

SENATE BILL 113

By Watson

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 9 and Title 50, relative to retirement.

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

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 5, is amended by adding the following as a new part:

8-5-301. This part is known and may be cited as the "Tennessee Retirement Savings Plan Act."

8-5-302.

(a) There is created a Tennessee retirement savings board consisting of seven (7) members as follows:

(1) The state treasurer or the treasurer's designee;

(2) The following members, appointed by the governor:

(A) A representative of employers;

(B) A representative with experience in the field of investments;

(C) A representative of an association representing employees; and

(D) A member of the public who is retired;

(3) A member of the senate, appointed by the speaker of the senate to be a nonvoting advisory member of the board; and

(4) A member of the house of representatives, appointed by the speaker of the house of representatives to be a nonvoting advisory member of the board.

(b)

(1) The governor and the speakers of the senate and the house of representatives shall first make appointments to the Tennessee retirement savings board for terms of office beginning on January 1, 2024.

(2) Notwithstanding the term of office specified by subsection (c), of the members first appointed to the Tennessee retirement savings board by the governor:

(A) The representative of employers shall serve for a term ending December 31, 2025;

(B) The representative of an association representing employees shall serve for a term ending December 31, 2026; and

(C) The two (2) other members shall serve for a term ending December 31, 2027.

(c) The term of office of each member of the board appointed by the governor is four (4) years, but a member serves at the pleasure of the governor. A member is eligible for reappointment. If there is a vacancy for any cause, the governor shall make an appointment to become immediately effective for the unexpired term.

(d) Each legislative member serves at the pleasure of the appointing authority and may serve as long as the member remains in the chamber of the general assembly from which the member was appointed.

(e) The state treasurer or the treasurer's designee appointed to the board under subdivision (a)(1) shall serve as chair of the board.

(f) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(g)

(1) The members of the board who are not governmental employees or public officials shall be paid a per diem of seventy-five dollars (\$75.00) for attending board meetings.

(2) Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties in accordance with the state comprehensive travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(h) The board is administratively attached to the department of treasury, and department staff shall provide administrative support to the board.

8-5-303.

(a) The Tennessee retirement savings board shall develop a defined contribution retirement plan for residents of this state who are employed for compensation in this state. The board shall conduct a market and legal analysis of the plan.

(b) The board has the following powers:

(1) To establish, implement, and maintain the plan developed under this section;

(2) To promulgate rules as are necessary to carry out the purpose and intent of this part, and to ensure that the plan complies with

applicable federal and state laws, rules, regulations, notices, and interpretations. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) To direct the investment of the funds contributed to accounts in the plan consistent with the investment restrictions established by the board. The investment restrictions must be consistent with the objectives of the plan, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board;

(4) To collect application, account, or administrative fees to defray the costs of administering the plan;

(5)

(A) To make or enter into contracts or agreements with:

(i) Financial institutions, depositories, consultants, actuaries, auditors, investment advisers, investment managers, third-party administrators, or other consultants and professionals as necessary to carry out the duties and responsibilities under this part and the plan established by the board;

(ii) Individuals or entities providing research, technical assistance, or technology; and

(iii) State agencies to assist the board in the fulfillment of its duties;

(B) All expenses and fees incidental to the services described in subdivision (b)(5)(A) must be charged to and paid from participant accounts;

(6) To evaluate the need for, and procure as needed, pooled private insurance of the plan;

(7) To develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general; and

(8) To delegate to the state treasurer the day-to-day administration, operations, and responsibilities of the plan, including, but not limited to:

(A) Exercising the duties and responsibilities contained in this part to implement the purpose of this part;

(B) Assigning duties and responsibilities to the state treasurer's staff, private vendors, or contractors, as the state treasurer deems necessary and proper;

(C) Consulting with professionals as necessary about the administration of the plan; and

(D) Establishing policies, guidelines, and operating procedures in accordance with this part.

8-5-304.

(a) The plan developed and established by the Tennessee retirement savings board under § 8-5-303 must:

(1) Allow eligible individuals employed for compensation in this state to contribute to an account established under the plan through payroll deduction;

(2) Require an employer with more than five (5) employees to offer its employees the opportunity to contribute to the plan through payroll deductions unless the employer offers a qualified retirement plan, including, but not limited to, a plan qualified under Section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code (U.S.C. title 26);

(3) Provide for automatic enrollment of employees and allow employees to opt out of the plan;

(4) Have a default contribution rate of five percent (5%) of wages or salary;

(5) Offer default escalation of contribution levels that can be increased or decreased within the limits allowed by the Internal Revenue Code (U.S.C. title 26);

(6) Provide for contributions to the plan to be deposited directly with the investment administrator for the plan;

(7) Whenever possible, use existing employer and public infrastructure to facilitate contributions to the plan, recordkeeping, and outreach;

(8) Require no employer contributions to employee accounts;

(9) Require the maintenance of separate records and accounting for each plan account;

(10) Provide for reports on the status of plan accounts to be provided to plan participants at least annually;

(11) Allow for account owners to maintain an account regardless of place of employment and to roll over funds into other retirement accounts;

(12) Pool accounts established under the plan for investment;

(13) Be professionally managed;

(14) Provide that the state of Tennessee and employers that participate in the plan have no proprietary interest in the contributions to or earnings on amounts contributed to accounts established under the plan;

(15) Provide that the investment administrator for the plan is the trustee of all contributions and earnings on amounts contributed to accounts established under the plan;

(16) Not impose any duties under the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.) on employers;

(17) Keep administration fees in the plan low;

(18) Allow the use of private sector partnerships to administer and invest the contributions to the plan under the supervision and guidance of the board; and

(19) Allow employers to establish an alternative retirement plan for some or all employees.

(b) The plan, the board, each board member, and the state of Tennessee shall not guarantee any rate of return or any interest rate on any contribution.

The plan, the board, each board member, and the state of Tennessee are not liable for any loss incurred by any person as a result of participating in the plan.

8-5-305. The Tennessee retirement savings board shall adopt rules that:

(1) Establish the process for voluntary enrollment in the plan developed under § 8-5-303, including procedures for automatic enrollment of employees and for employees to opt out of the plan;

(2) Establish the process for participants to make the default contributions to plan accounts and to adjust the contribution levels;

(3) Establish the process for employers to withhold employee contributions to plan accounts from employees' wages and send the contributions to the investment administrator for the plan;

(4) Establish the process for allowing employees to opt out of enrollment in the plan;

(5) Set minimum, maximum, and default contribution levels in accordance with limits established by the Internal Revenue Code (U.S.C. title 26);

(6) Establish the process for withdrawals from plan accounts;

(7) Establish the process and requirements for an employer to obtain an exemption from offering the plan if the employer offers a qualified retirement plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code (U.S.C. title 26);

(8) Mandate the contents and frequency of required disclosures to employees, employers, and other plan participants. These disclosures must include, but need not be limited to:

(A) The benefits and risks associated with making contributions to the plan;

(B) Instructions for making contributions to the plan;

(C) How to opt out of the plan;

(D) How to participate in the plan with a level of contributions other than the default rate;

(E) The process for withdrawal of retirement savings;

(F) How to obtain additional information about the plan;

(G) That employees seeking financial advice should contact financial advisers, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this part;

(H) That the plan is not an employer-sponsored retirement plan;

and

(I) That the plan accounts and rate of return are not guaranteed by the state; and

(9) Establish civil penalties for the employer's noncompliance with its participation in the plan as provided in this part.

8-5-306.

(a) Notwithstanding another law to the contrary, the state shall not disclose personal information about a participant or beneficiary of a participant obtained in connection with an account established under this part, except under the following circumstances:

(1) To an individual or entity authorized by the respective participant or beneficiary;

- (2) In compliance with a subpoena or a court order;
- (3) To the comptroller of the treasury or the comptroller's designee for the purpose of an audit;
- (4) To the internal revenue service or the United States department of treasury;
- (5) To the participant's employer as may be necessary to administer the plan; or
- (6) In an administrative proceeding or court action involving the state, the department of treasury, the state treasurer, or the board relative to an account established under this part.

(b) As used in this section, "personal information" includes, but is not limited to:

- (1) Social security numbers;
- (2) Bank account numbers;
- (3) Transit routing numbers;
- (4) Credit card numbers;
- (5) Debit card numbers;
- (6) Business or residential addresses;
- (7) Telephone numbers;
- (8) Email addresses;
- (9) Amounts contributed; and
- (10) Earnings on amounts contributed.

(c) Notwithstanding a law to the contrary and except as provided in subsection (d):

(1) All assets, income, and distributions of the plan are protected against the claims of creditors of the state, plan administrator, and plan participants, and are not subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws, or other processes; and

(2) An assignment of the items described in subdivision (c)(1) is not enforceable in a court.

(d) The board may adopt rules as provided in § 8-5-303(b)(2) to permit the plan to honor claims under a qualified domestic relations order. As used in this subsection (d), "qualified domestic relations order" has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986 (26 U.S.C. § 414(p)). However, such an order may only relate to the provision of marital property rights relating to the plan for the benefit of a plan participant's former spouse.

8-5-307.

(a) The Tennessee retirement savings plan administrative fund is established in the state treasury, separate and distinct from the general fund. Interest earned by the Tennessee retirement savings plan administrative fund must be credited to the fund. Moneys in the fund are continuously appropriated to the Tennessee retirement savings board.

(b) The Tennessee retirement savings plan administrative fund consists of:

(1) Moneys appropriated to the fund by the general assembly;

(2) Moneys transferred to the fund from the federal government, other state agencies, or local governments;

(3) Moneys from the payment of fees and the payment of other moneys due the board;

(4) Any gifts or donations made to the state of Tennessee for deposit in the fund; and

(5) Earnings on moneys in the fund.

(c) The board may use the moneys in the fund to pay the administrative costs and expenses of the board and the plan developed under § 8-5-303 and for any other purpose described in this part.

8-5-308.

(a) Before establishing a plan developed under § 8-5-303, the Tennessee retirement savings board shall:

(1) Conduct a market analysis to determine:

(A) The feasibility of the plan; and

(B) Whether and to what extent plans with the characteristics described in § 8-5-304 currently exist in the private market;

(2) Obtain legal advice regarding the applicability of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.) and the Internal Revenue Code (U.S.C. title 26) to the plan;

(3) Investigate whether employers that are not required to participate in the plan can make the plan available to their employees;

(4) Investigate whether individuals who are self-employed as independent contractors can participate in the plan; and

(5) Investigate how to allow individuals who are not automatically enrolled in the plan to opt in to the plan and make contributions to an account, either through payroll contributions or another method of contribution.

(b) The board shall coordinate with the efforts of other states as those states pursue legal guidance for similar retirement savings programs.

8-5-309.

The Tennessee retirement savings board shall report no later than February 1 each year to the governor and to the finance, ways and means committees of the house of representatives and the senate detailing the board's activities.

8-5-310.

(a) Except for retirement plans offered by a local government to its independent contractors on the effective date of this act, a local government shall not establish or offer a retirement plan for persons not employed by a governmental entity.

(b) As used in this section, "local government" means a Tennessee local governmental entity, including, but not limited to, a municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or an instrumentality of government created by one (1) or more of the local governmental entities described in this subsection (b) or by an act of the general assembly.

8-5-311.

Each state agency that enters into an interagency agreement with the Tennessee retirement savings board to provide outreach, technical assistance, or compliance services shall collaborate with other state agencies to develop a plan to provide these services to the board. This plan must be provided to the board no later than July 1, 2024.

8-5-312.

The Tennessee retirement savings board shall report to the finance, ways and means committees of the house of representatives and the senate no later than July 1, 2024. The report must include:

(1) The results of the market analysis sought by the board under § 8-5-308(a)(1);

(2) The findings from legal advice obtained by the board under § 8-5-308(a)(2);

(3) An analysis of potential costs to employers, including administrative costs, associated with providing automatic payroll deductions for participation in the plan, and recommendations on how to eliminate or reduce those costs through incentives, tax credits, or other means;

(4) A draft of the request for proposals to solicit bids from plan administrators;

(5) A timeline for implementation of the plan developed under § 8-5-303;

(6) An overview of any contracts entered into by the board in the performance of its duties; and

(7) Recommendations to the general assembly regarding ways to increase financial literacy in this state.

8-5-313.

(a) Except as provided in subsection (b), the Tennessee retirement savings board shall establish the retirement plan developed under § 8-5-303 so

that individuals may begin making contributions to the plan no later than January 1, 2026.

(b) If the board determines that the plan developed by the board under § 8-5-303 would qualify as an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.), the board shall not establish the plan.

(c) Subject to this part:

(1) Beginning January 1, 2026, a resident of this state employed for compensation in this state with a private employer employing more than one hundred (100) employees is eligible to participate in a defined contribution retirement plan established by the Tennessee retirement savings board under this part;

(2) Beginning January 1, 2027, a resident of this state employed for compensation in this state with a private employer employing between twenty-five (25) and one hundred (100) employees is eligible to participate in a defined contribution retirement plan established by the Tennessee retirement savings board under this part;

(3) Beginning January 1, 2028, a resident of this state employed for compensation in this state with a private employer that has between five (5) and twenty-four (24) employees is eligible to participate in a defined contribution retirement plan established by the Tennessee retirement savings board under this part; and

(4) Prior to an employer's participation in the plan, the employer shall register with the board to determine whether the employer is required to participate in the plan.

SECTION 2. Tennessee Code Annotated, Section 4-29-246(a), is amended by adding the following as a new subdivision:

() Tennessee retirement savings board, created by § 8-5-302;

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.