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Legislative Document

No. 1318

H.P. 896

House of Representatives, April 14, 2015

**An Act To Promote Individual Private Savings Accounts through a
Public-private Partnership**

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BECK of Waterville.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 7-A** is enacted to read:

3 **CHAPTER 7-A**

4 **MAINE SMALL BUSINESS RETIREMENT MARKETPLACE**

5 **§171. Short title**

6 This Act may be known and cited as "the Maine Small Business Retirement
7 Marketplace Act."

8 **§172. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 **1. Employee.** "Employee" means any individual who is 18 years of age or older
12 who is employed by an employer and who has wages that are allocable to the State during
13 a calendar year.

14 **2. Employer.** "Employer" means a person or entity engaged in a business, industry,
15 profession, trade or other enterprise in the State, whether for profit or not for profit, that:

16 A. Has at no time during the previous calendar year employed fewer than 10
17 employees in the State;

18 B. Has been in business at least 2 years; and

19 C. Has not offered a qualified retirement plan, including, but not limited to, a plan
20 qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b),
21 Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code of
22 1986 in the preceding 2 years.

23 **3. Enrollee.** "Enrollee" means any employee who is enrolled in the program.

24 **4. Fund.** "Fund" means the Maine Small Business Marketplace Fund.

25 **5. Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue
26 Code of 1986, or any successor law, in effect for the calendar year.

27 **6. Individual retirement account.** "Individual retirement account" means a Roth
28 individual retirement account under Section 408A of the Internal Revenue Code.

29 **7. Marketplace.** "Marketplace" means the Maine Small Business Retirement
30 Marketplace.

31 **8. Participating employer.** "Participating employer" means an employer or small
32 employer that provides a payroll deposit retirement savings arrangement as provided for
33 by this chapter for its employees who are enrollees in the program.

1 **9. Payroll deposit retirement savings arrangement.** "Payroll deposit retirement
2 savings arrangement" means an arrangement by which a participating employer allows
3 enrollees to remit payroll deduction contributions to the program.

4 **10. Small employer.** "Small employer" means a person or entity engaged in a
5 business, industry, profession, trade or other enterprise in the State, whether for profit or
6 not for profit, that:

7 A. Employed fewer than 10 employees at any one time in the State throughout the
8 previous calendar year; or

9 B. Has been in business less than 2 years.

10 **11. Wages.** "Wages" means any compensation within the meaning of Section
11 219(f)(1) of the Internal Revenue Code that is received by an enrollee from a
12 participating employer during the calendar year.

13 **§173. Maine Small Business Retirement Marketplace established**

14 The Maine Small Business Retirement Marketplace is established as a retirement
15 savings program in the form of an automatic enrollment payroll deduction individual
16 retirement account for the purpose of promoting greater retirement savings for private-
17 sector employees in a convenient, low-cost and portable manner.

18 **1. Payroll deposit retirement arrangement.** Each employer shall establish a
19 payroll deposit retirement savings arrangement to allow each employee to participate in
20 the marketplace. A small employer may, but is not required to, provide a payroll
21 deduction retirement savings arrangement for each employee who elects to participate in
22 the marketplace.

23 **2. Automatic enrollment; opt out.** A participating employer shall automatically
24 enroll in the marketplace each employee who has not opted out of participation in the
25 program and shall provide a payroll deduction retirement savings arrangement for the
26 employee and deposit, on behalf of the employee, these funds into the marketplace.

27 **3. Enrollee contributions.** An enrollee may select a contribution level to contribute
28 into the fund. This contribution level may be expressed as a percentage of wages or as a
29 dollar amount up to the deductible amount for the enrollee's taxable year under Section
30 219(b)(1)(A) of the Internal Revenue Code. An enrollee may change the contribution
31 level at any time, subject to rules adopted by the treasurer. If an enrollee fails to select a
32 contribution level, the enrollee shall contribute 3% of the enrollee's wages to the
33 marketplace as long as those contributions do not cause the enrollee's total contributions
34 to an individual retirement account for the year to exceed the deductible amount for the
35 enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.

36 **4. Selection of investment.** An enrollee may select an investment option from the
37 permitted investment options available under section 175. An enrollee may change this
38 investment option at any time, subject to rules adopted by the treasurer. In the event that
39 an enrollee fails to select an investment option, that enrollee is placed in the investment
40 option selected by the treasurer as the default.

1 **5. Open enrollment.** Following initial implementation of the marketplace pursuant
2 to this section, at least once every year a participating employer shall designate an open
3 enrollment period during which employees who previously opted out of the marketplace
4 may enroll in the marketplace. An employee who opts out of the marketplace who
5 subsequently wants to participate through the participating employer's payroll deposit
6 retirement savings arrangement may enroll only during the participating employer's
7 designated open enrollment period or, if permitted by the participating employer, at an
8 earlier time.

9 **6. Employer-sponsored plans.** An employer retains the option at any time to set up
10 any type of employer-sponsored retirement plan or to offer an automatic enrollment
11 payroll deduction individual retirement account, instead of having a payroll deposit
12 retirement savings arrangement to allow employee participation in the marketplace.

13 **7. Termination.** An employee may terminate the employee's participation in the
14 marketplace at any time in a manner prescribed by the treasurer.

15 **§174. Operation**

16 **1. Duties of the treasurer.** In addition to any other duties and responsibilities set
17 forth in this chapter, the treasurer shall:

18 A. Cause the marketplace to be designed, established and operated in a manner that:

19 (1) Maintains best practices for retirement savings vehicles;

20 (2) Maximizes participation, savings and sound investment practices;

21 (3) Maximizes simplicity, including ease of administration for participating
22 employers and enrollees;

23 (4) Provides an efficient product to enrollees by pooling investment funds;

24 (5) Ensures the portability of benefits; and

25 (6) Provides for the deaccumulation of enrollee assets in a manner that
26 maximizes financial security in retirement;

27 B. Appoint a trustee to the fund in compliance with Section 408 of the Internal
28 Revenue Code;

29 C. Explore and establish investment options in accordance with section 175 that
30 offer employees returns on contributions and the conversion of individual retirement
31 savings account balances to secure retirement income without incurring debt or
32 liabilities to the State;

33 D. Establish the process by which interest, investment earnings and investment
34 losses are allocated to individual program accounts on a pro rata basis and are
35 computed at the interest rate on the balance of an individual's account;

36 E. Make and enter into contracts necessary for the administration of the marketplace
37 and fund, including, but not limited to, retaining and contracting with investment
38 managers, private financial institutions, other financial and service providers.

- 1 consultants, actuaries, counsel, auditors, 3rd-party administrators and other
2 professionals as necessary;
- 3 F. Conduct a review of the performance of any investment vendors every 4 years,
4 including, but not limited to, a review of returns, fees and customer service. A copy
5 of reviews conducted under this paragraph must be posted to the marketplace's
6 publicly accessible website;
- 7 G. Determine the number and duties of staff members needed to administer the
8 marketplace and assemble such a staff, including, as needed, employing staff and
9 appointing a marketplace administrator;
- 10 H. Cause funds in the fund to be held and invested as pooled investments described
11 in section 175 with a view to achieving cost savings through efficiencies and
12 economies of scale;
- 13 I. Evaluate and establish the process by which an enrollee is able to contribute a
14 portion of the enrollee's wages to the marketplace for automatic deposit of those
15 contributions and the process by which the participating employer provides a payroll
16 deposit retirement savings arrangement to forward those contributions and related
17 information to the marketplace, including, but not limited to, contracting with
18 financial service companies and 3rd-party administrators with the capability to
19 receive and process employee information and contributions for payroll deposit
20 retirement savings arrangements or similar arrangements;
- 21 J. Design and establish the process for enrollment under section 173, including the
22 process by which an employee can opt not to participate in the marketplace, select a
23 contribution level, select an investment option, and terminate participation in the
24 marketplace;
- 25 K. Evaluate and establish the process by which an employee may voluntarily enroll
26 in and make contributions to the marketplace;
- 27 L. Accept any grants, appropriations or other funds from the State, any unit of
28 federal, state or local government, or any other person, firm, partnership or
29 corporation solely for deposit into the fund, whether for investment or administrative
30 purposes;
- 31 M. Evaluate the need for, and procure as needed, insurance against any loss in
32 connection with the property, assets or activities of the marketplace;
- 33 N. Make provisions for the payment of administrative costs and expenses for the
34 creation, management and operation of the marketplace. Subject to appropriations,
35 the State may pay administrative costs associated with the creation and management
36 of the marketplace until sufficient assets are available in the fund for that purpose.
37 Thereafter, all administrative costs of the fund, including repayment of any start-up
38 funds provided by the State, are paid only out of funds on deposit in the fund;
- 39 O. Allocate administrative fees to individual retirement accounts in the marketplace
40 on a pro rata basis;
- 41 P. Set minimum and maximum contribution levels in accordance with limits
42 established for individual retirement accounts by the Internal Revenue Code;

1 Q. Facilitate education and outreach to employers and employees;

2 R. Facilitate compliance by the marketplace with all applicable requirements for the
3 program under the Internal Revenue Code, including tax qualification requirements
4 or any other applicable law and accounting requirements; and

5 S. Exercise any and all other powers reasonably necessary for the effectuation of the
6 purposes, objectives and provisions of this chapter pertaining to the marketplace.

7 **2. Risk management.** The treasurer shall annually prepare and adopt a written
8 statement of investment policy that includes a risk management and oversight program.
9 This investment policy must prohibit the treasurer, marketplace and fund from borrowing
10 for investment purposes. The risk management and oversight program must be designed
11 to ensure that an effective risk management system is in place to monitor the risk levels
12 of the program and fund portfolio, to ensure that the risks taken are prudent and properly
13 managed, to provide an integrated process for overall risk management and to assess
14 investment returns as well as risk to determine if the risks taken are adequately
15 compensated compared to applicable performance benchmarks and standards. The
16 treasurer shall consider the statement of investment policy and any changes in the
17 investment policy at a public hearing.

18 **§175. Investment; requirements**

19 **1. Investment firms.** The treasurer shall engage, after an open bid process, an
20 investment manager or managers to invest the fund and any other assets of the
21 marketplace. Funds in the fund may be invested or reinvested by the Treasurer of State or
22 private investment managers as selected by the treasurer. In selecting the investment
23 manager or managers the treasurer shall take into consideration and give weight to the
24 investment manager's fees and charges in order to reduce the marketplace's administrative
25 expenses.

26 **2. Compliance.** The investment manager or managers shall comply with all
27 applicable federal and state laws, rules and regulations, as well as rules, policies and
28 guidelines adopted by the treasurer with respect to the marketplace and the investment of
29 the fund, including, but not limited to, the investment policy adopted under section 174,
30 subsection 2.

31 **3. Reports.** The investment manager or managers shall provide such reports as the
32 treasurer considers necessary for the treasurer to oversee each investment manager's
33 performance and the performance of the fund.

34 **4. Replacement of default option.** If the board elects to establish a secure return
35 fund, the board shall then determine whether such option shall replace the target date or
36 life-cycle fund as the default investment option for enrollees who do not elect an
37 investment option. In making such determination, the board shall consider the cost, risk
38 profile, benefit level, and ease of enrollment in the secure return fund. The board may at
39 any time thereafter revisit this question and, based upon an analysis of these criteria,
40 establish either the secure return fund or the life-cycle fund as the default for enrollees
41 who do not elect an investment option.

1 **§176. Benefits**

2 Interest, investment earnings and investment losses are allocated to individual
3 accounts as established by the treasurer. An enrollee's retirement savings benefit under
4 the marketplace is an amount equal to the balance in the enrollee's marketplace account
5 on the date the retirement savings benefit becomes payable. The State has no liability for
6 the payment of any benefit to any participant in the marketplace.

7 **§177. Employer and employee information packets and disclosure forms**

8 **1. Employer information.** The marketplace shall design and disseminate to all
9 employers an employer information packet and an employee information packet, which
10 includes background information on the marketplace and appropriate disclosures for
11 employees as required by this section.

12 **2. Employee information.** The employee information packet must include a
13 disclosure form. The disclosure form must explain, at a minimum, all of the following:

14 A. The benefits and risks associated with making contributions to the marketplace;

15 B. The mechanics of how to make contributions to the marketplace;

16 C. How to opt out of the marketplace;

17 D. How to participate in the marketplace with a level of employee contributions
18 other than 3%;

19 E. The process for withdrawal of retirement savings;

20 F. How to obtain additional information about the marketplace;

21 G. That employees seeking financial advice should contact financial advisors, that
22 participating employers are not in a position to provide financial advice, and that
23 participating employers are not liable for decisions employees make pursuant to this
24 chapter;

25 H. That the marketplace is not an employer-sponsored retirement plan; and

26 I. That the marketplace fund is not guaranteed by the State.

27 **3. Employee decision required.** The employee information packet must also
28 include a form for an employee to note a decision to opt out of participation in the
29 marketplace or elect to participate with a level of employee contributions other than 3%.

30 **4. Distribution of information.** Participating employers shall supply the employee
31 information packet to employees upon launch of the marketplace. Participating employers
32 shall supply the employee information packet to new employees at the time of hiring, and
33 new employees may opt out of participation in the marketplace or elect to participate with
34 a level of employee contributions other than 3% at that time.

1 **§178. Payments**

2 Employee contributions deducted by the participating employer through payroll
3 deduction must be paid by the participating employer to the fund using one or more
4 payroll deposit retirement savings arrangements established by the treasurer, either:

5 **1. Monthly contributions.** On or before the last day of the month following the
6 month in which the compensation otherwise would have been payable to the employee in
7 cash; or

8 **2. Other contributions.** Before a later deadline prescribed by the treasurer for
9 making such payments, but not later than the due date for the deposit of tax required to be
10 deducted and withheld relating to collection of income tax at source on wages or for the
11 deposit of tax required to be paid under the unemployment insurance system for the
12 payroll period to which such payments relate.

13 **§179. Maine Small Business Marketplace Fund**

14 **1. Trust fund.** The Maine Small Business Marketplace Fund is established as a trust
15 outside of the State Treasury. The fund must include the individual retirement accounts of
16 enrollees, which must be accounted for as individual accounts. Funds in the fund consist
17 of funds received from enrollees and participating employers pursuant to automatic
18 payroll deductions and contributions to savings made under this chapter. The fund must
19 be operated in a manner determined by the treasurer, as long as the fund is operated so
20 that the accounts of enrollees established under the marketplace meet the requirements for
21 individual retirement accounts under the Internal Revenue Code.

22 **2. Funds not property of State.** The amounts deposited in the fund do not
23 constitute property of the State, and the fund may not be construed to be a department,
24 institution or agency of the State. Amounts on deposit in the fund may not be
25 commingled with state funds and the State has no claim to or against, or interest in, such
26 funds.

27 **§180. Maine Small Business Marketplace Enterprise Fund**

28 The Maine Small Business Marketplace Enterprise Fund is established as an
29 enterprise fund. The treasurer shall use funds deposited in the enterprise fund to pay for
30 administrative expenses incurred in the performance of its duties under this chapter. The
31 enterprise fund may receive grants or other funds designated for administrative expenses
32 from the State or a unit of federal or local government or any other person, firm,
33 partnership or corporation. Interest earnings that are attributable to funds in the enterprise
34 fund must be deposited into the enterprise fund. The enterprise fund may not lapse, but
35 must be carried forward to carry out the purposes of this chapter.

36 **§181. Duty and liability of the State**

37 **1. No liability.** The State has no duty or liability to any party for the payment of
38 retirement savings benefits accrued by an enrollee under the marketplace. Financial
39 liability for the payment of retirement savings benefits in excess of funds available under

1 the marketplace must be borne solely by the entities with whom the board contracts to
2 provide insurance to protect the value of the marketplace.

3 **2. Losses or deficiencies.** A state board, commission or agency or any officer,
4 employee or member of a state board, commission or agency is not liable for any loss or
5 deficiency resulting from particular investments selected under this chapter.

6 **§182. Duty and liability of participating employers**

7 **1. Employee participation.** A participating employer does not have any liability for
8 an employee's decision to participate in or opt out of the marketplace or for the
9 investment decisions of the treasurer or of any enrollee.

10 **2. Employer not a fiduciary.** A participating employer may not be a fiduciary, or
11 considered to be a fiduciary, of the marketplace. A participating employer does not bear
12 responsibility for the administration, investment or investment performance of the
13 marketplace. A participating employer may not be liable with regard to investment
14 returns, marketplace design and benefits paid to marketplace participants.

15 **§183. Audit and reports**

16 **1. Audited financial statement.** The treasurer shall annually submit an audited
17 financial statement, prepared in accordance with generally accepted accounting
18 principles, on the operations of the marketplace during each calendar year by July 1st of
19 the following year to the Governor, the State Controller and the Legislature.

20 **2. Annual report.** The treasurer shall also submit a report that must include, but is
21 not limited to, a summary of the benefits provided by the marketplace, including the
22 number of enrollees in the marketplace, the percentage and amounts of investment
23 options and rates of return, and other information that is relevant to make a full, fair and
24 effective disclosure of the operations of the marketplace and the fund. The annual report
25 must be made by an independent certified public accountant and must include, but is not
26 limited to, direct and indirect costs attributable to the use of outside consultants,
27 independent contractors and any other persons who are not state employees for the
28 administration of the marketplace.

29 **3. Reports to employers.** In addition to other statements or reports required by law,
30 the treasurer shall provide periodic reports at least annually to participating employers,
31 reporting the names of each enrollee employed by the participating employer and the
32 amounts of contributions made by the participating employer on behalf of each enrollee
33 during the reporting period, as well as to enrollees, reporting contributions and
34 investment income allocated to, withdrawals from and balances in their program accounts
35 for the reporting period. Such reports may include any other information regarding the
36 marketplace as the board may determine necessary.

37 **§184. Penalty**

38 An employer who fails without reasonable cause to enroll employees in the
39 marketplace in accordance with the requirements of this chapter is subject to a penalty
40 equal to \$250 for each employee for each calendar year or portion of a calendar year

1 during which the employee was not enrolled in the marketplace or had not opted out of
2 participation in the marketplace.

3 **§185. Rules**

4 The treasurer shall adopt rules to implement this chapter. Rules adopted pursuant to
5 this section are routine technical rules as defined in chapter 375, subchapter 2-A.

6 **Sec. 2. Ruling on applicability of federal Employee Retirement Income**
7 **Security Act.** The treasurer shall request in writing an opinion or ruling from the
8 appropriate entity with jurisdiction over the federal Employee Retirement Income
9 Security Act of 1974, Public Law 93-405, regarding the applicability of the federal
10 Employee Retirement Income Security Act to this Act. The treasurer may not implement
11 this Act if the individual retirement account arrangements to be offered in accordance
12 with this Act fail to qualify for the favorable federal income tax treatment ordinarily
13 accorded to individual retirement accounts under the Internal Revenue Code or if it is
14 determined that the Maine Small Business Marketplace constitutes an employee benefit
15 plan and state or employer liability is established under the federal Employee Retirement
16 Income Security Act.

17 **SUMMARY**

18 This bill establishes the Maine Small Business Marketplace. The bill requires
19 employers of more than 10 employees that have not offered their employees a qualified
20 retirement plan in the preceding 2 years to offer a payroll deposit retirement savings
21 arrangement to their employees to allow contributions to an individual retirement
22 account. The bill also allows small employers with fewer than 10 employees to
23 voluntarily participate in the marketplace. The bill requires the Treasurer of State to
24 administer and oversee the marketplace.