

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

S. 2403

To amend the Employee Retirement Income Security Act of 1974 to provide a clear definition of adequate consideration for certain closely held stock, 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 IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. MARSHALL (for himself and Mr.
KAINE)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retire through Owner-
5 ship Act”.

6 **SEC. 2. AMENDING ADEQUATE CONSIDERATION DEFINI-**
7 **TION.**

8 (a) IN GENERAL.—Section 3(18) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1002(18)) is amended—

1 (1) by redesignating clauses (i) and (ii) as sub-
2 clauses (I) and (II), respectively;

3 (2) by redesignating subparagraphs (A) and
4 (B) as clauses (i) and (ii), respectively;

5 (3) by inserting “(A)” before “The term”; and

6 (4) by adding at the end the following:

7 “(B)(i) For purposes of clause (ii) of subpara-
8 graph (A), a fiduciary of an employee stock owner-
9 ship plan as defined in section 407(d)(6) may make
10 a good faith reliance on a valuation provided by an
11 independent valuation expert or business appraiser
12 that has relied upon the principles and methodolo-
13 gies set forth in Internal Revenue Service Revenue
14 Ruling 59–60 (as amplified and modified by the In-
15 ternal Revenue Service from time to time) in deter-
16 mining the fair market value of an asset described
17 in such clause.

18 “(ii) Clause (i) shall not be interpreted to—

19 “(I) preclude the Secretary from promul-
20 gating, in accordance with section 553 of title
21 5, United States Code, any regulation inter-
22 preting such clause;

23 “(II) expand the regulatory authority of
24 the Secretary with respect to the term ‘ade-
25 quate consideration’ beyond such authority

1 available to the Secretary on the day before the
2 date of enactment of the Retire through Owner-
3 ship Act; or

4 “(III) modify a fiduciary’s obligations
5 under section 404.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall apply with respect to determinations
8 described in section 3(18)(B) of the Employee Retirement
9 Income Security Act of 1974 (29 U.S.C. 1002(18)(B)) (as
10 added by such subsection) that are made on or after the
11 date of enactment of this Act.