

CHAPTER 295
FORMERLY
HOUSE BILL NO. 358
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 14, 16, AND 29 OF THE DELAWARE CODE RELATING TO THE ABLE PROGRAM, THE DELAWARE COLLEGE INVESTMENT PLAN, AND THE DEFERRED COMPENSATION PLAN.

WHEREAS, the Deferred Compensation Plan, the Achieving a Better Life Experience (“ABLE”) Program, and the Delaware College Investment Plan are each overseen by a separate board or council; and

WHEREAS, each of the foregoing programs and plans share many of the same core characteristics and involve comparable oversight functions; and

WHEREAS, the administration of the programs and plans can be improved for participants by consolidating and combining their boards into a single “Plans Management Board”; and

WHEREAS, the proposed Plans Management Board will be best constituted to determine the most appropriate means by which to implement Delaware’s ABLE Program;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 34, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter XII. Delaware College Investment Plan

§ 3483. Purpose.

It is the intent and purpose of the General Assembly through this subchapter to establish the Delaware College Investment Plan pursuant to § 529 of Title 26 of the United States Code [26 U.S.C. § 529] or successor section and to ~~create the Delaware College Investment Board~~ charge the Plans Management Board to implement and maintain the Plan through the adoption of rules and regulations for the administration of the Plan.

§ 3484. Administration; authority.

~~(a) This subchapter shall be administered by the Delaware College Investment Board, hereinafter referred to as the Board. The State Pension Office and Delaware Higher Education Office shall provide assistance to the Board in the administration of the Plan as directed by the Board Chairperson.~~ Plans Management Board pursuant to Section 2722 of Title 29.

~~(b) The Board shall be composed of the following:~~

~~(1) A Board Chairperson, selected by the Governor;~~

~~(2) The Secretary of Finance or the Secretary's designee;~~

~~(3) A member of the public appointed by the Delaware Higher Education Office, subject to the approval of the Secretary of Education; and~~

~~(4) Two public members, who by reason of their education and experience are qualified to serve, appointed by the Governor.~~

~~(c) The Board shall adopt such rules and regulations as it deems necessary and proper to administer this subchapter and to ensure the Plan's compliance with § 529 of Title 26 of the United States Code [26 U.S.C. § 529] or successor section.~~

~~(d) The Board shall publish an annual report to the Governor and General Assembly detailing its activities on or before September 30 of each year.~~

~~(e) The terms of the public members shall be staggered. The first appointed public member shall serve for a term of 1 year and the second appointed public member shall serve for a term of 2 years. Thereafter, public members shall serve for a term of 3 years. Public members shall be eligible for reappointment.~~

~~(f) Members of the Board overseeing the Delaware College Investment Plan may be reimbursed for mileage expenses incident to their duties.~~

§ 3485. Definitions.

As used in this subchapter:

(1) "Account" means an individual account, a trust account or a savings account established in accordance with this subchapter.

(2) "Account owner" means the individual, individuals, or the trustee of a trust identified at the time the account is opened as having the right to withdraw funds from the account.

(3) "Board" means the Plans Management Board pursuant to § 2722 of Title 29.

~~(3)~~ (4) "Designated beneficiary" means, except as provided in § 3490 of this title, the individual designated at the time the account is opened as having the right to receive a qualified withdrawal for the payment of qualified higher education expenses or, if such designated beneficiary is replaced in accordance with § 3490 of this title, such replacement.

~~(4)~~ (5) "Financial institution" means a bank, a commercial bank, a national bank, a savings bank, a savings and loan, a thrift institution, a credit union, an insurance company, a trust company, a mutual fund, an investment firm or other similar entity authorized to do business in this State.

~~(5)~~ (6) "Higher education institution" means an eligible education institution as defined in § 135(c)(3) of Title 26 of the United States Code [26 U.S.C. § 135(c)(3)].

~~(6)~~ (7) "Member of the family" shall have the same meaning as contained in § 529(e) of Title 26 of the United States Code [26 U.S.C. § 529(e)] or successor section.

~~(7)~~ (8) "Nonqualified withdrawal" means a withdrawal from an account that is not:

- a. A qualified withdrawal;
- b. A withdrawal made as the result of the death or disability of the designated beneficiary;
- c. A withdrawal made as the result of a scholarship (or allowance or payment described in § 135(d)(1)(B) or (C) of Title 26 of the United States Code [26 U.S.C. § 135(d)(1)(B) or (C)]) received by the designated beneficiary, but only to the extent of the amount of such scholarship, allowance or payment; or
- d. A rollover or change in the designated beneficiary described in § 3490 of this title.

~~(8)~~ (9) "Plan" means the Delaware College Investment Plan established by this subchapter.

~~(9)~~ (10) "Qualified higher education expenses" means tuition and other permitted expenses as presently set forth in § 529(e) of Title 26 of the United States Code [26 U.S.C. § 529(e)] or as hereafter permitted by such successor or amended section for the enrollment or attendance of a designated beneficiary at a higher education institution.

~~(10)~~ (11) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary, but only if the withdrawal is made in accordance with the requirements of the Plan.

~~(11)~~ (12) "Trust" means a trust which is revocable or irrevocable and which has at least 1 individual as its current beneficiary.

~~§ 3486. Powers of the Board.~~

~~The Board shall have the following powers, duties and functions:~~

~~(1) To establish, develop, implement and maintain the Plan in a manner consistent with the provisions of this subchapter and § 529 of Title 26 of the United States Code [26 U.S.C. § 529] or such successor section to obtain the benefits provided by such section for the Plan and its participants;~~

~~(2) To adopt rules and regulations for the general administration of the Plan;~~

~~(3) To maintain, invest and reinvest the funds contributed into the Plan consistent with the investment restrictions established by the Board. The investment restrictions shall be consistent with the objectives of the Plan and the Board shall exercise the judgment and care then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from investments of money belonging to the State in accordance with the policies established by the Board. The Board may consult with the Investment Subcommittee of the Board of Pension Trustees in the development of investment alternatives; and~~

~~(4) To make and enter into any and all contracts, agreements or arrangements and to retain, employ and contract for the services of private and public financial institutions, depositories, consultants, investment advisors or managers, third party plan administrators, research and technical and other services necessary or desirable for carrying out the purposes of this subchapter.~~

§ 3487. The Program.

(a) An account owner may establish an account by making an initial contribution to the Plan in the name of the designated beneficiary. Once a contribution is made it becomes part of the Plan and subject to this subchapter.

(b) Any person may make a contribution to an account once an account is opened. If the account owner is a trust, the trustee must consent to the contribution.

(c) Contributions to an account shall be made only in cash.

(d) Total contributions to all accounts shall not exceed those reasonably necessary, considering the return on contributions and the age and circumstances of the designated beneficiary, to provide for the qualified higher education expenses of the beneficiary. The Board shall establish maximum contribution limits applicable to Plan accounts and shall require such information from the account owner and the designated beneficiary to establish the limit as it relates to such account.

(e) Separate records and accounting shall be required by the Plan for each account and reports shall be made no less frequently than annually to the account owner and the designated beneficiary.

~~(f) The Plan shall be permitted to collect application, account or administrative fees to defray the costs of the Plan. The application, account or administrative fees must be approved by the Board.~~

~~(g)~~ (f) In the case of an account owner which is a trust, the Board shall require such information from the account owner as is necessary to establish compliance with the Plan.

§ 3488. Investment direction.

~~(a) Except as permitted in § 529 of Title 26 of the United States Code [26 U.S.C. § 529] and regulations thereunder, no person shall have the right to direct the investment of any contributions to or earnings from the Plan.~~

~~(b) Neither the Plan, the Board and each of its members nor the State shall insure any account or guarantee any rate of return or any interest rate on any contribution; nor shall they or any one of them be liable for any loss incurred by any person as a result of participating in the Plan.~~

~~(c) The Board and each of its members shall be entitled to the immunities set forth in Chapter 40 of Title 10, and in addition, no member of the Board shall be liable for any act or omission made during the member's tenure on the Board, or for any loss incurred by any person as a result of the participation by any Board member in the Plan. Further, the State shall indemnify each Board member who is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, arising by reason of such member's participation in the Plan, against any expenses (including attorney's fees if the Attorney General shall determine that such Board member is not entitled to representation by the State), judgments, fines and amounts paid in settlement actually and reasonably incurred by that member in connection with such action, suit or proceeding, if that member acted in good faith and in a manner that member reasonably believed to be in the best interest of the State, and with respect to any criminal action or proceeding, so long as that member had no reasonable cause to believe that that member's conduct was unlawful. Any expenses incurred by such Board member in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of the final disposition of such action, suit or proceeding upon authorization by a majority of the members of the Board and by the Governor of the State.~~

~~(d) The Board in the exercise of its sole discretion and without liability is specifically authorized to remove the Plan's funds from any financial institution and to reinvest the funds in a similar or different investment alternative at another financial institution at any time.~~

§ 3489. Prohibitions.

(a) No account nor any interest in an account shall be assignable or pledged or otherwise used to secure or obtain a loan or other advancement.

(b) No refund of a qualified educational expense payment may be paid by a higher education institution directly to the designated beneficiary or to the account owner. Any refund of qualified tuition expenses owed by a higher education institution on account of an overpayment of educational expenses must be refunded to the Plan for credit to the designated beneficiary's account.

(c) A qualified withdrawal that is used to pay for qualified education expenses must be paid jointly to the designated beneficiary and the higher education institution or directly to the higher education institution. A payment of qualified education expenses may not be made directly to the beneficiary.

(d) Total contributions to all accounts established on behalf of a particular beneficiary in excess of those reasonably necessary to meet the designated beneficiary's qualified higher education expenses are prohibited.

(e) Except as permitted in § 529 of Title 26 of the United States Code [26 U.S.C. § 529] and regulations thereunder, no person shall have the right to direct the investment of any contributions to or earnings from the Plan.
§ 3490. Designated beneficiary.

(a) An account owner shall have the right at any time to change the designated beneficiary of an account to another individual who is a member of the family of the former designated beneficiary, and, in the case of an account owner which is a trust, to another person who is also a beneficiary of the trust.

(b) An account owner shall have the right at any time to direct that all or a portion of an account be transferred to the account of another beneficiary if the designated beneficiaries are members of the same family, and, in the case of an account owner which is a trust, to the account of another beneficiary if the designated beneficiary is also a beneficiary of the trust.

(c) The right to change the designated beneficiary or to transfer between accounts contained in subsections (a) and (b) of this section may be denied if, under regulations adopted by the Board, the exercise of the right would result in either excess contributions to an account or the exercise of impermissible investment direction by the account owner.

§ 3491. Account withdrawals; penalties.

(a) Withdrawal from an account may be made on 30 days' written notice to the Board or on such shorter notice as the Board may by regulation provide. A withdrawal shall be designated as a qualified withdrawal or a nonqualified withdrawal and the application shall provide such information and be made on such forms as the Board shall find are necessary to enable the Board to determine the nature of the withdrawal.

(b) An account withdrawal paid to or for the benefit of any person during any calendar year shall be reported to the person and the Internal Revenue Service. The report shall be made at the time and contain such information as required by law.

(c) The Board shall establish a more than de minimis penalty, at the minimum amount necessary to satisfy the requirements of § 529 of Title 26 of the United States Code [26 U.S.C. § 529] or successor section for a nonqualified withdrawal on the portion of the withdrawal that constitutes income under § 529 of Title 26 of the United States Code [26 U.S.C. § 529] or successor section.

(d) Penalties collected under this section may be used to defray the costs of the Plan.

Section 2. Amend Chapter 96A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 96A. DELAWARE ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNTS

§ 9601A. Purpose.

The purpose of this chapter is to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life. This chapter ~~is enables the State's State to implementation implement~~ of the federal Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010.

§ 9602A. Definitions.

As used in this chapter:

(1) "Account" means an individual account, a trust account, or a savings account established in accordance with the provisions of this chapter.

(2) "Account owner" means an eligible individual, or if the eligible individual is under 18 years of age or is incapacitated, a parent or legal guardian of the eligible individual.

(3) "Board" shall mean the Plans Management Board pursuant to Section 2722 of Title 29.

~~(3) "Contracting state" means a state that does not have a program compliant with the federal ABLÉ act and which has entered into a contract with the State of Delaware to provide residents of the other state access to Delaware's Achieving a Better Life Experience Program.~~

(4) "Designated beneficiary" means, with respect to an account or accounts, the eligible individual whose qualified disability expenses are expected to be paid from the account.

(5) "Eligible individual" means a resident of ~~this State or a contracting~~ any state who is:

a. Entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act [42 U.S.C. § 401 et seq. or § 1381 et seq.], where such blindness or disability occurred before the date on which the individual attained ~~age 26~~ the age specified in the federal ABLÉ Act; or

b. An individual with respect to whom a disability certification, meeting the requirements of the federal ABLÉ Act, is filed.

(6) "Federal ABLÉ Act" means the Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010, and includes subsequent amendments to that act, as well as regulations promulgated thereunder by the United States Secretary of the Treasury.

(7) "Program" means the Delaware Achieving a Better Life Experience Program established by this chapter.

(8) "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the federal regulations.

~~§ 9603A. Achieving a Better Life Experience Board; composition; establishment of ABLÉ Program.~~
Administration of the ABLÉ Program.

~~(a) This chapter shall be administered by the Achieving a Better Life Experience Board~~ Plans Management Board pursuant to Section 2722 of Title 29. ~~The Office of the State Treasurer shall provide assistance to the Board in the administration of the Program as directed by the Board chairperson.~~

~~(b) The Board shall be composed of the following:~~

~~(1) A Board chairperson, selected by the Governor.~~

~~(2) The State Treasurer or the Treasurer's designee.~~

~~(3) The Secretary of the Department of Health and Social Services, or the Secretary's designee.~~

~~(4) Two members of the public who by reason of their education and experience relating to disabilities or financial planning are qualified to serve, 1 to be appointed by the Speaker of the House of Representatives and 1 to be appointed by the President Pro Tempore of the Senate.~~

~~(5) A current member of the Delaware College Investment Board, to be appointed by the Governor.~~

~~(6) A person with a disability who is an eligible individual under this chapter, to be appointed by the Governor.~~

~~(c) Persons appointed to the Board pursuant to paragraphs (b)(4), (5), and (6) of this section shall serve for staggered 2-year terms, except for the initial members of the Board, 2 of whom shall serve for 3 years.~~

~~(d)~~ (b) The Board ~~shall~~ may establish, develop, implement and maintain a Delaware Achieving a Better Life Experience Program for all eligible individuals and families for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life. Should a Delaware ABLÉ program be established, ~~The~~ the Board shall ensure and maintain the Program's status as a "qualified ABLÉ program" as defined by the federal ABLÉ Act.

(c) In lieu of the development of a Delaware ABLÉ program, the Board is authorized to effect this chapter's purpose through the entry into a consortium, joint venture, or contract with another state or states, or by assisting eligible individuals in Delaware in identifying and accessing ABLÉ programs established by other states.

~~(e) The Board shall publish an annual report to the Governor and General Assembly detailing its activities on or before September 30 of each year.~~

~~§ 9604A. Powers of the Board.~~

~~The Board shall have the following powers, duties and functions:~~

~~(1) To make and enter into all contracts, agreements, or arrangements, and to retain, employ, and contract for the services of private and public financial institutions, depositories, consultants, investment advisors or manager, third-party plan administrators, research, and technical and other services necessary or desirable for carrying out the purposes of this chapter.~~

~~(2) To maintain, invest, and reinvest the funds contributed to the Program consistent with the investment restrictions established by the Board. The investment restrictions shall be consistent with the objectives of the Program and the Board shall exercise the judgment and care then prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from investments of money belonging to the State in accordance with the policies established by the Board.~~

~~(3) To charge fees and expenses to the funds held under the Program or to persons establishing or owning accounts.~~

~~(4) To promulgate rules and regulations necessary for the administration of this chapter and to ensure the Program's compliance with the federal ABLÉ Act.~~

~~§ 9605A. The Program.~~

~~(a) An account may be opened by any person who desires to save to pay the qualified disability expenses of an eligible individual, by making an initial contribution to the Program in accordance with regulations promulgated by the Board.~~

~~(b) Any person may make a contribution to an account once an account is opened.~~

~~(c) Contributions to an account shall be made only in cash, except where otherwise permitted by the federal ABLÉ Act.~~

~~(d) Separate records and accounting shall be required by the Program for each account and reports shall be made no less frequently than annually to the account owner and the designated beneficiary.~~

~~§ 9606A. Prohibitions.~~

~~(a) A designated beneficiary may have only 1 account.~~

~~(b) No account nor any interest in an account may be used as security for a loan.~~

~~(c) Total contributions on behalf of a designated beneficiary may not exceed the limit established under subchapter XII, Chapter 34 of Title 14.~~

~~(d) Except as permitted by the federal ABLÉ Act, no person shall have the right to direct the investment of any contributions to or earnings from the Program.~~

~~§ 9607A. State and local means-tested programs.~~

~~Accounts established pursuant to this chapter or another state's ABLÉ program shall not be included in determining income asset eligibility of the designated beneficiary for state or local assistance programs.~~

~~§ 9608A. Limitations on liability.~~

~~(a) The Board and each of its members shall be entitled to the immunities set forth in Chapter 40 of Title 10, and in addition, no member of the Board shall be liable for any act or omission made during the member's tenure on the Board, or for any loss incurred by any person as a result of the participation by any Board member in the Program. Further, the State shall indemnify each Board member who is a party to or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation in the Program, against any expenses (including attorneys' fees if the Attorney General shall determine that such Board member is not entitled to representation by the State), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that member in~~

~~connection with such action, suit, or proceeding, if that member acted in good faith and in a manner that member reasonably believed to be in the best interest of the State, and with respect to any criminal action or proceeding, so long as that member had no reasonable cause to believe that the member's conduct was unlawful. Any expenses incurred by such Board member in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of the final disposition of such action, suit, or proceeding upon authorization by a majority of the members of the Board and by the Governor of the State.~~

~~(b) Neither the Program, the Board and each of its members, nor the State, including the Office of the State Treasurer, shall insure any account or guarantee any rate of return or any interest rate on any contribution; nor shall they or any one of them be liable for any loss incurred by any person as a result of participating in the plan.~~

Section 3. Amend Chapter 60A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6051. Purpose.

The purpose of this chapter is to create a vehicle through which all employees of the State may, on a voluntary basis, provide for additional retirement income security through a program of deferred compensation. The deferred compensation program provided by this chapter shall be in addition to any retirement or other benefit program provided by law for employees of the State.

§ 6052. Definitions.

As used in this chapter:

(1) "Board" shall mean the Plans Management Board pursuant to Section 2722 of this title.

(2) "Deferred compensation" means income earned as a public officer or employee of the State which, pursuant to a written agreement between the State and the employee, is set aside for retirement purposes.

~~(2)(3)~~ "Deferred compensation program" means such plan or plans of to allow deferred compensation pursuant to §§ 457, 403(b) and 401(a) of the Internal Revenue Code, as may be adopted by the Deferred Compensation Council Board.

~~(3)(4)~~ "Employee" means an individual who is employed by the State, including elected or appointed officials, and who receives compensation wholly or in part directly from the State Treasury or from the Treasury through an agency within the State that is wholly or in part supported by the State. The term "employee" includes employees of the Delaware Transit Corporation and Delaware Solid Waste Authority. Individuals hired on a temporary basis or as consultants shall not qualify as employees.

~~(4)(5)~~ "Qualified participant" is defined as an employee of the State, including school districts, who has deferred compensation under the provisions of this chapter and satisfies either of the following conditions:

a. Employee must be enrolled in the deferred compensation program for no less than 6 consecutive months immediately preceding receipt of the match;

b. Employee has deferred the maximum allowable by the Internal Revenue Service within the 6 months preceding receipt of the match.

~~§ 6053. Deferred Compensation Council.~~

~~(a) There shall be established a Deferred Compensation Council for public employees of the State which shall consist of 7 members, as follows:~~

~~(1) The Secretary of Finance, State Treasurer, Director of the Office of Management and Budget and the State Insurance Commissioner or their designees shall serve ex officio as members.~~

~~(2) Two shall be state employees appointed by the Governor.~~

~~(3) One shall be a representative of the public at large appointed by the Governor.~~

~~(4) Those members who do not serve ex officio shall be appointed for terms of 3 years, commencing, in each case, from the date of appointment; provided, however, that in the initial appointments, members shall, as designated by the Governor at the time of appointment, serve 1, 2 and 3 year terms respectively.~~

~~(5) In the case of vacancy on the Council for any reason other than expiration of the term of office, the Governor shall fill such a vacancy for the unexpired term.~~

~~(b) The Council shall, subject to any applicable contract provisions, undertake to obtain as favorable conditions of tax treatment as possible, both in the existing program and any later amendments thereto or any later programs as to such matters as: terms of distribution, designation of beneficiaries, withdrawal upon disability, financial hardship or termination of public employment and other optional provisions.~~

~~(c) The Council shall be responsible for the general administration of this chapter. Such responsibility shall include, but not be limited to:~~

~~(1) The adoption of rules and regulations for the administration of this chapter.~~

~~(2) Establishment and implementation of deferred compensation plans including the power to contract for any and all services that may be required to implement such plans.~~

~~(d) Except for ex officio members, all members of the Council shall be entitled to reimbursement for those travel and other expenses made necessary by their official duties that are approved by the State Treasurer.~~

~~(e) The Council shall be jointly chaired by the Secretary of Finance and the State Treasurer.~~

~~(f) The Council shall hold regular meetings at least twice each year, which meetings shall be open to the public in accordance with § 10004 of this title.~~

~~(g) Four members of the Council shall constitute a quorum and shall have the power to conduct any and all business authorized under this chapter as long as 1 member present is not an ex officio member.~~

~~(h) Council members shall not be liable for any loss sustained by the deferred compensation program as a result of their official acts, unless such acts constitute gross negligence or wilful wrongdoing.~~

§ 6054. Administration; reports.

~~(a) The clerical administration of the deferred compensation program shall be the responsibility of the office of the State Treasurer.~~

~~(b)(a) All plans of deferred compensation which may be adopted shall provide that each participating employee will be furnished a quarterly statement of the employee's account, on a form approved by the Council Board, showing at least the amount of income deferred, the investments purchased and the charges assessed on such purchases.~~

~~(c)(b) Each plan of deferred compensation which may be adopted shall provide that in the event of nonrenewal or termination, all accounts enrolled in the plan, including all records, investments and proceeds thereof, shall be transferred to an agent designated by the Council Board.~~

~~(d) At the close of the fiscal year, the office of the State Treasurer, at the direction of the Council, shall prepare an annual report for submission to the Governor and the General Assembly. Such reports shall summarize the activities of the Council during the preceding year and shall report on the status of the deferred compensation program and its various elements.~~

§ 6055. Payroll deductions.

The Department of Finance and the State Treasurer are authorized to make payroll deductions under this chapter pursuant to regulations adopted by the Council Board for any public officer or employee of the State who has authorized such deductions in writing. The Treasurer of the State shall account for all such payroll deductions and shall make payment of such deductions in accordance with regulations adopted by the Council Board. Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the State Employees' Pension Plan, any pension plan for members of the state judiciary and any pension plan for members of the State Police. ~~Any~~ Unless subject to the provisions of § 6062 of this chapter, any sum so deferred shall not be included in the computation of any federal or state income taxes withheld on behalf of any such employee, but shall be included for computation of Social Security Administration contributions.

§ 6056. Maximum amount deferrable.

Any provision of this chapter notwithstanding, the maximum amount of income which any 1 employee may elect to defer after June 30, 1975, shall not exceed the limit established by the Internal Revenue Service.

§ 6057. Limitation on investments.

The deferred compensation program may offer any of the following investment options and none other:

- (1) Savings accounts in federally insured banking institutions.
- (2) United States government bonds or debt instruments.
- (3) Life insurance and annuity contracts, provided the companies offering such contracts are subject to regulation by the Insurance Commissioner of the State.
- (4) Investment funds registered under the Investment Company Act of 1940.
- (5) Securities which are traded on the New York Stock Exchange National Association of Securities Dealers Automated Quotations (NASDAQ) and American Stock Exchange.

~~§ 6058. Audit.~~

~~The deferred compensation program shall be audited once each year by the State Auditor of Accounts. The Council shall make appropriate arrangements to pay the Auditor of Accounts for the cost of the audit and is required to act within a reasonable period of time upon any recommendations made by the Auditor of Accounts.~~

~~§ 6059. Costs.~~

~~The costs of administering the deferred compensation program, excluding personnel costs, shall be borne by the participants of the program in accordance with regulations adopted by the Council.~~

§ 6060. Employer Match Plan.

The ~~Deferred Compensation Council~~ Board is hereby authorized and directed to establish a plan pursuant to § 401(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 401(a)], as amended.

§ 6061. Employer contribution to qualified participants [Suspended effective July 1, 2008; see 80 Del. Laws, c. 79, § 7(e)]

Commencing January 1, 2001, and each pay period thereafter, an amount equal to 100 percent of the voluntary contribution of every qualified participant, not to exceed \$10 per pay period, shall be credited to the § 401(a) account of each qualified participant making a voluntary deferral under the provisions of this chapter. The employer contribution shall be remitted each pay period by the State Treasurer from an appropriation authorized for this purpose.

Modifications to the match amount per pay period, percentage of contribution matched, number of pay periods per year to be matched and other fiscal and operational aspects of the program are contingent upon funding by the General Assembly and may be administered through rules and regulations promulgated by the ~~Deferred Compensation Council~~ Board and pursuant to § 401(a) of the Internal Revenue Code [26 U.S.C. § 401(a)].

§ 6062. Roth savings option.

(a) ~~By July 1, 2015, the Deferred Compensation Council~~ The Board shall ensure that 403(b) and 457(b) [26 U.S.C. §§ 403(b) and 457(b)] retirement plans allow participants the option to designate their contributions into the plans as Roth contributions.

(b) ~~By July 1, 2015, the~~ The Office of Management and Budget shall make all necessary changes to the state employee payroll system necessary to facilitate the addition of a Roth option to state 403(b) and 457(b) retirement plans for state employees.

(c) ~~By July 1, 2015, the~~ The State Treasurer shall take all necessary steps to facilitate the addition of a Roth option to state 403(b) and 457(b) retirement plans.

Section 4. Amend Chapter 27, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2722. Plans Management Board.

(a) Establishment; purposes. — There is hereby established the Plans Management Board (the "Board"). The Board's purpose shall be to administer the College Investment Plan established pursuant to Subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program established pursuant to Chapter 96A of Title 16, and the Deferred Compensation Program established pursuant to Chapter 60A of this title (collectively, "the Plans"), in each case, in accordance with the individual purposes of each of the Plans.

(b) Composition. — The Board shall be composed of 11 members as follows:

- (1) The following persons shall serve by virtue of their position and may appoint a person to serve in their stead and at their pleasure:

- a. The State Treasurer.
- b. The Secretary of Finance.
- c. The Director of the Office of Management and Budget.
- d. The Insurance Commissioner.
- e. The Secretary of Education.

(2) Two state employees shall be appointed by the Governor, one of whom shall be eligible to participate in the deferred compensation program established in accordance with Section 403(b) of the Internal Revenue Code.

(3) Four public members, who by reason of education or experience are qualified to serve, shall be appointed by the Governor.

(c) Term of appointed members; conduct of meetings. —

(1) Each appointed member shall be appointed to serve a term of up to 3 years. Members shall be appointed for staggered terms, so that no more than 2 appointed members' terms shall expire in any 1 calendar year. Appointed members shall be eligible for reappointment.

(2) Each member of the Board shall have 1 vote and the powers of the Board shall be exercised by a majority vote of all members present; provided that a majority of current members shall constitute a quorum necessary to hold a meeting of the Board.

(3) There shall be a chairperson of the Board who shall be appointed by the Governor from among the public members appointed by the Governor, to serve at the pleasure of the Governor.

(4) The Board shall meet as often as shall be necessary to properly discharge its duties; provided, however, that the Board shall meet at least 4 times annually; and provided further, that the State Treasurer or the chairperson of the Board shall be authorized to call special meetings of the Board and to set the agenda for these meetings.

(5) Meetings and/or documents relating to investment strategy or negotiations concerning investment of money belonging to the Plans shall be exempt from Chapter 100 of this title.

(d) Standard of care. – The Board, its subcommittees, and each of their members shall discharge their duties with respect to each Plan solely in the interest of the participants and beneficiaries of such Plan and for the exclusive purpose of providing Plan benefits to participants and their beneficiaries, including defraying reasonable expenses of administering each such Plan, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of such Plan.

(e) Powers and duties of Board. —

(1) The Board is authorized and empowered to adopt rules and regulations for the general administration of its duties.

(2) The Board is authorized and empowered to establish subcommittees. Subcommittees may include persons who are not members of the Board.

(3) The Board is authorized and empowered to make and enter into any and all contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of any of the Plans.

(4) The Board shall have the power and duty to maintain, invest, and reinvest the funds contributed into the Plans consistent with the standard of care set forth in subsection (d) of this section.

(5) The Board shall approve the annual budget for each of the Plans and the collection of application, account, and administrative fees from the assets of each Plan in order to defray all costs of the Plans, to the extent permitted by law.

(6) The Board in the exercise of its sole discretion and without liability is specifically authorized to remove any of the Plans' funds from any financial institution and to reinvest the funds in a similar or different investment alternative at another financial institution at any time.

(7) The Board shall arrange for an annual financial audit of each of the Plans, which shall be provided annually to the General Assembly. The Board shall enter into a Memorandum of Understanding with the

Auditor of Accounts regarding each such audit, and payment for each such audit shall be approved by the Board.

(8) The use of teleconferencing or videoconferencing is authorized for use in conducting meetings of the Board and its subcommittees, including in order to obtain a quorum and for voting purposes.

(f) Compensation; indemnification. —

(1) Members shall not receive compensation for serving on the Board. Except for ex officio members, all members shall be entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board. A state employee appointed to the Board pursuant to paragraph (b)(2) of this section shall be permitted to count the time spent attending or traveling to and from Board meetings (as well as participation on subcommittees, selection committees, and their like) as part of their regular work day and shall not be required to expend leave time.

(2) The Board, its subcommittees, and each of their members shall be entitled to the immunities set forth in Chapter 40 of Title 10, and in addition, no member of the Board shall be liable for any act or omission made during the member's tenure on the Board, or for any loss incurred by any person as a result of participation in any of the Plans. Further, the State shall indemnify each Board member who is a party to or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board, against any expenses (including attorneys' fees if the Attorney General shall determine that such Board member is not entitled to representation by the State), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that member in connection with such action, suit, or proceeding, if that member acted in good faith and in a manner that member reasonably believed to be in the best interest of the State, and with respect to any criminal action or proceeding, so long as that member had no reasonable cause to believe that the member's conduct was unlawful. Any expenses incurred by such Board member in defending a civil, administrative, or investigative action, suit, or proceeding shall be paid by the State in advance of the final disposition of such action, suit, or proceeding upon authorization by a majority of the members of the Board and by the Governor of the State.

(g) Administrative support. — The Board shall receive administrative support from the Office of the State Treasurer.

Section 5. Transitional provisions. As of the effective date of this Act, the appointments of the currently serving public members of the Deferred Compensation Council and of the Delaware College Investment Board and currently serving state employee members of the Deferred Compensation Council shall become appointments as members of the newly constituted Plans Management Board. The Chair of the Delaware College Investment Board shall serve as the initial chair of the newly constituted Plans Management Board.

Section 6. This Act shall take effect on July 1, 2016.

Approved June 30, 2016