

118TH CONGRESS
2D SESSION

S. 4328

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.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2024

Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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.”.

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