

SENATE BILL 948

By Yarbrow

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 8 and Title 9, relative to establishing a voluntary employee retirement accounts program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding Sections 2 through 20 as a new part.

SECTION 2. This part shall be known and may be cited as the "Voluntary Employee Retirement Accounts Program Act."

SECTION 3. As used in this part:

- (1) "Board" means the voluntary employee retirement accounts board established under this part;
- (2) "Employee" means any individual who is eighteen (18) years of age or older, who is employed by an employer, and to whom the employer is obligated to issue a federal form W-2, wage and tax statement;
- (3) "Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in this state, whether for profit or not for profit, that:
  - (A) Has been in business at least two (2) years; and
  - (B) Has not offered a qualified retirement plan, including a plan qualified under § 401(a), § 401(k), § 403(a), § 403(b), § 408(k), § 408(p), or § 457(b) of the Internal Revenue Code of 1986 in the preceding two (2) years;
- (4) "Enrollee" means any employee who is enrolled in the program;
- (5) "Fund" means the voluntary employee retirement accounts program fund;

(6) "Internal Revenue Code" means Internal Revenue Code of 1986, or any successor law, in effect for the calendar year;

(7) "IRA" means a Roth IRA described in Section 408A of the Internal Revenue Code (26 U.S.C. § 408A);

(8) "Participating employer" means an employer that provides a payroll deposit retirement savings arrangement as provided for by this part for its employees who are enrollees in the program;

(9) "Payroll deposit retirement savings arrangement" means an arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the program;

(10) "Program" means the voluntary employee retirement accounts program; and

(11) "Wages" means any compensation within the meaning of § 219(f)(1) of the Internal Revenue Code that is received by an enrollee from a participating employer during the calendar year.

SECTION 4. There is created the voluntary employee retirement accounts program to provide a cost-effective group retirement program for employers in this state electing to participate in the program and employees. A participating employer may elect to discontinue participation in accordance with program requirements.

#### SECTION 5.

(a) There is created a special agency account in the state general fund to be known as the voluntary employee retirement accounts program fund. The fund shall include the individual retirement accounts of enrollees, which shall be accounted for as individual accounts. Moneys in the fund shall consist of moneys received from enrollees and participating employers pursuant to automatic payroll deductions and contributions to savings made under this part.

(b) The fund shall be operated in a manner determined by the board. The accounts of enrollees established under the program shall meet the requirements for IRAs under the Internal Revenue Code.

(c) Any fund balance remaining unexpended at the end of a fiscal year in the fund shall be carried forward into the subsequent fiscal year.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the state treasurer.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly.

#### SECTION 6.

(a) There is created a board to be known as the voluntary employee retirement accounts board, composed of seven (7) members, referred to in this part as the "board", as follows:

(1) State treasurer, or the state treasurer's designee, who shall serve as chair;

(2) Comptroller, or comptroller's designee;

(3) Commissioner of finance and administration, or commissioner's designee;

(4) Two (2) public members with expertise in retirement savings plan administration or investment, or both, appointed by the governor;

(5) A representative of participating employers, appointed by the governor; and

(6) A representative of enrollees, appointed by the governor.

(b) Members of the board shall serve without compensation but shall be reimbursed for necessary travel expenses incurred in connection with the board duties in accordance with the comprehensive travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(c) The initial appointments for the governor's appointees shall be as follows: one (1) public member for a term of four (4) years; one (1) public member for two (2) years; the representative of participating employers for three (3) years; and the representative of enrollees for one (1) year. Thereafter, all of the governor's appointees shall be for terms of four (4) years.

(d) A vacancy in the term of an appointed board member shall be filled for the balance of the unexpired term in the same manner as the original appointment.

SECTION 7. The board, the individual members of the board, the trustee appointed under Section 8(2), any other agents appointed or engaged by the board, and all persons serving as program staff shall discharge their duties with respect to the program solely in the interest of the program's enrollees and beneficiaries, as follows:

(1) For the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the program;

(2) By investing with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with similar aims; and

(3) By using any contributions paid by employees and employers into the trust exclusively for the purpose of paying benefits to the enrollees of the program, for the

cost of administration of the program, and for investments made for the benefit of the program.

SECTION 8. In addition to the other duties and responsibilities stated in this part, the board shall:

(1) Cause the program to be designed, established, and operated in a manner that:

- (A) Accords with best practices for retirement savings vehicles;
- (B) Maximizes participation, savings, and sound investment practices;
- (C) Maximizes simplicity, including ease of administration for participating employers and enrollees;
- (D) Provides an efficient product to enrollees by pooling investment funds;
- (E) Ensures the portability of benefits; and
- (F) Provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement;

(2) Appoint a trustee to the fund in compliance with Section 408 of the Internal Revenue Code;

(3) Explore and establish investment options, subject to Section 10, that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the state;

(4) Establish the process by which interest, investment earnings, and investment losses are allocated to individual program accounts on a pro rata basis and are computed at the interest rate on the balance of an individual's account;

(5) Make and enter into contracts necessary for the administration of the program and fund, including retaining and contracting with investment managers, private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary;

(6) Conduct a review of the performance of any investment vendors every four (4) years, including a review of returns, fees, and customer service. A copy of reviews conducted under this subdivision (6) shall be posted to the board's website;

(7) Determine the number and duties of staff members needed to administer the program and assemble such a staff, including, as needed, employing staff, appointing a program administrator, and entering into contracts with the state treasurer to make employees of the state treasurer's office available to administer the program;

(8) Cause moneys in the fund to be held and invested with a view to achieving cost savings through efficiencies and economies of scale;

(9) Evaluate and establish the process by which an enrollee is able to contribute a portion of the enrollee's wages to the program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the program, including contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements;

(10) Design and establish the process for enrollment under Section 13, including the process by which an employee can opt not to participate in the program, select a contribution level, select an investment option, and terminate participation in the program;

(11) Evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the program;

(12) Accept any grants, appropriations, or other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation solely for deposit into the fund, whether for investment or administrative purposes;

(13) Evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the program, and indemnify as needed each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board;

(14) Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the program, including the costs associated with Section 6(b), subdivisions (5), (6), (8), and (12), Section 10(b), and Section 17(a). Subject to appropriation, the state may pay administrative costs associated with the creation and management of the program until sufficient assets are available in the fund for that purpose. Thereafter, all administrative costs of the fund, including repayment of any start-up funds provided by the state, shall be paid only out of moneys on deposit in the fund. However, private funds or federal funding received under subdivision (12) to implement the program until the fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of the repayment. The board shall keep total annual expenses as low as possible, but in no event shall they exceed fifty hundredths percent (.50%) of the total trust balance;

(15) Allocate administrative fees to individual retirement accounts in the program on a pro rata basis;

(16) Set minimum and maximum contribution levels in accordance with limits established for IRAs by the Internal Revenue Code;

(17) Facilitate education and outreach to employers and employees;

(18) Facilitate compliance by the program with all applicable requirements for the program under the Internal Revenue Code, including tax qualification requirements or any other applicable law and accounting requirements;

(19) Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner; and

(20) Exercise any and all other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of this part pertaining to the program.

SECTION 9. The board may prepare and adopt a written statement of investment policy that includes a risk management and oversight program. Any such investment policy shall prohibit the board, program, and fund from borrowing for investment purposes. Any such risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the program and fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The board shall adopt any such statement of investment policy and any changes in the investment policy at a public meeting of the board. Any such investment policy and any changes to the investment policy shall be published on the board's or state treasurer's website at least thirty (30) days prior to implementation of the policy.

#### SECTION 10.

(a) The board shall establish as an investment option a life-cycle fund with a target date based upon the age of the enrollee. This shall be the default investment



option for enrollees who fail to elect an investment option unless and until the board designates by rule a new investment option as the default as described in subsection (c).

(b) The board may also establish any or all of the following additional investment options:

(1) A conservative principal protection fund;

(2) A growth fund;

(3) A secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return. If the board elects to establish a secure return fund, the board may procure any insurance, annuity, or other product to insure the value of individuals' accounts and guarantee a rate of return; the cost of the funding mechanism shall be paid out of the fund. Under no circumstances shall the board, program, fund, the state, or any participating employer assume any liability for investment or actuarial risk; the board shall determine whether to establish such investment options based upon an analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation; or

(4) An annuity fund.

(c) If the board elects to establish a secure return fund, the board shall then determine whether such option shall replace the target date or life-cycle fund as the default investment option for enrollees who do not elect an investment option. In making the determination, the board shall consider the cost, risk profile, benefit level, and ease of enrollment in the secure return fund. The board may at any time thereafter reconsider this determination and, based upon an analysis of these criteria, establish either the secure return fund or the life-cycle fund as the default for enrollees who do not elect an investment option.

SECTION 11. The state shall have no liability for the payment of any benefit to any participant in the program.

SECTION 12.

Prior to the opening of the program for enrollment, the state treasurer may design and disseminate to all employers information on the program, appropriate disclosures for employees, information regarding the vendor internet website described in Section 13(h), and any other information as the state treasurer deems fit.

SECTION 13.

(a) Except as otherwise provided in Section 19, the program shall be implemented, and enrollment of employees shall begin, within twenty-four (24) months after the effective date of this act. This section shall be implemented after the board opens the program for enrollment.

(b) Enrollees shall have the ability to select a contribution level into the fund. This level may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for the enrollee's taxable year under § 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the board. If an enrollee fails to select a contribution level, then the enrollee shall contribute five percent (5%) of the enrollee's wages to the program; provided, that the contributions shall not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under § 219(b)(1)(A) of the Internal Revenue Code.

(c) Enrollees may select an investment option from the permitted investment options listed in Section 10. Enrollees may change their investment option at any time, subject to rules promulgated by the board. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the

board as the default under Section 10(c). If the board has not selected a default investment option under Section 10(c), then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

(d) Following initial implementation of the program pursuant to this section, at least annually, participating employers shall designate an open enrollment period during which employees who previously opted out of the program may enroll in the program.

(e) An employee who opts out of the program who subsequently wishes to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating employer at an earlier time.

(f) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the program.

(g) An employee may terminate the employee's participation in the program at any time in a manner prescribed by the board.

(h) The board may establish and maintain an internet website designed to assist employers in identifying private sector providers of retirement arrangements that can be established by the employer rather than allowing employee participation in the program under this part; provided, however, the board may only establish and maintain an internet website under this subsection (h) if there is sufficient interest in such an internet website by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the internet website. The board must provide public

notice of the availability of and the process for inclusion on any such internet website before it becomes publicly available. Any such internet website must be available to the public before the board opens the program for enrollment, and the internet website address must be included on any internet website posting or other materials regarding the program offered to the public by the board.

SECTION 14. Employee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the fund using one (1) or more payroll deposit retirement savings arrangements established by the board under Section 8(9), either:

- (1) On or before the last day of the month following the month in which the compensation otherwise would have been payable to the employee in cash; or
- (2) Before such later deadline prescribed by the board for making the payments.

SECTION 15.

(a) The state shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the program. Any financial liability for the payment of retirement savings benefits in excess of funds available under the program shall be borne solely by the entities with whom the board contracts to provide insurance to protect the value of the program.

(b) No state board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from particular investments selected under this part, except for any liability that arises out of a breach of fiduciary duty under Section 7.

SECTION 16.

(a) Participating employers shall not have any liability for an employee's decision to participate in, or opt out of, the program or for the investment decisions of the board or of any enrollee.

(b) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program. A participating employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

#### SECTION 17.

(a) The board shall annually submit an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program during each calendar year by July 1 of the following year to the governor, the comptroller, the state treasurer, and the general assembly.

(b) The annual audit shall be made by an independent certified public accountant and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees for the administration of the program.

(c) In addition to any other statements or reports required by law, the board shall provide periodic reports at least annually to participating employers, reporting the names of each enrollee employed by the participating employer and the amounts of contributions made by the participating employer on behalf of each employee during the reporting period, as well as to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. The reports may include any other information regarding the program as the board may determine.

(d) The state treasurer shall prepare a report in consultation with the board that includes a summary of the benefits provided by the program, including the number of enrollees in the program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the program and the fund.

SECTION 18. The state treasurer may adopt, in accordance with the Uniform Administrative Procedure Act, compiled in title 4, chapter 5, any rules that may be necessary to implement this part.

SECTION 19. If the board does not obtain adequate funds to implement the program within the time frame set forth under Section 13, the board may delay the implementation of the program.

SECTION 20. The board shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the program. The board may not implement the program if the IRA arrangements offered under the program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the program is an employee benefit plan and state or employer liability is established under the federal Employee Retirement Income Security Act.

SECTION 21. This act shall take effect July 1, 2017, the public welfare requiring it.