

## SB0109S01 compared with SB0109

~~text~~ shows text that was in SB0109 but was deleted in SB0109S01.

Inserted text shows text that was not in SB0109 but was inserted into SB0109S01.

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Senator Todd Weiler proposes the following substitute bill:

### SMALL EMPLOYER RETIREMENT PROGRAM

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ addresses permissible diversion of wages;
- ▶ creates nonrefundable tax credits for employer participation in certain retirement plans;
- ▶ enacts the Utah Voluntary Employee Retirement Accounts Program, including:
  - defining terms;
  - requiring liberal construction and compliance with federal and state law;
  - directing the state treasurer to create the program;

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- creating the Utah Voluntary Employee Retirement Accounts Program Board;
- providing for the administration of the program, including authorizing contracts with ~~one or more~~ providers of services;
- providing for receipt of grants, gifts, or money to address the costs of the program;
- 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:

None

### Utah Code Sections Affected:

AMENDS:

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

ENACTS:

**59-7-621**, Utah Code Annotated 1953

**59-10-1038**, 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

**67-4b-205**, Utah Code Annotated 1953

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67-4b-206, 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

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*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 **59-7-621** is enacted to read:

### **59-7-621. Nonrefundable tax credit for employer's participation in Utah Voluntary Employee Retirement Accounts Program or other retirement plan.**

(1) As used in this section:

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

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

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

(2) (a) For a taxable year beginning on or after January 1, 2018, and on or before December 31, 2018, a participating employer or small nongovernmental 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) (A) for the first year that the participating employer elects to participate in the program; or

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

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

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

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

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

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(1) As used in this section:

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

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

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

(2) (a) For a taxable year beginning on or after January 1, 2018, and on or before December 31, 2018, a participating employer or small nongovernmental 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) (A) for the first year that the participating employer elects to participate in the program; or

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

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

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

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

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

As used in this chapter:

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

(2) "Commissioner" means the commissioner of financial institutions.

(~~2~~3) ~~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.

(~~3~~4) "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.

(~~4~~5) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a) or 408(b), Internal Revenue Code.

(~~5~~6) "Nonparticipating employer" means a small nongovernmental employer in the state that does not elect to participate in the program.

(~~6~~7) "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.

(~~7~~8) "Participating employer" means a small nongovernmental employer in the state that elects to participate in the program in accordance with Section 67-4b-301.

(~~8~~9) "Program" means the Utah Voluntary Employee Retirement Accounts Program created in Section 67-4b-201.

(~~9~~10) "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 6. 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



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federal and state law.

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

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

### **Part 2. Program Created**

#### **67-4b-201. Program 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 or the board in connection with the program:

(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 ~~or the board~~ 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 8. Section **67-4b-202** is enacted to read:

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

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

(a) the state treasurer;

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

~~three individuals with experience in the financial industry related to retirement plans;~~ ~~three individuals~~ appointed by the executive director of the Department of ~~Financial~~

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~~Institutions}~~ ~~Commerce; and~~

(c) one individual with experience in the financial industry related to small business retirement solutions, appointed by the commissioner.

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

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

(c) The executive director of the Department of ~~{Financial Institutions}~~ commerce and the commissioner shall, at the time of appointment or reappointment of a board member, adjust the length of a board member's term to ensure that the terms of the board members are staggered so approximately half of the board members described in ~~{Subsection}~~ Subsections (1)(b) and (c) are appointed every two years.

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

(a) removed by the executive director of the Department of ~~{Financial Institutions}~~ commerce or the commissioner;

(b) the board member resigns; or

(c) the board member's term expires and the executive director of the Department of ~~{Financial Institutions}~~ commerce or the commissioner appoints the board member's successor.

(4) When a vacancy occurs in the membership of the board for any reason, the executive director of the Department of ~~{Financial Institutions}~~ commerce or the commissioner shall appoint a replacement for the remainder of the board member's unexpired term.

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

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

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

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

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

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

(1) The board 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;

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(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 ~~board~~ state treasurer shall, in consultation with the board and in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with two 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; or

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

~~{~~ (f) for educating the general public about the program;

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

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

(b) a private individual or entity.

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

### **67-4b-204. 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;

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

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

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

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

### **67-4b-206. 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)~~ Title 63G, Chapter 6a, Utah Procurement Code 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 13. 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 January 1, 2018, the small nongovernmental employer does not offer an active 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 is not required to participate in the program.

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(b) If an employee of a nonparticipating employer in this state elects to participate in the program, the participating employee 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 14. 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 15. Section **67-4b-303** is enacted to read:

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

(1) (a) The state treasurer may issue a tax credit certificate under this section only to the extent that the Legislature, by statute, expressly authorizes the state treasurer to issue the tax credit certificate under this section for a fiscal year.

(b) The Legislature intends that a statutory authorization under Subsection (1)(a) specify the total allocation to the tax credits under Sections 59-7-621 and ~~59-10-1036~~ 59-10-1038.

(c) For ~~fiscal year 2017-18~~ calendar years 2018 and 2019 only, the state treasurer may issue a total of \$100,000 in tax credit certificates in accordance with this section.

(d) The state treasurer shall issue the tax credit certificates under this section to persons eligible for the tax credit under Section 59-7-621 or ~~59-10-1036~~ 59-10-1038 in the order that the tax credits are applied for under this section.

(e) A person may not claim a tax credit under Section 59-7-621 or ~~59-10-1036~~ 59-10-1038 unless the person receives a tax credit certificate from the state treasurer for the taxable year for which the person claims the tax credit.

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

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

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

(g) The application shall include:

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

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

(h) The state treasurer shall provide the State Tax Commission for calendar years ~~†2017~~2018 and ~~†2018~~2019 an electronic listing in a form the State Tax Commission prescribes of those persons who receive a certificate under this Subsection (1).

(2) The state treasurer shall provide for ongoing reporting to a participating employee 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 certificate under Subsection (1);

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

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

†

**Legislative Review Note**

**Office of Legislative Research and General Counsel†**