Retirement Savings
5 Modernization Act”.

6 **SEC. 2. FIDUCIARY DUTIES REGARDING ASSET CLASSES**

7 **UNDER ERISA.**

8 Section 404(a) of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. 1104(a)) is amended by
10 adding at the end the following:

1 “(3)(A) A fiduciary shall not be liable for a breach
2 of fiduciary duties under this section solely for—

3 “(i) recommending, selecting, or monitoring any
4 covered investment as an investment option for a
5 plan; or

6 “(ii) causing the plan to make any payment or
7 incur any expense, associated with such covered in-
8 vestment.

9 “(B) For purposes of subparagraph (A):

10 “(i) The term ‘covered investment’—

11 “(I) means any direct or indirect invest-
12 ment; and

13 “(II) includes, but is not limited to, any of
14 the following:

15 “(aa) Commodities.

16 “(bb) Debt, including public and pri-
17 vate credit.

18 “(cc) Digital assets.

19 “(dd) Hedge funds.

20 “(ee) Infrastructure.

21 “(ff) Insured products and annuities.

22 “(gg) Private equity.

23 “(hh) Real assets.

24 “(ii) Real estate or real estate-related
25 securities.

1 “(jj) Securities that are listed on a
2 national securities exchange.

3 “(kk) Venture capital.

4 “(ll) An investment in any fund, com-
5 mingled account, or pooled investment ve-
6 hicle that invests in any investment, in-
7 cluding but not limited to an investment
8 described in items (aa) through (kk).

9 “(ii) The terms ‘exchange’ and ‘security’ have
10 the meanings given the terms in section 3(a) of the
11 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

12 “(iii) The term ‘national securities exchange’
13 means an exchange registered as a national securi-
14 ties exchange pursuant to section 6 of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78f).

16 “(C) Nothing in this paragraph shall be construed as
17 providing an exemption or safe harbor from the require-
18 ments of paragraph (1).”.

○