

# AN ACT

To amend sections 148.01 and 148.04 and to enact sections 148.041 and 148.042 of the Revised Code to authorize automatic enrollment of new state government employees in the Ohio Public Employees Deferred Compensation Program.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 148.01 and 148.04 be amended and sections 148.041 and 148.042 of the Revised Code be enacted to read as follows:

Sec. 148.01. (A) As used in this chapter:

(1) "Eligible employee" means any public employee, as defined in division (A) of section 145.01 of the Revised Code; any person eligible to become a member of the public employees retirement system under section 145.20 of the Revised Code; any employee, as defined in division (C) of section 742.01, division (B) of section 3309.01, or division (A) of section 5505.01 of the Revised Code; any electing employee, as defined in section 3305.01 of the Revised Code; and any member of the state teachers retirement system.

(2) "Participant account" means any of the following accounts:

(a) An account that is maintained by the Ohio public employees deferred compensation board and that evidences moneys that have been deferred by or on behalf of, a continuing member or participating employee and transmitted to the board by the retirement system of the continuing member or participating employee;

(b) An account that is maintained by the governing board, administrator, depository, or trustee of a deferred compensation program of a municipal corporation and that evidences moneys that have been deferred by an officer or employee of that municipal corporation and transmitted to the governing board, administrator, depository, or trustee by the retirement system of the officer or employee or in another manner;

(c) An account that is maintained by a governing board, as defined in section 148.06 of the Revised Code, and that evidences moneys that have been deferred by an officer or employee of a government unit, as defined in that section, and transmitted to the governing board by the retirement system of the officer or employee or in another manner.

(3) "Participating employee" means any eligible employee who is having compensation deferred pursuant to ~~a contract~~ either of the following:

(a) An agreement that is ~~executed~~ entered into before the compensation is earned and that is with the eligible employee's employer and the Ohio public employees deferred compensation board;

(b) Automatic enrollment in the Ohio public employees deferred compensation program under section 148.042 of the Revised Code.

(4) "Continuing member" means any former participating employee who is not currently

having compensation deferred, or the former participating employee's beneficiary, to whom payment has not been made of all deferred compensation distributions.

(B) Notwithstanding section 145.01 of the Revised Code, the definitions of that section are applicable to this chapter only to any extent necessary to fully understand the provisions of this chapter. Reference may also be had to Chapters 742., 3305., 3307., 3309., and 5505. of the Revised Code for that purpose.

Sec. 148.04. (A) The Ohio public employees deferred compensation board shall initiate, plan, expedite, and, subject to an appropriate assurance of the approval of the internal revenue service, promulgate and offer to all eligible employees, and thereafter administer on behalf of all participating employees and continuing members, and alter as required, a program for deferral of compensation, including a reasonable number of options to the employee for the investment of deferred funds, always in such form as will assure the desired tax treatment of such funds. The members of the board are the trustees of any deferred funds and shall discharge their duties with respect to the funds solely in the interest of and for the exclusive benefit of participating employees, continuing members, and their beneficiaries. With respect to such deferred funds, section 148.09 of the Revised Code shall apply to claims against participating employees or continuing members and their employers.

~~(B) The Ohio public employees deferred compensation program shall provide informational materials and acknowledgment forms to employers required to comply with division (C) of this section.~~

~~(C)(1) Whenever an individual becomes employed in a position paid by warrant of the director of budget and management, the individual's employer shall do both of the following at the time the employee completes the employee's initial employment paperwork:~~

~~(a) Provide to the employee materials provided by the Ohio public employees deferred compensation program under division (B) of this section regarding the benefits of long-term savings through deferred compensation;~~

~~(b) Secure, in writing or by electronic means, the employee's acknowledgment form regarding the employee's desire to participate or not participate in a deferred compensation program offered by the board.~~

~~An election regarding participation under this section shall be made in such manner and form as is prescribed by the Ohio public employees deferred compensation program and shall be filed with the program.~~

~~The employer shall forward each acknowledgment form completed under this division to the deferred compensation program not later than forty-five days after the date on which the employee's employment begins.~~

~~(2) Every employer of an eligible employee shall contract with enroll the employee upon the employee's application for participation in a deferred compensation program offered by the board on the employee's application to participate, on the employee's election under section 148.041 of the Revised Code, or by automatic enrollment under section 148.042 of the Revised Code.~~

~~(D)(C) The board shall take all actions necessary to ensure that the program qualifies as an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986, 26 U.S.C. 457. The board shall, subject to any applicable contract provisions of the Ohio public employees deferred compensation program plan, undertake to obtain as favorable conditions of tax~~

treatment as possible, both in the initial programs and any permitted alterations of them or additions to them, as to such matters as terms of distribution, designation of beneficiaries, withdrawal upon disability, financial hardship, or termination of public employment, and other optional provisions.

The board may establish a designated Roth account feature or any other feature in which an employee may make tax-deferred or nontax-deferred contributions to an eligible government plan in accordance with 26 U.S.C. 457, as amended.

~~(E)-(D)~~ In no event shall the total of the amount of deferred compensation to be set aside under a deferred compensation program and the employee's nondeferred income for any year exceed the total annual salary or compensation under the existing salary schedule or classification plan applicable to the employee in that year.

Such a deferred compensation program shall be in addition to any retirement or any other benefit program provided by law for employees of this state. The board shall adopt rules pursuant to Chapter 119. of the Revised Code to provide any necessary standards or conditions for the administration of its programs, including any limits on the portion of a participating employee's compensation that may be deferred in order to avoid adverse treatment of the program by the internal revenue service or the occurrence of deferral, withholding, or other deductions in excess of the compensation available for any pay period.

Both of the following apply to a deferred compensation program established under this section:

(1) Any income deferred under the program shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the retirement system of an employee;

(2) Any sums deferred shall not be included in the computation of any federal and state income taxes withheld on behalf of an employee. Sums contributed to a Roth account feature or other feature to which nontax-deferred contributions are made shall be included in the computation of any federal and state income taxes withheld on behalf of an employee.

~~(F)-(E)~~ This section does not limit the authority of any municipal corporation, county, township, park district, conservancy district, sanitary district, health district, public library, county law library, public institution of higher education, or school district to provide separate authorized plans or programs for deferring compensation of their officers and employees in addition to the program for the deferral of compensation offered by the board. Any municipal corporation, township, public institution of higher education, or school district that offers such plans or programs shall include a reasonable number of options to its officers or employees for the investment of the deferred funds, including annuities, variable annuities, regulated investment trusts, or other forms of investment approved by the municipal corporation, township, public institution of higher education, or school district, that will assure the desired tax treatment of the funds.

Sec. 148.041. (A) Unless the employee will be automatically enrolled in the Ohio public employees deferred compensation program under section 148.042 of the Revised Code, whenever an eligible employee becomes employed in a position paid by warrant of the director of budget and management, the employee's employer shall do both of the following at the time the employee completes the employee's initial employment paperwork:

(1) Provide to the employee materials provided by the Ohio public employees deferred

compensation board under division (D) of this section regarding the benefits of long-term savings through deferred compensation;

(2) Except as otherwise provided in division (E) of this section, secure, in writing or by electronic means, the employee's election to participate or not participate in a deferred compensation program offered by the board.

(B) An election regarding participation under this section shall be made in the manner prescribed by the board.

(C) The employer shall forward each election completed under this section to the program not later than forty-five days after the date the employee's employment begins.

(D) The board shall provide informational materials and participation forms to employers required to comply with this section.

(E) If an eligible employee transfers employment from one position paid by warrant of the director of budget and management to another position paid by warrant of the director of budget and management and, at the time of transfer, is a participating employee, the employee's new employer shall not be required to secure the employee's election to participate or not participate under division (A)(2) of this section.

Sec. 148.042. (A) As used in this section, "employing authority" means both of the following:

(1) The supreme court, house of representatives, senate, legislative service commission, secretary of state, auditor of state, treasurer of state, or attorney general with respect to employees of those entities;

(2) The director of administrative services, with respect to eligible employees employed in a position paid by warrant of the director of budget and management who are not employed by a person or entity listed in division (A)(1) of this section.

(B)(1) An employing authority may elect to automatically enroll employees described in division (C)(1) of this section in the Ohio public employees deferred compensation program. An employing authority that elects automatic enrollment shall notify the Ohio public employees deferred compensation board of that election. Automatic enrollment shall commence as soon as administratively practical for the board and the employing authority.

(2) An employing authority that elects automatic enrollment may cease automatic enrollment by notifying the board. The employing authority shall specify in the notice the date on which automatic enrollment will cease, and that date must be at least ninety days after the date the employing authority sends the notice. An employee who commences employment after automatic enrollment ceases may elect to participate in the program in accordance with section 148.04 or 148.041 of the Revised Code. Cessation of automatic enrollment does not affect the enrollment of employees enrolled during an automatic enrollment period.

An employing authority that ceases automatic enrollment may subsequently elect automatic enrollment by complying with division (B)(1) of this section.

(C)(1) An eligible employee employed by an employing authority that has elected automatic enrollment shall be automatically enrolled in the program if one of the following applies to the employee:

(a) The employee initially commences employment with the employing authority on or after the date automatic enrollment begins under division (B) of this section.

(b) The employee separates from employment with an employing authority, becomes a continuing member, and, on or after the date automatic enrollment begins, commences employment with that employing authority or a different employing authority.

(c) The employee is employed in a position paid by warrant of the director of budget and management and the employee transfers employment from an employing authority that has not elected to automatically enroll employees under this section to another position paid by warrant of the director of budget and management under an employing authority that has elected to automatically enroll employees, if the transfer occurs on or after the date automatic enrollment begins.

(2) An employee who, at the time of transferring from one employing authority to another as described in division (C)(1)(c) of this section, is a participating employee shall not be automatically enrolled in the program by the employing authority to which the employee transfers.

(D) The board shall establish the automatic deferral amounts and specify the investment options into which those deferred amounts will be invested for participating employees who are enrolled under this section. Deferral amounts shall not exceed the lesser of either ten per cent of an eligible employee's compensation or the maximum contribution that the employee is eligible to contribute under federal law.

(E) An employing authority that elects to automatically enroll employees under this section shall provide those employees with notice of the employee's rights and obligations in the manner prescribed by the board.

(F) An employing authority shall not elect to automatically enroll an eligible employee under this section, or elect to cease automatic enrollment, if that election conflicts with any collective bargaining agreement entered into between the employing authority and an exclusive representative as defined in section 4117.01 of the Revised Code.

SECTION 2. That existing sections 148.01 and 148.04 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

S. B. No. 27

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_