AMERICAN BENEFITS
COUNCIL

March 29, 2023

Submitted electronically via Oregon State Legislature Testimony Submission Form

Senator Kathleen Taylor, Chair
Senate Committee on Labor and Business
900 Court St. NE, S-423
Salem, Oregon 97301

Senator Daniel Bonham, Vice-Chair
Senate Committee on Labor and Business
900 Court St NE, S-423
Salem, OR, 97301

Re: S.B. 571, A Bill to Require Employers to Offer Contributions to an ABLE Account in Lieu of Contributions to a Retirement Account

Dear Chair Taylor and Vice-Chair Bonham:

On The American Benefits Council ("the Council") appreciates the opportunity to submit written testimony on S.B. 571 in connection with the public hearing and work session held on March 28, 2023, before the Oregon Senate Committee on Labor and Business. As introduced, S.B. 571 would require an employer that offers or provides contributions to employee retirement accounts to offer its employees the option to receive equal contributions to ABLE accounts in lieu of contributions to the employees' retirement accounts. Because the bill raises significant federal preemption concerns under the Employee Retirement Income Security Act (ERISA) of 1974, **the Council is writing objecting to S.B. 571 as introduced** and **in support of the proposed "-1" amendment to S.B. 571**, which the committee adopted during its March 28th work session.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

The great majority of the Council's members have operations in multiple states, including Oregon. The Council has engaged productively with OregonSaves on multiple occasions to share our experiences in how to achieve savings success and to ensure that OregonSaves does not adversely affect employers that already offer a retirement plan to their workers. We testified in person in May 2019 during the administrative rulemaking process and have met informally with OregonSaves officials. In short, our engagement has been in service of making OregonSaves a complement, not an impediment, to the success of the employer-based retirement system, and we have been happy in the past to call OregonSaves a "model for engagement" with private sector employers. It is with similar intent that we now write in regard to S.B. 571.

For the reasons discussed below, S.B. 571 could potentially create a risk of litigation to Oregon under ERISA's preemption provision because the bill would interfere with the design and operation of ERISA-governed retirement plans by requiring such plans to provide that contributions that would otherwise be made to a retirement account may be directed outside of the plan to an entirely unrelated account. The proposed amendment to S.B. 571, however, does not present the same concerns, as it would simply amend Oregon's existing ABLE statute to add that "[t]he board shall provide information to designated beneficiaries regarding the potential impact to their benefits and services if contributions are made to a workplace retirement account." The Council thus strongly supports the committee's action on March 28 to adopt the proposed amendment to S.B. 571.

BACKGROUND ON ERISA PREEMPTION

ERISA is a comprehensive federal statute regulating employer-sponsored retirement and welfare benefit plans. For nearly 50 years, employers who sponsor a retirement plan have been subject to a single federal statutory and regulatory regime under ERISA. One of the fundamental reasons that Congress had for passing ERISA was to ensure that employers who voluntarily sponsor a retirement plan are not subject to a multitude of regimes under state laws that would inevitably vary from state to state. To achieve this goal, Congress included an explicit and far-reaching preemption provision in the statute. According to that provision, and except as otherwise provided by law, Title I and Title IV of ERISA "*shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan*" [emphasis added].[1]

A state's failure to recognize the role of ERISA in promoting the uniform design and operation of employee benefit plans could result in inconsistent requirements being imposed on national employers. It could also cause confusion and result in the unequal treatment of participants who work and live in different states. To avoid this result,

[1] ERISA § 514(a).

ERISA's preemption provision applies to a wide range of state laws that "relate" to employer-sponsored retirement plans in a manner that, for example, dictates a particular plan design or employee coverage requirements.[2] The preemption provision also applies to laws that attempt to alter the voluntary nature of the employment-based retirement system, or that impose additional reporting requirements on employers that sponsor a plan.

ERISA PREEMPTION CONCERNS RAISED BY S.B. 571

As introduced, S.B. 571 would require an employer that offers or provides contributions to employee retirement accounts, including ERISA-covered plans such as a 401(k) plan, to offer its employees the option to receive equal contributions to ABLE accounts in lieu of contributions to the employees' retirement accounts. As described above, ERISA preempts state laws that relate to any employee benefit plan. The requirements that S.B. 571 would impose on employers and employer-sponsored retirement plans would interfere both with an employer's plan design and with the administration of an employer's plan—the very type of interference that Congress sought to prevent through ERISA's preemption provision.

Further, ERISA's preemption provisions are "deliberately expansive."[3] The U.S. Supreme Court has held that a law relates to an employee benefit plan if it has a "connection with" such a plan.[4] A state law has an impermissible "connection with" a plan if the law governs a central matter of plan administration or interferes with nationally uniform plan administration. We believe that, if S.B. 571 is enacted in the form in which it was introduced, the new law could be preempted by ERISA because it "relate[s] to" and has an impermissible "connection with" retirement plans.

For these reasons, the Council supports the committee's adoption of the proposed amendment to S.B. 571 to avoid preemption by federal law. Adopting the proposed amendment also avoids burdening those Oregon employers that already maintain or otherwise make available a tax-qualified retirement plan to their employees, which alone is a laudable and important goal.

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[2] *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 97 (1983) (finding that a pair of state laws that prohibits employers from structuring their employee benefit plans in a manner that discriminates on the basis of pregnancy and that requires employers to pay employees specific benefits clearly "relate[s] to" benefit plans).

[3] *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987) (internal citations omitted).

[4] *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S.Ct. 474, 476, 479 (2020); *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320 (2016).

Thank you for your consideration of our testimony on S.B. 571.

Sincerely,

Lynn Dudley
Senior Vice President, Global Retirement & Compensation Policy