

Retirement Policy Initiatives in the States: How You Might Be Impacted



ASPPA

Making Retirement Plans Work

Part of the American Retirement Association

Andrew J. Remo
Director of Legislative Affairs
American Retirement Association

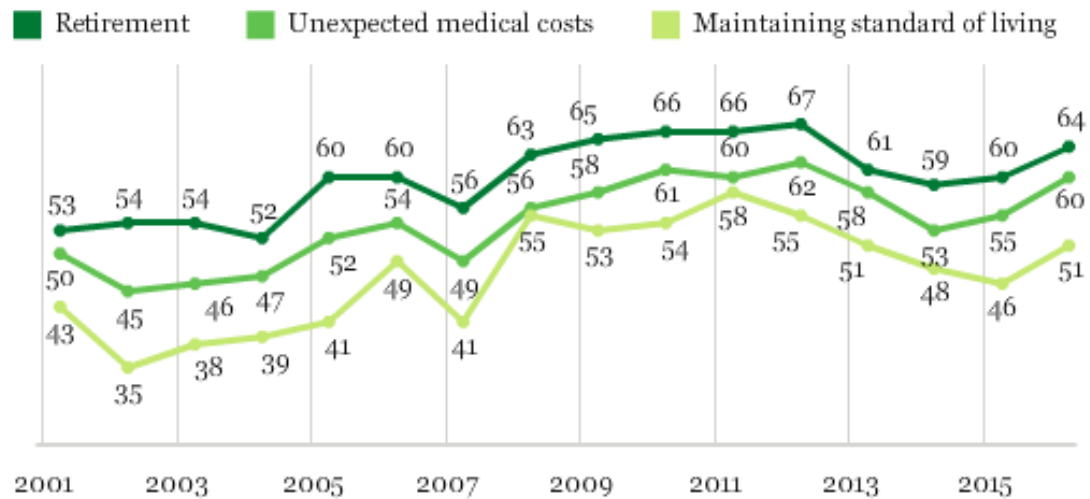
Overview

- Why states are acting
- Framework for judging proposals
- Types of proposals
- DOL rule and interpretations on state initiatives

Americans Most Worried About Retirement Security

Americans' Top Financial Concerns, 2001-2016

% Very/Moderately worried



Figures only shown for April polls

GALLUP®

2016 Gallup Economy and Personal Finance Survey

Total Savings and Investments

In total, about how much money would you say you (and your spouse) currently have in savings and investments, *not including the value of your primary residence or defined benefit plan assets?*

	2014	2015	2016	2016 Has Ret Plan	2016 No Ret Plan
< \$1,000	36%	28%	26%	9%	67%
\$1,000-\$9,999	16%	17%	16%	15%	16%
\$10,000-\$24,999	8%	12%	12%	16%	4%
\$25,000-\$49,999	9%	9%	10%	13%	4%
\$50,000-\$99,999	9%	10%	10%	13%	3%
\$100,000-\$249,999	11%	10%	12%	17%	1%
> \$250,000	11%	14%	14%	18%	4%

2016 Retirement Confidence Survey – Employee
Benefit Research Institute and Greenwald &
Associates

Coverage Challenge

- Over **20 million** private sector workers earning between \$30K-\$100K do not have access to a retirement plan at work.

*Unpublished Employee Benefit Research Institute estimates from March 2013 Current Population Survey

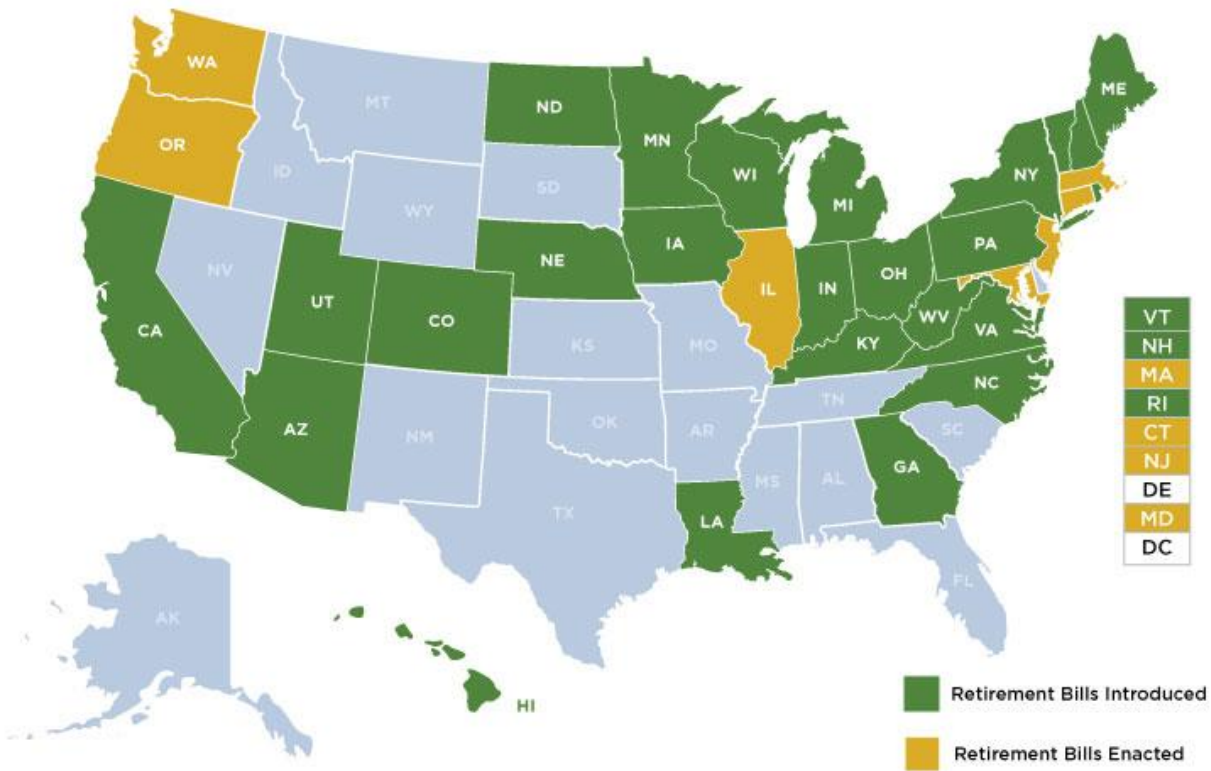
- Middle class workers are **15 times more likely to save** for their families' retirement at work than on their own.

*Employee Benefit Research Institute (2010) estimates using 2008 panel of SIPP data (covered by an employer plan) and EBRI database estimate (not covered by an employer plan – IRA only)

Big Picture

- 32 out of 50 states are considering or have enacted initiatives to address retirement plan coverage for private sector workers
- Seven states have enacted state sponsored retirement programs or marketplaces for private sector workers
- Zero state programs are fully implemented or collecting contributions

State Initiatives Map



Poll Question #1

Do you currently do business in a state that is either considering or has enacted into law a state retirement program or marketplace for private sector workers?

A. Yes

B. No

Poll Question #2

How concerned are you about competition from the state?

- A. Not concerned
- B. Somewhat concerned
- C. Very concerned
- D. Not sure

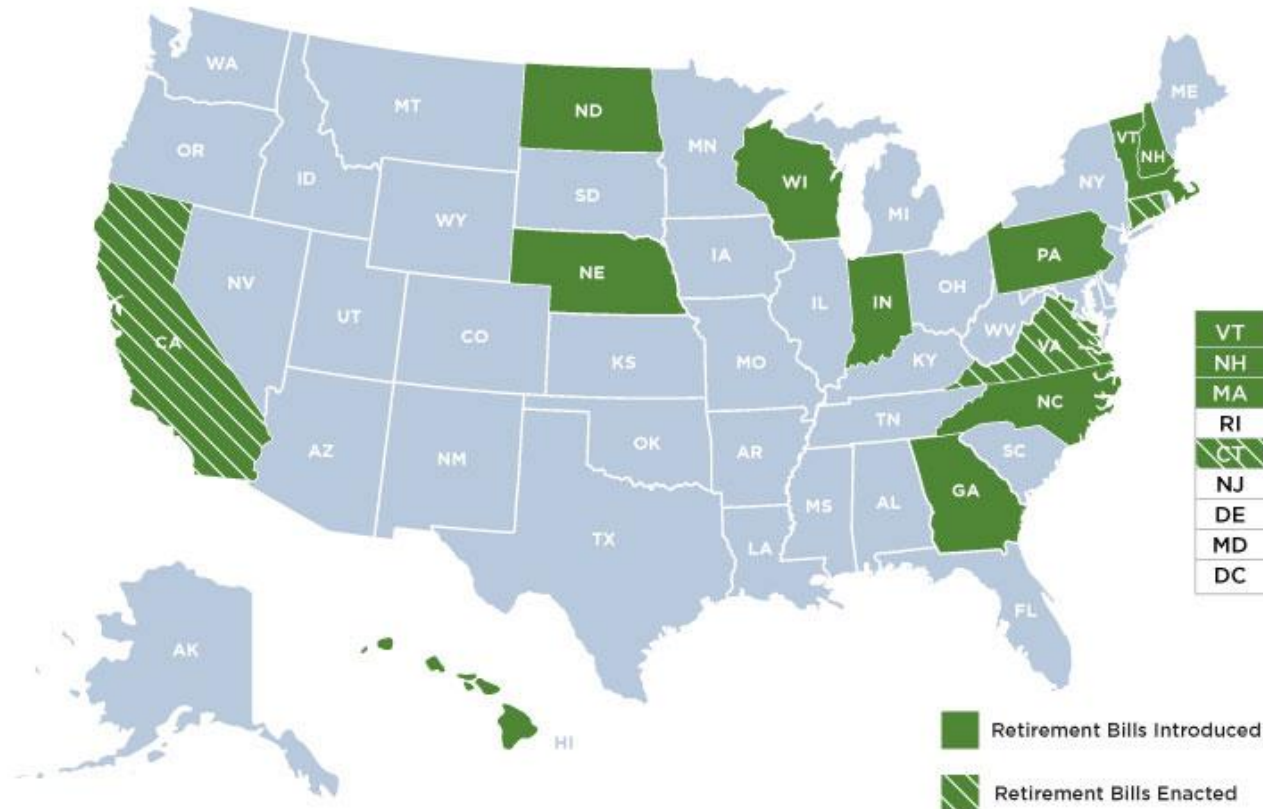
Framework for Judging Proposals

- Require all employers over a certain size to offer a retirement savings program
- Private-sector qualified plans and payroll deduction IRAs must satisfy the requirement
- Any state program must be IRA-based, exempt from ERISA
- Any state program must include a vendor website

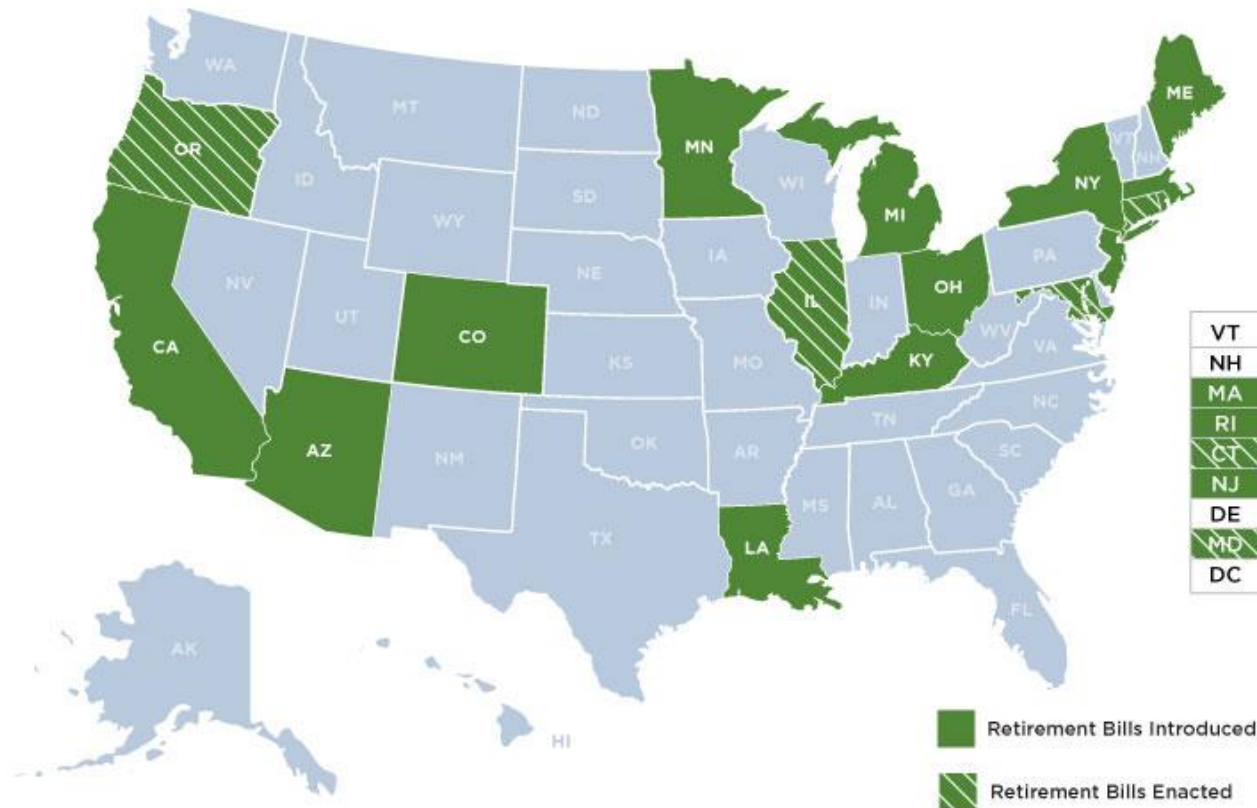
Types of State Initiatives

- Study bills
- State programs with a mandate on private employers over a certain size
- State marketplace bills
- State programs without a mandate

State Program Study Bills



State Programs with Mandate



Enacted Laws with Mandate

- Illinois – enacted into law January 2015
- Oregon – enacted into law June 2015
- Maryland – enacted into law May 2016
- Connecticut – enacted into law May 2016
- California next? – bill needs to pass the legislature by the end of August 2016

Illinois Secure Choice Savings Program

- IL SB 2758 (Public Act 098-1150)
- Effective June 1, 2015
- To be operational within 24 months of effective date
 - Effective date may be delayed if “adequate funds” are not obtained to implement the legislation
- Employers must comply within nine months of effective date
- Website:
http://www.illinoistreasurer.gov/Individuals/Secure_Choice

Illinois Secure Choice Savings Program

- All non-governmental employers that meet the following criteria *must* provide a workplace retirement savings arrangement for all employees over the age of 18:
 - (i) 25 or more employees at all times during past year
 - (ii) In business for at least two years
 - (iii) Not offered a qualified retirement plan to employees within the last two years
- Employers can *at any time* adopt a private plan such as defined benefit, 401(k), SEP, SIMPLE, or automatic enrollment payroll deduction IRA arrangement instead of participating in the state program
- Employers that do not comply with the requirement will be subject to a fine of \$250 per employee per year of non-compliance.

Illinois Secure Choice Savings Program

- Participating employer auto-enrolls eligible employees at three percent of pay
 - Employees can opt out or select their own contribution level not to exceed Roth IRA contribution limits
- Employees who opt out may re-enroll during annual open-enrollment period
- Participating employer responsible only for withholding and remitting funds, and providing information packet to employees

Illinois Secure Choice Savings Program

- Accounts under the state program *must* be Roth IRAs
- Investment options:
 - Default life-cycle target date fund
 - Trustees may also offer
 - Principal protection fund
 - Growth fund
 - Secure return fund (backed by an insurance product)
 - An annuity fund
- Administrative expenses not to exceed 75 bps
- RFP for vendor

Illinois Secure Choice Savings Program

- Illinois Secure Choice Savings Board must create a vendor website to assist private employers in identifying private providers of retirement arrangements
 - Website funded by the private providers
- Board to establish process for inclusion on the website before it goes live
 - Must be live before the Board opens the state program for enrollment
- Vendor website information must be included on the Secure Choice website, all promotional materials, and all employer and employee information packets

Oregon Retirement Savings Plan

- OR HB 2960 (Chapter 557 – 2015 Laws)
- Effective June 25, 2015
- Board Report due December 31, 2016
 - Market analysis
 - Legal analysis
 - Employer-cost analysis
 - Implementation timeline
 - RFP drafts for plan administrators to bid
 - Final literacy recommendations
- Plan to be made available to pilot group on July 1, 2017
- Websites: <http://www.oregon.gov/retire/Pages/Employers.aspx>
<http://www.oregon.gov/treasury/ORSP/Pages/default.aspx>

Oregon Retirement Savings Plan

- **All** employers are required to offer the state plan unless the employer offers a qualified retirement plan to employees
- Silent on any consequences for non-compliance
- Board to decide default contribution level to the program – offer default escalation
- Board to decide how contributions will be invested
- Board can collect administrative fees – no cap on fees

Maryland Small Business Retirement Savings Program

- MD HB 1378 (Chapter 324 – 2016 Laws)
- Effective July 1, 2016
- Applies to *all* private employers that pay employees through a payroll system or service
- Employers that offer a retirement plan of any type or the state program is eligible to waive annual business-filing fee
 - \$300 for most MD business entities

Maryland Small Business Retirement Savings Program

- Accounts under the state program can be either 408(a) traditional IRAs or 408(b) individual retirement annuities
- Board to decide default-contribution amount
- Board directed to provide a range of investment options in the plan – including a default-investment selection
- Annual administration fees capped at .5% of assets under management
- Board may provide a lifetime income-investment option

Connecticut Retirement Security Program

- CT SB 5591 (Public Act No. 16-29)
- Effective July 1, 2016
- Connecticut Retirement Security Authority Board members to be appointed no later than July 31, 2016 and convened by January 1, 2017
- Applies to all “qualified employers” starting January 1, 2018
- The Authority may defer the effective date of the program in whole or in part, and for particular categories of employers, as it deems necessary

Connecticut Retirement Security Program

- “Qualified employers” defined as any private employer with five or more employees who made \$5,000 or more in the prior year
- “Qualified employers” are exempt from the law’s requirements if they maintain a qualified retirement plan or “any other retirement arrangement approved by the Authority”
- Labor Commissioner may bring a civil action against qualified employers against employers who fail to enroll employees
- Participating employer auto-enrolls eligible employees at three percent of pay
 - Employees can opt-out or select their own contribution level not to exceed Roth IRA contribution limits or six percent of pay

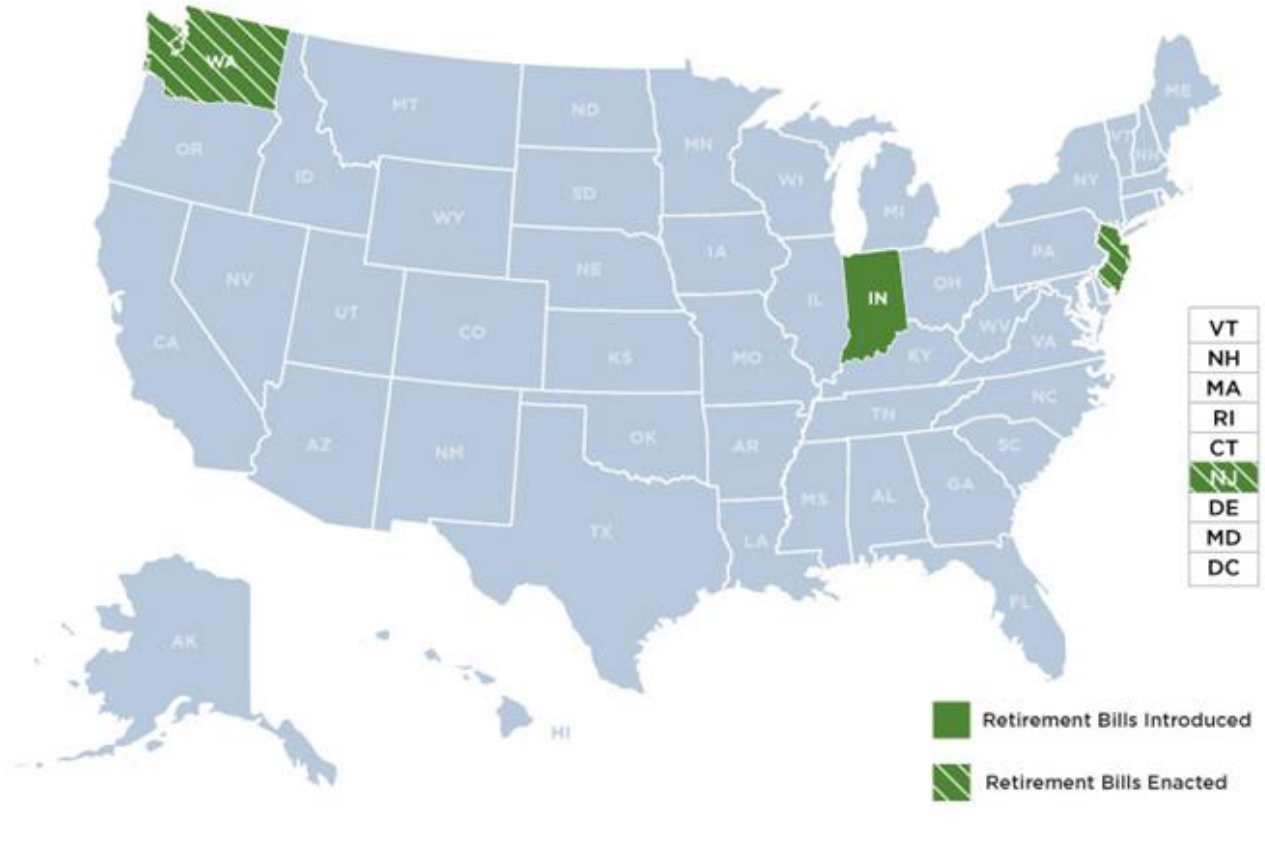
Connecticut Retirement Security Program

- Accounts under the state program *must* be Roth IRAs
- Only one investment option – an age-appropriate target date fund
- At “normal retirement age” – half of participant account balance invested in a lifetime-income product
 - Defined as the age when an individual can withdraw all IRA funds without penalty

Connecticut Retirement Security Program

- Connecticut Retirement Security Authority must create a vendor website to assist private employers in identifying private providers of retirement arrangements
 - Website funded by the participating registered vendors
- Authority to establish process for inclusion on the website before it goes live
- Vendor website information must be included on the Connecticut Retirement Security Authority website, all promotional materials, and all employer and employee information packets

State Marketplace Bills



Enacted State Marketplace Laws

- Washington State – enacted into law in May 2015
- New Jersey – enacted into law in January 2016
- New Jersey law language mirrors Washington State

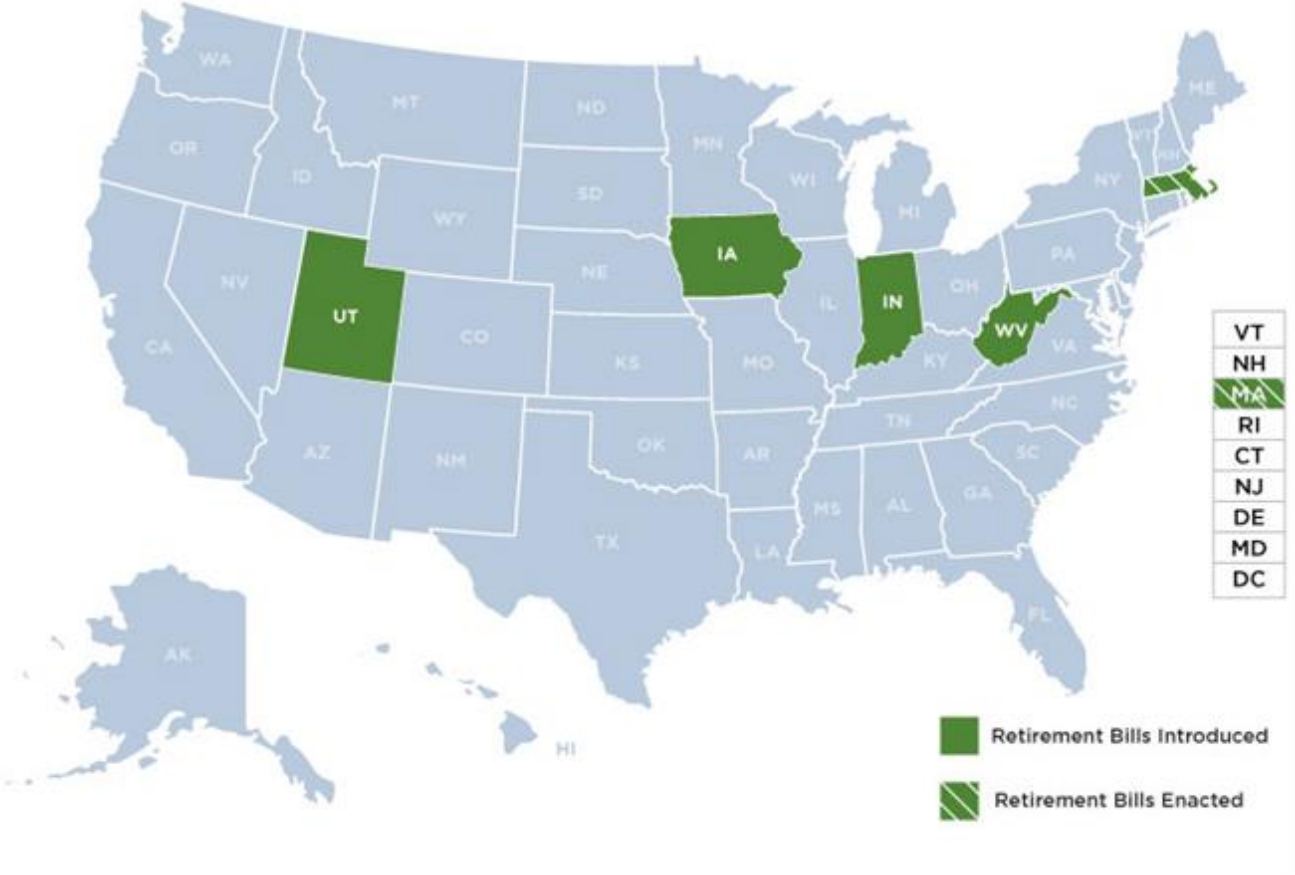
Washington Small Business Retirement Marketplace

- WA SB 5826 (Chapter 296 – 2015 Laws)
- Effective July 24, 2015
- WA Department of Commerce announced that the marketplace will launch in January 2017
- Website:
<http://www.commerce.wa.gov/growing-the-economy/business-services/small-business-retirement-marketplace/>

Washington Small Business Retirement Marketplace

- Participation in the marketplace is completely voluntary
- Self-employed, sole proprietors, employers with fewer than 100 employees eligible to participate
- Marketplace must approve at least two types of plans plus myRA
 - SIMPLE IRA
 - Payroll deduction IRA program
- Marketplace providers must offer two product options
 - Target-date fund
 - Balanced fund
- There must be at least two different providers offering approved plans on the marketplace

State Programs without Mandate



DOL Guidance on State Initiatives

- Proposed rule (state-sponsored payroll deduction IRA program safe harbor) and Interpretative Bulletin (state MEPs) issued in November 2015
- Final rule sent to Office of Management and Budget in July 2016
- Final rule not likely to vary significantly from proposed rule
- Rule will become effective 60 days after publication

DOL Guidance on State Initiatives

- Two pieces of guidance:
 - Proposed ERISA Regulation §2510.3-2(h), which would provide a safe harbor under which state-sponsored payroll deduction IRA programs would not be considered ERISA plans.
 - DOL Interpretive Bulletin 2015-02, to be effective immediately, which would allow states to establish “open” MEPs that would be subject to ERISA.

State Sponsored IRA Program Rule

- Under Proposed Regulation §2510.3-2(h), state-sponsored payroll deduction IRAs would NOT be subject to ERISA if:
 - Established under a state law that **requires employers to participate**
 - State administers program and is responsible for investments (or investment alternative selection) and security of payroll deductions and savings

State Sponsored IRA Program Rule

- Under Proposed Regulation §2510.3-2(h), state-sponsored payroll deduction IRAs would NOT be subject to ERISA if (continued):
 - Employer has “no discretionary authority, control, or responsibility” and any other involvement is limited
 - Employee participation is “voluntary” but automatic enrollment and/or escalation is permissible
 - Employees are notified of their rights under the program and there is a mechanism for enforcement.

State Sponsored IRA Program Rule

- Prior to Proposed Regulation §2510.3-2(h), DOL Interpretive Bulletin 99-1 laid out non-ERISA **voluntary payroll deduction** IRA framework
- Private sector payroll deduction IRA savings programs will remain subject to Interpretive Bulletin 99-1 under which automatic enrollment or escalation results in ERISA coverage
- Proposed rule gives state IRA programs a competitive advantage over private payroll deduction IRA providers

State MEPs

- DOL Interpretive Bulletin 2015-02 permits states to sponsor “open” multiple employer plans effective immediately
- To qualify as a state sponsored open MEP:
 - State (or designated state agency or instrumentality) would be the sponsor, named fiduciary, and plan administrator responsible for administering plan (or selecting service providers)
 - Employer could limit its fiduciary responsibility to prudently selecting the arrangement and monitoring its operation

State MEPs

- State sponsored open MEPs (continued):
 - Are ERISA covered plans and subject to all the normal ERISA rules
 - As such, the plan and its fiduciary “would have to be subject to the same remedies as any private party offering such products and services”
 - State laws providing sovereign immunity to the state and governmental employees could cause a problem with meeting this requirement.

State MEPs

- “Commonality” requirement satisfied because the state “has a unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate...”
- “Having this unique nexus distinguishes the state MEP from other business enterprises that underwrite benefits or provide administrative services to several unrelated employers.”

State MEPs

- DOL Advisory Opinion 2012-04A (requiring “commonality”) still applies to MEPs that are not established by the state
 - The 2012 opinion held that the “commonality” required to have a single plan as previously applied in the MEWA context also applies to retirement plans
 - As a result, “open” MEPs not sponsored by a state will, in most cases, be treated as a collection of separate plans under ERISA
- DOL again tips the scales towards the state versus private providers

Questions?

