

AMENDMENT NO. 1

Calendar No. _____

Purpose: To prohibit the Secretary of Labor from constraining the range or type of investments that may be offered to participants and beneficiaries of individual retirement accounts who exercise control over the assets in such accounts.

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. TUBERVILLE

Viz:

1 At the appropriate place in title VII, insert the fol-
2 lowing:

3 **SEC. 7 ____ . FIDUCIARY DUTIES WITH RESPECT TO PEN-**
4 **SION PLAN INVESTMENTS.**

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

8 “(3)(A) In the case of a pension plan that provides
9 for individual accounts and permits a participant or bene-

1 ficiary to exercise control over the assets in the partici-
2 pant's or beneficiary's account, nothing in paragraph
3 (1)—

4 “(i) requires a fiduciary to select, or prohibits
5 a fiduciary from selecting, any particular type of in-
6 vestment alternative, provided that a fiduciary pro-
7 vides the participant or beneficiary an opportunity to
8 choose, from a broad range of investment alter-
9 natives, the manner in which some or all of the as-
10 sets of the participant's or beneficiary's account are
11 invested, according to regulations prescribed by the
12 Secretary; or

13 “(ii) requires that any particular type of invest-
14 ment be either favored or disfavored, other than on
15 the basis of the investment's risk-return characteris-
16 tics, in the context of the plan fiduciary's objective
17 of providing investment alternatives suitable for pro-
18 viding benefits for participants and beneficiaries.

19 “(B) In the event that a fiduciary selects a self-di-
20 rected brokerage window as an investment alternative for
21 a plan described in subparagraph (A)—

22 “(i) the Secretary shall not issue any regula-
23 tions or subregulatory guidance constraining or pro-
24 hibiting the range or type of investments that may
25 be offered through such brokerage window;

1 “(ii) subsection (c) shall apply to such self-di-
2 rected brokerage window; and

3 “(iii) the diversification requirement of para-
4 graph (1)(C) and the prudence requirement of para-
5 graph (1)(B) are not violated by the fiduciary’s se-
6 lection of a self-directed brokerage window as an in-
7 vestment alternative or as a result of the exercise of
8 a participant or beneficiary’s control over the assets
9 in such self-directed brokerage window.”.