

114TH CONGRESS  
2D SESSION

# S. 3338

To amend the Internal Revenue Code of 1986 to encourage small businesses to enroll their employees in retirement savings options, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2016

Mr. BURR (for himself and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to encourage small businesses to enroll their employees in retirement savings options, and for other purposes.

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 “Small Business Em-  
5       ployee Retirement Savings Act of 2016”.

6       **SEC. 2. INCREASE IN CREDIT LIMITATION FOR SMALL EM-**  
7       **PLOYER PENSION PLAN STARTUP COSTS.**

8       (a) IN GENERAL.—Paragraph (1) of section 45E(b)  
9       of the Internal Revenue Code of 1986 is amended to read  
10      as follows:

1 “(1) for the first credit year and each of the 2  
 2 taxable years immediately following the first credit  
 3 year, the greater of—

4 “(A) \$500, or

5 “(B) the lesser of—

6 “(i) \$250 for each employee of the eli-  
 7 gible employer who is not a highly com-  
 8 pensated employee (as defined in section  
 9 415(q)) and who is eligible to participate  
 10 in the eligible employer plan maintained by  
 11 the eligible employer, or

12 “(ii) \$5,000, and”.

13 (b) EFFECTIVE DATE.—The amendment made by  
 14 this section shall apply to taxable years beginning after  
 15 December 31, 2015.

16 **SEC. 3. CREDIT FOR SMALL EMPLOYERS ADOPTING AUTO-**  
 17 **ENROLLMENT OPTIONS.**

18 (a) IN GENERAL.—Subpart D of part IV of sub-  
 19 chapter A of chapter 1 of the Internal Revenue Code of  
 20 1986 is amended by adding at the end the following new  
 21 section:

1 **“SEC. 45S. AUTO-ENROLLMENT OPTION FOR RETIREMENT**  
 2 **SAVINGS OPTIONS PROVIDED BY SMALL EM-**  
 3 **PLOYERS.**

4 “(a) IN GENERAL.—For purposes of section 38, in  
 5 the case of a small employer, the retirement auto-enroll-  
 6 ment credit determined under this section is an amount  
 7 equal to \$500 for any taxable year in the credit period.

8 “(b) CREDIT PERIOD.—For purposes of subsection  
 9 (a)—

10 “(1) IN GENERAL.—The credit period with re-  
 11 spect to any small employer is the 3-taxable-year pe-  
 12 riod beginning with the first taxable year for which  
 13 the employer includes an eligible automatic contribu-  
 14 tion arrangement (as defined in section 414(w)(3))  
 15 in a qualified retirement plan (as defined in section  
 16 4974(c)) sponsored by the employer, but only if the  
 17 plan maintains such arrangement throughout such  
 18 period.

19 “(2) CREDIT PERMISSIBLE IN START-UP  
 20 YEAR.—The first taxable year in the credit period  
 21 may be the same taxable year as the first credit year  
 22 (as defined in section 45E(d)(3)).

23 “(3) EMPLOYER MUST REMAIN SMALL EM-  
 24 PLOYER.—Notwithstanding paragraph (1), the credit  
 25 period with respect to any small employer shall end  
 26 with the earlier of—

1                   “(A) the last taxable year in such period  
2                   determined without regard to this paragraph, or

3                   “(B) the last taxable year in which such  
4                   employer is a small employer.

5           “(c) SMALL EMPLOYER.—For purposes of this sec-  
6   tion, the term ‘small employer’ means any employer for  
7   any taxable year if the number of employees employed by  
8   such employer during such taxable year does not exceed  
9   100. All employers treated as a single employer under sec-  
10   tion (a) or (b) of section 52 shall be treated as a single  
11   employer for purposes of this section.”.

12           (b) CREDIT TO BE PART OF GENERAL BUSINESS  
13   CREDIT.—Subsection (b) of section 38 of the Internal  
14   Revenue Code of 1986 is amended by striking “plus” at  
15   the end of paragraph (35), by striking the period at the  
16   end of paragraph (36) and inserting “, plus”, and by add-  
17   ing at the end the following new paragraph:

18                   “(37) in the case of a small employer (as de-  
19                   fined in section 45S(c)), the retirement auto-enroll-  
20                   ment credit determined under section 45S(a).”.

21           (c) CLERICAL AMENDMENT.—The table of sections  
22   for subpart D of part IV of subchapter A of chapter 1  
23   of the Internal Revenue Code of 1986, as amended by sec-  
24   tion 2, is amended by inserting after the item relating to  
25   section 45R the following new item:

“Sec. 45S. Auto-enrollment option for retirement savings options provided by small employers.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

4 **SEC. 4. REMOVAL OF 10 PERCENT CAP AFTER FIRST PLAN**  
5 **YEAR FROM AUTOMATIC ENROLLMENT SAFE**  
6 **HARBOR.**

7 (a) IN GENERAL.—Clause (iii) of section  
8 401(k)(13)(C) of the Internal Revenue Code of 1986 is  
9 amended by striking “, does not exceed 10 percent, and  
10 is at least” and inserting “and is”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Subclause (I) of section 401(k)(13)(C)(iii)  
13 of the Internal Revenue Code of 1986 is amended by  
14 striking “3 percent” and inserting “at least 3 per-  
15 cent, but not greater than 10 percent,”.

16 (2) Subclause (II) of section 401(k)(13)(C)(iii)  
17 of such Code is amended by striking “4 percent”  
18 and inserting “at least 4 percent”.

19 (3) Subclause (III) of section 401(k)(13)(C)(iii)  
20 of such Code is amended by striking “5 percent”  
21 and inserting “at least 5 percent”.

22 (4) Subclause (IV) of section 401(k)(13)(C)(iii)  
23 of such Code is amended by striking “6 percent”  
24 and inserting “at least 6 percent”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after the  
3 date of enactment of this Act.

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