

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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Ms. SMITH introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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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  
9 amended by adding at the end the following new para-  
10 graph:

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

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

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

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

19           “(C) Nothing in this part shall preclude an invest-  
20 ment selected in accordance with clause (i) or (ii) of sub-  
21 paragraph (A) from being treated as a default investment  
22 or a component of such a default investment (as described  
23 in regulations issued by the Secretary under subsection  
24 (c)(5)(A)), if such investment would otherwise qualify for  
25 such treatment under such regulations.”.