

March 5, 2015

The Honorable Paul Holvey, Chair
Members, House Business and Labor Committee

RE: HB 2960 - OPPOSE

Dear Chairman Holvey and Members of the Committee:

Thank you for the opportunity to comment on HB 2960, which will come before your committee on March 6. The organizations listed below must respectfully oppose HB 2960 and urge you not to adopt it as written.

We share the state's goal of encouraging employers to adopt workplace retirement plans and increasing voluntary worker participation. However, HB 2960 is a deeply flawed proposal. We would like to suggest an alternate approach to this important issue. At a minimum, the -3 amendment should be adopted to ensure transparency, proper oversight and protection of taxpayers. Ideally, we would like to work in collaboration with the state to improve Oregonians' retirement security. Our proposal to do so is embodied in the -1 amendment.

HB 2960 creates new costs and liabilities for the State and private employers

The permanent Board created by HB 2960 has sweeping powers to create "establish, implement and maintain" a defined contribution plan for potentially hundreds of thousand of Oregonians, apparently without further approval of the Legislature and without conducting a fiscal analysis of the plan. Thus, the Board would have the power to impose a costly mandate on employers and commit the state to large and yet unknown liabilities.

The mere creation of the Board and its initial plan research and development will have immediate costs to the General Fund. California is spending up to \$1 million just to study the feasibility of a similar plan.

In addition, the proposed retirement plan outlined in HB 2960 will have significant immediate and long term costs to the General Fund. Fiscal studies created by others states to assess the cost of plans similar to the one described in HB 2960 should be reviewed before proceeding with this bill. These are publicly available and we would be happy to provide them to you.

The auto-enrollment mandate in HB 2960 will impose financial obligations and liabilities on employers of all sizes in Oregon. Potential employer costs include the cost of auto-enrolling and selecting default investments for their full- and part-time, temporary and seasonal workers, and potentially independent contractors and former employees who are now unemployed. It appears that this requirement will also apply to employers who already have a plan in place but exclude part-time, seasonal or temporary workers from eligibility. As further described below, each and every participating employer will have to take on the full range of ERISA fiduciary responsibilities, compliance and reporting.

The creation of the Board is unnecessary

There is already a vibrant market and widespread access to retirement plans in Oregon. According to DCBS, there are approximately 1820 broker/dealers who supervise 100,000 licensed sales people marketing retirement plans, 250 licensed life insurers with thousands of appointed agents, 18 state chartered credit unions with 147 branches around the state, and 26 state chartered banks with branches in virtually every community who offer IRAs and other retirement plans.

There is no lack of access to plans. Oregon's financial services firms offer employers a wide array of safe and effective retirement savings plans, including plans that feature auto enrollment and contribution increases. Individual Retirement Accounts (IRAs) and individual annuities can be tailored to meet the needs of Oregonians of all income levels. In fact, workers in Oregon can open an IRA today for as little as an initial \$5 deposit. Most employers offer the use of payroll deduction to make saving even easier.

In addition, the new myRA program of the U.S. Treasury - a simple, guaranteed, payroll deduction retirement plan with no ERISA complications or liabilities - is now available to all small employers and their workers. The myRA retirement plan is expected to help low- and middle-income workers save up to \$15,000, with no risk of losing capital.

The Board "pre-requisites to establishment" of a state plan described in Section 7 of HB 2960 could be accomplished by the current Oregon Retirement Savings Task Force, which does not sunset until 2017. In fact, these activities were supposed to be accomplished by the Task Force but have not been yet. The Task Force should be asked to update and complete its work before the Legislature commits to a permanent and powerful new state Board.

For instance, the Task Force should update its report to reflect that the *real barriers to savings* in Oregon are job insecurity, slow wage growth, and high levels of debt, including student loans, housing, health care and consumer debt. As many as 35% of American adults with credit files are in a debt collection process. Many young workers do not have enough short term emergency savings to cover a \$500 expense. It is hard to save for the future when you can't make ends meet today. None of this research was mentioned in the Task Force report.

There is still an opportunity for the Task Force to complete its work and properly address the crux legal and tax issues before the January 2017 sunset date. Instead of creating a costly, permanent Board in state government, the Committee could ask the Task Force to complete its assigned tasks as outlined in Section 2 of HB 3436. In addition, the Committee could ask the Task Force to conduct the studies and inquiries described in HB 2960, including the requests for IRS and U.S. Department of Labor opinions. We would be happy to assist in that process.

The Plan described in HB 2960 will subject the State and private employers to ERISA liability

The state sponsored retirement plan described in HB 2960 closely mirrors the plan recommended by the Oregon Retirement Savings Task Force in its September 2014 report to the Legislature. The plan is also similar to one proposed in HB 3436 from 2013. The Legislature rejected that proposal and chose instead to convene the Oregon Retirement Savings Task Force chaired by the State Treasurer.

The Task Force was charged with conducting an objective study of how to improve individual and employer based retirement savings in Oregon. However, the Task Force violated the plain language of HB 3436 and recommended the creation of a state sponsored plan that will very likely subject the State and participating employers to the costs and responsibilities of federal ERISA regulation.

HB 3436 specifically prohibited the Task Force from recommending "plans or products that would subject the state or private sector employers to responsibilities under the federal Employee Retirement Income Security Act of 1974 (ERISA)."

However, information received by the Task Force from the U.S. Department of Labor (DOL) on June 10, 2014, as well as expert legal analysis, indicate it is reasonable to expect that the state-sponsored plan for private sector workers employing auto-enrollment, auto-escalation and default accounts - *the same features included in HB 2960* - would subject the State of Oregon and participating employers to ERISA regulation and all the fiduciary liabilities and compliance costs that ERISA imposes to protect workers.

Unfortunately, *neither the DOL's testimony nor the private legal analysis received by the Task Force is included in its report.* We are not sure why this critical information was excluded from the report, but in the interest of full transparency, we believe this committee should carefully review all of those findings.

At a minimum, transparency, oversight and protection of taxpayers are needed

We believe that the Board created by HB 2960 should be required to study and understand the costs of and obstacles to their retirement plan before recommending or implementing it. In addition, there should be transparency for participating employer and workers, and oversight by the Legislature.

If you decide to proceed with HB 2960, we strongly urge you to *adopt the -3 amendments.* These proposed amendments clarify that Board established under the bill must meet certain prudent requirements before proceeding to develop or implement any “deferred contribution retirement plan” that could pose costs, risks and liabilities for the state and participating employers. These requirements, which are based on protections in the California law, include:

- (1) Conducting a feasibility analysis showing that the plan proposed by the Board would be fiscally self-sustaining and not require General Fund subsidies;
- (2) Obtaining an opinion from the IRS confirming that savings vehicles in the proposed plan will receive favorable tax treatment;
- (3) Obtaining an advisory opinion from the U.S. Department of Labor indicating that any plan proposed by the Board will not expose the State of Oregon or participating employers to liabilities and responsibilities under ERISA; and
- (4) Requiring the Board to submit the plan to the Legislature for review, fiscal analysis and approval.

A Better Way to Help Oregonians Achieve a Safe and Secure Retirement

We believe there is a better way to address the retirement savings challenge. The members of our coalition support a practical, robust and voluntary collaboration with the state to encourage retirement plan creation and new worker savings. This approach is captured in the -1 amendment, which creates the Oregon State of Savers Act.

The goal of Oregon's State of Savers Act is to address the challenge of ensuring that Oregonians are saving adequately for their retirement years. The Act engages the collective resources of private sector financial services providers, employers and the State of Oregon to expand access, increase retirement savings, and provide guaranteed lifetime income so that every Oregon family can achieve a comfortable, independent, and dignified retirement.

The State of Savers Act recognizes that there is a vibrant, voluntary private marketplace which currently is served by thousands of licensed financial professionals and providers who offer individuals and employers low cost retirement savings options such as individual IRAs, Roth IRAs, annuities, Simplified Employee Pensions (SEPs), SIMPLE 401ks and SIMPLE IRA plans.

However, we agree that more needs to be done to reach small employers and their employees who do not have a workplace plan, as well as part-time and seasonal workers, independent contractors and other individuals who have not established individual savings plans.

The State of Savers Act addresses these challenges by:

- *Improving access to and awareness of available plans;
- *Communicating the importance of retirement savings to employers, workers and individuals; and

*Increasing the incentives for plan creation and individual savings.

The common-sense improvements embodied in the State of Savers Act can strengthen Oregon's private retirement system and provide better retirement savings opportunities for more Oregon households. All

of these reforms and enhancements can, and should, be accomplished without diminishing the critical worker protections provided by the federal Employee Retirement Income Security Act (ERISA), our well-established national framework for regulating private retirement plans.

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For the reasons stated above, we urge you not to advance HB 2960 as introduced.

If you decide to proceed with the costly, mandatory approach in HB 2960, we urge you to **adopt the -3 amendments**, which will protect taxpayers, add transparency for employers and workers and allow the Legislature to actually review and analyze the costs of the proposed plan before allowing the Board to implement a program that is likely to create permanent liabilities for the State of Oregon and participating employers.

If you would instead like to work in collaboration with the thousands of financial services providers and tens of thousand of employers in our coalition to achieve real improvements in Oregonians' retirement readiness, then we urge you to **adopt the -1 amendment** and help us make Oregon a State of Savers.

Thank you for your consideration.

National Federation of Independent Business (NFIB)
Associated Oregon Industries (AOI)
Oregon Restaurant & Lodging Association (ORLA)
National Association of Insurance and Financial Advisors (NAIFA)
Securities Industry and Financial Markets Association (SIFMA)
Oregon Bankers Association (OBA)
Oregon Home Builders Association (OHBA)
Professional Insurance Agents of Oregon/Idaho
Independent Insurance Agents and Brokers of Oregon (IIABO)
Financial Services Institute (FSI)
The American Council of Life Insurers (ACLI)
Oregon State Chamber of Commerce
Oregon Farm Bureau
Oregon Seed Council
Farmers Insurance/Farmers New World Life
Liberty Mutual Insurance Company
Standard Insurance Company
Oregon Dairy Farmers Association (ODFA)
Pacific Northwest Hardware and Implement Association
Oregon Blueberry Commission