

Date:

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HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

132ND LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 141, L.D. 355, “An Act to Advance the Maine Retirement Savings Program”

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under current law, covered employers are subject to financial penalties for the failure to enroll their employees in the Maine Retirement Savings Program starting July 1, 2025; and

Whereas, this legislation makes the establishment and enforcement of these penalties against covered employers discretionary and delays the dates by which employers may begin to be subject to financial penalties on an annually increasing basis by one year; and

Whereas, this legislation must take effect prior to July 1, 2025 so covered employers are not subject to financial penalties; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out all of sections 2 to 5 and inserting the following:

'Sec. 2. 5 MRSA §173, sub-§2, ¶A-1 is enacted to read:

A-1. Allow a covered employer to register a covered employee in the program at any time between the date of hire and the 120th day of employment;

Sec. 3. 5 MRSA §173, sub-§2, ¶B, as enacted by PL 2021, c. 356, §1, is amended to read:

B. Notwithstanding any provision of state law related to payroll deduction to the contrary, require each covered employer to offer its covered employees the choice

whether or not to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out. A covered employee who is not a participant because that employee has opted out ~~will be automatically reenrolled with~~ may be provided the opportunity to ~~opt out again~~ reenroll at regular or ad hoc intervals determined by the board in its discretion, but not more frequently than annually;

Sec. 4. 5 MRSA §173, sub-§3, as repealed and replaced by PL 2023, c. 167, §6, is amended to read:

3. Implementation. The board may implement the program in stages, which may include a pilot program and phasing in the program based on the size number of employers, a covered employer's employees or other factors. A covered employer shall offer the program to its covered employees no later than December 31, 2024. An employer that becomes a covered employer after the start date of the program shall offer the program to covered employees within the time frame established by the board.

A covered employer with fewer than 5 employees is not required to offer the program to its covered employees but may offer the program to its employees at the option of the employer and in accordance with rules established by the board.

Sec. 5. 5 MRSA §173, sub-§4, as amended by PL 2023, c. 167, §§7 and 8, is further amended to read:

4. Penalties. The board ~~shall~~ may establish and enforce penalties in accordance with this subsection.

A. If a covered employer fails to enroll a covered employee without reasonable cause, the covered employer is subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the program or had not opted out of participation in the program and, for each calendar year beginning after the date on which a penalty has been assessed with respect to a covered employee, is subject to a penalty for any portion of that calendar year during which the covered employee continues to be unenrolled without opting out of participation in the program. The amount of any penalty imposed by the board on a covered employer for the failure to enroll a covered employee without reasonable cause may not exceed the amounts set forth in this paragraph and is determined as follows:

(1) ~~From Starting July 1, 2025 to June 30, 2026, in the first year of the failure to enroll,~~ the maximum penalty per covered employee is \$20;

(2) ~~From Starting July 1, 2026 to June 30, 2027, in the 2nd year of the failure to enroll,~~ the maximum penalty per covered employee is \$50; and

(4) On or after July 1, ~~2027~~ 2028, in the 3rd year of the failure to enroll, the maximum penalty per covered employee is \$100.

B. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee for which it is established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirements of this chapter.

C. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee if the covered employer exercised reasonable diligence to meet the

1 requirements of this chapter and the covered employer complies with those
2 requirements with respect to each covered employee by the end of the 90-day period
3 beginning on the first date the covered employer knew, or exercising reasonable
4 diligence would have known, that the failure existed. The covered employer is deemed
5 to have known that the failure existed after receiving 3 communications from the
6 program.

7 D. In the case of a failure that is due to reasonable cause and not to willful neglect, all
8 or part of the penalty may be waived to the extent that the payment of the penalty would
9 be excessive or otherwise inequitable relative to the failure involved.

10 E. If a covered employer fails to remit a payroll deduction contribution to the program
11 on the earliest date the amount withheld from the covered employee's compensation
12 can reasonably be segregated from the covered employer's assets, but not later than the
13 15th day of the month following the month in which the covered employee's
14 contribution amounts are withheld from the covered employee's paycheck, the failure
15 to remit the contribution on a timely basis is subject to the same penalties as apply to
16 employer misappropriation of employee wage withholdings and to the penalties
17 specified in paragraph A.

18 F. The Attorney General shall represent the board in enforcement and collection of
19 penalties.'

20 Amend the bill by adding before the summary the following:

21 **'Emergency clause.** In view of the emergency cited in the preamble, this legislation
22 takes effect when approved.'

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
24 number to read consecutively.

25 SUMMARY

26 This amendment makes the following changes to the bill.

27 1. It removes the language making it mandatory for employers of 3 or more employees
28 to offer the Maine Retirement Savings Program and maintains the requirement in current
29 law applying to covered employers with 5 or more employees.

30 2. It codifies language from rules that allow an employer to enroll a covered employee
31 at any time between the date of hire and the 120th date of employment.

32 3. It removes the requirement that an employer must automatically reenroll an
33 employee that has opted out of the program on an annual basis and instead allows an
34 employee to be provided the opportunity to be reenrolled.

35 4. It makes the establishment and enforcement of penalties against employers that fail
36 to enroll their employees in the program discretionary rather than mandatory and specifies
37 that the amount of any penalty may not exceed the amount set forth in current law. It delays
38 the starting dates that employers may be subject to financial penalties for failing to enroll
39 their employees by one year.

FISCAL NOTE REQUIRED
(See attached)