

1 **SMALL EMPLOYER RETIREMENT PROGRAM**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to the state treasurer establishing the Utah
10 Voluntary Employee Retirement Accounts Program and creating certain tax credits.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses permissible diversion of wages;
- 14 ▶ creates nonrefundable tax credits for employer participation in certain retirement
15 plans;
- 16 ▶ enacts the Utah Voluntary Employee Retirement Accounts Program, including:
 - 17 • defining terms;
 - 18 • requiring liberal construction and compliance with federal and state law;
 - 19 • directing the state treasurer to create the program;
 - 20 • providing for the administration of the program, including authorizing contracts
21 with one or more providers of services;
 - 22 • providing for receipt of grants, gifts, or money to address the costs of the
23 program;
 - 24 • addressing education about the program;
 - 25 • requiring certain information to be provided;
 - 26 • addressing confidentiality of information;
 - 27 • providing for participation by small nongovernmental employers or employees



28 of nongovernmental employers;

- 29 • requiring annual notification related to participation; and
- 30 • requiring reports to participating employees and participating employers; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **34-28-3**, as last amended by Laws of Utah 2014, Chapter 188

39 ENACTS:

- 40 **59-7-621**, Utah Code Annotated 1953
- 41 **59-10-1038**, Utah Code Annotated 1953
- 42 **67-4b-101**, Utah Code Annotated 1953
- 43 **67-4b-102**, Utah Code Annotated 1953
- 44 **67-4b-103**, Utah Code Annotated 1953
- 45 **67-4b-201**, Utah Code Annotated 1953
- 46 **67-4b-202**, Utah Code Annotated 1953
- 47 **67-4b-203**, Utah Code Annotated 1953
- 48 **67-4b-204**, Utah Code Annotated 1953
- 49 **67-4b-205**, Utah Code Annotated 1953
- 50 **67-4b-206**, Utah Code Annotated 1953
- 51 **67-4b-301**, Utah Code Annotated 1953
- 52 **67-4b-302**, Utah Code Annotated 1953
- 53 **67-4b-303**, Utah Code Annotated 1953



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

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

57 **34-28-3. Regular paydays -- Currency or negotiable checks required -- Deposit in**
58 **financial institution -- Statement of total deductions -- Unlawful withholding or diversion**

59 **of wages.**

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

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

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

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

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

72 (i) in lawful money of the United States;

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

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

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

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

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

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

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

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

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

90 electronic transfer.

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

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

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

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

99 (i) the employee's name;

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

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

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

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

104 federal law, including:

105 (A) state and federal income tax;

106 (B) social security tax;

107 (C) Medicare tax; and

108 (D) court-ordered withholdings; and

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

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

112 (6) An employer may not withhold or divert part of an employee's wages unless:

113 (a) the employer is required to withhold or divert the wages by:

114 (i) court order; or

115 (ii) state or federal law;

116 (b) the employee expressly authorizes the deduction in writing;

117 (c) the employer presents evidence that in the opinion of a hearing officer or an
118 administrative law judge would warrant an offset; [or]

119 (d) subject to Subsection (8), the employer withholds or diverts the wages:

120 (i) as a contribution of the employee under a contract or plan that is:

121 (A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code;
122 and

123 (B) established by the employer; and

124 (ii) the contract or plan described in Subsection (6)(d)(i) provides that an employee's
125 compensation is reduced by a specified contribution:

126 (A) under the contract or plan; and

127 (B) that is made for the employee unless the employee affirmatively elects:

128 (I) to not have a reduction made as a contribution by the employee under the contract
129 or plan; or

130 (II) to have a different amount be contributed by the employee under the contract or
131 plan[-]; or

132 (e) in accordance with Title 67, Chapter 4b, Utah Voluntary Employee Retirement
133 Accounts Program.

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

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

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

141 (c) An employer shall modify or terminate the withholding or diversion described in
142 Subsection (6)(d) beginning with a pay period that begins no later than 30 days following the
143 day on which the employee provides the employer the written notice described in Subsection
144 (8)(b).

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

147 Section 2. Section **59-7-621** is enacted to read:

148 **59-7-621. Nonrefundable tax credit for employer's participation in Utah**

149 **Voluntary Employee Retirement Accounts Program or other retirement plan.**

150 (1) As used in this section:

151 (a) "Participating employer" means a small nongovernmental employer in the state that

152 elects to participate in the program in accordance with Section 67-4b-301.

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

155 (c) "Small nongovernmental employer" means a nongovernmental employer who
156 employs at least five and no more than 100 employees in the state for each working day in each
157 of 20 weeks or more in the current or preceding calendar year.

158 (2) (a) For a taxable year beginning on or after January 1, 2018, and on or before
159 December 31, 2018, a participating employer or small nongovernmental employer may claim a
160 nonrefundable tax credit as provided in this Subsection (2).

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

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

164 (B) for the first year that a small nongovernmental employer, that is not a participating
165 employer, contracts to participate in a retirement plan for its employees that provides for
166 payroll deductions; and

167 (ii) for which the participating employer or small nongovernmental employer receives
168 a certificate in accordance with Section 67-4b-303 confirming that the participating employer
169 or small nongovernmental employer is eligible for a tax credit under this section.

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

171 Section 3. Section 59-10-1038 is enacted to read:

172 **59-10-1038. Nonrefundable tax credit for participation in Utah Voluntary**
173 **Employee Retirement Accounts Program or other retirement plan.**

174 (1) As used in this section:

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

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

179 (c) "Small nongovernmental employer" means a nongovernmental employer who
180 employs at least five and no more than 100 employees in the state for each working day in each
181 of 20 weeks or more in the current or preceding calendar year.

182 (2) (a) For a taxable year beginning on or after January 1, 2018, and on or before

183 December 31, 2018, a participating employer or small nongovernmental employer may claim a
 184 nonrefundable tax credit as provided in this Subsection (2).

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

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

188 (B) for the first year that a small nongovernmental employer, that is not a participating
 189 employer, contracts to participate in a retirement plan for its employees that provides for
 190 payroll deductions; and

191 (ii) for which the participating employer or small nongovernmental employer receives
 192 a certificate in accordance with Section [67-4b-303](#) confirming that the participating employer
 193 or small nongovernmental employer is eligible for a tax credit under this section.

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

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

196 **CHAPTER 4b. UTAH VOLUNTARY EMPLOYEE RETIREMENT**

197 **ACCOUNTS PROGRAM**

198 **Part 1. General Provisions**

199 **67-4b-101. Title.**

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

202 Section 5. Section **67-4b-102** is enacted to read:

203 **67-4b-102. Definitions.**

204 As used in this chapter:

205 (1) "Board" means the Utah Voluntary Employee Retirement Accounts Program Board
 206 created in Section [67-4b-202](#).

207 (2) "Fiduciary or commercial information" means information:

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

209 (i) would conflict with a fiduciary obligation; or

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

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

212 (3) "Investment product" means a fixed or variable rate annuity, savings account,

213 certificate of deposit, money market account, bond, mutual fund, or another form of investment

214 not prohibited by the Internal Revenue Code and authorized by the program.

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

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

219 (6) "Participating employee" means an individual who:

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

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

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

223 (7) "Participating employer" means a small nongovernmental employer in the state that
224 elects to participate in the program in accordance with Section [67-4b-301](#).

225 (8) "Program" means the Utah Voluntary Employee Retirement Accounts Program
226 created in Section [67-4b-201](#).

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

230 Section 6. Section **67-4b-103** is enacted to read:

231 **67-4b-103. Liberal construction -- Compliance.**

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

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

236 (3) Notwithstanding the other provisions of this chapter, the state treasurer may not
237 recommend or implement standards or requirements for the program if doing so would cause
238 an IRA arrangement or other investment product offered under the program to be an employee
239 benefit plan that would result in state or employer liability under the Employee Retirement
240 Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq.

241 Section 7. Section **67-4b-201** is enacted to read:

242 **Part 2. Program Created**

243 **67-4b-201. Program created -- State not liable -- Not public money.**

244 (1) The state treasurer shall create the Utah Voluntary Employee Retirement Accounts

245 Program within the office of the state treasurer to provide a cost-effective group retirement
246 program for small nongovernmental employers in the state and employees of small
247 nongovernmental employers in the state.

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

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

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

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

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

256 Section 8. Section **67-4b-202** is enacted to read:

257 **67-4b-202. Utah Voluntary Employee Retirement Accounts Program Board.**

258 (1) There is created a Utah Voluntary Employee Retirement Accounts Program Board
259 within the office of the treasurer, consisting of the following five members:

260 (a) the state treasurer;

261 (b) the executive director of the Department of Commerce or the executive director's
262 designee; and

263 (c) three individuals with experience in the financial industry related to retirement
264 plans, appointed by the executive director of the Department of Financial Institutions.

265 (2) (a) Each appointment under Subsection (1)(c) is for a term of four years.

266 (b) A board member may not serve more than two consecutive terms.

267 (c) The executive director of the Department of Financial Institutions shall, at the time
268 of appointment or reappointment of a board member, adjust the length of a board member's
269 term to ensure that the terms of the board members are staggered so approximately half of the
270 board members described in Subsection (1)(c) are appointed every two years.

271 (3) A board member described in Subsection (1)(c) serves until:

272 (a) removed by the executive director of the Department of Financial Institutions;

273 (b) the board member resigns; or

274 (c) the board member's term expires and the executive director of the Department of
275 Financial Institutions appoints the board member's successor.

276 (4) When a vacancy occurs in the membership of the board for any reason, the
277 executive director of the Department of Financial Institutions shall appoint a replacement for
278 the remainder of the board member's unexpired term.

279 (5) (a) The state treasurer is the chair of the board.

280 (b) The chair of the board shall set the agenda for each board meeting.

281 (6) (a) A majority of the board members constitutes a quorum.

282 (b) The action of a majority of a quorum constitutes the action of the board.

283 Section 9. Section **67-4b-203** is enacted to read:

284 **67-4b-203. Administration.**

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

287 (a) providing for an automatic deduction IRA;

288 (b) procedures for payroll deductions and remittances;

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

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

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

295 (2) The board shall, in accordance with Title 63G, Chapter 6a, Utah Procurement
296 Code, contract with two or more providers that provide:

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

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

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

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

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

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

305 (3) The state treasurer or the board may receive grants, gifts, or other money from the
306 following to address costs of administering the program:

307 (a) a unit of federal, state, or local government; or

308 (b) a private individual or entity.

309 Section 10. Section **67-4b-204** is enacted to read:

310 **67-4b-204. Information to governor or Legislature.**

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

312 (1) any study or evaluation of the program;

313 (2) a summary of the benefits provided by the program, including the number of

314 participating employers and participating employees in the program; and

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

317 Section 11. Section **67-4b-205** is enacted to read:

318 **67-4b-205. Confidentiality of information.**

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

321 (1) identifying information;

322 (2) account balances;

323 (3) details of transactions; or

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

325 Section 12. Section **67-4b-206** is enacted to read:

326 **67-4b-206. Education of the public concerning program.**

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

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

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

334 (a) the Department of Workforce Services;

335 (b) the State Tax Commission;

336 (c) the Department of Commerce; and

337 (d) the Avenue H web portal created by Section [63N-11-104](#) and administered by the

338 Office of Consumer Health Services within the Governor's Office of Economic Development.

339 Section 13. Section **67-4b-301** is enacted to read:

340 **Part 3. Participation**

341 **67-4b-301. Election to participate.**

342 (1) (a) A small nongovernmental employer in this state may elect to participate in the
343 program if, as of January 1, 2018, the small nongovernmental employer does not offer an active
344 retirement program for its employees before electing to participate in the program.

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

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

349 (3) (a) A small nongovernmental employer in this state is not required to participate in
350 the program.

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

355 Section 14. Section **67-4b-302** is enacted to read:

356 **67-4b-302. Information given to employees.**

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

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

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

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

362 (2) The state treasurer shall establish:

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

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

366 Section 15. Section **67-4b-303** is enacted to read:

367 **67-4b-303. Certificate for tax credit -- Ongoing reporting.**

368 (1) (a) The state treasurer may issue a tax credit certificate under this section only to

369 the extent that the Legislature, by statute, expressly authorizes the state treasurer to issue the
370 tax credit certificate under this section for a fiscal year.

371 (b) The Legislature intends that a statutory authorization under Subsection (1)(a)
372 specify the total allocation to the tax credits under Sections 59-7-621 and 59-10-1036.

373 (c) For fiscal year 2017-18 only, the state treasurer may issue a total of \$100,000 in tax
374 credit certificates in accordance with this section.

375 (d) The state treasurer shall issue the tax credit certificates under this section to persons
376 eligible for the tax credit under Section 59-7-621 or 59-10-1036 in the order that the tax credits
377 are applied for under this section.

378 (e) A person may not claim a tax credit under Section 59-7-621 or 59-10-1036 unless
379 the person receives a tax credit certificate from the state treasurer for the taxable year for which
380 the person claims the tax credit.

381 (f) A tax credit applicant may apply to the state treasurer to receive a tax credit
382 certificate by filing an application with the state treasurer:

383 (i) on or before the quarterly deadline established by the state treasurer; and

384 (ii) on a form and in the manner prescribed by the state treasurer.

385 (g) The application shall include:

386 (i) the information required by the state treasurer that is necessary for the state treasurer
387 to determine eligibility for the tax credit; and

388 (ii) other documentation as required by the state treasurer.

389 (h) The state treasurer shall provide the State Tax Commission for calendar years 2017
390 and 2018 an electronic listing in a form the State Tax Commission prescribes of those persons
391 who receive a certificate under this Subsection (1).

392 (2) The state treasurer shall provide for ongoing reporting to a participating employee
393 regarding the account of the participating employee, including:

394 (a) the frequency of the reporting; and

395 (b) what is to be itemized in the report.

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

398 (a) provide the certificate under Subsection (1);

399 (b) report to the State Tax Commission under Subsection (1); and

400

(c) report to participating employees under Subsection (2).

Legislative Review Note
Office of Legislative Research and General Counsel