

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1102
OFFERED BY MR. BALLENGER**

Insert at the end of subtitle B of title VI the following new section:

1 **SEC. 620. ELIMINATION OF ERISA DOUBLE JEOPARDY.**

2 (a) **ELIMINATION OF SECOND LAWSUITS BY THE**
3 **SECRETARY.**—Section 502(h) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1132(h)) is
5 amended—

6 (1) by inserting “(1)” after “(h)”, and

7 (2) by adding at the end the following:

8 “(2) In any case in which—

9 “(A) a complaint in an action brought against
10 a person under subsection (a)(2) is served in accord-
11 ance with paragraph (1), and

12 “(B) the action is maintained as a class action
13 or derivative action under the Federal Rules of Civil
14 Procedure,

15 “(C) the action is resolved by a court-approved
16 settlement agreement,

17 “(D) the complaint is served upon the Secretary
18 at least 90 days prior to final court approval of the
19 settlement agreement, and

1 “(E) the Secretary receives a fully executed
2 copy of the settlement agreement within the time es-
3 tablished by the court for notifying the plan’s par-
4 ticipants of the proposed compromise pursuant to
5 Rule 23 or 23.1 of the Federal Rules of Civil Proce-
6 dure,

7 the Secretary shall be barred from litigating any claim
8 against such person under subsection (a)(2) that was, or
9 could have been, brought in that action with respect to
10 the same plan. Notwithstanding this paragraph, the Sec-
11 retary shall not be barred from litigating any claim
12 against such person under subsection (a)(2) if the Sec-
13 retary filed a complaint under subsection (a)(2) prior to
14 the final court approval of the settlement agreement.”

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section are effective with respect to all actions or
17 claims commenced by the Secretary that are pending on
18 or after the date of the enactment of this Act.