

S.L.C.  
*Mike Braun*  
Amendment # 1

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duty of plan administrators to select and maintain investments based solely on pecuniary factors, and for other purposes.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

**S. 4353**

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve retirement plan provisions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BRAUN

Viz:

1 At the end of title VII, add the following:

2 **SEC. 703. FIDUCIARY DUTY REGARDING THE CONSIDER-**

3 **ATION OF CERTAIN FACTORS IN INVESTMENT**

4 **DECISIONS FOR EMPLOYEE BENEFIT PLANS.**

5 (a) IN GENERAL.—Subsection (a) of section 404 of  
6 the Employee Retirement Income Security Act of 1974  
7 (29 U.S.C. 1104) is amended by adding at the end the  
8 following new paragraph:

9 “(3)(A) The duties under paragraph (1) shall include  
10 the duty to select and maintain investments based, except

1 as provided in subparagraph (B), solely on pecuniary fac-  
2 tors.

3 “(B) Notwithstanding subparagraph (A), when  
4 choosing between or among investment alternatives that  
5 a fiduciary is unable to distinguish on the basis of pecu-  
6 niary factors alone, the fiduciary may use non-pecuniary  
7 factors as the deciding factor in the selection or mainte-  
8 nance of an investment if the fiduciary furnishes to par-  
9 ticipants documentation on the following:

10 “(i) Why pecuniary factors were not sufficient  
11 to select or maintain the investment.

12 “(ii) How the investment compares to the alter-  
13 native investments with regard to—

14 “(I) the composition of the investments of  
15 the plan with regard to diversification;

16 “(II) the liquidity and current return of  
17 the investments of the plan relative to the an-  
18 ticipated cash flow requirements of the plan;  
19 and

20 “(III) the projected return of the invest-  
21 ments of the plan relative to the funding objec-  
22 tives of the plan.

23 “(iii) How the chosen non-pecuniary factor is  
24 consistent with the interests of participants and

1 beneficiaries in their retirement income or financial  
2 benefits under the plan.

3 “(C) For purposes of this paragraph, the term ‘pecu-  
4 niary factor’ means a factor that a fiduciary prudently de-  
5 termines is expected to have a material effect on the risk  
6 or return of an investment based on appropriate invest-  
7 ment horizons consistent with the plan’s investment objec-  
8 tives and the plan’s funding policy established pursuant  
9 to section 402(b)(1).”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to investments made after the date  
12 that is 60 days after the date of enactment of this Act.