IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duties regarding asset classes.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retirement Savings Modernization Act”.

SEC. 2. FIDUCIARY DUTIES REGARDING ASSET CLASSES UNDER ERISA.

Section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) is amended by adding at the end the following:
“(3)(A) A fiduciary shall not be liable for a breach of fiduciary duties under this section solely for—

“(i) recommending, selecting, or monitoring any covered investment as an investment option for a plan; or

“(ii) causing the plan to make any payment or incur any expense, associated with such covered investment.

“(B) For purposes of subparagraph (A):

“(i) The term ‘covered investment’—

“(I) means any direct or indirect investment; and

“(II) includes, but is not limited to, any of the following:

“(aa) Commodities.

“(bb) Debt, including public and private credit.

“(cc) Digital assets.

“(dd) Hedge funds.

“(ee) Infrastructure.

“(ff) Insured products and annuities.

“(gg) Private equity.

“(hh) Real assets.

“(ii) Real estate or real estate-related securities.
“(jj) Securities that are listed on a national securities exchange.

“(kk) Venture capital.

“(ll) An investment in any fund, commingled account, or pooled investment vehicle that invests in any investment, including but not limited to an investment described in items (aa) through (kk).

“(ii) The terms ‘exchange’ and ‘security’ have the meanings given the terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).


“(C) Nothing in this paragraph shall be construed as providing an exemption or safe harbor from the requirements of paragraph (1).”.