

Senate Engrossed

retirement savings program; state treasurer

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1375

AN ACT

AMENDING SECTION 35-311, ARIZONA REVISED STATUTES; AMENDING TITLE 35,
ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; APPROPRIATING MONIES;
RELATING TO STATE MANAGEMENT OF MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-311, Arizona Revised Statutes, is amended to
3 read:

4 35-311. State board of investment; membership; powers and
5 duties

6 A. The state board of investment is established consisting of the
7 state treasurer, the director of the department of administration or the
8 director of the department of administration's designee, the director of
9 the department of insurance and financial institutions or the director of
10 the department of insurance and financial institutions' designee and two
11 individuals appointed by the state treasurer, one of whom has verifiable
12 expertise in investment management and one of whom represents a public
13 entity with current deposits in a local government investment pool. The
14 state treasurer is chairperson of the board. The board shall keep an
15 accurate record of its proceedings. A certified copy of the record is
16 prima facie evidence of the matters appearing in the record in any
17 court. A meeting of the board may be called at any time by the
18 chairperson or a majority of the board members.

19 B. The state board of investment shall:

20 1. Hold regular monthly meetings.

21 2. Review investments of treasury monies.

22 3. Serve as trustee of the permanent state land funds and manage
23 the assets of the funds consistent with the requirements of article X,
24 section 7, Constitution of Arizona.

25 4. Serve as trustee of any endowments established pursuant to
26 section 35-314.03.

27 5. Serve as trustee of AZ529, Arizona's education savings plan
28 established by title 15, chapter 14, article 7.

29 6. Serve as trustee of any pension prefunding plan investment
30 accounts established pursuant to section 35-314.04.

31 7. SERVE AS TRUSTEE OF THE ARIZONA WORK AND SAVE PROGRAM
32 ESTABLISHED PURSUANT TO CHAPTER 11 OF THIS TITLE.

33 C. The state treasurer shall furnish to the board of investment at
34 its regular monthly meeting a report of the performance of current
35 investments and a report of the current investments as of the close of
36 business of the preceding month. The state treasurer shall make these
37 reports available for inspection by the public during normal working hours
38 at the office of the state treasurer for ~~a period of time of not less than~~
39 AT LEAST two years after the date of the report.

40 D. The board of investment may order the state treasurer to sell
41 any of the securities, and any order shall specifically describe the
42 securities and fix the time period during which they are to be sold.
43 Securities ~~so~~ ordered to be sold shall be sold for cash by the state
44 treasurer at the current market price. The state treasurer and the

1 members of the board are not accountable for any loss occasioned by sales
2 of securities at prices lower than their book value. Any loss shall be
3 charged against earnings received from interest or capital gains on the
4 applicable treasury monies.

5 E. The board may establish standards in addition to those
6 established by section 35-317, subsection A for the qualification of
7 agents acting pursuant to section 35-317, subsection B.

8 Sec. 2. Title 35, Arizona Revised Statutes, is amended by adding
9 chapter 11, to read:

10 CHAPTER 11
11 ARIZONA WORK AND SAVE PROGRAM
12 ARTICLE 1. GENERAL PROVISIONS

13 35-1301. Definitions

14 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

15 1. "BOARD" MEANS THE STATE BOARD OF INVESTMENT.

16 2. "COVERED EMPLOYEE":

17 (a) MEANS AN INDIVIDUAL WHO IS EMPLOYED BY A COVERED EMPLOYER, WHO
18 HAS WAGES OR OTHER COMPENSATION THAT IS ALLOCABLE TO THE STATE AND WHO IS
19 AT LEAST EIGHTEEN YEARS OF AGE.

20 (b) DOES NOT INCLUDE:

21 (i) ANY EMPLOYEE COVERED UNDER THE RAILWAY LABOR ACT (44 STAT. 577;
22 45 UNITED STATES CODE SECTION 151).

23 (ii) ANY EMPLOYEE ON WHOSE BEHALF AN EMPLOYER MAKES CONTRIBUTIONS
24 TO A TAFT-HARTLEY MULTIEMPLOYER PENSION TRUST FUND.

25 (iii) ANY INDIVIDUAL WHO IS AN EMPLOYEE OF THE FEDERAL GOVERNMENT,
26 THIS STATE OR ANY OTHER STATE, ANY COUNTY OR MUNICIPAL CORPORATION OR ANY
27 OF THIS STATE'S, ANY OTHER STATE'S OR THE FEDERAL GOVERNMENT'S UNITS OR
28 INSTRUMENTALITIES.

29 3. "COVERED EMPLOYER":

30 (a) MEANS A PERSON OR ENTITY ENGAGED IN A BUSINESS, INDUSTRY,
31 PROFESSION, TRADE OR OTHER ENTERPRISE IN THIS STATE, WHETHER FOR PROFIT OR
32 NOT FOR PROFIT, EXCLUDING THE FEDERAL GOVERNMENT, THIS STATE, ANY COUNTY,
33 ANY MUNICIPAL CORPORATION OR ANY OF THIS STATE'S UNITS OR
34 INSTRUMENTALITIES.

35 (b) DOES NOT INCLUDE EITHER:

36 (i) AN EMPLOYER THAT MAINTAINS A SPECIFIED TAX-FAVORED RETIREMENT
37 PLAN FOR ITS EMPLOYEES OR HAS DONE SO EFFECTIVE IN FORM AND OPERATION AT
38 ANY TIME WITHIN THE CURRENT OR TWO PRECEDING CALENDAR YEARS.

39 (ii) FOR THE PORTION OF THE CALENDAR YEAR IN WHICH THE EMPLOYER
40 ADOPTS A TAX-FAVORED RETIREMENT PLAN, AN EMPLOYER THAT DOES NOT MAINTAIN A
41 SPECIFIED TAX-FAVORED RETIREMENT PLAN FOR A PORTION OF A CALENDAR YEAR
42 ENDING ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND ADOPTS A
43 TAX-FAVORED RETIREMENT PLAN EFFECTIVE FOR THE REMAINDER OF THAT CALENDAR
44 YEAR.

1 4. "ERISA" MEANS THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
2 1974.

3 5. "FUND" MEANS THE WORK AND SAVE FUND ESTABLISHED BY SECTION
4 35-1302.

5 6. "IRA" MEANS A TRADITIONAL OR ROTH INDIVIDUAL RETIREMENT ACCOUNT
6 OR INDIVIDUAL RETIREMENT ANNUITY UNDER 26 UNITED STATES CODE SECTION
7 408(a), 408(b) OR 408A.

8 7. "PARTICIPANT" MEANS AN INDIVIDUAL WHO IS CONTRIBUTING TO AN IRA
9 UNDER THE PROGRAM OR HAS AN IRA ACCOUNT BALANCE UNDER THE PROGRAM.

10 8. "PARTICIPATING EMPLOYER" MEANS A COVERED EMPLOYER THAT PROVIDES
11 FOR COVERED EMPLOYEES ACCESS TO A PAYROLL DEDUCTION IRA PROVIDED FOR BY
12 THIS ARTICLE.

13 9. "PAYROLL DEDUCTION IRA" MEANS AN ARRANGEMENT BY WHICH AN
14 EMPLOYER ALLOWS EMPLOYEES TO CONTRIBUTE TO AN IRA BY MEANS OF PAYROLL
15 DEDUCTION.

16 10. "PROGRAM" OR "ARIZONA WORK AND SAVE PROGRAM" MEANS THE
17 RETIREMENT SAVINGS PROGRAM ESTABLISHED BY THIS ARTICLE.

18 11. "ROTH IRA" MEANS A ROTH INDIVIDUAL RETIREMENT ACCOUNT OR
19 INDIVIDUAL RETIREMENT ANNUITY UNDER 26 UNITED STATES CODE SECTION 408A.

20 12. "SPECIFIED TAX-FAVORED RETIREMENT PLAN" MEANS A RETIREMENT PLAN
21 THAT IS TAX-QUALIFIED UNDER OR IS DESCRIBED IN AND SATISFIES THE
22 REQUIREMENTS OF 26 UNITED STATES CODE SECTION 401(a), 401(k), 403(a),
23 403(b), 408(k) OR 408(p).

24 13. "TOTAL FEES AND EXPENSES" MEANS ALL FEES, COSTS AND EXPENSES,
25 INCLUDING ADMINISTRATIVE EXPENSES, INVESTMENT EXPENSES, INVESTMENT ADVICE
26 EXPENSES, ACCOUNTING COSTS, ACTUARIAL COSTS, LEGAL COSTS, MARKETING
27 EXPENSES, EDUCATION EXPENSES, TRADING COSTS, INSURANCE ANNUITIZATION COSTS
28 AND OTHER MISCELLANEOUS COSTS.

29 14. "TRADITIONAL IRA" MEANS A TRADITIONAL INDIVIDUAL RETIREMENT
30 ACCOUNT OR TRADITIONAL INDIVIDUAL RETIREMENT ANNUITY UNDER 26 UNITED
31 STATES CODE SECTION 408(a) OR 408(b).

32 15. "TREASURER" MEANS THE STATE TREASURER.

33 35-1302. Arizona work and save program; state treasurer;
34 program development and implementation; work and
35 save fund

36 A. THE TREASURER SHALL:

37 1. DEVELOP AND IMPLEMENT THE PROGRAM IN A MANNER CONSISTENT WITH
38 THIS ARTICLE BY ADOPTING RULES, GUIDELINES AND PROCEDURES THAT ESTABLISH
39 THE PROCESSES FOR ENROLLMENT AND CONTRIBUTIONS TO PAYROLL DEDUCTION IRAS
40 UNDER THE PROGRAM, INCLUDING ELECTIONS BY COVERED EMPLOYEES, WITHHOLDING
41 BY COVERED EMPLOYERS OF EMPLOYEE PAYROLL DEDUCTION CONTRIBUTIONS FROM
42 WAGES AND REMITTANCE FOR DEPOSIT TO IRAS AND VOLUNTARY ENROLLMENT AND
43 CONTRIBUTIONS BY OTHERS, INCLUDING SELF-EMPLOYED INDIVIDUALS AND
44 INDEPENDENT CONTRACTORS, THROUGH PAYROLL DEDUCTION OR OTHERWISE.

1 2. CAUSE THE PROGRAM, FUND AND ARRANGEMENTS AND ACCOUNTS
2 ESTABLISHED UNDER THE PROGRAM TO BE DESIGNED, ESTABLISHED AND OPERATED:

3 (a) IN ACCORDANCE WITH BEST PRACTICES FOR RETIREMENT SAVING
4 VEHICLES.

5 (b) TO ENCOURAGE PARTICIPATION, SAVING, SOUND INVESTMENT PRACTICES
6 AND APPROPRIATE SELECTION OF INVESTMENT OPTIONS, INCLUDING ANY DEFAULT
7 INVESTMENTS.

8 (c) TO MAXIMIZE SIMPLICITY AND EASE OF ADMINISTRATION FOR COVERED
9 EMPLOYERS.

10 (d) TO MINIMIZE COSTS, INCLUDING BY COLLECTIVE INVESTMENT AND OTHER
11 MEASURES TO ACHIEVE ECONOMIES OF SCALE AND OTHER EFFICIENCIES IN PROGRAM
12 DESIGN AND ADMINISTRATION.

13 (e) TO PROMOTE PORTABILITY OF BENEFITS.

14 (f) TO AVOID PREEMPTION OF THE PROGRAM BY FEDERAL LAW.

15 3. ARRANGE FOR COLLECTIVE, COMMON AND POOLED INVESTMENT OF ASSETS
16 OF THE PROGRAM AND FUND, INCLUDING INVESTMENTS IN CONJUNCTION WITH OTHER
17 FUNDS WITH WHICH THESE ASSETS ARE ALLOWED BY LAW TO BE COLLECTIVELY
18 INVESTED, TO ACHIEVE ECONOMIES OF SCALE AND OTHER EFFICIENCIES DESIGNED TO
19 MINIMIZE COSTS FOR THE PROGRAM AND ITS PARTICIPANTS.

20 4. DEVELOP AND DISSEMINATE EDUCATIONAL INFORMATION DESIGNED TO
21 EDUCATE PARTICIPANTS AND CITIZENS ABOUT THE BENEFITS OF PLANNING AND
22 SAVING FOR RETIREMENT AND INFORMATION TO HELP THE PARTICIPANTS AND
23 CITIZENS DECIDE THE LEVEL OF PARTICIPATION AND SAVINGS STRATEGIES THAT MAY
24 BE APPROPRIATE FOR THE PARTICIPANTS AND CITIZENS, INCLUDING INFORMATION TO
25 FURTHER FINANCIAL CAPABILITY AND FINANCIAL LITERACY.

26 5. CONDUCT OUTREACH TO INDIVIDUALS, EMPLOYERS, OTHER STAKEHOLDERS
27 AND THE PUBLIC REGARDING THE PROGRAM AND TO SPECIFY THE CONTENTS,
28 FREQUENCY, TIMING AND MEANS OF REQUIRED DISCLOSURES FROM THE PROGRAM TO
29 COVERED EMPLOYEES, PARTICIPANTS, OTHER INDIVIDUALS ELIGIBLE TO PARTICIPATE
30 IN THE PROGRAM, COVERED EMPLOYERS AND OTHER INTERESTED PARTIES.

31 6. IF NECESSARY, DETERMINE THE ELIGIBILITY OF AN EMPLOYER, EMPLOYEE
32 OR OTHER INDIVIDUAL TO PARTICIPATE IN THE PROGRAM.

33 7. ESTABLISH THE PROCESSES FOR WITHDRAWALS, ROLLOVERS AND DIRECT
34 TRANSFERS FROM IRAS UNDER THE PROGRAM TO FACILITATE PORTABILITY AND
35 MAXIMIZE BENEFITS.

36 8. ARRANGE FOR AND FACILITATE COMPLIANCE BY THE PROGRAM OR
37 ARRANGEMENTS ESTABLISHED UNDER THE PROGRAM WITH ALL APPLICABLE
38 REQUIREMENTS FOR THE PROGRAM UNDER THE INTERNAL REVENUE CODE, INCLUDING
39 REQUIREMENTS FOR FAVORABLE TAX TREATMENT OF THE IRAS, AND UNDER ANY OTHER
40 APPLICABLE FEDERAL OR STATE LAW AND ACCOUNTING REQUIREMENTS, INCLUDING
41 USING ITS BEST EFFORTS TO IMPLEMENT PROCEDURES MINIMIZING THE RISK THAT
42 COVERED EMPLOYEES WILL CONTRIBUTE TO AN IRA MORE THAN THE ELIGIBLE AMOUNT
43 ALLOWED UNDER THE INTERNAL REVENUE CODE TO CONTRIBUTE TO THE IRA ON A
44 TAX-FAVORED BASIS, AND PROVIDE FOR OR ARRANGE FOR ASSISTANCE TO COVERED

1 EMPLOYERS AND COVERED EMPLOYEES TO COMPLY WITH APPLICABLE LAW AND
2 TAX-RELATED REQUIREMENTS IN A COST-EFFECTIVE MANNER. THE BOARD MAY
3 ESTABLISH ANY PROCESSES THAT THE BOARD REASONABLY DEEMS TO BE NECESSARY OR
4 ADVISABLE TO VERIFY WHETHER AN EMPLOYER IS A COVERED EMPLOYER, INCLUDING
5 REFERENCE TO ONLINE DATA AND POSSIBLE USE OF QUESTIONS IN EMPLOYER STATE
6 TAX FILINGS.

7 9. RETAIN PROFESSIONAL SERVICES, IF NECESSARY, INCLUDING
8 ACCOUNTANTS, AUDITORS, CONSULTANTS AND OTHER EXPERTS.

9 10. SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES
10 DEPARTMENT OF THE TREASURY AND THE INTERNAL REVENUE SERVICE RELATING TO
11 THE PROGRAM.

12 11. INTERPRET, IN RULES, POLICIES, GUIDELINES AND PROCEDURES, THIS
13 ARTICLE BROADLY TO CONSIDER ITS PURPOSE AND OBJECTIVES, INCLUDING TO
14 ENSURE THAT THE PROGRAM AND ARRANGEMENTS ESTABLISHED UNDER THE PROGRAM
15 SATISFY ALL CRITERIA FOR FAVORABLE FEDERAL TAX TREATMENT AND COMPLIES, TO
16 THE EXTENT NECESSARY, WITH ANY OTHER APPLICABLE FEDERAL OR STATE LAW.

17 12. CHARGE, IMPOSE AND COLLECT ADMINISTRATIVE FEES AND SERVICE
18 CHARGES IN CONNECTION WITH ANY AGREEMENT, CONTRACT OR TRANSACTION RELATING
19 TO THE PROGRAM.

20 13. NEGOTIATE AND SELECT THE FINANCIAL INSTITUTION OR INSTITUTIONS
21 TO ACT AS THE DEPOSITORY AND MANAGER OF THE PROGRAM IN ACCORDANCE WITH
22 THIS ARTICLE. ON APPROVAL BY THE BOARD, THE TREASURER MAY USE EXISTING
23 INVESTMENT FUNDS ESTABLISHED PURSUANT TO SECTIONS 35-314.03, 35-316 AND
24 35-326 FOR THIS PURPOSE.

25 14. ON OR BEFORE JULY 1, 2024, ENTER INTO PARTICIPANT AGREEMENTS
26 WITH PARTICIPANTS PURSUANT TO THIS ARTICLE.

27 15. DEVELOP AND IMPLEMENT AN INVESTMENT POLICY THAT DEFINES THE
28 PROGRAM'S INVESTMENT OBJECTIVES, CONSISTENT WITH THE OBJECTIVES OF THE
29 PROGRAM, AND THAT PROVIDES FOR POLICIES AND PROCEDURES CONSISTENT WITH
30 THOSE INVESTMENT OBJECTIVES. THE BOARD SHALL DESIGNATE APPROPRIATE
31 DEFAULT INVESTMENTS THAT MUST INCLUDE A MIX OF ASSET CLASSES, SUCH AS
32 TARGET DATE AND BALANCED FUNDS. THE BOARD SHALL SEEK TO MINIMIZE
33 PARTICIPANT FEES AND EXPENSES OF INVESTMENT AND ADMINISTRATION. THE BOARD
34 SHALL STRIVE TO DESIGN AND IMPLEMENT INVESTMENT OPTIONS THAT ARE AVAILABLE
35 TO HOLDERS OF ACCOUNTS ESTABLISHED AS PART OF THE PROGRAM AND OTHER
36 PROGRAM FEATURES THAT ARE INTENDED TO ACHIEVE MAXIMUM POSSIBLE INCOME
37 REPLACEMENT AND THAT ARE BALANCED WITH AN APPROPRIATE LEVEL OF RISK IN AN
38 IRA-BASED ENVIRONMENT THAT IS CONSISTENT WITH THE INVESTMENT OBJECTIVES
39 UNDER THE POLICY. THE INVESTMENT OPTIONS MAY ENCOMPASS A RANGE OF RISK
40 AND RETURN OPPORTUNITIES AND ALLOW FOR A RATE OF RETURN COMMENSURATE WITH
41 AN APPROPRIATE LEVEL OF RISK WITH CONSIDERATION TO THE INVESTMENT
42 OBJECTIVES UNDER THE POLICY. THE MENU OF INVESTMENT OPTIONS SHALL BE
43 DETERMINED BY TAKING INTO ACCOUNT THE NATURE AND OBJECTIVES OF THE
44 PROGRAM, THE DESIRABILITY, BASED ON BEHAVIORAL RESEARCH FINDINGS, OF

1 LIMITING INVESTMENT CHOICES UNDER THE PROGRAM TO A REASONABLE NUMBER AND
2 THE EXTENSIVE INVESTMENT CHOICES AVAILABLE TO PARTICIPANTS IF THEY ROLL
3 OVER TO AN IRA OUTSIDE THE PROGRAM.

4 16. ENSURE THAT ALL CONTRIBUTIONS TO IRAS UNDER THE PROGRAM ARE
5 USED ONLY TO DO THE FOLLOWING:

6 (a) PAY BENEFITS TO PARTICIPANTS UNDER THE PROGRAM.

7 (b) PAY THE COST OF ADMINISTERING THE PROGRAM.

8 (c) MAKE INVESTMENTS FOR THE BENEFIT OF THE PROGRAM, AND THAT
9 ASSETS OF THE PROGRAM OR FUND MONIES ARE NOT TRANSFERRED TO THE STATE
10 GENERAL FUND OR TO ANY OTHER FUND OF THIS STATE OR ARE OTHERWISE
11 ENCUMBERED OR USED FOR ANY PURPOSE OTHER THAN THOSE SPECIFIED IN THIS
12 ARTICLE.

13 17. DEVELOP AUDIT REQUIREMENTS. FINANCIAL AUDITS OF THE PROGRAM
14 SHALL BE PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
15 PRINCIPLES, THAT DETAIL THE ACTIVITIES, OPERATIONS, RECEIPTS AND
16 EXPENDITURES OF THE PROGRAM. THE TREASURER SHALL MAKE AUDIT REPORTS AND
17 PROGRAM PERFORMANCE REPORTS PUBLICLY AVAILABLE ON THE TREASURER'S WEBSITE.

18 B. IN ORDER TO FULFILL THE REQUIREMENTS OF THIS SECTION AND TO
19 MINIMIZE COSTS FOR THE PROGRAM AND ITS PARTICIPANTS, THE TREASURER MAY
20 ENTER INTO CONTRACTS, AGREEMENTS, MEMORANDA OF UNDERSTANDING OR OTHER
21 ARRANGEMENTS TO COLLABORATE OR COMBINE RESOURCES, INVESTMENTS OR
22 ADMINISTRATIVE FUNCTIONS WITH OTHER GOVERNMENTAL ENTITIES, INCLUDING OTHER
23 STATES OR THEIR AGENCIES OR INSTRUMENTALITIES THAT MAINTAIN OR ARE
24 ESTABLISHING RETIREMENT SAVINGS PROGRAMS THAT ARE COMPATIBLE WITH THE
25 PROGRAM. AN ARRANGEMENT MAY INCLUDE COLLECTIVE OR POOLED INVESTMENTS WITH
26 OTHER MONIES OF OTHER STATES' PROGRAMS WITH WHICH THE ASSETS OF THE
27 PROGRAM AND TRUST ARE ALLOWED BY LAW TO BE COLLECTIVELY INVESTED AND ARE
28 CONSISTENT WITH THE PURPOSES SET FORTH IN THIS ARTICLE.

29 C. THE WORK AND SAVE FUND IS ESTABLISHED CONSISTING OF THE ASSETS
30 OF THE ARIZONA WORK AND SAVE PROGRAM. THE TREASURER SHALL ADMINISTER THE
31 FUND, AND THE BOARD SHALL ACT AS THE TRUSTEE OF THE FUND. MONIES IN THE
32 FUND ARE CONTINUOUSLY APPROPRIATED. THE FUND IS DESIGNATED A PUBLIC
33 INSTRUMENTALITY OF THIS STATE THAT IS ESTABLISHED FOR AN ESSENTIAL PUBLIC
34 PURPOSE. THE TREASURER SHALL DESIGNATE TRUST INTERESTS IN THE FUND FOR
35 EACH ACCOUNT OWNER. THE FUND SHALL BE SEPARATED INTO A TRUST ACCOUNT AND
36 AN OPERATING ACCOUNT. THE TRUST ACCOUNT SHALL INCLUDE AMOUNTS RECEIVED BY
37 THE ARIZONA WORK AND SAVE PROGRAM FROM PARTICIPANTS PURSUANT TO AGREEMENTS
38 AND INTEREST AND INVESTMENT INCOME EARNED BY THE FUND. THE TREASURER
39 SHALL MAKE TRANSFERS FROM THE TRUST ACCOUNT TO THE OPERATING ACCOUNT AS
40 NECESSARY TO IMMEDIATELY PAY OBLIGATIONS UNDER AGREEMENTS AND FOR THE
41 OPERATING EXPENSES AND ADMINISTRATIVE COSTS OF THE PROGRAM. THE TREASURER
42 SHALL DEPOSIT AND INVEST MONIES OR OTHER AMOUNTS IN THE FUND WITH
43 FINANCIAL INSTITUTIONS IN A PROCESS EQUIVALENT TO SECTION 15-1874, AS
44 APPLICABLE. THE BOARD SHALL ACCEPT ANY GRANTS, GIFTS, APPROPRIATIONS OR

1 OTHER MONIES FROM THIS STATE, ANY UNIT OF FEDERAL, STATE OR LOCAL
2 GOVERNMENT OR ANY OTHER PERSON, FIRM, PARTNERSHIP, CORPORATION OR OTHER
3 ENTITY SOLELY FOR DEPOSIT IN THE FUND, WHETHER FOR INVESTMENT OR
4 ADMINISTRATIVE EXPENSES.

5 35-1303. Program requirements

6 THE PROGRAM DEVELOPED AND IMPLEMENTED BY THE STATE TREASURER
7 PURSUANT TO THIS ARTICLE MUST:

8 1. ALLOW ELIGIBLE INDIVIDUALS IN THIS STATE TO VOLUNTARILY CHOOSE
9 WHETHER TO CONTRIBUTE TO AN IRA UNDER THE PROGRAM, INCLUDING ALLOWING
10 COVERED EMPLOYEES IN THIS STATE THE CHOICE TO CONTRIBUTE TO AN IRA THROUGH
11 PAYROLL DEDUCTION UNDER THE PROGRAM.

12 2. ALLOW EACH COVERED EMPLOYER TO OFFER ITS EMPLOYEES THE VOLUNTARY
13 CHOICE WHETHER TO CONTRIBUTE TO A PAYROLL DEDUCTION IRA BY ALLOWING
14 AUTOMATIC ENROLLMENT WHERE EMPLOYEES MAY OPT OUT OF PARTICIPATION.

15 3. PROVIDE THAT THE ACCOUNT OWNER IS SOLELY RESPONSIBLE FOR
16 INVESTMENT PERFORMANCE, INCLUDING MARKET GAINS AND LOSSES, AND THAT IRA
17 ACCOUNTS AND RATES OF RETURN ARE NOT GUARANTEED BY ANY EMPLOYER, THIS
18 STATE, THE BOARD, ANY BOARD MEMBER OR STATE OFFICIAL OR THE PROGRAM.

19 4. PROVIDE THAT THE IRA TO WHICH CONTRIBUTIONS ARE MADE MUST BE A
20 ROTH IRA, EXCEPT THAT THE BOARD SHALL HAVE THE AUTHORITY AT ANY TIME TO
21 ADD AN OPTION FOR ALL PARTICIPANTS TO AFFIRMATIVELY ELECT TO CONTRIBUTE TO
22 A TRADITIONAL IRA AS AN ALTERNATIVE TO THE ROTH IRA.

23 5. PROVIDE THAT THE BOARD OR ITS DELEGATE SHALL DESIGN A STANDARD
24 OR DEFAULT PACKAGE THAT PROVIDES FOR A PARTICULAR CONTRIBUTION RATE AND
25 INVESTMENT TO BE PRESENTED TO COVERED EMPLOYEES AS THE MOST PROMINENT
26 COMBINATION OF OPTIONS, IF COVERED EMPLOYEES ARE FREE TO ELECT ANY OTHER
27 OPTIONS, INCLUDING NONPARTICIPATION OR A DIFFERENT CONTRIBUTION RATE,
28 WHICH COULD BE AS LOW AS ONE PERCENT OF SALARY OR WAGES, AND A DIFFERENT
29 INVESTMENT, OFFERED UNDER THE PROGRAM, THAT IN ALL CASES IS SUBJECT TO THE
30 IRA ELIGIBILITY CONDITIONS AND CONTRIBUTION DOLLAR LIMITS APPLICABLE UNDER
31 THE INTERNAL REVENUE CODE.

32 6. PROVIDE FOR DIRECT DEPOSIT OF CONTRIBUTIONS INTO INVESTMENTS
33 UNDER THE PROGRAM.

34 7. BE PROFESSIONALLY MANAGED.

35 8. NOT ALLOW ANY EMPLOYER CONTRIBUTIONS BY COVERED EMPLOYERS.

36 9. PROVIDE AT LEAST ANNUALLY TO EACH PARTICIPANT A REPORT ON THE
37 STATUS OF THE PARTICIPANT'S ACCOUNT.

38 10. PROVIDE THAT EACH ACCOUNT HOLDER OWNS THE CONTRIBUTIONS TO OR
39 EARNINGS ON AMOUNTS CONTRIBUTED TO THE ACCOUNT HOLDER'S ACCOUNT UNDER THE
40 PROGRAM AND THAT THIS STATE AND EMPLOYERS HAVE NO PROPRIETARY INTEREST IN
41 THOSE CONTRIBUTIONS OR EARNINGS.

42 11. BE DESIGNED AND IMPLEMENTED IN A MANNER CONSISTENT WITH FEDERAL
43 LAW, INCLUDING FAVORABLE FEDERAL TAX TREATMENT, TO THE EXTENT THAT IT
44 APPLIES AND IS CONSISTENT THAT THE PROGRAM IS NOT PREEMPTED BY ERISA.

1 12. ALLOW FOR INDIVIDUALS WHO ARE NOT EMPLOYEES TO PARTICIPATE IN
2 THE PROGRAM, INCLUDING INDIVIDUALS WHO ARE SELF-EMPLOYED OR INDEPENDENT
3 CONTRACTORS.

4 13. KEEP TOTAL FEES AND EXPENSES AS LOW AS PRACTICABLE.

5 14. ESTABLISH RULES AND PROCEDURES GOVERNING THE DISTRIBUTION OF
6 MONIES FROM THE PROGRAM, INCLUDING DISTRIBUTIONS AS MAY BE ALLOWED OR
7 REQUIRED BY THE PROGRAM AND ANY APPLICABLE PROVISIONS OF TAX LAWS, WITH
8 THE OBJECTIVES TO MAXIMIZE FINANCIAL SECURITY IN RETIREMENT, HELP PROTECT
9 SPOUSAL RIGHTS AND ASSIST PARTICIPANTS WITH THE CHALLENGES OF DECUMULATION
10 OF SAVINGS. THE BOARD MAY PROVIDE FOR ONE OR MORE REASONABLY PRICED
11 DISTRIBUTION OPTIONS TO PROVIDE A SOURCE OF FIXED REGULAR RETIREMENT
12 INCOME, INCLUDING INCOME FOR LIFE OR FOR THE PARTICIPANT'S LIFE EXPECTANCY
13 OR FOR JOINT LIVES AND LIFE EXPECTANCIES, AS APPLICABLE.

14 15. ESTABLISH RULES AND PROCEDURES PROMOTING PORTABILITY OF
15 BENEFITS, INCLUDING THE ABILITY TO MAKE TAX-FREE ROLLOVERS OR TRANSFERS
16 FROM IRAS UNDER THE PROGRAM TO OTHER IRAS OR TO TAX-QUALIFIED PLANS THAT
17 ACCEPT THESE ROLLOVERS OR TRANSFERS PROVIDED THAT ANY ROLLOVER IS
18 INITIATED BY PARTICIPANTS AND NOT SOLICITED BY AGENTS OR BROKERS.

19 16. DETERMINE WHETHER ANNUAL INCREASES OF PARTICIPANT'S
20 CONTRIBUTION RATES SHOULD BE INCLUDED IN THE PROGRAM AND ALLOW A
21 PARTICIPANT TO CHOOSE NOT TO PARTICIPATE IN THE INCREASES.

22 17. ADDRESS THE FAILURE OF A COVERED EMPLOYER TO TRANSMIT A PAYROLL
23 DEDUCTION CONTRIBUTION TO THE PROGRAM ON THE EARLIEST DATE THE AMOUNT
24 WITHHELD FROM THE COVERED EMPLOYEE'S COMPENSATION CAN REASONABLY BE
25 SEGREGATED FROM THE COVERED EMPLOYER'S ASSETS, BUT NOT LATER THAN THE
26 FIFTEENTH DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE COVERED
27 EMPLOYEE'S CONTRIBUTION AMOUNTS ARE WITHHELD FROM THE EMPLOYEE'S PAYCHECK.

28 35-1304. Employers; protection from liability

29 A. A COVERED EMPLOYER OR OTHER EMPLOYER IS NOT LIABLE FOR OR DOES
30 NOT BEAR RESPONSIBILITY FOR:

31 1. AN EMPLOYEE'S DECISION WHETHER TO PARTICIPATE IN THE PROGRAM OR
32 A PARTICIPANT'S SPECIFIC ELECTIONS UNDER THE PROGRAM.

33 2. A PARTICIPANT'S OR THE BOARD'S INVESTMENT DECISIONS.

34 3. THE ADMINISTRATION, INVESTMENT, INVESTMENT RETURNS OR INVESTMENT
35 PERFORMANCE OF THE PROGRAM, INCLUDING ANY INTEREST RATE OR OTHER RATE OF
36 RETURN ON ANY CONTRIBUTION OR ACCOUNT BALANCE IF THE EMPLOYER DOES NOT
37 PLAY A ROLE.

38 4. THE PROGRAM DESIGN OR THE BENEFITS PAID TO PARTICIPANTS.

39 5. AN INDIVIDUAL'S AWARENESS OF OR COMPLIANCE WITH THE CONDITIONS
40 AND OTHER PROVISIONS OF THE TAX LAWS THAT DETERMINE WHICH INDIVIDUALS ARE
41 ELIGIBLE TO MAKE TAX-FAVORED CONTRIBUTIONS TO IRAS, IN WHAT AMOUNT AND IN
42 WHAT TIME FRAME AND MANNER.

43 6. ANY LOSS, FAILURE TO REALIZE ANY GAIN OR ANY OTHER ADVERSE
44 CONSEQUENCES, INCLUDING ANY ADVERSE TAX CONSEQUENCES OR LOSS OF FAVORABLE

1 TAX TREATMENT, PUBLIC ASSISTANCE OR OTHER BENEFITS INCURRED BY ANY PERSON
2 WHO PARTICIPATES IN THE PROGRAM.

3 B. A COVERED EMPLOYER OR OTHER EMPLOYER IS NOT, AND IS NOT
4 CONSIDERED TO BE, A FIDUCIARY IN RELATION TO THE PROGRAM OR FUND OR ANY
5 OTHER ARRANGEMENT UNDER THE PROGRAM.

6 35-1305. Protection from liability

7 A. THIS STATE, THE BOARD, EACH MEMBER OF THE BOARD OR OTHER STATE
8 OFFICIAL, OTHER STATE BOARDS, COMMISSIONS OR AGENCIES, OR ANY MEMBER,
9 OFFICER OR EMPLOYEE THEREOF AND THE PROGRAM:

10 1. HAVE NO RESPONSIBILITY FOR INDIVIDUALS TO COMPLY WITH THE
11 CONDITIONS AND OTHER PROVISIONS OF THE INTERNAL REVENUE CODE THAT
12 DETERMINE WHICH INDIVIDUALS ARE ELIGIBLE TO MAKE TAX-FAVORED CONTRIBUTIONS
13 TO IRAS, IN WHAT AMOUNT AND IN WHAT TIME FRAME AND MANNER.

14 2. HAVE NO DUTY, RESPONSIBILITY OR LIABILITY TO ANY PARTY FOR THE
15 PAYMENT OF ANY BENEFITS UNDER THE PROGRAM, REGARDLESS OF WHETHER
16 SUFFICIENT MONIES ARE AVAILABLE UNDER THE PROGRAM TO PAY THOSE BENEFITS.

17 3. DO NOT AND MAY NOT GUARANTEE ANY INTEREST RATE OR OTHER RATE OF
18 RETURN ON OR INVESTMENT PERFORMANCE OF ANY CONTRIBUTION OR ACCOUNT
19 BALANCE.

20 4. ARE NOT AND MAY NOT BE LIABLE OR RESPONSIBLE FOR ANY LOSS,
21 DEFICIENCY, FAILURE TO REALIZE ANY GAIN OR ANY OTHER ADVERSE CONSEQUENCES,
22 INCLUDING ANY ADVERSE TAX CONSEQUENCES OR LOSS OF FAVORABLE TAX TREATMENT,
23 PUBLIC ASSISTANCE OR OTHER BENEFITS, INCURRED BY ANY PERSON AS A RESULT OF
24 PARTICIPATING IN THE PROGRAM.

25 B. THE DEBTS, CONTRACTS AND OBLIGATIONS OF THE PROGRAM OR THE BOARD
26 ARE NOT THE DEBTS, CONTRACTS AND OBLIGATIONS OF THIS STATE, AND NEITHER
27 THE FAITH AND CREDIT NOR THE TAXING POWER OF THIS STATE IS PLEDGED
28 DIRECTLY OR INDIRECTLY TO THE PAYMENT OF THE DEBTS, CONTRACTS AND
29 OBLIGATIONS OF THE PROGRAM OR THE BOARD.

30 35-1306. Confidentiality of participant and account
31 information; exception

32 INDIVIDUAL ACCOUNT INFORMATION RELATING TO ACCOUNTS UNDER THE
33 PROGRAM AND RELATING TO INDIVIDUAL PARTICIPANTS, INCLUDING NAMES,
34 ADDRESSES, TELEPHONE NUMBERS, EMAIL ADDRESSES, PERSONAL IDENTIFICATION
35 INFORMATION, INVESTMENTS, CONTRIBUTIONS AND EARNINGS, IS CONFIDENTIAL AND
36 MUST BE MAINTAINED AS CONFIDENTIAL:

37 1. EXCEPT TO THE EXTENT NECESSARY TO ADMINISTER THE PROGRAM IN A
38 MANNER CONSISTENT WITH THIS ARTICLE, THE TAX LAWS OF THIS STATE AND THE
39 INTERNAL REVENUE CODE.

40 2. UNLESS THE INDIVIDUAL WHO PROVIDES THE INFORMATION OR IS THE
41 SUBJECT OF THE INFORMATION EXPRESSLY AGREES IN WRITING TO THE INFORMATION
42 DISCLOSURE.

