

114TH CONGRESS
2D SESSION

S. 3389

To authorize State-sponsored multiple employer plans and State payroll deduction savings programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2016

Mr. HEINRICH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To authorize State-sponsored multiple employer plans and State payroll deduction savings programs.

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 “State Retirement Sav-
5 ings Act of 2016”.

6 **SEC. 2. STATE-SPONSORED MULTIPLE EMPLOYER PLANS.**

7 Part 2 of title I of the Employee Retirement Income
8 Security Act of 1974 (29 U.S.C. 10151 et seq.) is amend-
9 ed by adding at the end the following:

1 **“SEC. 212. STATE-SPONSORED MULTIPLE EMPLOYER**
2 **PLANS.**

3 “(a) IN GENERAL.—Any State may establish a plan
4 described in section 210(a). Such plan shall not be consid-
5 ered a governmental plan solely because it is established
6 and administered by a State, provided the plan is in com-
7 pliance with the requirements of this section.

8 “(b) REQUIREMENTS.—A State multiple employer
9 plan shall—

10 “(1) be established by a State pursuant to
11 State law;

12 “(2) be open to all employers in the State;

13 “(3) not require participation from any em-
14 ployer, including any employer described in section
15 401(c)(4) of the Internal Revenue Code of 1986;

16 “(4) be subject to all requirements of this Act
17 that apply to a plan described in section 210(a); and

18 “(5) provide for an opt-out for all employees of
19 a participating employer, if the plan provides for
20 automatic enrollment.

21 “(c) PLAN SPONSOR, FIDUCIARY, AND ADMINIS-
22 TRATOR.—The plan sponsor, named fiduciary, and plan
23 administrator of a State-sponsored plan described in sub-
24 section (a) shall be the State.

25 “(d) ENROLLMENT OF INDIVIDUAL EMPLOYEES.—

1 “(1) IN GENERAL.—A State multiple employer
2 plan may enroll individuals directly in such plan, if
3 such individuals are employed by employers who do
4 not participate in the State plan.

5 “(2) EMPLOYER PARTICIPATION.—The State
6 plan shall not require employer participation in the
7 form of contributions, bonuses, or monetary incen-
8 tives in the case of individual employee participation
9 under paragraph (1).

10 “(e) TAX TREATMENT.—

11 “(1) TREATMENT OF CONTRIBUTIONS.—Con-
12 tributions made to a State multiple employer plan
13 shall be treated in the same manner for purposes of
14 section 401 of the Internal Revenue Code of 1986
15 as contributions to any other multiple employer plan
16 described in section 210(a).

17 “(2) TREATMENT OF PLAN.—A State plan de-
18 scribed in subsection (a) shall be treated as a plan
19 subject to section 413(c) of the Internal Revenue
20 Code of 1986.”.

21 **SEC. 3. CERTAIN STATE SAVINGS PROGRAMS.**

22 (a) IN GENERAL.—A State may establish and main-
23 tain a State payroll deduction savings program (referred
24 to in this section as a “program”) that provides individual
25 retirement plans (as defined in section 7701(a)(37) of the

1 Internal Revenue Code of 1986). Such plan shall not be
2 considered an employee pension benefit plan under section
3 3(2) of the Employee Retirement Income Security Act of
4 1974 (29 U.S.C. 1002(2)), provided that—

5 (1) the program is established by a State pur-
6 suant to State law;

7 (2) the program is implemented and adminis-
8 tered by the State establishing the program, and
9 such State is responsible for investing the employee
10 savings or for selecting investment alternatives for
11 employees to choose;

12 (3) the State assumes responsibility for the se-
13 curity of payroll deductions and employee savings;

14 (4) the State adopts measures to ensure that
15 employees are notified of their rights under the pro-
16 gram, and creates a mechanism for enforcement of
17 such rights;

18 (5) participation in the program is voluntary
19 for employees;

20 (6) all rights of the employee, former employee,
21 or beneficiary under the program are enforceable
22 only by the employee, former employee, or bene-
23 ficiary, an authorized representative of such a per-
24 son, or by the State;

1 (7) except for employer contributions allowed
2 under subsection (b), the involvement of the em-
3 ployer is limited to—

4 (A) collecting employee contributions
5 through payroll deductions and remitting them
6 to the program;

7 (B) providing notice to the employees and
8 maintaining records regarding the employer's
9 collection and remittance of payments under the
10 program;

11 (C) providing information to the State nec-
12 essary to facilitate the operation of the pro-
13 gram; and

14 (D) distributing program information to
15 employees from the State and permitting the
16 State or such entity to publicize the program to
17 employees;

18 (8) the employer's participation in the program
19 is required by State law;

20 (9) the employer has no discretionary authority,
21 control, or responsibility under the program; and

22 (10) the employer receives no direct or indirect
23 consideration in the form of cash or otherwise, other
24 than the reimbursement of the actual costs of the

1 program to the employer of the activities described
2 in paragraph (8).

3 (b) EMPLOYER CONTRIBUTIONS TO AN EMPLOYEE
4 ACCOUNT IN A STATE SAVINGS PROGRAM; FINANCIAL IN-
5 CENTIVES ALLOWED.—A State savings program described
6 in subsection (a)—

7 (1) may permit an employer to contribute funds
8 to an employee's account under the payroll deduc-
9 tion savings program, and need not require an em-
10 ployer to make contributions to employee accounts,
11 provide bonuses, or other monetary incentives to em-
12 ployees to participate in the program;

13 (2) may permit an employer to provide bonuses
14 or other monetary incentive to employees to partici-
15 pate in the program;

16 (3) may be offered to employees who are al-
17 ready eligible for some other workplace savings ar-
18 rangement;

19 (4) may utilize one or more service or invest-
20 ment providers to operate and administer the pro-
21 gram, provided that the State retains full responsi-
22 bility for the operation and administration of the
23 program; and

24 (5) shall treat employees as having automati-
25 cally elected payroll deductions in an amount or per-

centage of compensation, including any automatic increases in such amount or percentage, specified under State law until the employee specifically elects not to have such deductions made (or specifically elects to have the deductions made in a different amount or percentage of compensation allowed by the program), provided that the employee is given adequate notice of the right to make such elections, and need not provide for the automatic deductions.

(c) DEFINITIONS.—For purposes of this section—

(1) the term “State” has the meaning given such term in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), and, in the case of a State that has not established a State payroll deduction savings program described in subsection (a), includes any qualified political subdivision of a State; and

(2) the term “qualified political subdivision” means any governmental unit of a State, including a city, county, or similar governmental body, that—

(A) has the implicit or explicit authority under State law to require employer participation in a retirement savings account program described in subsection (a); and

1 (B) has a population equal to or greater
2 than the population of the least populated of
3 the 50 States (excluding the District of Colum-
4 bia and the territories).

5 (d) CLARIFICATION.—Section 3(2) of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1002(2)) is amended by adding at the end the following:
8 “(C) A State payroll deduction savings program es-
9 tablished in accordance with section 3 of the State Retire-
10 ment Savings Act of 2016 is not an ‘employee pension
11 benefit plan’ or ‘pension plan’ for purposes of this title.”.

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