



LAWS OF DELAWARE
VOLUME 85
CHAPTER 399
153rd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 423

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DEFERRED COMPENSATION.

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

Section 1. Amend Chapter 60, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 6052. Definitions.

As used in this chapter:

(1) “Automatic enrollment” means a provision in the state plan under 26 U.S.C. § 457(b) under which an employee is treated as having elected to have the employer make a specified contribution to the plan equal to a percentage or fixed amount of compensation until the employee affirmatively elects to opt out of automatic enrollment.

(3) “Covered employee” includes any person who is a new employee and who is eligible for automatic enrollment under the terms of the plan. Covered employee does not include any employee who is covered by a collective bargaining agreement unless automatic enrollment into the 457(b) plan is expressly authorized by the employee’s collective bargaining agreement.

(4) “Default contribution rate” means the percent of compensation that a covered employee contributes to the employee’s 457(b) account from and after automatic enrollment and until such time as the employee affirmatively elects to make a contribution in a different amount.

(5) “Default investment” means the investment in a qualified default investment alternative selected by the Board that is purchased with a covered employee’s contributions from and after automatic enrollment and until such time as the employee affirmatively elects a different investment option.

(9) “New employee” means any person who becomes an employee from and after [the effective date of this Act]. New employee includes employees who have left and then returned to State employment, including post-retirement.

Section 2. Amend § 6055, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6055. Payroll deductions.

The ~~Department of Finance and the State Treasurer are~~ Office of Management and Budget is authorized to make payroll deductions under this chapter pursuant to ~~regulations~~ rules or procedures adopted by the Board for any public officer or employee of the State who has authorized such deductions in ~~writing,~~ writing, or who has been automatically enrolled under this chapter. 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 Board~~ applicable law and regulations. 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. Unless subject to the provisions of § 6062 of this title, 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.

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

§ 6063. Automatic enrollment, automatic escalation, and default investments.

(a) Notwithstanding anything to the contrary in § 5106 of this title, a covered employee who does not opt out shall be automatically enrolled into the 457(b) plan at the default rate specified by the Board pursuant to subsection (b) of this section.

(b) The initial default contribution rate shall be established by the Board. The initial default contribution rate may be changed by the Board from time to time. The initial default contribution rate may not be less than 3% of compensation. The Board may determine in its discretion to increase the automatic default contribution rate for all covered employees based on their years of participation, provided that such increases may be either 1% or 2% of compensation and shall not occur more frequently than annually. The maximum default contribution rate established by the Board may not exceed 15% of compensation. The initial or subsequent default contribution rates shall apply to all covered employees who do not affirmatively select a different initial or subsequent contribution rate. All contribution rates are subject to the dollar limits on contributions provided by law. A covered employee shall have the right to change the contribution amount or cease participating in the plan, subject to rules adopted by the Board.

(c) Contributions shall be invested in the default investment unless the covered employee affirmatively elects to invest some or all balances in one or more approved investment options offered in the 457(b) plan. Contributions normally shall start within 90 days of employment, subject to the new employee's right to opt out. The Board shall select an age-appropriate target date fund as the default investment. A covered employee shall have the opportunity to change investments for future contributions or existing balances or both, subject to rules adopted by the Board. A covered employee who wishes to cease contributions and obtain a refund of amounts contributed to the plan pursuant to automatic enrollment must opt out of the plan and request the return of the employee's account balance within the deadline established by the Board, which deadline may not exceed 120 days from the date of employment.

(d)(1) The Board must provide every covered employee with advance notice that includes all of the following:

a. A notification of the covered employee's impending automatic enrollment into the 457(b) plan, the default contribution rate, and the investments purchases that will be made in the absence of the employee's affirmative election.

b. A description of the rules and procedures for opting out of automatic enrollment.

c. A description of the rules and procedures for changing the contribution amount.

d. A description of the rules and procedures for selecting a different investment option.

e. A description of all investment options available under the plan.

f. A description of the rules and procedures for requesting the return of the employee's account balance and the consequences of failing to make such request by the deadline established by the board.

(2) The Board or its designee shall provide notice required under this section to new employees as soon as practicable after the start of employment.

(e) The Board shall determine whether contributions to default investment options are pre- or post-tax.

(f) Covered employees who opt out of automatic enrollment may at a later date affirmatively elect to participate in the deferred compensation program.

(g) Any agency or other entity with covered employees must provide all employee data necessary for automatic enrollment.

(h) The Board shall promulgate such rules, procedures, and regulations as are necessary to implement this section.

Section 4. This Act takes effect 10 days after the date of publication in the Register of Regulations of a notice from the State Treasurer that the Office of Management and Budget has certified to the State Treasurer that necessary payroll upgrades necessary to implement this Act have been completed.

Approved July 23, 2026