

115TH CONGRESS  
1ST SESSION

# S. 1035

To amend the Employee Retirement Income Security Act of 1974 with respect to the scope of employee pension benefit plans.

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## IN THE SENATE OF THE UNITED STATES

MAY 3, 2017

Mr. HEINRICH (for himself, Mr. MURPHY, Mrs. MURRAY, Mr. WYDEN, Mr. DURBIN, Mr. VAN HOLLEN, Ms. HASSAN, Mr. CARPER, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mrs. SHAHEEN, Ms. HARRIS, Mr. BENNET, Mr. WHITEHOUSE, Mr. MERKLEY, Ms. DUCKWORTH, Mr. BOOKER, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to the scope of employee pension benefit plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserve Rights Of  
5 States and Political subdivisions to Encourage Retirement  
6 Savings Act” or the “PROSPERS Act”.

1 **SEC. 2. DEFINITIONS.**

2 Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended—

3 (1) in paragraph (2)—

4 (A) in subparagraph (A), by striking “sub-  
5 paragraph (B)” and inserting “subparagraphs  
6 (B) and (C)”; and

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

8 “(C)(i) The terms ‘employee pension benefit plan’  
9 and ‘pension plan’ do not include an individual retirement  
10 plan (as defined in section 7701(a)(37) of the Internal  
11 Revenue Code of 1986) established and maintained pursu-  
12 ant to a payroll deduction savings program of a State or  
13 qualified political subdivision of a State, provided that—

14 “(I) the program is specifically established pur-  
15 suant to State or qualified political subdivision law;

16 “(II) the program is implemented and adminis-  
17 tered by the State or qualified political subdivision  
18 establishing the program (or by a governmental  
19 agency or instrumentality of either), which is re-  
20 sponsible for investing the employee savings or for  
21 selecting investment alternatives for employees to  
22 choose;

23 “(III) the State or qualified political subdivision  
24 (or governmental agency or instrumentality of ei-  
25 ther) assumes responsibility for the security of pay-  
26

1 roll deductions and employee savings, including by  
2 requiring that amounts withheld from wages by the  
3 employer be transmitted to the program promptly  
4 and by providing an enforcement mechanism to as-  
5 sure compliance with this requirement;

6 “(IV) the State or qualified political subdivision  
7 (or governmental agency or instrumentality of ei-  
8 ther) adopts measures to ensure that employees are  
9 notified of their rights under the program, and cre-  
10 ates a mechanism for enforcement of those rights;

11 “(V) participation in the program is voluntary  
12 for employees;

13 “(VI) all rights of the employee, former em-  
14 ployee, or beneficiary under the program are en-  
15 forceable only by the employee, former employee, or  
16 beneficiary, an authorized representative of such a  
17 person, or by the State or qualified political subdivi-  
18 sion (or governmental agency or instrumentality of  
19 either);

20 “(VII) the involvement of the employer is lim-  
21 ited to—

22 “(aa) collecting employee contributions  
23 through payroll deductions and remitting them  
24 to the program;

1           “(bb) providing notice to the employees  
2           and maintaining records regarding the employ-  
3           er’s collection and remittance of payments  
4           under the program;

5           “(cc) providing information to the State or  
6           qualified political subdivision (or governmental  
7           agency or instrumentality of either) necessary  
8           to facilitate the operation of the program; and

9           “(dd) distributing program information to  
10          employees from the State or qualified political  
11          subdivision (or governmental agency or instru-  
12          mentality of either) and permitting the State or  
13          qualified political subdivision (or governmental  
14          agency or instrumentality of either) to publicize  
15          the program to employees;

16          “(VIII) the employer contributes no funds to  
17          the program and provides no bonus or other mone-  
18          tary incentive to employees to participate in the pro-  
19          gram;

20          “(IX) the employer’s participation in the pro-  
21          gram is required by the law of the State law or  
22          qualified political subdivision;

23          “(X) the employer has no discretionary author-  
24          ity, control, or responsibility under the program; and

1           “(XI) the employer receives no direct or indi-  
2           rect consideration in the form of cash or otherwise,  
3           other than consideration (including tax incentives  
4           and credits) received directly from the State or  
5           qualified political subdivision (or governmental agen-  
6           cy or instrumentality of either) that does not exceed  
7           an amount that reasonably approximates the em-  
8           ployer’s (or a typical employer’s) costs under the  
9           program.

10          “(ii) A State savings program will not fail to satisfy  
11          the requirements of subclauses (I) through (XI) of clause  
12          (i) merely because the program—

13               “(I) is directed toward those employers that do  
14               not offer some other workplace savings arrangement;

15               “(II) utilizes one or more service or investment  
16               providers to operate and administer the program,  
17               provided that the State (or governmental agency or  
18               instrumentality of the State) retains full responsi-  
19               bility for the operation and administration of the  
20               program; or

21               “(III) treats employees as having automatically  
22               elected payroll deductions in an amount or percent-  
23               age of compensation, including any automatic in-  
24               creases in such amount or percentage, unless the  
25               employee specifically elects not to have such deduc-

1 tions made (or specifically elects to have the deduc-  
2 tions made in a different amount or percentage of  
3 compensation allowed by the program), provided  
4 that the employee is given adequate advance notice  
5 of the right to make such elections and provided,  
6 further, that a program may also satisfy the require-  
7 ments of such subclauses (I) through (XI) without  
8 requiring or otherwise providing for automatic elec-  
9 tions such as those described in this subclause.

10 “(iii) For purposes of this subparagraph, the term  
11 “qualified political subdivision” means any governmental  
12 unit of a State, including a city, county, or similar govern-  
13 mental body, that—

14 “(I) has the authority, implicit or explicit,  
15 under State law to require employers’ participation  
16 in the program as described in clause (i); and

17 “(II) at the time of the establishment of the po-  
18 litical subdivision’s payroll deduction savings pro-  
19 gram—

20 “(aa) has a population equal to or greater  
21 than the population of the least populated State  
22 (excluding the District of Columbia and terri-  
23 tories listed in paragraph (10));

24 “(bb) has no geographic overlap with any  
25 other political subdivision that has enacted a

1 mandatory payroll deduction savings program  
2 for private-sector employees and is not located  
3 in a State that has enacted such a program  
4 statewide; and

5 “(cc) has implemented and administers a  
6 plan, fund, or program that provides retirement  
7 income to its employees, or results in a deferral  
8 of income by its employees for periods extend-  
9 ing to the termination of covered employment  
10 or beyond.

11 “(iv) For purposes of clause (i)(III), amounts with-  
12 held from an employee’s wages by the employer are  
13 deemed to be transmitted promptly if such amounts are  
14 transmitted to the program as of the earliest date on  
15 which such contributions can reasonably be segregated  
16 from the employer’s general assets, but in no event later  
17 than the last day of the month following the month in  
18 which such amounts would otherwise have been payable  
19 to the employee in cash.”.

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