

118TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To require any labor organization that is or would be the collective bargaining representative for any employees to provide information regarding the amount of funds in any defined benefit plan of the labor organization before any labor organization election, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To require any labor organization that is or would be the collective bargaining representative for any employees to provide information regarding the amount of funds in any defined benefit plan of the labor organization before any labor organization election, 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 “Making All Fund In-  
5 formation Available Act”.

1 **SEC. 2. REQUIREMENT FOR LABOR ORGANIZATIONS TO**  
2 **PROVIDE INFORMATION REGARDING DE-**  
3 **FINED BENEFIT PLANS BEFORE ANY LABOR**  
4 **ORGANIZATION ELECTION.**

5 (a) DEFINITIONS.—In this Act:

6 (1) BENEFICIARY.—The term “beneficiary” has  
7 the meaning given the term in section 3 of the Em-  
8 ployee Retirement Income Security Act of 1974 (29  
9 U.S.C. 1002).

10 (2) DEFINED BENEFIT PLAN.—The term “de-  
11 fined benefit plan” has the meaning given the term  
12 in such section of such Act (29 U.S.C. 1002).

13 (3) EMPLOYEE, EMPLOYER.—The terms “em-  
14 ployee” and “employer” have the meanings given  
15 such terms in section 2 of the National Labor Rela-  
16 tions Act (29 U.S.C. 152).

17 (4) LABOR ORGANIZATION.—The term “labor  
18 organization” has the meaning given the term in  
19 such section of such Act (29 U.S.C. 152).

20 (5) LABOR ORGANIZATION ELECTION.—The  
21 term “labor organization election” means any elec-  
22 tion described in section 9 of the National Labor Re-  
23 lations Act (29 U.S.C. 159), including an election  
24 for decertification described in subsection (e) of such  
25 section.

1           (6) PARTICIPANT.—The term “participant” has  
2           the meaning given the term in section 3 of the Em-  
3           ployee Retirement Income Security Act of 1974 (29  
4           U.S.C. 1002).

5           (b) REQUIREMENT TO PROVIDE CERTAIN INFORMA-  
6           TION REGARDING A DEFINED BENEFIT PLAN.—

7           (1) IN GENERAL.—A labor organization that is  
8           the representative of employees of an employer for  
9           purposes of collective bargaining in accordance with  
10          section 9(a) of the National Labor Relations Act (29  
11          U.S.C. 159(a)) during a labor organization election,  
12          or that would become such a representative of such  
13          employees after a labor organization election, shall—

14                 (A) not fewer than 3 days before the date  
15                 of such labor organization election, provide to  
16                 such employees the notice described in para-  
17                 graph (2) regarding any defined benefit plan  
18                 that is or would be available for enrollment by  
19                 the employees because of representation by the  
20                 labor organization for purposes of collective  
21                 bargaining; and

22                 (B) in the case of such a defined benefit  
23                 plan that has a percentage of plan liabilities de-  
24                 scribed in paragraph (2)(A)(i) that is less than  
25                 100 percent, provide to such employees access

1 to a financial expert (described in paragraph  
2 (3)) who is, for the 3 days immediately pre-  
3 ceding the date of such labor organization elec-  
4 tion, able to answer questions regarding such  
5 defined benefit plan.

6 (2) NOTICE.—

7 (A) IN GENERAL.—The notice described in  
8 this paragraph is a statement that, with respect  
9 to a defined benefit plan described in paragraph  
10 (1)(A), provides—

11 (i) the percentage of plan liabilities  
12 funded, calculated as the ratio between the  
13 value of the plan's assets and liabilities, as  
14 of the end of the most recently completed  
15 plan year;

16 (ii) in the case of an employee who is  
17 not a participant in a defined benefit plan  
18 described in paragraph (1)(A), the percent-  
19 age of each dollar of contribution by the  
20 employee, if the employee enrolls in such a  
21 plan, that—

22 (I) would be used to provide ben-  
23 efits to the employee (or a beneficiary  
24 of the employee); and

1 (II) would be used to provide  
2 benefits to participants of the defined  
3 benefit plan (or their beneficiaries)  
4 who are enrolled as of the date on  
5 which the labor organization election  
6 described in paragraph (1) occurs;  
7 and

8 (iii) in the case of a percentage of  
9 plan liabilities described in clause (i) that  
10 is less than 100 percent—

11 (I) the ratio between the esti-  
12 mated monthly benefit that a partici-  
13 pant or beneficiary would receive at  
14 normal retirement age under the de-  
15 fined benefit plan and the estimated  
16 monthly benefit that a participant or  
17 beneficiary would receive at normal  
18 retirement age under the defined ben-  
19 efit plan if such percentage of plan li-  
20 abilities was 100 percent; and

21 (II) the estimated amount of the  
22 monthly benefit amount that would be  
23 paid by the Pension Benefit Guaranty  
24 Corporation if the plan is terminated

1                   with insufficient assets to pay bene-  
2                   fits.

3                   (B) INFORMATION PROVIDED IN AN AN-  
4                   NUAL REPORT.—The notice described in sub-  
5                   paragraph (A) may quote, in plain language,  
6                   from the most recently filed annual report pro-  
7                   vided to the Secretary of Labor or the Pension  
8                   Benefit Guaranty Corporation under section  
9                   104 or 4065 of the Employee Retirement In-  
10                  come Security Act of 1974 (29 U.S.C. 1024,  
11                  1365) with respect to the defined benefit plan  
12                  described in paragraph (1)(A).

13                  (3) FINANCIAL EXPERT.—A financial expert  
14                  provided by a labor organization in accordance with  
15                  paragraph (1)(B)—

16                         (A) shall be—

17                                 (i) independent from the defined ben-  
18                                 efit plan described in paragraph (1)(A)  
19                                 and the labor organization; and

20                                 (ii) provided at no cost to the employ-  
21                                 ees;

22                         (B) may not be compensated using any as-  
23                         sets of the defined benefit plan.

24                  (4) AVAILABILITY OF MATERIALS AFTER ELEC-  
25                  TION.—

1           (A) IN GENERAL.—Not later than 30 days  
2           after a labor organization election described in  
3           paragraph (1), a labor organization shall pro-  
4           vide to the Office of Labor-Management Stand-  
5           ards all written materials (including the notice  
6           provided under paragraph (1)(A)), instructions,  
7           or handouts provided to employees with respect  
8           to the requirements of this Act.

9           (B) PUBLIC AVAILABILITY.—Not later  
10          than 30 days after receiving any written mate-  
11          rials, instructions, or handouts under subpara-  
12          graph (A), the Office of Labor-Management  
13          Standards shall make such materials, instruc-  
14          tions, or handouts publicly available on the  
15          website of the Office of Labor-Management  
16          Standards.

17       (c) ENFORCEMENT.—

18           (1) CRIMINAL PENALTIES FOR MISLEADING OR  
19       FALSE STATEMENTS.—

20           (A) OFFENSE.—It shall be unlawful for  
21           any person to lie to or mislead an employee in  
22           any notice provided under subsection (b)(1)(A)  
23           or with respect to any answers provided under  
24           subsection (b)(1)(B).

1           (B) PENALTY.—Any person who violates  
2           subparagraph (A) shall be fined under title 18,  
3           United States Code, imprisoned for not more  
4           than 5 years, or both.

5           (2) PRIVATE RIGHT OF ACTION.—Any employee  
6           who is adversely affected by an alleged violation of  
7           subsection (b) may commence a civil action against  
8           any person that violates such section in any court of  
9           competent jurisdiction for actual damages. The court  
10          may award costs and expenses, including attorney’s  
11          fees, to an employee in a prevailing action under this  
12          paragraph.

13          (3) REFERRAL.—If the Assistant Secretary of  
14          Labor for Employee Benefits Security obtains evi-  
15          dence that any person has engaged in conduct that  
16          may constitute a violation of paragraph (1)(A), the  
17          Assistant Secretary shall—

18                 (A) refer the matter to the Attorney Gen-  
19                 eral for prosecution under such paragraph; and

20                 (B) provide such evidence to the National  
21                 Labor Relations Board.

22          (4) ENFORCEMENT BY THE NLRB.—Section 9  
23          of the National Labor Relations Act (29 U.S.C.  
24          159) is amended by adding at the end the following:



1           “(f) In any case in which the Board determines that  
2 the results of an election under this section were influ-  
3 enced by conduct that may constitute a violation of section  
4 2(c)(1)(A) of the Making All Fund Information Available  
5 Act or that a labor organization that is, or would become,  
6 the representative of employees after such an election vio-  
7 lated section 2(b)(1) of such Act—

8                   “(1) the election shall be invalid;

9                   “(2) the Board shall set aside the results of  
10 such election; and

11                   “(3) a new election may not be held unless the  
12 Assistant Secretary of Labor for Employee Benefits  
13 Security determines that the labor organization has  
14 fulfilled the requirements of section 2(b)(1) of such  
15 Act.”.