State Efforts to Expand Coverage:

ILLINOIS SECURE CHOICE SAVINGS PROGRAM ACT

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Chicago Tribune: Quinn signs small-business retirement plan bill into law (January 4, 2015)

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Illinois Secure Choice Savings Program Act

- 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 9 months of effective date

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IL SB 2758 – As Enacted

- State-based auto-IRA program
- All non-governmental employers that meet the following criteria *must* provide a workplace retirement savings arrangement for all employees *with wages allocable to Illinois* over the age of 18:
  - (i) 25 or more employees *in Illinois* at all times during past calendar year
  - (ii) in business for at least two years
  - (iii) not offered a qualified retirement plan to employees within the last two years

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IL SB 2758 – As Enacted

- Employers that don't meet the criteria can choose to participate.
- 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.

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Illinois Secure Choice Savings Program

- Participating employer auto-enrolls eligible employees at 3% of pay
  - employees can opt-out or select their own contribution level not to succeed 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 info packet to employees

IL SB 2758 –Vendor Website

- Illinois Secure Choice Savings Board must create a vendor website to assist private employers in identifying private providers of retirement arrangements
  - Provided sufficient vendor interest and
  - Website funded by the private providers
- Board to establish process for inclusion on the website
  - Provide public notice to of availability and process for inclusion
  - No criteria specified in law
  - Must be live before the Board opens the state program for enrollment

IL SB 2758 –Vendor Website

- Vendor website information must be included on the Secure Choice website, all promotional materials, and all employer and employee information packets
- Also to be included on the IL Department of Revenue's website and all IL Department of Revenue enforcement notices under the legislation

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

Next steps

- Board appointments
  - State Treasurer to chair
  - Comptroller and Governor's OMB office reps
  - Governor nominates 2 public reps with admin or investment experience plus one employer and one employee rep
  - Nominees must be approved by Treasurer and Senate
    - Deemed approved if no action in 60 days
- Board to:
  - Request opinion from DOL on ERISA coverage
    - No implementation if ERISA applies
  - RFP for provider

Potential Roadblocks

- Failure to obtain "adequate funds" to start the program (funds can be obtained from either public or private sources or both)
- DOL determines that the state program is an ERISA employee benefit plan.

ERISA Regs for Payroll Deduction IRAs

- Under ERISA regulations (2510.3-2(d)), payroll deduction IRAs are not subject to ERISA provided that:
  - No contributions are made by the employer
  - Participation is completely voluntary for employees
  - Employer does not "endorse" the program
  - Employer receives no consideration other than "reasonable compensation" for payroll deduction services

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DOL Interpretive Bulletin 99-1

- DOL Interpretive Bulletin 99-1 provided more specific guidance for employers.
  - Reiterated that payroll deduction IRAs are not subject to ERISA if meet the criteria in 2510.3-2(d)
  - Defined what constitutes "endorsement"
  - Defined what constitutes "reasonable compensation"
  - Did not address automatic enrollment
- *Key question*: is automatically enrolling participants into a payroll deduction IRA program "completely voluntary"?
- *Further concern*: DOL completely ignored Interpretive Bulletin 99-1 in its *my*RA information letter.

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DOL *my*RA Information Letter

- Sent to Treasury in December 2014
- Determined that the *my*RA program is not subject to ERISA ***solely*** because the program is administered by the federal government
  - Only reference to previous guidance is in a footnote.
- DOL's view could have major implications for state retirement initiatives
- Worst case scenario - DOL could opine that state auto-IRA programs are not subject to ERISA but private auto-IRA programs usually are.

Illinois v California

California/IL Similarities

- Employers of a certain size must offer a workplace retirement savings plan
- Any qualified plan or payroll deduction IRA from any private sector vendor satisfies the requirement
- Default arrangement for employers with no plan is state-run auto-IRA
  - Employer can opt out of state-run plan at any time by adopting another (private) arrangement
- Website for employers to identify interested private providers
- State-run default not to be an ERISA plan

California/IL Differences

- California requires a study and legislative authorization to open the program
- Who is covered?
  - IL requirement applies to companies with 25 or more employees
  - CA is 5 or more
- State program investments
  - IL built on self-direction
    - target-date default with other investment options
  - CA has no self-direction; professionally managed with guaranteed rate of return (determined annually, in advance of the yr)
- CA legislation restricts providers eligible for provider website

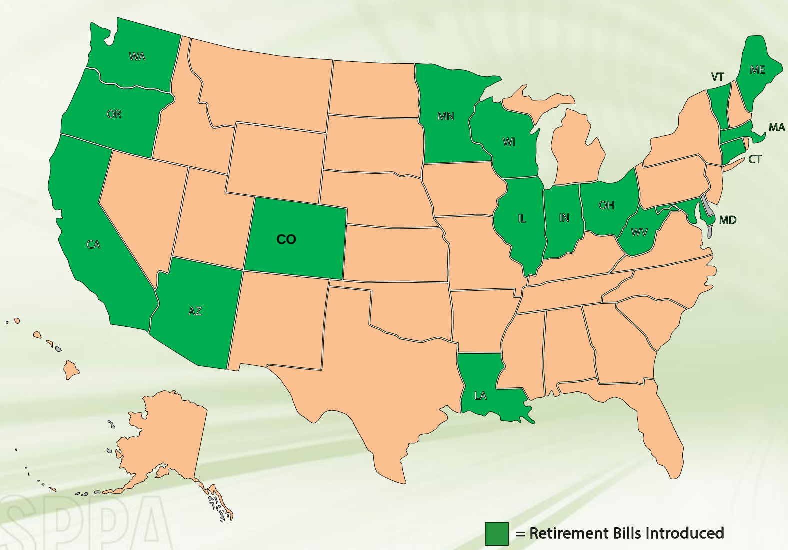
Framework for Judging Proposals

- Employers of a certain size must offer some type of retirement savings program
- Any qualified plan or payroll deduction IRA from any private sector vendor must satisfy the requirement
- Any state option must be IRA-based
- Website for private-sector vendors must be included to level the playing field (if there is a state option)

Other Activity

- Oregon created a study commission that issued a final report last September
- Connecticut created a study commission that is ongoing
- Maryland failed to do anything legislatively
  - Commission created by exec. order disbanded by new governor
  - Report in the works

States with Private Sector Retirement Proposals (2014)



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2015 additions (so far)

- North Dakota
  - State run plan for small business
  - No coverage expansion, just state competing with private providers
- New Hampshire (study)

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What's next?