S T A T E O F N E W Y O R K

5550

2011-2012 Regular Sessions

I N A S S E M B L Y

February 23, 2011

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Governmental Operations

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:

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

ARTICLE III
EMPLOYEE BENEFIT PLANS

SECTION 301. PROHIBITION AGAINST DIMINUTION OF BENEFITS.

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

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

2. "EMPLOYER" MEANS ANY PERSON ACTING DIRECTLY AS AN EMPLOYER, OR INDIRECTLY IN THE INTEREST OF AN EMPLOYER, IN RELATION TO AN EMPLOYEE BENEFIT PLAN; AND INCLUDES A GROUP OR ASSOCIATION OF EMPLOYERS ACTING FOR AN EMPLOYER IN SUCH CAPACITY. THE TERM EMPLOYER INCLUDES WITHOUT RESTRICTION ANY EMPLOYEE ORGANIZATION, AND PUBLIC, PRIVATE, OR NOT FOR PROFIT ENTITY OR ENTITIES, INDIVIDUAL OR INDIVIDUALS, INCLUDING ENTITIES OR INDIVIDUALS DOING BUSINESS AS, WHICH ARE ENGAGED IN ANY TRADE OR OCCUPATION WHICH EMPLOYS EMPLOYEES IN THIS STATE.

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

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

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

5. "EMPLOYEE ORGANIZATION" MEANS ANY LABOR UNION OR ANY ORGANIZATION OF ANY KIND, OR ANY AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE, ASSOCIATION, GROUP OR PLAN, IN WHICH EMPLOYEES PARTICIPATE AND WHICH EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERNING AN EMPLOYEE WELFARE BENEFIT PLAN OR OTHER MATTERS INCIDENTAL TO EMPLOYMENT RELATIONSHIPS; OR ANY EMPLOYEES' BENEFICIARY ASSOCIATION ORGANIZED FOR THE PURPOSE IN WHOLE OR IN PART, OF ESTABLISHING SUCH A PLAN.

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

7. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, JOINT VENTURE, LIMITED LIABILITY COMPANY, CORPORATION, MUTUAL COMPANY, JOINT-STOCK COMPANY, TRUST, ESTATE, UNINCORPORATED ORGANIZATION, ASSOCIATION, OR EMPLOYEE ORGANIZATION.

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