



# Cats in an Open Field

State ‘laboratories of democracy’ tackle retirement security by studying and testing auto-IRA programs.

BY JOHN IEKEL

**P**ut 50 cats in a field. They’ll head off in all directions except for areas denied them. But there will be certain things they’ll agree on, like the urgency of finding that field mouse and providing for their feline family.

The 50 cats in the American field — the states — are free to head in their own directions, within the fencing of constitutional constraints. And they do. But there are certain things on which they agree, and one of them is the need to help residents prepare for their golden years.

Workplace retirement plans have long been a key means of providing that help. But providing retirement benefits has never been compulsory for the nation’s employers. Retirement systems, plans and accounts have provided amply for many retirees — but there are holes in the retirement security safety net.

Thus the rise of the auto IRA.

Andrew Remo, the American Retirement Association’s congressional affairs manager, notes that the auto IRA was first envisioned as an answer on a national level. Says Remo, “Mark Iwry, then at the Brookings Institute, and David Johns, then at the Heritage Foundation, first created the auto IRA concept at the federal level in 2005 and have been pushing for legislation to implement that idea ever since, to no avail. Similarly, the ARA has been supportive of the auto IRA concept at the federal level for over a decade now.”

The idea is catching on in the states, however, and in a big way. Half the states are at least on the road

to putting an auto IRA in place. So far, four have enacted measures calling for studies of the idea, if not outright establishment of an auto IRA program.

The state-level measures share many things in common, Remo says. “Generally speaking, the Illinois auto IRA legislation has become a model on which other states now base their proposals. In fact, state lawmakers in New Jersey and Maine have introduced legislation that is identical to the law that was passed in Illinois.”

One key feature of these measures is that generally they would be housed in the state Treasurer’s office, which means that typically the Treasurer is heavily involved in the development of bills presented to a state legislature, Remo says.

But they also tend to reflect the unique character of the individual states. Says Remo, “States take pride in being the ‘laboratories of democracy’ and each effort will adopt its own characteristics. The legislative proposals in each state are different because each state has its own political considerations and state government structure.”

But just because legislation is tailored to a particular state doesn’t necessarily mean that enactment won’t be a heavy lift. Here’s why, according to Remo: “Given the complexity of the issue and the entrenched opposition to these state proposals by many financial services associations and individual companies, the process to get a bill over the finish line is tough.” Most states study the issue for a while in order to build a comfort level about the idea with

lawmakers before taking action, Remo notes. In Illinois, for example, advocates were working on this issue for years before legislation passed and was signed into law in early 2015.

Following is a look at what some of the 25 states active in the auto IRA “laboratories of democracy” are doing.

## BILLS ENACTED

Four states have enacted measures related in some way to auto IRAs.

In 2012, California Gov. Jerry Brown (D) signed into law SB 1234, a measure that authorizes consideration of the California Secure Choice Retirement Savings Program. Sounds simple and final, but it’s not.

This law requires that first a nine-member board must conduct market analysis to determine whether the legal and practical conditions for implementation can be met. The board has approved an approach to the market analysis that includes examination of program design, market analysis, financial feasibility and legal feasibility. After the board has completed its work, it is to submit its findings to the legislature, which will then consider legislation authorizing implementation of the program.

Connecticut has taken a tack that is similar, though not identical. While California’s legislature did not fund the board it created, nor set specific deadlines for the board’s work, the Nutmeg State’s legislature did.

The Connecticut Retirement Security Trust Board is to study the market feasibility of implementing a public retirement plan and report

the results to the governor and the General Assembly. Connecticut's board is to make that report no later than Jan. 1, 2016; then, in consultation with key stakeholders, it must also develop and submit a comprehensive implementation proposal by April 1, 2016.

The board seeks to enter into contracts with Boston College and Mercer Investment Consulting, Inc., concerning the market feasibility study, but they have not been finalized, according to the minutes of the board's April 1, 2015 meeting. Both have submitted a statement of work to the board outlining the services they would provide. The board on April 1 authorized the state Comptroller and state Treasurer to approve and execute the contracts.

Neighboring Massachusetts in 2012 enacted a measure that created the Massachusetts Voluntary Retirement Accounts Program, which is intended to provide retirement options for the employees of nonprofit organizations. The Bay State legislature is considering two other measures now (see "Measures Under Consideration," below).

And last — but not least — is Illinois, the first state to enact a full-blown measure establishing a state program to provide a retirement plan for private-sector workers. Then-Gov. Pat Quinn (D), in one of his last actions before leaving office, signed it into law on Jan. 4, 2015. The law generally went into effect on June 1, 2015; the Illinois Secure Choice Savings Program, which it creates, is to be rolled out in 2017.

The law requires an employer to automatically enroll workers in Roth IRAs if it:

- at no time during the previous calendar year employed fewer than 25 employees in Illinois;
- has been in business at least two years; and
- has not offered a qualified retirement plan in the preceding two years.

Highlights of the program include:

- Employees will contribute by

payroll deduction at 3% of pay.

- Employees can opt out.
- Employees can adjust their contribution rate.
- Employers cannot make contributions to employees' accounts.
- A default life cycle fund will be available for employees.
- Employees will not be able to deduct their contributions from their federal income taxes.
- Employees' investment gains will not be taxed until distribution.
- Participating employees can access their funds at any time.
- Employees can receive tax-advantaged distributions only after reaching age 59½.
- Program assets are in a single investment pool managed by a board composed of the state treasurer, elected officials, state employees and government appointees.
- A fine of \$250 per employee per year can be imposed on employers that do not comply.

There is a potential complication: The plan could run afoul of ERISA. The board is required seek an opinion from the Department of Labor (DOL) regarding whether the program will be subject to ERISA. If the DOL determines that it is, the plan will not be implemented. However, the DOL is not required to respond; if it does not, the plan can proceed.

## MEASURES UNDER CONSIDERATION

Bills related to auto IRAs are under consideration in 21 states (see map). Here's a look at four of them.

### Colorado

The Colorado legislature is considering ways to enhance Centennial State residents' retirement security by increasing the percentage who participate in a retirement plan.

But first things first. Colorado's House of Representatives is considering a bill that would establish a task force that would make recommendations on how to do that.

It's not the first time — in May 2014, the House passed a bill that would have done that. But the Senate disagreed, and the bill failed in that chamber five days later.

Try, try again.

Reps. John Buckner (D-Arapahoe) and Brittany Petterson (D-Jefferson) introduced HB 15-1235 on Feb. 19, 2015. Like its predecessor, the bill would create the Colorado Retirement Security Task Force.

The task force would:

- study and assess the factors that affect Coloradans' ability to save for a financially secure retirement and determine whether it is feasible to create a retirement savings plan for private sector employees;
- consider specified factors;
- meet from the interim between legislative sessions in 2015 to December 2016;
- solicit and accept input from private citizens, state and local governmental entities and public or private organizations;
- develop recommendations; and
- submit two reports to the General Assembly based on its findings.

The bill was referred to the House Business Affairs and Labor Committee, which amended and referred it to the House Appropriations Committee on March 24. That committee reported it to the House on April 2; it passed in its second reading on April 17 and has been read a third time.

Sens. Pat Steadman (D-Denver) and Nancy Todd (D-Arapahoe) are the measure's sponsors in the chamber that was not convinced in 2014, but they have not introduced it yet.

### Maine

There also is legislation Down East that would create a system with automatic features. The bill before the Maine legislature, HP 715, would establish the Adjustable Pension Plan Program, a combined defined benefit and defined contribution retirement plan, which would replace the State Employee and Teacher Retirement Program for state employees and

teachers hired on or after July 1, 2017.

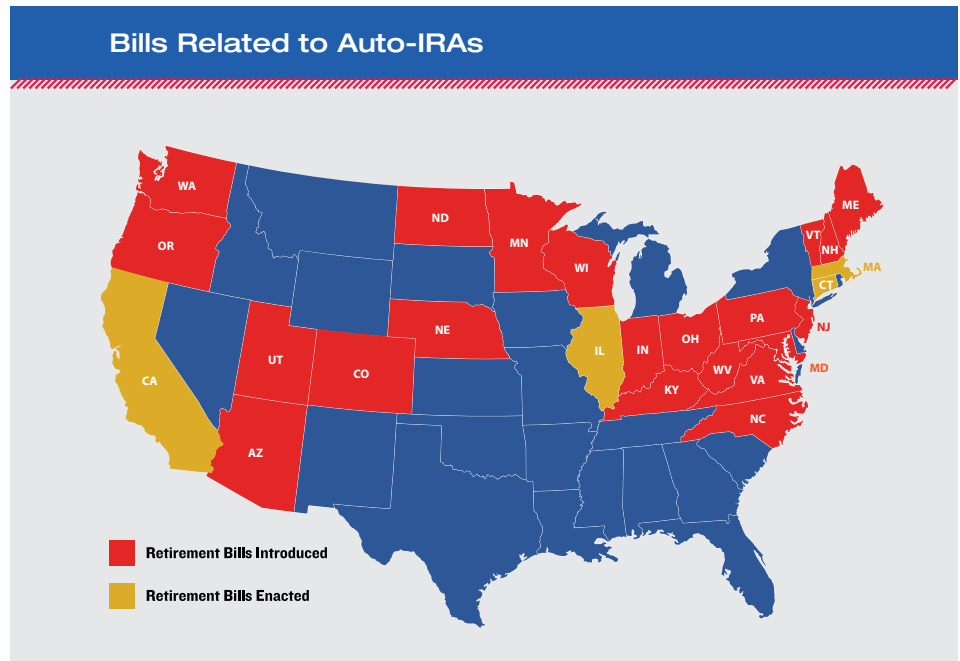
According to Ray Harmon, Government Affairs Counsel for the American Retirement Association, the bill provides that all state employees and teachers hired on or after July 1, 2017 would be covered by Social Security and become members of the Adjustable Pension Plan Program as a condition of their employment. All state employees and teachers hired before that date would be required to become members of the State Employee and Teacher Retirement Program.

The bill would direct the Maine Public Employees Retirement System to review the laws governing the existing retirement program. It also provides that by Dec. 2, 2015 legislation be developed to implement the Adjustable Pension Plan Program in accordance with the plan document developed by the Maine Public Employees Retirement System and submitted in March 2012 to the Joint Standing Committee on Appropriations and Financial Affairs.

The bill was referred to the House Committee on Appropriations and Fiscal Affairs on March 24 and the Senate Committee on Appropriations on the next day. The House committee held a public hearing on it on April 13. Representatives from the Maine Education Association, Maine School Management Association, MSEA/SEIU Local 1989 and Maine Rep. Tom Winsor (R-Norway) presented testimony; of them, only Winsor expressed support for the measure.

#### *Massachusetts*

If one is good, two may be better. At least that appears to be the principle the Bay State's House of Representatives is following. The chamber is considering two measures that would establish employer-based retirement plans in which employees would be automatically enrolled. Both were introduced on Jan. 20, 2015 and are before the Joint Committee on Financial Services.



Rep. Robert Koczera (D-Readville) introduced H. 899, which would establish the Massachusetts Voluntary Retirement Accounts Program. The program would be open to any employer with 100 or fewer qualified employees and would consist of a two-tier system with a SIMPLE IRA-type program or other IRS-approved employer plan, and workplace-based IRAs open to all workers.

Private employers would be required to provide employees with the opportunity to enroll, including providing for payroll deductions for those who do. Employers would enter into contracts with enrolled employees to defer or contribute a portion of their compensation.

Rep. Angelo Scaccia (D-Suffolk) introduced H. 939, the Massachusetts Secure Choice Savings Program Act, which would establish the Massachusetts Secure Choice Savings Program. The program would be an automatic enrollment payroll deduction IRA that would be administered by the Massachusetts Secure Choice Savings Board.

The board would establish a lifecycle fund, with a target date based upon enrollees' ages, as the default

investment option for enrollees who fail to elect an investment option. There would be other investment options, however, including:

- a conservative principal protection fund;
  - a growth fund;
  - a secure return fund whose primary objective would be the preservation of the safety of principal and the provision of a stable and low-risk rate of return; and
  - an annuity fund.
- The measure would require employers to automatically enroll employees unless they opt out. Employees may select a contribution level and may change their contribution level at any time. Those who do not set a contribution level would contribute 3% of wages.

#### *Rhode Island*

The Ocean State is the latest state whose legislature is considering a bill that would put an auto IRA in place. H. 6080 was introduced on April 15, 2015; the House of Representatives' Labor Committee recommended that the bill be held for further study.

The measure would establish an automatic enrollment payroll

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deduction IRA program administered by the state Department of Labor and Training and State Investment Commission.

Employees would be able to opt out of the program. They would contribute at least 3% of wages but would be able to change their contribution levels. Employees also could choose how their funds are to be invested.

Private-sector employers with five or more employees that do not offer a retirement plan could either establish one, make a private-sector IRA available or participate in the state-run auto-IRA program the bill would establish.

Remo testified before the Rhode Island House Committee of Labor in its recent hearing on the bill and expressed the American Retirement Association’s strong support of the measure.

Remo observed that the American Retirement Association supports the measure not only because it would expand the ability of private-sector employees in Rhode Island to save for their retirement through an employer-based account, but also because it will have minimal effects on the employers.

“There is no requirement for employers to contribute to this plan. It is just a payroll slot, so administrative costs for the employer are minimal. In fact, the American Retirement Association strongly supports H.B. 6080, with minor modifications, because the proposed auto-IRA framework will expand the availability of workplace retirement savings without burdening small

business owners,” he testified.

“The current retirement system in the private sector works well for those to have access to it. The challenge is to expand the availability of retirement savings in the private workforce,” Remo said. He went on to say, “The key to a successful retirement for the citizens of the Ocean State is having a retirement plan at work. Simply put, saving at work works.” It’s estimated that more than quarter of a million Rhode Island workers do not have access to a retirement plan at work, he noted.

Remo stressed the importance of private-sector involvement, which he called essential for the initiative’s success. “H.B. 6080 encourages private-sector involvement through an Internet website where private employers will be able to identify private-sector providers that are offering auto-IRA or other retirement savings arrangements. The American Retirement Association believes this approach is critical, and will ensure that Rhode Island residents will have access to a high-quality retirement savings arrangement,” he told the committee.

The American Retirement Association does not consider the bill to be perfect, Remo noted. “The American Retirement Association would like to see some minor changes to H.B. 6080 that would make it more clear that employers subject to the legislation would be allowed to use private payroll deduction IRA products in order to meet its requirements. The American Retirement Association also has concerns that the legislation provides

for a broad ‘hardship exemption’ that essentially allows any business in Rhode Island to not comply with the bill’s requirements by simply sending a notification to the Rhode Island Department of Labor and Training. This provision could limit the effectiveness of the bill’s effort to provide access to payroll deduction savings in the workplace to as many workers as possible,” he said.

Remo concluded with an endorsement of the measure: “H.B. 6080, with the minor changes the American Retirement Association have suggested, will address the real problem of coverage. The current system is working very well for millions of working Americans. Expanding availability of payroll deduction savings is the key to improving the system. There is no need for dramatic changes, but Rhode Island could take a big step forward by adopting a state-based automatic IRA proposal similar to Illinois to make it easier for private employers, particularly small businesses, to offer a workplace savings plan for their employees.”

## WHAT’S NEXT?

So how are the proposals in the 21 states considering them likely to fare? According to Remo, it all depends — there is no single, blanket answer. He notes, “It is important to examine the political makeup of each state that is considering legislation to gauge the prospects of passage and enactment.” **PC**