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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Retirement Savings Act of 2016''.

SEC. 2. STATE-SPONSORED MULTIPLE EMPLOYER PLANS.

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

"SEC. 212. STATE-SPONSORED MULTIPLE EMPLOYER PLANS.

''(a) IN GENERAL.—Any State may establish a plan described in section 210(a). Such plan shall not be considered a governmental plan solely because it is established and administered by a State, provided the plan is in compliance with the requirements of this section.

''(b) REQUIREMENTS.—A State multiple employer plan shall—

''(1) be established by a State pursuant to State law;

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

''(3) not require participation from any employer, including any employer described in section 401(c)(4) of the Internal Revenue Code of 1986;

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

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

''(c) PLAN SPONSOR, FIDUCIARY, AND ADMINISTRATOR.—The plan sponsor, named fiduciary, and plan administrator of a State-sponsored plan described in subsection (a) shall be the State.

''(d) ENROLLMENT OF INDIVIDUAL EMPLOYEES.—

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

"(2) EMPLOYER PARTICIPATION.—The State plan shall not require employer participation in the form of contributions, bonuses, or monetary incentives in the case of individual employee participation under paragraph (1).

"(e) TAX TREATMENT.—

"(1) TREATMENT OF CONTRIBUTIONS.—Contributions made to a State multiple employer plan shall be treated in the same manner for purposes of section 401 of the Internal Revenue Code of 1986 as contributions to any other multiple employer plan described in section 210(a).

"(2) TREATMENT OF PLAN.—A State plan described in subsection (a) shall be treated as a plan subject to section 413(c) of the Internal Revenue Code of 1986.".

SEC. 3. CERTAIN STATE SAVINGS PROGRAMS.

(a) IN GENERAL.—A State may establish and maintain a State payroll deduction savings program (referred to in this section as a "program") that provides individual retirement plans (as defined in section 7701(a)(37) of the

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

(1) the program is established by a State pursuant to State law;

(2) the program is implemented and administered by the State establishing the program, and such State is responsible for investing the employee savings or for selecting investment alternatives for employees to choose;

(3) the State assumes responsibility for the security of payroll deductions and employee savings;

(4) the State adopts measures to ensure that employees are notified of their rights under the program, and creates a mechanism for enforcement of such rights;

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

(6) all rights of the employee, former employee, or beneficiary under the program are enforceable only by the employee, former employee, or beneficiary, an authorized representative of such a person, or by the State;

(7) except for employer contributions allowed under subsection (b), the involvement of the employer is limited to—

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

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

(C) providing information to the State necessary to facilitate the operation of the program; and

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

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

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

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

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

(b) EMPLOYER CONTRIBUTIONS TO AN EMPLOYEE ACCOUNT IN A STATE SAVINGS PROGRAM; FINANCIAL INCENTIVES ALLOWED.—A State savings program described in subsection (a)—

(1) may permit an employer to contribute funds to an employee's account under the payroll deduction savings program, and need not require an employer to make contributions to employee accounts, provide bonuses, or other monetary incentives to employees to participate in the program;

(2) may permit an employer to provide bonuses or other monetary incentive to employees to participate in the program;

(3) may be offered to employees who are already eligible for some other workplace savings arrangement;

(4) may utilize one or more service or investment providers to operate and administer the program, provided that the State retains full responsibility for the operation and administration of the program; and

(5) shall treat employees as having automatically 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

(B) has a population equal to or greater than the population of the least populated of the 50 States (excluding the District of Columbia and the territories).

(d) CLARIFICATION.—Section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following:

"(C) A State payroll deduction savings program established in accordance with section 3 of the State Retirement Savings Act of 2016 is not an 'employee pension benefit plan' or 'pension plan' for purposes of this title.".

○