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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- PRIVATE EMPLOYER IRA
PROGRAM

Introduced By: Representatives Edwards, Marshall, Shekarchi, Ajello, and Solomon

Date Introduced: January 15, 2016

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 16.2

4 PRIVATE EMPLOYER IRA PROGRAM

5 **42-16.2-1. Purpose of chapter.** -- It is the express intention of the general assembly by
6 the passage of this chapter to provide a retirement savings program in the form of an automatic
7 enrollment payroll deduction IRA program, which is hereby established and shall be administered
8 by the state department of labor and training (DLT) for the purpose of promoting greater
9 retirement savings for certain private sector employees in a convenient, voluntary, low-cost, and
10 portable manner.

11 **42-16.2-2. Definitions.** -- As used in this chapter:

12 (1) "Department" means the state department of labor and training.

13 (2)(i) "Employee" means an individual who is employed by an employer:

14 (ii) "Employee" does not include:

15 (A) Any employee covered under the federal Railway Labor Act, or any employee
16 engaged in interstate commerce so as not to be subject to the legislative powers of this state,
17 except insofar as application of this chapter is authorized under the laws of the United States;

18 (B) Any employee covered by a valid collective bargaining agreement that expressly

1 provides for a multiemployer Taft-Hartley pension plan; and

2 (C) Any employee who is under eighteen (18) years of age before the beginning of the
3 calendar year;

4 (3)(i) "Employer" means an individual or entity engaged in a business, industry,
5 profession, trade, or other enterprise in this state, whether for-profit or not-for-profit, that has:

6 (A) Five (5) or more employees;

7 (B) Been in business at least two (2) years;

8 (C) Not offered a qualified retirement plan, including, but not limited to, a plan qualified
9 under §§401(a), 402(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code,
10 in the preceding two (2) years; and

11 (D) Satisfies the requirements to establish or participate in a payroll deposit retirement
12 savings agreement;

13 (ii) Employer does not include:

14 (A) The federal government;

15 (B) The state; or

16 (C) Any of the state's units or instrumentalities, including any municipal government of
17 the state or its agencies.

18 (4) "Enrollee" means any employee who is enrolled in the program;

19 (5) "IRA" means a traditional or Roth individual retirement account under §408 A of the
20 Internal Revenue Code;

21 (6) "Participating employer" means an employer that provides a payroll deposit
22 retirement savings arrangement for enrolled employees;

23 (7) "Payroll deposit retirement savings arrangement" means an arrangement by which an
24 employer allows employees to remit payroll deduction contributions to a retirement savings
25 program;

26 (8) "Program" means the private employer IRA program;

27 (9)(i) "Vendor" means a registered investment company, life insurance company, or
28 qualified third-party administrator, authorized to do business in Rhode Island that provides or
29 administers retirement investment products, including a company that is authorized to do business
30 in Rhode Island that provides payroll services or recordkeeping services, and offers retirement
31 plans or payroll deposit IRA arrangements using products of regulated investment companies and
32 insurance companies qualified to do business in this state;

33 (ii) "Vendor" does not include individual registered representatives, brokers, financial
34 planners or agents.

1 (10) "Wages" means any compensation, as defined by, §219(f)(1) of the Internal Revenue
2 Code, that is received by an enrollee from a participating employer during the calendar year.

3 **42-16.2-3. Administration.** – (a) The program shall be administered, for administrative
4 purposes, by the department of labor and training.

5 (b) Routine administrative costs incurred by the program shall be absorbed in the budget
6 for the department.

7 **42-16.2-4. Powers and duties of department.** – (a) The department, and all persons
8 -serving as program staff shall discharge their duties with respect to the program solely in the
9 interest of the program's enrollees and beneficiaries.

10 (b) The department shall comply with and carry out the following responsibilities:

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

12 (i) Accords with best practices for retirement savings vehicles;

13 (ii) Maximizes participation, savings, and sound investment practices;

14 (iii) Maximizes simplicity, including ease of compliance and use for participating
15 employers and enrollees;

16 (iv) Provides an efficient and cost-effective product to enrollees;

17 (v) Ensures the portability of benefits; and

18 (vi) Provides for the deaccumulation of enrollee assets in a manner that maximizes
19 financial security in retirement.

20 (2) Comply with all applicable federal law and regulations of the Department of the
21 Treasury relating to the Internal Revenue Code.

22 (3) Make and enter into contracts necessary for the administration of the program.

23 (4) Evaluate and establish the process by which an enrollee is able to contribute a portion
24 of their wages to the program for automatic deposit of those contributions and the process by
25 which the participating employer provides a payroll deposit retirement savings arrangement to
26 forward those contributions and related information to the program.

27 (5) Design and establish the process for enrollment under §42-16.2-7, including the
28 process by which an employee may:

29 (i) Opt not to participate in the program;

30 (ii) Select a contribution level;

31 (iii) Select an investment option; and

32 (iv) Terminate participation in the program.

33 (6) Keep annual administrative expenses as low as possible.

34 (7) Facilitate education and outreach to employers and employees.

1 (8) Carry out the duties and obligations of the program in an effective, efficient, and low-
2 cost manner. This includes the authority to explore, with other state entities, the potential
3 efficiencies which might be achieved by combining vendor contracting opportunities.

4 (9) Exercise any other powers reasonably necessary for the effectuation of the purposes,
5 objectives, and provisions of this chapter pertaining to the program.

6 (10) If deemed necessary, request in writing an opinion or ruling from the appropriate
7 entity with jurisdiction over the federal Employee Retirement Income Security Act (ERISA)
8 regarding the applicability of the federal Employee Retirement Income Security Act to the
9 program.

10 (11) Conduct or cause to be conducted an audit of program-related activities of any
11 vendor.

12 (12) Enter into information sharing agreements with any other state government entity
13 possessing data necessary for program administration.

14 (13) Recommend to the Rhode Island general assembly, for legislative action,
15 nonpunitive incentives to encourage employer and employee participation, including, but not
16 limited, to tax credits.

17 **42-16.2-5. Employment of vendors.** – (a) The state investment commission shall
18 engage, through a procurement process, pursuant to the general laws, a vendor to serve as the
19 default vendor with a three (3) year request for proposal.

20 (b) All other vendors selected by employers shall comply with all applicable federal and
21 state laws, rules and regulations, as well as all administrative regulations promulgated by the
22 department with respect to the program.

23 (c) All vendors shall provide the reports that the department deems necessary for the
24 department to oversee the vendors' performance, including, but not limited to, usage reports to
25 monitor compliance.

26 **42-16.2-6. Investment options and contribution amount.** – (a) The department shall
27 ensure that investment options include a life-cycle fund or a lifestyle balanced qualified default
28 investment alternative governed by ERISA with a target date based upon the age of the enrollee.

29 (1) The life-cycle fund or a lifestyle balanced qualified default investment alternative
30 governed by ERISA shall be the default investment option for enrollees who fail to elect an
31 investment option unless and until the department designates by rule a new investment option as
32 the default which it shall determine from appropriate qualified default investment alternatives.

33 (2) The contribution amount for the default option shall be three percent (3%) of wages
34 earned during a payroll period.

1 (b) The department shall exercise its best efforts to also ensure that an appropriate menu
2 of investment options are available to enrollees.

3 **42-16.2-7. Implementations of program - Enrollment.** – (a) Prior to the opening of the
4 program for enrollment, the department shall develop, design, and disseminate to all employers
5 an employer information packet and an employee information packet, which shall include
6 background information on the program, appropriate disclosures for employees, and information
7 regarding any program-related Internet website.

8 (b) The employee information packet shall include, but not be limited to, all of the
9 following:

10 (1) The benefits and risks associated with making contributions to the program;

11 (2) The mechanics of how to make contributions to the program;

12 (3) How to opt out of the program;

13 (4) How to participate in the program;

14 (5) The process for withdrawal of retirement savings;

15 (6) How to obtain additional information about the program;

16 (7) A statement advising employees seeking financial advice to contact financial
17 advisors, and also stating that participating employers are not in a position to provide financial
18 advice, and are not liable for the decisions employees make pursuant to this chapter;

19 (8) A statement that the program is not an employer-sponsored retirement plan;

20 (9) A statement that the program fund is not guaranteed by the state;

21 (10) A form for an employee to note their decision to opt out of participation in the
22 program; and

23 (11) Information stating that the default option is a life-cycle qualified default investment
24 alternative fund and that the initial investment amount shall be three percent (3%) of wages
25 earned during a payroll period.

26 (c) Participating employers shall provide employees with a copy of the employee
27 information packet upon the implementation of the program or at the time of hiring.

28 (d) Except as otherwise provided, the program shall be implemented and enrollment of
29 employees shall begin within twenty-four (24) months after the effective date of this chapter.

30 (e) Each employer shall establish a payroll deposit retirement savings arrangement to
31 allow each employee to participate in the program within six (6) months after implementation of
32 the program.

33 (f) Any employer for whom compliance with this chapter would cause a hardship may
34 notify the department of its need for an exemption from the requirements of this chapter. Any

1 claim of hardship from an employer shall carry a rebuttable presumption of actual hardship and
2 an exemption shall be granted as determined by the department.

3 (g) Employers with four (4) or fewer employees that have been in business two (2) or
4 more years may voluntarily elect to participate in the program pursuant to rules prescribed by the
5 department.

6 (h) Employers shall enroll each employee who has not opted out of participation in the
7 program, and shall provide payroll deduction retirement savings arrangements for these enrollees
8 and deposit the funds into the program.

9 (i) Enrollees must select a contribution level of at least three percent (3%) of wages
10 earned during each payroll period. This level may be set up to the deductible amount for the
11 enrollee's taxable year under §219(b)(1)(A) of the Internal Revenue Code.

12 (j) If an enrollee fails to select a contribution level using the form described in subsection
13 (b) of this section, then the enrollee shall contribute three percent (3%) of their wages earned
14 during a payroll period to the program, provided that this contribution does not cause the
15 enrollee's total contributions to IRAs for the year to exceed the deductible amount for the
16 enrollee's taxable year under §219(b)(1)(A) of the Internal Revenue Code.

17 (k) Enrollees may change their contribution level at any time, subject to administrative
18 regulations promulgated by the department.

19 (l) Enrollees may select an investment option or a mix of investment options contained
20 within the program.

21 (m) Enrollees may change their investment option at any time, subject to administrative
22 regulations promulgated by the department.

23 (n) If an enrollee fails to select an investment option, that enrollee shall be placed in the
24 investment option selected by the state investment commission as the default under subsection
25 (b)(11) of this section. If the state investment commission has not selected a default investment
26 option, then an enrollee who fails to select an investment option shall be placed in the life-cycle
27 fund investment option.

28 (o) Employers shall retain the option at all times to set up any type of employer-
29 sponsored retirement plan, such as a defined benefit plan or a 401(k), simplified employee
30 pension (SEP) plan, or savings incentive match plan for employees (SIMPLE), instead of having
31 a payroll deposit retirement savings arrangement to allow employee participation in the program.

32 (p) An employee may terminate their participation in the program at any time in a manner
33 prescribed by the department.

34 (q)(1) The state investment commission shall establish and maintain an Internet website

1 designed to assist employers in identifying private sector providers of retirement arrangements
2 that can be set up by the employer, rather than allowing employee participation in the program
3 under this chapter;

4 (2) However, the state investment commission shall only establish and maintain an
5 Internet website under this subsection if there is sufficient interest in such an Internet website by
6 private sector providers and if the private sector providers furnish the funding necessary to
7 establish and maintain the Internet website.

8 (3) The state investment commission shall provide public notice of the availability of and
9 the process for inclusion on the Internet website address before it becomes publicly available.

10 (4) If the Internet website is available to the public before the department opens the
11 program for enrollment, the Internet website address shall be included on any Internet website
12 posting or other materials regarding the program offered to the public by the department.

13 (r) Enrollee contributions deducted by the participating employer through payroll
14 deduction shall be paid by the participating employer to the vendors pursuant to payroll deposit
15 retirement savings arrangements established by the department.

16 **42-16.2-8. No liability for retirement savings benefits.** – (a) The state shall have no
17 duty or liability to any party for the payment of any retirement savings benefits accrued by any
18 individual under the program.

19 (b) No state commission, commission, or agency, or any officer, employee, or member
20 thereof shall be liable for any loss or deficiency resulting from particular investments selected
21 under this chapter.

22 (c)(1) Participating employers shall not have any liability for an employee's decision to
23 participate in, or opt out of, the program or for the investment decisions of any enrollee.

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

29 **42-16.2-9. Rules and regulations.** – The department shall promulgate administrative
30 rules and regulations, as necessary to carry out and implement the provisions of this chapter.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- PRIVATE EMPLOYER IRA
PROGRAM

1 This act would establish a private employer IRA program allowing employees to
2 contribute at least three percent (3%) of their payroll period wages with oversight by the state
3 department of labor and training and the state investment commission.

4 This act would take effect upon passage.

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