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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. ______

To amend the Employment Retirement Income Security Act of 1974 to establish additional requirements relating to claims and appeals.

IN THE HOUSE OF REPRESENTATIVES

Ms. LEE of Pennsylvania introduced the following bill; which was referred to the Committee on ______________________________

A BILL

To amend the Employment Retirement Income Security Act of 1974 to establish additional requirements relating to claims and appeals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Appeal Rights Enforcement Act".

SEC. 2. ENFORCEMENT OF CLAIMS PROCEDURE AND EXTERNAL REVIEW REQUIREMENTS.

(a) EQUITABLE RELIEF AND PENALTIES.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended—

(1) in paragraph (5), by inserting before the semicolon the following: ‘‘or the terms of the plan’’; and

(2) in paragraph (6), to read as follows:

‘‘(6) by the Secretary to collect any civil penalty under this title;’’.

(b) PENALTY FOR CLAIMS PROCEDURE AND EXTERNAL REVIEW REQUIREMENT VIOLATIONS.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following:

‘‘(14)(A) GLOBAL AND INDIVIDUAL VIOLATIONS.—

‘‘(i) IN GENERAL.—The Secretary may assess a civil penalty under subparagraph (B) against any person or entity (other than a plan) that materially causes (including through failure to perform required actions) a global violation described in clause (ii) or individual violation described in clause (iii).

"(ii) GLOBAL VIOLATION.—It shall be deemed a global violation for a plan to fail to have—

"(I) a claims procedure that complies (in writing or in operation) with—

"(aa) the terms of the plan; or

"(bb) section 503 (including the requirements of section 2560.503–1 of title 29, Code of Federal Regulations, as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act); or

"(II) an external review process that complies (in writing or in operation) with—

"(aa) the terms of the plan; or

"(bb) the requirements of section 2590.715–2719 of title 29, Code of Federal Regulations, as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act.

"(iii) INDIVIDUAL VIOLATION.—It shall be deemed an individual violation for a plan to fail to—

"(I) provide a required notification or disclosure to a participant or beneficiary that includes all required content;

"(II) respond to or decide a participant's or beneficiary's claim, appeal or request for external review in a timely manner; or

"(III) respond to a participant's or beneficiary's communication or request for information with the requested information to which the participant or beneficiary is legally entitled;

in a manner that violates the plan's written claims procedure, section 503 (including the requirements of section 2560.503-1 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act), or the requirements of section 2590.715–2719 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act).

"(iv) SEPARATE VIOLATIONS.— Each individual violation with respect to each participant or beneficiary shall be treated as a separate violation.

"(B) PENALTY AMOUNTS.—

"(i) GLOBAL VIOLATION.—The amount of the penalty imposed under this paragraph for a global violation shall be no greater than the product of—

"(I) for each plan year in which such a violation occurs, $1,000, multiplied by

"(II) the number of participants and beneficiaries in the plan at the start of each such plan year.

"(ii) ENHANCED PENALTY FOR CERTAIN GLOBAL VIOLATIONS.—A penalty for a global violation may be trebled if such violation is not corrected within 90 days after the Secretary gives written notice of the Secretary's intent to assess such penalty to the plan administrator and each person or entity that the Secretary intends to hold liable for the penalty.

"(iii) INDIVIDUAL VIOLATION.—The amount of the penalty imposed under this paragraph for an individual violation shall be no greater than $1,000 for each day beginning on the date on which—

"(I) a participant or beneficiary (or such participant or beneficiary's authorized representative) gives written notice of the violation to the administrator and the Secretary of Labor; or

"(II) if the Secretary discovers an individual violation during the course of an investigation pursuant to section 504, the Secretary provides written notice to the administrator of such violation.

and ending on the date on which the violation is corrected.

"(iv) ENHANCED PENALTY FOR CERTAIN INDIVIDUAL VIOLATIONS.—The civil penalty described in clause (iii) may be trebled with respect to each separate and distinct violation of subparagraph (A)(iii) that is not corrected within the following periods beginning on the date on which the plan administrator receives notice described in subclauses (I) or (II) of clause (iii):

"(I) 90-day period with respect to a violation pertaining to a plan that is not a group health plan.

"(II) 30-day period with respect to a violation pertaining to a group health plan.

"(III) 3-day period with respect to a violation of a claim involving urgent care as defined in section 2560.503–1(m)(1) of title 29, Code of Federal Regulations (as in effect as of the date of enactment of the Consumer Appeal Rights Enforcement Act).

"(v) PATTERN OR PRACTICE OF INDIVIDUAL VIOLATIONS.—In addition to the penalties under clauses (iii) and (iv), in the case that the Secretary determines that a person or entity has engaged in a pattern or practice of individual violations, the Secretary—

"(I) shall provide notice to the plan of the intent to assess a penalty with respect to each individual violation that occurred within the 3-year period ending on the date that such notice was provided, unless each such individual violation has been corrected;

"(II) with respect to each individual violation, shall assess a penalty not less than $100 and not greater than $1,000 for each day each such violation during such period was not corrected following receipt of the notice by the Secretary; and

"(III) may waive some or all of the penalties if the plan corrects the violations within 120 days of receipt of the notice required under subclause (I).

"(C) JOINT AND SEVERAL LIABILITY.—Any person or entity that materially causes (including through failure to perform required actions) a violation described in subparagraph (A) shall be jointly and severally liable for the payment of the appropriate penalty described in subparagraph (B).".

(c) ADDITIONAL PENALTY.—Section 502(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(g)) is amended by adding at the end the following:

"(3)(A) In any action brought under subsection (a)(5) with respect to a violation of section 503 (including a violation of section 2560.503–1 of title 29, Code of Federal Regulations, as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act) or a violation of section 2590.715–2719 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the Consumer Appeal Rights Enforcement Act), a court may impose against any defendant (other than a plan), as additional relief, the penalties described under subsection (c)(14).

"(B) A court may not impose such penalties if the Secretary has previously assessed a penalty under subsection (c)(14) against such defendant for the same violation.

"(C) The Secretary may not assess any penalty under subsection (c)(14) against a person or entity if, in an action brought under subsection (a)(5), a court has imposed a penalty against such person or entity for the same violation.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply beginning on the date that is 90 days after the date of enactment of this Act.

SEC. 3. DIRECT ENFORCEMENT AUTHORITY.

(a) IN GENERAL.—Section 502(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(b)(3)) is repealed.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply beginning on the date that is 90 days after the date of enactment of this Act.