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Clark Kendall: Freedom of choice for retirement

By: Commentary: Clark Kendall March 19, 2015

Do the sponsors of Maryland H.B. 421 and S.B. 312, which would create the so-called Maryland Secure Choice Retirement Savings Program and Trust, think 1 million Marylanders are either too lazy or too financially irresponsible, or both, to pick up the phone and open a simple IRA retirement account at a bank?

In my opinion, the answer is yes.

Why do I think this? Because Del. C. William Frick (D), sponsor of H.B. 421, and Sen. Jim Rosapepe (D), sponsor of S.B. 312, are trying to force Maryland employers with five or more employees to automatically enroll their workers in a mandatory state-run retirement program – if they do not offer an employer-sponsored retirement plan. That means companies, mainly small businesses, would be required by state law to take at least 3 percent – the minimum required by the U.S. Department of Labor – out of every employee paycheck.

Don't get me wrong. Marylanders should be responsible for and encouraged to save for their own retirement. My problem is with making Maryland's small businesses the state's "retirement police."

Today, Maryland employers and employees have access to a multitude of retirement savings options. These include, just to name a few, IRA accounts, profit-sharing plans with or without Social Security integration, 401(k) plans, 403(b) plans, 457 plans, thrift savings and FERS plans for federal employees, defined benefit plans, ESOPs (employee stock option plans) and stock option plans, and various non-qualified incentives.

As a financial planning professional, I find it hard to believe that 1 million hard-working Marylanders – the number estimated by an O'Malley administration task force – and their employers are unable to utilize one or a combination of the aforementioned options. There are a wide variety of financial institutions and advisers ready, willing and able to assist both employers and employees in establishing and maintaining their accounts of choice.

As president of a Maryland-based financial planning and investment management firm, you would think that I would welcome this new law. After all, it's in my interest to have state legislators create more financial confusion on this topic so individuals and companies will seek our services and advice. If this measure passes, my phone will be ringing off the hook. While it would be good for my business, I don't think it would be good for our community.

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To begin with, the proposed bill will have the greatest impact on the small-business community. It will create additional fixed and marginal operating costs that will discourage entrepreneurs from starting new businesses, and force established businesses to look for other operating efficiencies that may discourage them from hiring more Maryland residents. In fact, the new bill may encourage new business owners to establish their business in other states.

Here's another point to consider: Why would the state of Maryland want to get into the business of managing employer-run retirement programs? The fact is, the $45 billion retirement program for 143,000 state employees is underfunded by 31 percent. Should a state agency that is having difficulty managing its own retirement program be saddled with the additional responsibility of setting up new retirement planning laws and regulations for the state's small businesses? And then attempt to manage those funds? I don't think so.

Another pertinent question: If legislators are really worried about Marylanders not saving enough, then why not outlaw casinos and the lottery? Casino gambling and buying lottery tickets are potentially far more damaging to the financial futures of a lot more Marylanders than not taking advantage of a retirement plan.

When you come right down to it, this issue is more of a Maryland civil liberties issue than a Maryland retirement issue. Marylanders should have the right to decide if they want to put money into a retirement account or not. People should have the freedom to choose their own retirement path.

What would be far more beneficial, in my opinion, is implementing a retirement savings contribution tax credit similar to the Federal Savers Credit for citizens who contribute to one of the aforementioned individual or employer-sponsored retirement accounts. The power of this sort of "trickle-up" incentive would be a much better motivator than penalties for non-compliance. This would be a positive step that no other state has taken. It's also the kind of progressive socioeconomic policy that Maryland is known for.

In sum, H.B. 421 and S.B. 312 are bad ideas for the state of Maryland. This legislation will discourage talented individuals from starting new businesses and/or hiring additional local employees. The state government should not be in the business of managing small business retirement plans, especially given its poor track record with the state's own pension plan. Instead, the state of Maryland should focus on educating and encouraging its citizens to save for themselves to ensure a happy and healthy retirement for all Marylanders.

Clark Kendall, founder of Kendall Capital Management in Rockville, Maryland, has over 30 years of experience in investment management and wealth management.

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