

1410

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. GOLDEN, LAVALLE, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to prohibiting a diminution of certain employee benefits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The elder law is amended by adding a new article 3 to read
2 as follows:

3 ARTICLE 3
4 EMPLOYEE BENEFIT PLANS

5 SECTION 301. PROHIBITION AGAINST DIMINUTION OF BENEFITS.

6 S 301. PROHIBITION AGAINST DIMINUTION OF BENEFITS. ANY OTHER PROVISION
7 OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, AN EMPLOYER SHALL NOT
8 DIMINISH THE BENEFITS GRANTED A PARTICIPANT, OR FOR WHICH SUCH PARTICIPANT
9 IS ELIGIBLE, UNDER AN EMPLOYEE WELFARE BENEFIT PLAN AS SUCH PLAN
10 WAS IN EXISTENCE AT THE TIME OF THE RETIREMENT OF SUCH PARTICIPANT, AND
11 WHICH APPLIED TO SUCH PARTICIPANT. ANY REDUCTION IN SUCH PLAN OR BENEFITS
12 TO SUCH PARTICIPANT IS HEREBY DECLARED NULL AND VOID AS AGAINST
13 STATE POLICY. AS USED IN THIS ARTICLE:

14 1. THE TERMS "EMPLOYEE WELFARE BENEFIT PLAN" AND "WELFARE PLAN" HAVE
15 THE SAME MEANING AS SUCH TERMS ARE DEFINED IN SECTION 1002 OF SUBTITLE A
16 OF SUBCHAPTER I OF CHAPTER 18 OF USC TITLE 29.

17 2. "EMPLOYER" MEANS ANY PERSON ACTING DIRECTLY AS AN EMPLOYER, OR
18 INDIRECTLY IN THE INTEREST OF AN EMPLOYER, IN RELATION TO AN EMPLOYEE
19 BENEFIT PLAN; AND INCLUDES A GROUP OR ASSOCIATION OF EMPLOYERS ACTING
20 FOR AN EMPLOYER IN SUCH CAPACITY. THE TERM EMPLOYER INCLUDES WITHOUT
21 RESTRICTION ANY EMPLOYEE ORGANIZATION, AND PUBLIC, PRIVATE, OR NOT-FOR-
22 PROFIT ENTITY OR ENTITIES, INDIVIDUAL OR INDIVIDUALS, INCLUDING ENTITIES

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 OR INDIVIDUALS DOING BUSINESS AS, WHICH ARE ENGAGED IN ANY TRADE OR
2 OCCUPATION WHICH EMPLOYS EMPLOYEES IN THIS STATE.

3 3. "EMPLOYEE" MEANS ANY INDIVIDUAL EMPLOYED BY AN EMPLOYER.

4 4. "PARTICIPANT" MEANS ANY FORMER EMPLOYEE OF AN EMPLOYER, OR ANY
5 FORMER MEMBER OF AN EMPLOYEE ORGANIZATION, WHO IS ELIGIBLE TO RECEIVE A
6 BENEFIT OF ANY TYPE FROM AN EMPLOYEE WELFARE BENEFIT PLAN WHICH COVERS
7 EMPLOYEES OF SUCH EMPLOYER OR MEMBERS OF SUCH ORGANIZATION, OR WHOSE
8 BENEFICIARIES MAY BE ELIGIBLE TO RECEIVE ANY SUCH BENEFIT.

9 5. "EMPLOYEE ORGANIZATION" MEANS ANY LABOR UNION OR ANY ORGANIZATION
10 OF ANY KIND, OR ANY AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE, ASSOCI-
11 ATION, GROUP OR PLAN, IN WHICH EMPLOYEES PARTICIPATE AND WHICH EXISTS
12 FOR THE PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERN-
13 ING AN EMPLOYEE WELFARE BENEFIT PLAN OR OTHER MATTERS INCIDENTAL TO
14 EMPLOYMENT RELATIONSHIPS; OR ANY EMPLOYEES' BENEFICIARY ASSOCIATION
15 ORGANIZED FOR THE PURPOSE IN WHOLE OR IN PART, OF ESTABLISHING SUCH A
16 PLAN.

17 6. "BENEFICIARY" MEANS A PERSON DESIGNATED BY A PARTICIPANT, OR BY THE
18 TERMS OF AN EMPLOYEE BENEFIT PLAN, WHO IS OR MAY BECOME ENTITLED TO A
19 BENEFIT THEREUNDER.

20 7. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, JOINT VENTURE, CORPO-
21 RATION, MUTUAL COMPANY, JOINT-STOCK COMPANY, TRUST, ESTATE, UNINCORPO-
22 RATED ORGANIZATION, ASSOCIATION, OR EMPLOYEE ORGANIZATION.

23 S 2. This act shall take effect on the ninetieth day after it shall
24 have become a law.