

118TH CONGRESS  
1ST SESSION

# S. 523

To amend the Employee Retirement Income Security Act of 1974 to permit retirement plans to consider certain factors in investment decisions.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2023

Ms. SMITH (for herself, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mr. DURBIN, Ms. WARREN, Mr. SANDERS, Mr. WYDEN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to permit retirement plans to consider certain factors in investment decisions.

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 “Freedom to Invest in  
5 a Sustainable Future Act”.

6 **SEC. 2. ERISA AMENDMENTS.**

7 Subsection (a) of section 404 of the Employee Retire-  
8 ment Income Security Act of 1974 (29 U.S.C. 1104) is

1 amended by adding at the end the following new para-  
2 graph:

3 “(3)(A) Provided that a fiduciary discharges the fidu-  
4 ciary’s duties with respect to a plan in a manner otherwise  
5 consistent with this subsection, a fiduciary may—

6 “(i) consider environmental, social, governance,  
7 or similar factors, in connection with carrying out an  
8 investment decision, strategy, or objective, or other  
9 fiduciary act; and

10 “(ii) consider collateral environmental, social,  
11 governance, or similar factors as tie-breakers when  
12 competing investments can reasonably be expected to  
13 serve the plan’s economic interests equally well with  
14 respect to expected return and risk over the appro-  
15 priate time horizon.

16 “(B) In a case described in clause (i) or (ii) of sub-  
17 paragraph (A), a fiduciary shall not be required to main-  
18 tain any greater documentation, substantiation, or other  
19 justification of the fiduciary’s actions relating to such fi-  
20 duciary act than is otherwise required under this part.

21 “(C) Nothing in this part shall preclude an invest-  
22 ment selected in accordance with clause (i) or (ii) of sub-  
23 paragraph (A) from being treated as a default investment  
24 or a component of such a default investment (as described  
25 in regulations issued by the Secretary under subsection

1 (c)(5)(A), if such investment would otherwise qualify for  
2 such treatment under such regulations.”.

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