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~~text~~ shows text that was in SB0133 but was deleted in SB0133S01.

inserted text shows text that was not in SB0133 but was inserted into SB0133S01.

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Senator Todd Weiler proposes the following substitute bill:

SMALL EMPLOYER RETIREMENT PROGRAM

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the state treasurer establishing the Utah Voluntary Employee Retirement Accounts Program and makes conforming amendments.

Highlighted Provisions:

This bill:

- ▶ addresses permissible diversion of wages;
- ▶ creates nonrefundable tax credits for employer participation in the program;
- ▶ permits depositing tax refunds into the program;
- ▶ enacts the Utah Voluntary Employee Retirement Accounts Program, including:
 - defining terms;
 - requiring liberal construction and compliance with federal and state law;

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- directing the state treasurer to create the program;
 - providing for the administration of the program, including authorizing contracts with one or more providers of services;
 - addressing education about the program;
 - requiring certain information to be provided;
 - addressing confidentiality of information;
 - providing for participation by small nongovernmental employers or employees of nongovernmental employers;
 - requiring annual notification related to participation; and
 - requiring reports to participating employees and participating employers; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

[This bill provides retrospective operation.](#)

Utah Code Sections Affected:

AMENDS:

34-28-3, as last amended by Laws of Utah 2014, Chapter 188

59-1-403, as last amended by Laws of Utah 2015, Chapters 411 and 451

ENACTS:

59-7-621, Utah Code Annotated 1953

59-10-1036, Utah Code Annotated 1953

59-10-1319, Utah Code Annotated 1953

67-4b-101, Utah Code Annotated 1953

67-4b-102, Utah Code Annotated 1953

67-4b-103, Utah Code Annotated 1953

67-4b-201, Utah Code Annotated 1953

67-4b-202, Utah Code Annotated 1953

67-4b-203, Utah Code Annotated 1953

67-4b-204, Utah Code Annotated 1953

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67-4b-205, Utah Code Annotated 1953

67-4b-301, Utah Code Annotated 1953

67-4b-302, Utah Code Annotated 1953

67-4b-303, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-28-3** is amended to read:

34-28-3. Regular paydays -- Currency or negotiable checks required -- Deposit in financial institution -- Statement of total deductions -- Unlawful withholding or diversion of wages.

(1) (a) An employer shall pay the wages earned by an employee at regular intervals, but in periods no longer than semimonthly on days to be designated in advance by the employer as the regular payday.

(b) An employer shall pay for services rendered during a pay period within 10 days after the close of that pay period.

(c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay wages earned during the pay period on the day preceding the Saturday, Sunday, or legal holiday.

(d) If an employer hires an employee on a yearly salary basis, the employer may pay the employee on a monthly basis by paying on or before the seventh of the month following the month for which services are rendered.

(e) Wages shall be paid in full to an employee:

(i) in lawful money of the United States;

(ii) by a check or draft on a depository institution, as defined in Section 7-1-103, that is convertible into cash on demand at full face value; or

(iii) by electronic transfer to the depository institution designated by the employee.

(2) An employer may not issue in payment of wages due or as an advance on wages to be earned for services performed or to be performed within this state an order, check, or draft unless:

(a) it is negotiable and payable in cash, on demand, without discount, at a depository institution; and

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(b) the name and address of the depository institution appears on the instrument.

(3) (a) Except as provided in Subsection (3)(b), an employee may refuse to have the employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by filing a written request with the employer.

(b) An employee may not refuse to have the employee's wages deposited by electronic transfer under Subsection (3)(a) if:

(i) for the calendar year preceding the pay period for which the employee is being paid, the employer's federal employment tax deposits are equal to or in excess of \$250,000; and

(ii) at least two-thirds of the employees of the employer have their wages deposited by electronic transfer.

(c) An employer may not designate a particular depository institution for the exclusive payment or deposit of a check or draft for wages.

(4) If a deduction is made from the wages paid, the employer shall, on each regular payday, furnish the employee with a statement showing the total amount of each deduction.

(5) An employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, shall:

(a) on the day on which the employer pays an employee, give the employee a written or electronic pay statement that states:

(i) the employee's name;

(ii) the employee's base rate of pay;

(iii) the dates of the pay period for which the individual is being paid;

(iv) if paid hourly, the number of hours the employee worked during the pay period;

(v) the amount of and reason for any money withheld in accordance with state or

federal law, including:

(A) state and federal income tax;

(B) social security tax;

(C) Medicare tax; and

(D) court-ordered withholdings; and

(vi) the total amount paid to the employee for that pay period; and

(b) comply with the requirements described in Subsection (5)(a) regardless of whether the employer pays the employee by check, cash, or other means.

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- (6) An employer may not withhold or divert part of an employee's wages unless:
- (a) the employer is required to withhold or divert the wages by:
 - (i) court order; or
 - (ii) state or federal law;
 - (b) the employee expressly authorizes the deduction in writing;
 - (c) the employer presents evidence that in the opinion of a hearing officer or an administrative law judge would warrant an offset; ~~or~~
 - (d) subject to Subsection (8), the employer withholds or diverts the wages:
 - (i) as a contribution of the employee under a contract or plan that is:
 - (A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code; and
 - (B) established by the employer; and
 - (ii) the contract or plan described in Subsection (6)(d)(i) provides that an employee's compensation is reduced by a specified contribution:
 - (A) under the contract or plan; and
 - (B) that is made for the employee unless the employee affirmatively elects:
 - (I) to not have a reduction made as a contribution by the employee under the contract or plan; or
 - (II) to have a different amount be contributed by the employee under the contract or plan~~[-];~~ or
 - (e) in accordance with Title 67, Chapter 4b, Utah Voluntary Employee Retirement Accounts Program.

(7) An employer may not require an employee to rebate, refund, offset, or return a part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection (6).

(8) (a) An employer shall notify an employee in writing of the right to make an election under Subsection (6)(d).

(b) An employee may make an election described in Subsection (6)(d) at any time by providing the employer written notice of the election.

(c) An employer shall modify or terminate the withholding or diversion described in Subsection (6)(d) beginning with a pay period that begins no later than 30 days following the

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day on which the employee provides the employer the written notice described in Subsection (8)(b).

(9) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.

Section 2. Section **59-1-403** is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:
 - (A) this title; or
 - (B) other law under which persons are required to file returns with the commission;
- (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or
- (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

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(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report,

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return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, the Office of ~~the~~ Legislative Fiscal Analyst, or the Governor's Office of Management and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of

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Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(1)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and social security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o), "office" means the:

(A) Office of [~~the~~] Legislative Fiscal Analyst; or

(B) Office of Legislative Research and General Counsel.

(ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii), the commission shall at the request of an office provide to the office all information:

(A) gained by the commission; and

(B) required to be attached to or included in returns filed with the commission.

(iii) (A) An office may not request and the commission may not provide to an office a person's:

(I) address;

(II) name;

(III) social security number; or

(IV) taxpayer identification number.

(B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(iii)(A).

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(iv) An office may provide information received from the commission in accordance with this Subsection (3)(o) only:

(A) as:

(I) a fiscal estimate;

(II) fiscal note information; or

(III) statistical information; and

(B) if the information is classified to prevent the identification of a particular return.

(v) (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(o).

(B) An office may not provide to a person that requests information in accordance with Subsection (3)(o)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(o)(iv).

(p) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the

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information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(v) Notwithstanding Subsection (1), the commission shall provide to the state treasurer information related to a resident or nonresident individual's contribution to the Utah Voluntary Employee Retirement Accounts Program as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1319.

(4) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):

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- (i) is not guilty of a class A misdemeanor; and
 - (ii) is not subject to:
 - (A) dismissal from office in accordance with Subsection (5)(b); or
 - (B) disqualification from holding public office in accordance with Subsection (5)(b).
 - (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.
- Section 3. Section **59-7-621** is enacted to read:

59-7-621. Nonrefundable tax credit for employer's participation in Utah

Voluntary Employee Retirement Accounts Program.

- (1) As used in this section:
 - (a) "Participating employer" means the same as that term is defined in Section 67-4b-102.
 - (b) "Program" means the same as that term is defined in Section 67-4b-102.
 - (2) (a) ~~For a taxable year beginning on or after January 1, 2016, but beginning on or before December 31, 2017, a~~ participating employer may claim a nonrefundable tax credit as provided in this Subsection (2).
 - (b) Subject to the other provisions of this section, the tax credit is \$500:
 - (i) for the first year that the participating employer elects to participate in the program;
- and
- (ii) for which the participating employer receives a statement in accordance with Section 67-4b-303 confirming that the participating employer elects to participate in the program.
- (3) A tax credit under this section may not be carried forward or carried back.

Section 4. Section **59-10-1036** is enacted to read:

59-10-1036. Nonrefundable tax credit for participation in Utah Voluntary Employee Retirement Accounts Program.

- (1) As used in this section:
 - (a) "Participating employer" means the same as that term is defined in Section 67-4b-102.
 - (b) "Program" means the same as that term is defined in Section 67-4b-102.
- (2) (a) ~~For a taxable year beginning on or after January 1, 2016, but beginning on or before December 31, 2017, a~~ participating employer may claim a nonrefundable tax credit as

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provided in this Subsection (2).

(b) Subject to the other provisions of this section, the tax credit is \$500:

(i) for the first year that the participating employer elects to participate in the program;

and

(ii) for which the participating employer receives a statement in accordance with Section 67-4b-303 confirming that the participating employer elects to participate in the program.

(3) A tax credit under this section may not be carried forward or carried back.

Section 5. Section **59-10-1319** is enacted to read:

59-10-1319. Contribution to a Utah Voluntary Employee Retirement Accounts

Program account.

(1) (a) If a resident or nonresident individual is owed an individual income tax refund for the taxable year, the individual may designate on the resident or nonresident individual's income tax return a contribution to a Utah Voluntary Employee Retirement Accounts Program account, established under Title 67, Chapter 4b, Utah Voluntary Employee Retirement Accounts Program, as provided in this part.

(b) If a resident or nonresident individual is not owed an individual income tax refund for the taxable year, the individual may not designate on the resident or nonresident's individual income tax return a contribution to a Utah Voluntary Employee Retirement Accounts Program account.

(2) (a) The commission shall send the contribution to the state treasurer along with the following information:

(i) the amount of the ~~individual income tax refund~~ contribution; and

(ii) the taxpayer's:

(A) name;

(B) social security number or taxpayer identification number; and

(C) address.

(b) If a contribution to a Utah Voluntary Employee Retirement Accounts Program account is designated in a single individual income tax return filed jointly by spouses, the commission shall send the information described under Subsection (2)(a) for both spouses to the state treasurer.

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(3) (a) If the taxpayer owns a Utah Voluntary Employee Retirement Accounts Program account, the state treasurer shall deposit the contribution into the account.

(b) If the taxpayer owns more than one Utah Voluntary Employee Retirement Accounts Program account, the state treasurer shall allocate the contribution among the accounts in equal amounts.

(c) (i) If the taxpayer does not own a Utah Voluntary Employee Retirement Accounts Program account, the state treasurer shall send the taxpayer an account agreement.

(ii) If the taxpayer does not sign and return the account agreement by the date specified by the state treasurer or if the taxpayer is not eligible to participate in the Utah Voluntary Employee Retirement Accounts Program, the state treasurer shall return the contribution to the taxpayer without any interest or earnings.

(4) For the purpose of determining interest on an overpayment or refund under Section 59-1-402, no interest accrues after the commission sends the contribution to the state treasurer.

Section 6. Section **67-4b-101** is enacted to read:

CHAPTER 4b. UTAH VOLUNTARY EMPLOYEE RETIREMENT ACCOUNTS PROGRAM Part 1. General Provisions

67-4b-101. Title.

This chapter is known as the "Utah Voluntary Employee Retirement Accounts Program."

Section 7. Section **67-4b-102** is enacted to read:

67-4b-102. Definitions.

As used in this chapter:

(1) "Fiduciary or commercial information" means information:

(a) related to any subject if the disclosure of the information:

(i) would conflict with a fiduciary obligation; or

(ii) is prohibited by an insider trading provision; or

(b) of a commercial nature, including information related to account holders.

(2) "Investment product" means a fixed or variable rate annuity, savings account, certificate of deposit, money market account, bond, mutual fund, or another form of investment not prohibited by the Internal Revenue Code and authorized by the program.

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(3) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a) or 408(b), Internal Revenue Code.

(4) "Nonparticipating employer" means a small nongovernmental employer in the state that does not elect to participate in the program.

(5) "Participating employee" means an individual who:

(a) is employed in this state by a small nongovernmental employer;

(b) chooses to have contributions made to an account in the program; and

(c) has at least \$1 in an account in the program.

(6) "Participating employer" means a small nongovernmental employer in the state that elects to participate in the program in accordance with Section 67-4b-301.

(7) "Program" means the Utah Voluntary Employee Retirement Accounts Program created in Section 67-4b-201.

(8) "Small nongovernmental employer" means a nongovernmental employer who employs no more than 100 employees in the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.

Section 8. Section **67-4b-103** is enacted to read:

67-4b-103. Liberal construction -- Compliance.

(1) This chapter shall be liberally construed so as to provide a tax-qualified retirement program for participating employers and participating employees.

(2) The program shall comply with the Internal Revenue Code and other applicable federal and state law.

Section 9. Section **67-4b-201** is enacted to read:

Part 2. Program Created

67-4b-201. Program created -- Trust fund created -- State not liable -- Not public money.

(1) The state treasurer shall create the Utah Voluntary Employee Retirement Accounts Program within the office of the state treasurer to provide a cost-effective group retirement program for small nongovernmental employers in the state and employees of small nongovernmental employers in the state.

(2) The program does not create or constitute a debt, obligation, or liability of the state.

(3) Any contract entered into by the state treasurer in connection with the program:

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(a) does not create or constitute a debt of the state and is solely an obligation of the program; and

(b) shall require the person contracting with the state treasurer to indemnify the state.

(4) The corpus, assets, and earnings under the program are not public money of the state and are solely available to carry out the purposes of this chapter.

Section 10. Section **67-4b-202** is enacted to read:

67-4b-202. Administration.

(1) The state treasurer shall develop standards and requirements for operation of the program consistent with this chapter and applicable federal regulations, including:

(a) providing for an automatic deduction IRA;

(b) procedures for payroll deductions and remittances;

(c) procedures for a participating employee to make deposits into an account if the participating employee is employed by a nonparticipating employer;

(d) procedures for portability or discontinuing participation in the program; and

(e) procedures for a participating employee to increase or decrease the participating employee's contribution to an account or cease participation in the program, including providing for automatic increases in amounts deducted for an IRA.

(2) The state treasurer shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with one or more providers that provide:

(a) options for accounts and investment products under the program;

(b) a procedure through a website for a small nongovernmental employer to elect to become a participating employer in accordance with Section 67-4b-301;

(c) a procedure through a website for an employee of a small nongovernmental employer to become a participating employee and to select an investment product;

(d) for record keeping, reporting, and other administrative services;

(e) for management of money being deposited in an investment product; or

(f) for educating the general public about the program.

Section 11. Section **67-4b-203** is enacted to read:

67-4b-203. Information to governor or Legislature.

The program shall submit to the governor and the Legislature, upon request:

(1) any study or evaluation of the program;

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(2) a summary of the benefits provided by the program, including the number of participating employers and participating employees in the program; and

(3) any other information that is relevant to make a full, fair, and effective disclosure of the operations of the program that is not fiduciary or commercial information.

Section 12. Section **67-4b-204** is enacted to read:

67-4b-204. Confidentiality of information.

Information specific to a participating employee is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, including:

(1) identifying information;

(2) account balances;

(3) details of transactions; or

(4) an item similar to the items described in Subsections (1) through (3).

Section 13. Section **67-4b-205** is enacted to read:

67-4b-205. Education of the public concerning program.

(1) (a) The state treasurer shall develop educational information to educate the public concerning the program.

(b) In accordance with Subsection 67-4b-202(2), the state treasurer may contract with one or more providers to develop the educational information required by this section.

(2) The following shall cooperate with the state treasurer to disseminate educational information developed under this section, either through distributing the educational information or including links to the educational information prominently on websites:

(a) the Department of Workforce Services;

(b) the State Tax Commission;

(c) the Department of Commerce; and

(d) the Avenue H web portal created by Section 63N-11-104 and administered by the Office of Consumer Health Services within the Governor's Office of Economic Development.

Section 14. Section **67-4b-301** is enacted to read:

Part 3. Participation

67-4b-301. Election to participate.

(1) (a) A small nongovernmental employer in this state may elect to participate in the program if, as of July 1, 2016, the small nongovernmental employer does not offer an active

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retirement program for its employees before electing to participate in the program.

(b) A participating employer shall comply with all program requirements, including making payroll deductions and remittances as required by the state treasurer.

(2) A participating employer may elect to discontinue participation in accordance with program requirements.

(3) (a) A small nongovernmental employer in this state may not be required to participate in the program.

(b) If an employee of a nonparticipating employer in this state elects to participate in the program, the participating employer shall make deposits in the participating employee's account in accordance with procedures established by the state treasurer, except that a nonparticipating employer may not be required to make payroll deductions and remittances.

Section 15. Section **67-4b-302** is enacted to read:

67-4b-302. Information given to employees.

(1) A small nongovernmental employer shall annually notify the small nongovernmental employer's employees of the following:

(a) whether the small nongovernmental employer is a participating employer;

(b) what steps an employee may take to become a participating employee; and

(c) any other information required by the state treasurer.

(2) The state treasurer shall establish:

(a) the information required to be included under Subsection (1); and

(b) one or more methods a small nongovernmental employer may use to comply with the notification requirements of Subsection (1).

Section 16. Section **67-4b-303** is enacted to read:

67-4b-303. Statement confirming participation -- Ongoing reporting.

(1) (a) The state treasurer shall provide a statement to a participating employer that confirms that the participating employer has elected to participate in the program in a calendar year.

(b) The state treasurer shall annually provide the State Tax Commission an electronic listing in a form the State Tax Commission prescribes of those persons who receive in the previous calendar year a statement under this Subsection (1).

(2) The state treasurer shall provide for ongoing reporting to a participating employee

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regarding the account of the participating employee, including:

- (a) the frequency of the reporting; and
- (b) what is to be itemized in the report.

(3) In accordance with Subsection 67-4b-202(2), the state treasurer may contract with one or more providers to:

- (a) provide the statement under Subsection (1);
- (b) report to the State Tax Commission under Subsection (1); and
- (c) report to participating employees under Subsection (2).

Section 17. **Effective date -- Retrospective operation.**

(1) ~~{Except as provided in Subsection (2), this}~~ This bill takes effect on July 1, 2016.

(2) The amendments in this bill to Section 59-1-403 and the enactment of the following sections ~~{take effect January 1, 2017}~~ have retrospective operation for a taxable year beginning on or after January 1, 2016:

- (a) Section 59-7-621;
- (b) Section 59-10-1036; and
- (c) Section 59-10-1319.

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Legislative Review Note

Office of Legislative Research and General Counsel†