

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

2

HOUSE BILL 899
Committee Substitute Favorable 6/22/21

Short Title: North Carolina Work and Save.

(Public)

Sponsors:

Referred to:

May 10, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE SMALL BUSINESS RETIREMENT SAVINGS PROGRAM AND
3 TO APPROPRIATE FUNDS.

4 Whereas, the General Assembly finds that too many North Carolina citizens have no
5 or inadequate savings for retirement, and an estimated 1.7 million North Carolina working
6 families, including employees, independent contractors, and the self-employed, have no access
7 to an employer-sponsored retirement plan or program or any other easy way to save at work; and

8 Whereas, it is the policy of the State to assist the North Carolina private-sector
9 workforce, including in particular moderate- and lower-income working households, to
10 voluntarily save for retirement, including by facilitating saving in individual retirement accounts
11 (IRAs) as well as by encouraging employers to adopt retirement savings and other retirement
12 plans for employees in the State; and

13 Whereas, more adequate, portable, low-cost, and consumer-protective retirement
14 saving by North Carolina households will enhance their retirement security and ultimately reduce
15 the pressure on State public assistance programs for retirees and other elderly citizens and the
16 potential burden on North Carolina taxpayers to finance such programs; and

17 Whereas, the General Assembly intends to establish a North Carolina Work and Save
18 Program that will use the services of competent and qualified private-sector entities selected by
19 the North Carolina Small Business Retirement Savings Program Board to administer the Program
20 and manage the funds on behalf of the Program participants; and

21 Whereas, the North Carolina 529 College Savings Program has demonstrated the
22 feasibility of a public-private partnership that outsources investment and administration to assist
23 private citizens of the State to save on a voluntary and cost-efficient basis; Now, therefore,
24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** Article 10 of Chapter 143B of the General Statutes is amended by
26 adding a new Part to read:

27 "Part 2L. North Carolina Small Business Retirement Savings Program.

28 "§ 143B-437.105. Title.

29 This Part shall be known as the "North Carolina Small Business Retirement Program"
30 or "North Carolina Work and Save."

31 "§ 143B-437.106. Definitions.

32 The following definitions apply in this Part:

33 (1) Administrative Fund. – The North Carolina Small Business Retirement
34 Savings Administrative Fund established in G.S. 143B-427.115.

35 (2) Board. – The North Carolina Small Business Retirement Savings Program
36 Board.



* H 8 9 9 - V - 2 *

- 1 (3) Covered employee. – An individual who is employed by a covered employer,
2 who has wages or other compensation that is allocable to the State, and who
3 is at least 18 years of age. A covered employee does not include any of the
4 following:
- 5 a. Any employee covered under the federal Railway Labor Act (45
6 U.S.C. § 151).
- 7 b. Any employee on whose behalf an employer makes contributions to a
8 Taft-Hartley multiemployer pension trust fund.
- 9 c. Any individual who is an employee of the federal government, the
10 State or any other state, any county or municipal corporation, or any
11 of the State's, any other state's, or the federal government's units or
12 instrumentalities.
- 13 (4) Covered employer. – A person or entity engaged in a business, industry,
14 profession, trade, or other enterprise in the State, whether for profit or not for
15 profit, excluding the federal government, the State, any county, any
16 municipality, or any political subdivision of the State, and provided that
17 covered employer does not include an employer that maintains a specified
18 tax-favored retirement plan for its employees or has done so effective in form
19 and operation at any time within the current or two preceding calendar years.
20 If an employer does not maintain a specified tax-favored retirement plan for a
21 portion of a calendar year ending on or after the effective date of this Article
22 and adopts such a plan effective for the remainder of that calendar year, the
23 employer is exempt from covered employer status for that remainder of the
24 year.
- 25 (4a) Department. – The North Carolina Department of Commerce.
- 26 (5) ERISA. – The Employee Retirement Income Security Act of 1974, as
27 amended (29 U.S.C. § 1001 et seq.).
- 28 (6) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended
29 (Title 26 of the United States Code).
- 30 (7) IRA. – A traditional or Roth individual retirement account or individual
31 retirement annuity.
- 32 (8) Participant. – An individual who is contributing to an IRA under the Program
33 or has an IRA account balance under the Program.
- 34 (9) Participating employer. – A covered employer that provides for covered
35 employees a payroll deduction IRA provided for by this Article.
- 36 (10) Payroll deduction IRA arrangement or payroll deduction IRA. – An
37 arrangement by which an employer allows employees to contribute to an IRA
38 by means of payroll deduction.
- 39 (11) Program or North Carolina Work and Save Program. – The Small Business
40 Retirement Savings Program established by this Article.
- 41 (12) Roth IRA. – A Roth individual retirement account or individual retirement
42 annuity under section 408A of the Internal Revenue Code.
- 43 (13) Specified tax-favored retirement plan. – A retirement plan that is tax-qualified
44 under or is described in and satisfies the requirements of subsection 401(a),
45 401(k), 403(a), 403(b), 408(k) (Simplified Employee Pension), or 408(p)
46 (SIMPLE-IRA) of the Internal Revenue Code.
- 47 (14) Total fees and expenses. – All fees, costs, and expenses, including, but not
48 limited, to administrative expenses, investment expenses, investment advice
49 expenses, accounting costs, actuarial costs, legal costs, marketing expenses,
50 education expenses, trading costs, insurance annuitization costs, and other
51 miscellaneous costs.

1 (15) Traditional IRA. – A traditional individual retirement account or traditional
2 individual retirement annuity under section 408(a) or (b) of the Internal
3 Revenue Code.

4 (16) Trust. – The trust in which the assets of the Program are held. Where
5 applicable, except as may be otherwise specified, references throughout this
6 Article to the Program generally are intended to refer also to the Trust
7 including the assets, facilities, costs and expenses, receipts, expenditures,
8 activities, operations, administration, or management.

9 **"§ 143B-437.107. Establishment of Board.**

10 (a) The North Carolina Small Business Retirement Savings Board is established for
11 administrative purposes in the Department of Commerce, but the Board shall exercise its powers
12 and duties independently of the Department. The Department shall provide administrative
13 support for the Board in carrying out its duties pursuant to this Article.

14 (b) The Board shall consist of 12 members.

15 (1) Ten voting members shall be appointed as follows:

16 a. The State Treasurer shall appoint a member who has a favorable
17 reputation for skill, knowledge, and experience in retirement
18 investment products or retirement plan designs.

19 b. Five members appointed by the Governor as follows:

20 1. One member who has a favorable reputation for skill,
21 knowledge, and experience in retirement investment products
22 or retirement plan designs.

23 2. One member who has a favorable reputation for skill,
24 knowledge, and experience relating to small business or
25 covered employers.

26 3. One member from the Office of State Budget and Management
27 or other designee knowledgeable about fiscal impacts.

28 4. One member who is an employee of the Department of
29 Commerce.

30 5. One member of the public.

31 c. Two members appointed by the General Assembly upon the
32 recommendation of the Speaker of the House of Representatives as
33 follows:

34 1. One member who is a retired individual or an individual who
35 represents persons retired to be a representative of the interests
36 of retirees.

37 2. One member who has a favorable reputation for skill,
38 knowledge, and experience in the interests of employers in
39 retirement saving.

40 d. Two members appointed by the General Assembly upon the
41 recommendation of the President Pro Tempore of the Senate as
42 follows:

43 1. One member who is a representative of an association
44 representing employees or who has a favorable reputation for
45 skill, knowledge, and experience in the interests of employees
46 in retirement saving.

47 2. One member who has a favorable reputation for skill,
48 knowledge, and experience in retirement investment products
49 or retirement plan designs.

1 (2) In addition to the 10 voting members, the President Pro Tempore of the Senate
2 and the Speaker of the House of Representatives shall each appoint one
3 nonvoting advisory member.

4 (c) All initial appointments shall be made no later than October 1, 2021. Of the initial
5 five appointments made by the Governor, two shall be appointed for four-year terms, two shall
6 be appointed for two-year terms, and one shall be appointed for a one-year term, with all terms
7 to begin on October 1, 2021. Of the initial two appointments made by the General Assembly
8 upon the recommendation of the President Pro Tempore of the Senate, one shall be appointed for
9 a four-year term and one shall be appointed for a two-year term, with both terms to begin on
10 October 1, 2021. Of the initial two appointments made by the General Assembly upon the
11 recommendation of the Speaker of the House of Representatives, one shall be appointed for a
12 four-year term and one shall be appointed for a two-year term, with both terms to begin on
13 October 1, 2021. The initial appointment by the State Treasurer shall be for a term of three years
14 to begin on October 1, 2021. All successors shall be appointed for four-year terms. All members
15 of the Board shall serve at the pleasure of the appointing authority.

16 (d) Members of the Board shall serve without compensation and shall receive per diem,
17 subsistence, and travel allowances as provided in G.S. 138-5 and G.S. 138-6 as applicable.

18 (e) The Governor shall convene the first meeting of the Board no later than October 15,
19 2021. A majority of the voting members of the Board constitutes a quorum. The first order of
20 business before the Board shall be to elect a chair from among the Board's membership. A
21 vacancy in the membership of the Board shall not impair the right of a quorum to exercise the
22 powers and duties of the Board.

23 **"§ 143B-437.108. Powers and duties of the Board.**

24 (a) The Board shall have the following powers and duties, subject to its authority and
25 fiduciary duty:

26 (1) Design, develop, implement, maintain, govern, and promulgate rules with
27 respect to a payroll deduction retirement savings program for covered
28 employers and, to that end, may conduct market, legal, and feasibility
29 analyses.

30 (2) Elect a chair and other officers it deems necessary.

31 (3) Meet as necessary to perform its duties.

32 (4) Appoint an executive director, who shall be the chief administrative officer of
33 the Board.

34 (5) Retain trustees, record keepers, investment managers, investment advisors,
35 and other administrative, professional, expert advisors and service providers,
36 none of whom shall be members of the Board and all of whom shall serve at
37 the pleasure of the Board, and determine their duties and compensation. The
38 Board may authorize the executive director and other officials to oversee
39 requests for proposals or other public competitions and enter into contracts on
40 behalf of the Board and conduct any business necessary for the efficient
41 operation of the Board.

42 (6) Cause the Program, Trust, and arrangements and accounts established under
43 the Program to be designed, established, and operated:

44 a. In accordance with best practices for retirement saving vehicles.

45 b. To encourage participation, saving, sound investment practices, and
46 appropriate selection of investment options, including any default
47 investments.

48 c. To maximize simplicity and ease of administration for covered
49 employers.

50 d. To arrange for collective, common, and pooled investment of assets of
51 the Program and Trust, including investments in conjunction with

- 1 other funds with which these assets are permitted by law to be
2 collectively invested, with a view to achieving economies of scale and
3 other efficiencies designed to minimize costs for the Program and its
4 participants, to promote portability of benefits.
- 5 e. To avoid preemption of the Program by federal law (Employee
6 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.).
- 7 (7) Develop and implement an investment policy that defines the Program's
8 investment objectives, consistent with the objectives of the Program, and that
9 provides for policies and procedures consistent with those investment
10 objectives. The Board shall designate appropriate default investments that
11 include a mix of asset classes, such as target date and balanced funds. The
12 Board shall seek to minimize participant fees and expenses of investment and
13 administration. The Board shall strive to design and implement investment
14 options available to holders of accounts established as part of the Program and
15 other Program features that are intended to achieve maximum possible income
16 replacement balanced with an appropriate level of risk in an IRA-based
17 environment consistent with the investment objectives under the policy. The
18 investment options may encompass a range of risk and return opportunities
19 and allow for a rate of return commensurate with an appropriate level of risk
20 in view of the investment objectives under the policy. The menu of investment
21 options shall be determined taking into account the nature and objectives of
22 the Program, the desirability based on behavioral research findings of limiting
23 investment choices under the Program to a reasonable number, and the
24 extensive investment choices available to participants in the event that they
25 roll over to an IRA outside the Program.
- 26 (8) Set and collect necessary fees from covered employees for application,
27 account, or administrative processing and accept any grants, gifts, legislative
28 appropriations, loans, and other moneys from the State, any unit of federal,
29 State, or local government, or any other person, firm, or entity to defray the
30 costs of administering and operating the Program.
- 31 (9) If necessary, determine the eligibility of an employer, employee, or other
32 individual to participate in the Program.
- 33 (10) Adopt rules it deems necessary or advisable for the implementation of this
34 Article and the administration and operation of the Program.
- 35 (11) Cause expenses incurred to initiate, implement, maintain, and administer the
36 Program to be paid from contributions to, or investment returns or assets of,
37 the Program or other money collected by or for the Program or pursuant to
38 arrangements established under the Program to the extent permitted under
39 federal and State law.
- 40 (12) Invest and reinvest its funds in the Administrative Fund in accordance with
41 applicable State and federal laws.
- 42 (13) Make and enter into competitively procured contracts, agreements,
43 memoranda of understanding, partnerships, or other arrangements, to
44 collaborate and cooperate with, and to retain, employ, and contract with or for
45 any of the following to the extent necessary or desirable, for the effective and
46 efficient design, implementation, and administration of the Program
47 consistent with the purposes set forth in this Article and to maximize outreach
48 to covered employers and covered employees:
- 49 a. Services of private and public financial institutions, depositories,
50 consultants, actuaries, counsel, auditors, investment advisers,
51 investment administrators, investment management firms, other

- 1 investment firms, third-party administrators, other professionals and
2 service providers, and State public retirement systems.
- 3 b. Research, technical, financial, administrative, and other services.
4 c. Services of other State agencies to assist the Board in the exercise of
5 its powers and duties.
- 6 (14) The Board may enter into an intergovernmental agreement or memorandum
7 of understanding with the State and any agency of the State to receive
8 outreach, technical assistance, enforcement and compliance services,
9 collection or dissemination of information pertinent to the Program subject to
10 such obligations of confidentiality as may be agreed or required by law, or
11 other services or assistance. The State and any agencies of the State that enter
12 into such agreements or memoranda of understanding shall collaborate to
13 provide the outreach, assistance, information, and compliance or other
14 services or assistance to the Board. The memoranda of understanding may
15 cover the sharing of costs incurred in gathering and disseminating information
16 and the reimbursement of costs for any enforcement activities or assistance.
- 17 (15) Make and enter into contracts, agreements, memoranda of understanding,
18 arrangements, partnerships, or other arrangements to collaborate, cooperate,
19 coordinate, contract, or combine resources, investments, or administrative
20 functions with other governmental entities, including other states or their
21 agencies or instrumentalities that maintain or are establishing retirement
22 savings programs compatible with the Program, including collective,
23 common, or pooled investments with other funds of other states' programs
24 with which the assets of the Program and Trust are permitted by law to be
25 collectively invested, to the extent necessary or desirable for the effective and
26 efficient design, administration, and implementation of the Program
27 consistent with the purposes set forth in this Article, including the purpose of
28 achieving economies of scale and other efficiencies designed to minimize
29 costs for the Program.
- 30 (16) Develop and implement an education and outreach plan to gain input and
31 disseminate information regarding the North Carolina Work and Save
32 Program and retirement savings and financial literacy in general.
- 33 (17) Establish procedures for the timely and fair resolution of participant and other
34 disputes related to accounts or program operation.
- 35 (18) Evaluate the need for, and procure if and as deemed necessary, pooled private
36 insurance against any and all loss in connection with the property, assets, or
37 activities of the Program.
- 38 (19) Borrow from the State, any unit of federal, State, or local government, or any
39 other person, firm, partnership, corporation, or other entity working capital
40 funds and other funds as may be necessary for this purpose, provided that such
41 funds are borrowed in the name of the Program and Board only and that any
42 such borrowings shall be payable solely from the revenues of the Program.
- 43 (20) Enter into long-term procurement contracts with one or more financial
44 providers that provide a fee structure that would assist the Program in avoiding
45 or minimizing the need to borrow or to rely upon general assets of the State.
- 46 (b) In addition to the applicable prohibitions contained in Article 4 of Chapter 138A of
47 the General Statutes, a Board member, executive director, and other staff of the Board shall not
48 do any of the following:
- 49 (1) Directly or indirectly have any interest in the making of any investment under
50 the Program or in gains or profits accruing from any such investment.

- 1 (2) Borrow any Program-related funds or deposits or use any such funds or
2 deposits in any manner, for himself or herself or as an agent or partner of
3 others.
4 (3) Become an endorser, surety, or obligor on investments made under the
5 Program.

6 **"§ 143B-437.109. Standard of conduct; fiduciary duty.**

7 The Board, individual members of the Board, all persons serving as staff to the Program, and
8 any other agents appointed or engaged shall discharge their duties for the exclusive purpose of
9 providing benefits to the Program participants and administering the Program with discharge of
10 its duties and shall:

- 11 (1) Defray reasonable expenses in the administration of the Program.
12 (2) Govern Program investors with the care, skill, prudence, and diligence as a
13 prudent person acting in a like capacity would.
14 (3) Comply with all State ethics laws and regulations.

15 **"§ 143B-437.110. Requirements for the North Carolina Small Business Retirement Savings**
16 **Program.**

17 The Program developed and established by the Board shall:

- 18 (1) Provide a process to facilitate voluntary enrollment into the Program for
19 covered employers, covered employees, and self-employed persons.
20 (2) Provide that the IRA to which contributions are made will be a Roth IRA,
21 except that the Board shall have the authority at any time to add an option for
22 all participants to affirmatively elect to contribute to a traditional IRA as an
23 alternative to the Roth IRA.
24 (3) Provide that the standard package shall be a Roth IRA with a target date fund
25 investment, and a contribution rate that begins at five percent (5%) of salary
26 or wages; provided, however, that the covered employee can choose to stop
27 participation altogether, to use a traditional IRA and a different investment
28 from among the options available, and to contribute at a higher or lower
29 contribution rate, subject to the IRA contribution dollar limits applicable
30 under the Internal Revenue Code.
31 (4) Provide on a uniform basis, if and when the Board so determines, in its
32 discretion, for annual increases of each participant's contribution rate, by not
33 more than one percent (1%) of salary or wages per year up to a maximum of
34 eight percent (8%). Any such increases shall apply to participants, as
35 determined by the Board, by default or only if initiated by affirmative
36 participant election included as part of the standard package, in either case
37 subject to the IRA contribution limits applicable under the Internal Revenue
38 Code.
39 (5) Allow a covered employer to withhold payroll deductions from a covered
40 employee's paycheck for the express purpose of making a covered employee
41 contribution to the Program funds.
42 (6) Include a process for direct deposit of contributions into covered employee
43 investments in the Program.
44 (7) Covered employers are not allowed to make employer contributions to the
45 covered employee's accounts.
46 (8) Allow for covered employees to make non-payroll contributions into an
47 account in addition to the covered employer payroll deducted amounts.
48 (9) Include an account reporting system that requires separate records and
49 accounting for each covered employer and covered employee enrolled.
50 (10) Include an account status notification process for covered employees to be
51 notified about and track their investments pursuant to this Article.

- 1 (11) Allow portability of benefits, including the ability to make tax-free rollovers
2 or transfers from accounts under the Program to other non-program retirement
3 accounts or to tax-qualified plans that accept such rollovers or transfers
4 provided any rollover is initiated by the employee.
- 5 (12) Establish rules and procedures governing the distribution of funds from the
6 Program, including such distributions as may be permitted or required by the
7 Program and any applicable provisions of tax laws, with the objectives of
8 maximizing financial security in retirement, helping to protect spousal rights,
9 and assisting participants with the challenges of decumulation of savings. The
10 Board shall have the authority, in its discretion, to provide for one or more
11 reasonably priced distribution options to provide a source of fixed retirement
12 income, including income for life or for the participant's life expectancy (or
13 for joint lives and life expectancies, as applicable).
- 14 (13) Pool accounts as necessary under the Program for optimum investment
15 opportunity and return on investment outcomes.
- 16 (14) Be professionally managed.
- 17 (15) Provide a report on the status of each Program participant's account to each
18 Program participant at least annually.
- 19 (16) Provide that each program participant owns the contributions to and earnings
20 on amounts contributed to the participant's account under this Article and that
21 the State, the Board, and covered employers have no proprietary interest,
22 whether legal or equitable, in those contributions or earnings.
- 23 (17) Keep total fees and expenses as low as practicable and in any event each year
24 not in excess of 100 basis points of the total assets of the Program, except that
25 this limit shall not apply during a start-up period of three years beginning with
26 the initial implementation of the Program.
- 27 (18) Be designed and implemented in a manner consistent with federal law,
28 including favorable federal tax treatment, to the extent that it applies and
29 consistent with the Program not being preempted by ERISA.
- 30 (19) Ensure that the North Carolina Small Business Retirement Savings Program
31 is designed to be financially self-sustaining over time.
- 32 (20) Provide that, if a covered employer fails to transmit a payroll deduction
33 contribution to the Program on the earliest date the amount withheld from the
34 covered employee's compensation can reasonably be segregated from the
35 covered employer's assets, but not later than the fifteenth day of the month
36 following the month in which the covered employee's contribution amounts
37 are withheld from his or her paycheck, the failure to remit such contributions
38 on a timely basis shall be subject to the same sanctions as employer
39 misappropriation of employee wage withholdings and to penalties.

40 **§ 143B-437.111. Rules for the North Carolina Work and Save Program.**

41 The Board shall adopt rules to implement the Program that:

- 42 (1) Establish the processes for enrollment and contributions to Payroll Deduction
43 IRAs under the Program, including elections by covered employees,
44 withholding by covered employers of employee payroll deduction
45 contributions from wages and remittance for deposit to IRAs, and voluntary
46 enrollment and contributions by others, including self-employed individuals
47 and independent contractors, through payroll deduction or otherwise.
- 48 (2) Establish the processes for withdrawals, rollovers, and direct transfers from
49 IRAs under the Program in the interest of facilitating portability and
50 maximization of benefits.
- 51 (3) Establish processes for phasing in enrollment of eligible individuals.

- 1 (4) Conduct outreach to individuals, employers, other stakeholders, and the public
2 regarding the Program. Specify the contents, frequency, timing, and means of
3 required disclosures from the Program to covered employees, participants,
4 other individuals eligible to participate in the Program, covered employers,
5 and other interested parties. These disclosures shall include, but need not be
6 limited to:
- 7 a. The benefits associated with tax-favored retirement saving.
 - 8 b. The potential advantages and disadvantages associated with
9 contributing to Roth IRAs and, if applicable, traditional IRAs under
10 the Program.
 - 11 c. The eligibility rules for Roth IRAs and, if applicable, traditional IRAs.
 - 12 d. That the individual and not the employer, the State, the Board, any
13 Board member or other State official, or the Program will be solely
14 responsible for determining whether and, if so, how much the
15 individual is eligible to contribute on a tax-favored basis to an IRA.
 - 16 e. The penalty for excess contributions to IRAs and the method of
17 correcting excess contributions.
 - 18 f. Instructions for enrolling, making elections to contribute or to decline
19 to contribute, and making elections regarding contribution rates, type
20 of IRA, and investments.
 - 21 g. Instructions for implementing and for changing the elections.
 - 22 h. The potential availability of a saver's tax credit, including the
23 eligibility conditions for the credit and instructions on how to claim it.
 - 24 i. That employees seeking tax, investment, or other financial advice
25 should contact appropriate professional advisors, and that Covered
26 Employers are not in a position to provide such advice and are not
27 liable for decisions individuals make in relation to the Program.
 - 28 j. That the Payroll Deduction IRAs are intended not to be
29 employer-sponsored retirement plans and that the Program is not an
30 employer-sponsored retirement plan.
 - 31 k. The potential implications of account balances under the Program for
32 the application of asset limits under certain public assistance
33 programs.
 - 34 l. That the account owner is solely responsible for investment
35 performance, including market gains and losses, and that IRA
36 accounts and rates of return are not guaranteed by any employer, the
37 State, the Board, any Board member or State official, or the Program.
 - 38 m. Additional information about retirement and saving and other
39 information designed to promote financial literacy and capability
40 which may take the form of links to, or explanations of how to obtain,
41 such information.
 - 42 n. How to obtain additional information about the Program.

43 **"§ 143B-427.112. Protection from liability for covered employers.**

- 44 (a) A covered employer or other employer is not and shall not be liable for or bear
45 responsibility for any of the following:
- 46 (1) An employee's decision to participate in or not to participate in the Program
47 or a participant's specific elections under the Program.
 - 48 (2) Participants' or the Board's investment decisions.
 - 49 (3) The administration, investment, investment returns, or investment
50 performance of the Program, including, without limitation, any interest rate or

1 other rate of return on any contribution or account balance, provided they play
2 no role.

3 (4) The Program design or the benefits paid to participants.

4 (5) Individuals' awareness of or compliance with the conditions and other
5 provisions of the tax laws that determine which individuals are eligible to
6 make tax-favored contributions to IRAs, in what amount, and in what time
7 frame and manner.

8 (6) Any loss, failure to realize any gain, or any other adverse consequences,
9 including, without limitation, any adverse tax consequences or loss of
10 favorable tax treatment, public assistance, or other benefits, incurred by any
11 person as a result of participating in the Program.

12 (b) No covered employer or other employer shall be, or shall be considered to be, a
13 fiduciary in relation to the Program or Trust or any other arrangement under the Program.

14 **"§ 143B-427.113. Protection from liability for the State.**

15 The State has no duty or liability to any party for the payment of any retirement savings
16 benefits accrued by any individual under the Program. The State, the Board, each member of the
17 Board, and the Program:

18 (1) Shall have no responsibility for compliance by individuals with the conditions
19 and other provisions of the Internal Revenue Code that determine which
20 individuals are eligible to make tax-favored contributions to IRAs, in what
21 amount, and in what time frame and manner.

22 (2) Shall have no duty, responsibility, or liability to any party for the payment of
23 any benefits under the Program, regardless of whether sufficient funds are
24 available under the Program to pay such benefits.

25 (3) Do not and shall not guarantee any interest rate or other rate of return on or
26 investment performance of any contribution or account balance.

27 (4) Shall have no liability or responsibility for any loss, deficiency, failure to
28 realize any gain, or any other adverse consequences, incurred by any person
29 as a result of participating in the Program.

30 **"§ 143B-427.114. Confidentiality of participant and account information.**

31 Individual account information relating to accounts under the Program and relating to
32 individual participants, including, but not limited to, names, addresses, telephone numbers, email
33 addresses, personal identification information, investments, contributions, and earnings is
34 confidential, is not a public record as defined in G.S. 132-1, and may not be disclosed except as
35 follows:

36 (1) To the extent necessary to administer the Program in a manner consistent with
37 this Article the tax laws of this State, and Internal Revenue Code; or

38 (2) To the extent that the individual who provides the information or is the subject
39 of the information expressly agrees in writing to the disclosure of the
40 information.

41 **"§ 143B-427.115. Funding of Program.**

42 The North Carolina Small Business Retirement Savings Administrative Fund is established,
43 to be held in trust separate and distinct from the General Fund. Interest earned by the
44 Administrative Fund shall be credited to the Administrative Fund. Moneys in the Administrative
45 Fund are continuously appropriated to the Board. The Administrative Fund consists of:

46 (1) Moneys appropriated to the Administrative Fund by the General Assembly.

47 (2) Moneys transferred to the Administrative Fund from the federal government,
48 other State agencies, or local governments.

49 (3) Moneys from the payment of application, account, administrative, or other
50 fees and the payment of other moneys due the Board.

1 (4) Any gifts, donations, or grants made to the State for deposit in the
2 Administrative Fund.

3 (5) Earnings on moneys in the Administrative Fund.

4 **"§ 143B-427.116. Annual report.**

5 (a) The Board shall cause an accurate account of all of the Program's, Trust's, and Board's
6 activities, operations, receipts, and expenditures to be maintained. By October 1 of each year, the
7 Board shall submit to the Governor and the Joint Legislative Commission of Governmental
8 Operations a report, detailing the activities, operations, receipts, and expenditures of the Program
9 and Board during the preceding calendar year. The report shall also include projected activities
10 of the Program for the current calendar year and any necessary statutory recommendations and
11 appropriations.

12 (b) Each year, a full audit of the books and accounts of the Board pertaining to those
13 activities, operations, receipts and expenditures, personnel, services, or facilities shall be
14 conducted by a certified public accountant and shall include, but not be limited to, direct and
15 indirect costs attributable to the use of outside consultants, independent contractors, and any other
16 persons who are not State employees for the administration of the Program. For the purposes of
17 the audit, the auditors shall have access to the properties and records of the Program and Board
18 and may prescribe methods of accounting and the rendering of periodic reports in relation to
19 projects undertaken by the Program.

20 **"§ 143B-427.117. Implementation.**

21 (a) The Board shall establish the Program so that individuals can begin contributing
22 under the Program not later than July 1, 2023.

23 (b) The Board shall not implement the Program if and to the extent the Board determines
24 that the Program is preempted by ERISA. Accordingly, the Board shall implement the Program
25 in a severable fashion to the extent practicable if and to the extent that the Board determines:

26 (1) That a portion or aspect of the Program is preempted by ERISA, in which
27 event the Board shall not implement that portion or aspect of the Program but
28 shall proceed to implement the remainder of the Program to the extent
29 practicable; or

30 (2) That some but not all of the Payroll Deduction IRA Arrangements or other
31 arrangements under the Program are or would be employee benefit plans
32 under ERISA, in which event the Board shall proceed to implement the
33 Program with respect to the other arrangements under the Program to the
34 extent practicable."

35 **SECTION 2.** There is appropriated from the General Fund to the Department of
36 Commerce the sum of four hundred thousand dollars (\$400,000) in nonrecurring funds for the
37 2021-2022 fiscal year and the sum of six hundred thousand dollars (\$600,000) in nonrecurring
38 funds for the 2022-2023 fiscal year. The Department shall allocate the funds to the North Carolina
39 Small Business Retirement Savings Program Board (Board) to be used for the following:

40 (1) To enable or facilitate the start-up and continuing operation, maintenance,
41 administration, and management of the North Carolina Small Business
42 Retirement Savings Program (Program) until the Program accumulates
43 sufficient balances and can generate sufficient funding through fees assessed
44 on Program accounts for the Program to become financially self-sustaining.

45 (2) To hire an individual to serve as the initial executive director pursuant to
46 G.S. 143B-437.108(a)(4). The position shall be filled on a time-limited basis,
47 and the individual filling the position shall not be considered a State employee.

48 **SECTION 3.** This act becomes effective July 1, 2021.