



## State Sponsored Retirement Plans

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This *issue brief* provides an overview of state laws related to state-sponsored retirement plans, retirement plan marketplaces, and multiple employer retirement plans for private sector workers. The brief also includes a discussion of related federal laws and Congressional activity, and past Colorado legislation on the topic.

### State-Sponsored Retirement Plan Laws

Seven states — California, Connecticut, Illinois, Maryland, New Jersey, New York, and Oregon — have enacted laws establishing state-sponsored retirement plans for private sector workers. The basic model used across these states is to automatically enroll private sector workers who do not have access to a retirement plan through their employer in a state-sponsored individual retirement account that is administered by an independent board.

These state laws have several common provisions. The laws generally require that private sector employers of a certain size either offer their employees the ability to enroll in a qualifying private employer-sponsored retirement program, or automatically enroll their employees in the state-sponsored retirement plan. Employees enrolled in the state-sponsored retirement plans have their contributions automatically withdrawn by their employer, who is then responsible for sending the contribution to the plan's administrators. Employers are prohibited from contributing to the plans in order to comply with federal law. All of the state laws include provisions allowing employees to set their contribution rate at a rate that is different than the

default rate, or to opt out of the program altogether.

**California.** In 2012, California became the first state to enact a law creating a state-sponsored retirement plan.<sup>1</sup> Following a market analysis, program design, and financial feasibility study, the California legislature passed legislation in 2016 to implement the program.<sup>2</sup> The California Secure Choice Retirement Savings Program, also known as CalSavers, applies to all private sector employers with five or more employees. Employers with fewer than five employees may opt in to the program. The program will begin enrolling employers in 2019 according to a phase-in schedule based on employer size.

**Connecticut.** In 2016, Connecticut created the Connecticut Retirement Security Program, which applies to all private sector employers with five or more qualified employees that have been in business for at least two years.<sup>3</sup> Employers with fewer than five employees may elect to offer the program to their employees. A market feasibility study was conducted, and program implementation is expected to begin in 2019.<sup>4</sup>

**Illinois.** In 2015, Illinois created the Illinois Secure Choice Savings Program, which applies to private sector employers with 25 or more employees that have been in business for at least two years.<sup>5</sup> Small employers may choose to allow their employees to participate in the program. A feasibility study was conducted, and the program

<sup>1</sup>Cal. Gov. Code § 100000, *et seq.*

<sup>2</sup><https://www.treasurer.ca.gov/scib/report.pdf>.

<sup>3</sup>Conn. Gen. Stat. § 31-416, *et seq.*

<sup>4</sup><https://www.osc.ct.gov/crsb>.

<sup>5</sup>820 Ill. Comp. Stat. § 80/1, *et seq.*

began enrolling employers in 2018 according to a phase-in schedule based on employer size.<sup>6</sup>

**Maryland.** In 2016, Maryland created the Maryland Small Business Retirement Savings Program, also known as MarylandSaves, which applies to all employers that have been in business for two or more years.<sup>7</sup> A pilot program is expected to be launched in late 2019, with a full program launch in early 2020.

**New Jersey.** In 2016, New Jersey enacted legislation to establish the New Jersey Small Business Retirement Marketplace Act.<sup>8</sup> However, the program was never implemented. In 2019, the New Jersey Legislature passed legislation creating the New Jersey Secure Choice Savings Program, which will apply to private sector employers with 25 or more employees that have been in business for at least two years.<sup>9</sup> Smaller employers may opt in to the program. The program is expected to be implemented and begin enrollment in 2021.

**New York.** In 2018, New York created the New York State Secure Choice Savings Program.<sup>10</sup> The program is voluntary for employers and employees. The program is expected to be implemented and begin enrollment in 2020.

**Oregon.** In 2015, following a study by the Oregon Retirement Savings Task Force, Oregon created the Oregon Retirement Savings Plan, also known as OregonSaves.<sup>11</sup> The program applies to all employers, regardless of size. Feasibility and market analysis studies were conducted, and the program began enrolling employers in 2017 according to a phase-in schedule based on employer size.<sup>12</sup>

## Other State-Sponsored Retirement laws

In 2015, the Washington legislature created the Washington Small Business Retirement

Marketplace, which launched in March 2018.<sup>13</sup> Employers with fewer than 100 employees may voluntarily enroll in pre-approved private retirement plans through the state-sponsored marketplace.

Two other states, Massachusetts and Vermont, have created state-sponsored multiple employer retirement plan (MEP) programs, which enables multiple employers that are unrelated to participate in a single retirement plan.<sup>14</sup> The Massachusetts MEP only applies to nonprofit organizations with 20 or fewer employees.

## Federal Laws and Congressional Action

**The Employee Retirement Income Security Act (ERISA).** ERISA sets standards for pension and retirement plans, and provides protections for consumers. ERISA specifically preempts state laws that address ERISA-covered employee benefit plans.<sup>15</sup>

In August 2016, the U.S. Department of Labor issued rules determining that plans established through state-sponsored retirement programs do not fall under ERISA. However, these rules were later nullified by Congress.<sup>16</sup> Following the nullification of this rule by Congress, several lawsuits were filed against states that have implemented state-sponsored retirement plans arguing that these plans are in violation of ERISA.

## Colorado Legislation

The Colorado General Assembly has considered several bills on the topic of creating, or studying the creation of, a state-sponsored retirement plan in the state. Specifically, during the past three sessions, House Bill 18-1298, House Bill 17-1290, and House Bill 16-1403 were introduced. None of these bills were enacted.

<sup>6</sup><https://tinyurl.com/y5ks9stg>.

<sup>7</sup>Md. Code, Lab. & Emp. Law § 12-101, *et seq.*

<sup>8</sup>N.J. Rev. Stat. § 43:23-1, *et seq.*

<sup>9</sup>N.J. Rev. Stat. § 43:23-13, *et seq.*

<sup>10</sup>N.Y. Gen. Bus. Law § 1300, *et seq.*

<sup>11</sup>Or. Rev. Stat. § 178.200, *et seq.*

<sup>12</sup><https://tinyurl.com/y2fdddoy> & <https://tinyurl.com/y5xdawky>.

<sup>13</sup>Wash. Rev. Code § 43.330.730, *et seq.*

<sup>14</sup>Mass. Gen. Laws ch. 29, § 64E; Vermont Act 69 of 2017.

<sup>15</sup>29 U.S.C. § 1144.

<sup>16</sup>29 CFR § 2510.2 (h).