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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 205

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO ESTABLISHMENT AND MANAGEMENT OF THE EXPANDING ACCESS FOR RETIREMENT AND NECESSARY SAVING PROGRAM.

1 WHEREAS, workplace retirement saving plans provide millions of U.S. workers with an effective and convenient
2 way to save for retirement, yet one third of U.S. workers lack access to such plans; and

3 WHEREAS, according to research from the National Institute on Retirement Security, 75% of U.S. residents agree
4 that the country is facing a retirement crisis; and

5 WHEREAS, an increasing number of states are offering or planning to offer workers whose employers do not
6 sponsor a retirement plan an option to be automatically enrolled in private-sector payroll deduction IRAs, and many other
7 states are considering such programs; and

8 WHEREAS, according to the National Compensation and Benefits Survey, which surveyed Delaware workplaces
9 and their employees, 54% of employers within the State do not offer retirement plans; and

10 WHEREAS, according to research from the Georgetown University Center for Retirement Initiatives,
11 approximately 38% of the State's workforce – more than 145,000 workers, many of whom are lower- to moderate-income
12 women and minority workers – do not have access to employer-sponsored retirement plans; and

13 WHEREAS, despite the economic downturn caused by the COVID-19 pandemic, state-sponsored retirement plans
14 that support small business employees have remained resilient with employee contributions holding steady, withdrawals
15 under control, and employer registrations increasing; and

16 WHEREAS, in the three states with the longest-running state-sponsored retirement programs, employee
17 contributions held steady or increased during the COVID-19 pandemic; and

18 WHEREAS, according to a March 2020 survey by MoneyRates, 36% of employees who are within 20 years of
19 retirement expect the COVID-19 pandemic to delay their retirement; and

20 WHEREAS, according to an April 2021 Congressional Research Service report, the number of citizens over the
21 age of 65 living in poverty in the State is projected to increase substantially over the next 20 years, with a commensurate
22 increase in demand for public assistance benefits; and

23 WHEREAS, through the Delaware EARNs Program, the State will facilitate increased retirement saving among
24 the State's working population and reduce the need for additional taxes or fees to fund public assistance programs; and

25 WHEREAS, the Delaware EARNs Program will provide a convenient, low-cost, portable, and tax-favored means
26 of saving for workers whose employers do not offer a private-sector 401(k) or other employer-sponsored retirement plan.

27 NOW, THEREFORE:

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

29 Section 1. Amend Title 19 of the Delaware Code by inserting a new "Part V" as Chapter 37 by making insertions
30 as shown by underline as follows:

31 Chapter 37. Delaware Expanding Access for Retirement and Necessary Saving Program.

32 § 3701. Establishment; purposes.

33 There is hereby established the Expanding Access for Retirement and Necessary Saving ("EARNs") Program to
34 serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security
35 through a State-facilitated retirement saving program in a convenient, cost effective, and portable manner. The Program is
36 designed as a public-private partnership that will encourage, not replace or compete with, employer- sponsored retirement
37 plans.

38 § 3702. Definitions.

39 For purposes of this chapter:

40 (1) "Board" means the Delaware EARNs Program Board established under § 3703 of this title.

41 (2) "Covered employee" means an individual who is employed by a covered employer, and who has wages or
42 other compensation allocable to the State. Covered employee does not include:

43 a. Any individual who is an employee of the federal government, the State or any other state, any county or
44 municipal corporation, or any of the State's or any other state's agencies or instrumentalities.

45 b. Any employee covered under the federal Railway Labor Act.

46 c. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension
47 plan.

48 (3) "Covered employer" means any person, partnership, limited liability company, corporation, or other entity
49 engaged in a business, industry, profession, trade, or other enterprise in the State, including a nonprofit entity, that employs,

50 and during the previous calendar year employed, at least 5 covered employees, and that has been in business in this State
51 for at least 6 months in the immediately preceding calendar year. Covered employer does not include:

52 a. The federal government, the State, any other state, any county, any municipal corporation, or any of the
53 State's or another state's agencies or instrumentalities.

54 b. Any employer that maintains a specified tax-favored retirement plan.

55 (4) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended.

56 (5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, or any successor law,
57 in effect for the calendar year.

58 (6) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in
59 §408(a), 408(b), or 408A of the Internal Revenue Code.

60 (7) "Participant" means any individual who is contributing to, or has a balance credited to, an IRA under the
61 Program.

62 (8) "Participating employer" means a covered employer that makes the Program available to its employees through
63 payroll deduction IRA arrangements under this chapter.

64 (9) "Payroll deduction IRA arrangement" means an arrangement by which a participating employer makes payroll
65 deductions authorized by this chapter and remits the amounts deducted as contributions to IRAs on behalf of participants.

66 (10) "Plans Management Board" means the Board established by § 2722 of Title 29 to manage specified plans and
67 programs created under the laws of this State.

68 (11) "Program" means the EARNs Program established by this chapter. Except as otherwise specified, references
69 to the Program throughout this chapter also means the trust, including trust assets, facilities, costs and expenses, receipts,
70 expenditures, activities, operations, administration, and management.

71 (12) "Program expenses" means all fees, costs, and expenses of the State related to the Program, including
72 administrative expenses, investment expenses, consulting fees, accounting costs, auditing costs, legal fees and costs,
73 marketing expenses, education expenses, and other miscellaneous costs incurred in the implementation and continuation of
74 the Program.

75 (13) "Roth IRA" means an IRA described in §408A of the Internal Revenue Code.

76 (14) "Specified tax-favored retirement plan" means a retirement plan that is an automatic enrollment payroll
77 deduction IRA or a qualified retirement plan in compliance with applicable federal law for employees including those
78 described in §§ 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

79 (15) "Traditional IRA" means an IRA described in §408(a) or (b) of the Internal Revenue Code.

80 (16) “Trust” means the trust in which assets of the Program are to be held, including contributions and investment
81 earnings.

82 (17) “Wages” means any commission, compensation, salary or other remuneration, as defined by §219(f)(1) of the
83 Internal Revenue Code received by a participant from a participating employer.

84 § 3703. The Delaware EARNNS Program Board; establishment; purpose.

85 (a) The Delaware EARNNS Program Board is hereby established. The Board shall oversee the design,
86 implementation and initial administration of the Program in accordance with this chapter.

87 (b) The Board shall consist of 7 members comprised of the following:

88 (1) 4 members shall serve by virtue of their office, each of whom may designate a person to serve in their
89 stead and at their pleasure:

90 a. The State Treasurer.

91 b. The Secretary of Finance.

92 c. The Insurance Commissioner.

93 d. The Secretary of Labor.

94 (2) 1 member who is the chairperson of the Plans Management Board, who may designate a member of the
95 Plans Management Board or one of its committees to serve in the chairperson’s stead and at the pleasure of the chairperson.

96 (3) 2 public members appointed by the Governor who, by reason of education or experience, are qualified to
97 serve. One public member must be an owner of a small business in the State. The other public member must have
98 experience in providing financial advice or assistance to lower- to moderate-income workers or retirees. Public members’
99 initial term shall be for 2 years, subject to earlier termination upon dissolution of the Board as provided in this chapter.

100 (c) Board voting, governance and meetings.

101 (1) Each board member shall have 1 vote. The powers of the Board shall be exercised by a majority of all
102 members present at a meeting of the board, whether in person or remotely. Four members shall constitute the
103 necessary quorum to convene a meeting of the Board and to act on any measure before it.

104 (2) The Governor shall appoint a board chairperson from between the public members. The chairperson as
105 such shall serve at the pleasure of the Governor.

106 (3) The Board shall meet at a minimum of 4 times annually. The Board Chairperson and the State Treasurer
107 are authorized to call and set the agenda for special meetings of the Board.

108 (4) The Board and its committees may conduct meetings remotely by teleconference or videoconference,
109 including in order to obtain a quorum and to take votes on any measure.

110 (5) Meetings and documents relating to investment strategy or negotiations concerning investment of Program
111 money shall be exempt from Chapter 100 of Title 29.

112 (d) Standard of care.

113 (1) The Board, its committees, and each of their members shall discharge their duties with respect to the
114 Program solely in the interest of the participants and beneficiaries of the Program and for the exclusive purpose of
115 providing Program benefits to participants and their beneficiaries, including defraying reasonable expenses in
116 administering the Program and in accordance with the trust and other program documents and applicable law.

117 (2) When investing, managing, or using trust assets, the Board, its committees, and each of the members shall
118 act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in
119 a like capacity and familiar with such matters would use to attain the purposes of the Program.

120 (e) Powers and duties.

121 (1) The Board shall establish, design, develop, implement, maintain, and oversee the Program in accordance
122 with best practices for retirement saving vehicles.

123 (2) The Board shall, through employer and employee outreach, marketing or education initiatives, or
124 publication of online resources, encourage participation, retirement saving and sound investment practices. The Board
125 shall provide or make available information regarding the Program, including its applicability and registration
126 requirements, with special emphasis on participation eligibility and the ability of employers at any time to sponsor a
127 specified tax-favored retirement plan that would exempt them from covered employer status.

128 (3) The Board shall adopt rules or regulations to govern the Program, including rules or regulations governing
129 the following:

130 a. Employee eligibility and covered employer status.

131 b. Enrollment and re-enrollment processes.

132 c. The methods by which covered employees or participants may make and change elections.

133 d. The means by which covered employees or participants may opt out of participation.

134 e. Contribution limits, the initial automatic default contribution rate, the automatic annual default
135 escalation rate and the maximum default contribution rate.

136 The Board may adopt rules or regulations allowing employers that are exempt under this chapter to
137 voluntarily participate in the Program and extending eligibility to participate in the Program to individuals who are not
138 employees, including unemployed individuals, self-employed individuals and other independent contractors.

139 (4) The Board is authorized to charge and collect reasonable administrative fees from participants and use
140 such fees, as well as appropriations and other funds dedicated to supporting the Program, to defray reasonable program
141 expenses.

142 (5) The Board may establish committees. Committee membership may include persons who are not members
143 of the full board.

144 (6) Subject to applicable procurement requirements, the Board may enter into contracts, agreements, or
145 arrangements for goods and services necessary or desirable for carrying out the purposes of this chapter, including
146 recordkeeping, administrative, consulting, accounting, legal, asset management, and investment advisory services to
147 assist in establishing, maintaining, administering, operating, and implementing the Program.

148 (7) The Board may effect this chapter's purpose by creating or entering into, on behalf of the Program, a
149 consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or
150 boards, which may modify the board's duties under this chapter.

151 (8) The Board shall establish the trust. The trust shall include a participant fund that shall hold all participant
152 IRA assets and an administrative fund that shall hold all fees collected from participants and other amounts received
153 from other funding sources, other than appropriations, and earnings on trust assets. Participant contributions shall be
154 allocated to the participant fund and combined solely for investment purposes. Each participant shall own the
155 contributions to and earnings on the participant's account under the Program. Neither the State nor any employer shall
156 have any proprietary interest in the participant's account. Program expenses shall be paid from the administrative fund
157 or appropriations. Trust assets shall not be transferred or used by the Board for any purposes and shall not be
158 commingled with State or non-program funds.

159 (9) The Board shall adopt an investment policy statement and select investment options, including default
160 investment options, consistent with the objectives of the Program. The menu of investment options may encompass a
161 range of risk and return opportunities and shall be determined taking into account the following:

- 162 a. The nature and objectives of the Program.
- 163 b. The diverse needs of participants.
- 164 c. The desirability of limiting investment choices under the Program to a reasonable number.
- 165 d. The extensive investment choices available to participants if program accounts roll over to an IRA
166 outside of the Program.

167 (10) The Board shall ensure that the Program is designed and operated in a manner that will not cause it to be
168 subject to or preempted by ERISA.

- 169 (11) The Board shall ensure that the Program is designed and operated to:
170 a. Minimize costs to participants, employers and the Program.
171 b. Minimize the risk that covered employees will exceed applicable annual contribution limits.
172 c. Minimize any need for employers that are not covered employers to register with the Program.
173 d. Facilitate and encourage employer and employee participation in the Program and participant saving.
174 e. Provide resources to any employer that, as an alternative to the Program, may be interested in adopting
175 a privately offered tax-favored retirement plan for its employees.
176 f. Maximize simplicity, including ease of administration for participating employers and ease of use for
177 participants.
178 g. Maximize portability of participant accounts.
179 h. Maximize financial security in retirement.

180 (12) The Board may arrange for collective, common, and pooled investment of assets of the Program,
181 including investments in conjunction with other funds with which Program assets are permitted to be collectively
182 invested, with a view to saving costs through efficiencies and economies of scale.

183 (13) The Board shall arrange for and facilitate compliance with all requirements applicable to the Program
184 under the Internal Revenue Code, including requirements for favorable tax treatment of IRAs, and any other applicable
185 law or regulation.

186 (14) The Board may accept on behalf of the Program any grants, gifts, appropriation, and other money from
187 any person, governmental, or other entity to defray the costs of administering and operating the Program.

188 (15) The Board may implement the Program in stages, which may include phasing in the Program based on
189 the size of employers, or other factors. To the extent practicable, the Board shall implement the Program so that
190 covered employees can begin to participate and make contributions by January 1, 2025.

191 (16) The Board shall approve the annual administrative budget for the Program and oversee the collection and
192 disbursement of money in the administrative fund.

193 (17) The Board, in the exercise of its sole discretion, and without liability, may remove program funds from
194 any financial institution or investment vehicle at any time, provided that such funds shall at all times remain in the trust
195 and be transferred promptly to an alternative financial institution or investment vehicle under the Program.

196 (18) The Board shall arrange for an annual financial audit of the Program by an outside auditor which shall be
197 provided to the General Assembly. The Board shall enter into a memorandum of understanding with the Auditor of

198 Accounts concerning each audit consistent with the Plans Management Board's audit policy. Payment for any audit
199 must be approved by the Board.

200 (19) The Board may enter into intergovernmental agreements or memoranda of understanding with the State
201 and any agency or instrumentality of the State in order to further the successful implementation and operation of the
202 Program through the provision, receipt, or other sharing of data, technical assistance, enforcement, compliance,
203 collection, and other services or assistance to the Program, and all such agencies and instrumentalities shall cooperate
204 with the Board in achieving those ends.

205 (f) Compensation; exculpation; indemnification.

206 (1) Members may not receive compensation for serving on the board or its committees. Except for ex officio
207 members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending
208 meetings of the Board or a committee. A state employee appointed to the Board is permitted to count the time spent
209 attending or traveling to and from board meetings or board committees, as part of the employee's regular work day and
210 shall not be required to use leave time.

211 (2) Each board and committee member is entitled to immunity under the provisions of Chapter 40 of Title 10
212 for civil liability resulting from acts or omissions arising out of and in connection with discretionary actions undertaken
213 as a function of a member's responsibilities under this chapter if that member acted in good faith and in a manner the
214 member reasonably believed to be in the best interest of the State, and without gross or wanton negligence.

215 a. A board or a committee member is not personally liable for any act or omission made during the
216 member's tenure, or for any loss incurred by any person as a result of participation in the Program.

217 b. The State shall indemnify each board or committee member who is a party to or is threatened to be
218 made a party to any potential, pending, or completed action, suit, or proceeding, whether civil, criminal,
219 administrative, or investigative, arising by reason of such member's participation on the Board or a committee, for
220 any expenses, judgments, fines, costs, and amounts paid in settlement if actually and reasonably incurred in
221 defending against the action, suit or proceeding. Indemnification is conditioned on the member having acted in
222 good faith and in a manner the member reasonably believed to be in the best interest of the State. With respect to
223 indemnification for a criminal matter, the member must also have had no reasonable cause to believe the
224 member's conduct was unlawful.

225 c. In the event that the Attorney General is precluded from providing legal representation to a member
226 under § 2504(3) of Title 29, the State shall indemnify a member for reasonable and actual attorney fees and
227 disbursements a member incurs in defending against the action, suit or proceeding.

228 d. Any expenses incurred by a board or committee member in defending a civil, administrative, or
229 investigative action, suit, or proceeding arising as a result of the member's activities as a member of the Board
230 may be paid by the State in advance of the final disposition of the action, suit, or proceeding on authorization by a
231 majority of the members of the Board and by the Governor.

232 (g) The Board and its committees shall receive administrative support from the Office of the State Treasurer. The
233 Office of the State Treasurer is authorized to and shall initiate and manage all procurement and regulatory processes related
234 to the Program and carry out such other program-related functions as may be delegated by the board.

235 (h) Unless terminated earlier as provided in this subsection, the Board shall disband and cease to exist, effective as
236 of December 31, 2025, at which point all duties and functions of the Board under this chapter shall be transferred to and
237 assumed by the Plans Management Board. At any time after full implementation of the Program, the board, by majority
238 vote, may disband and transfer no less than all of its duties and authority under this chapter to the Plans Management Board
239 provided that the Plans Management Board, by majority vote, agrees to assume all such duties and authority prior to
240 December 31, 2025.

241 § 3704. The Program.

242 The Program shall have such features as the Board in its discretion may adopt, subject to applicable federal law,
243 and the following mandatory provisions:

244 (1) Each participant may have only 1 account with the Program, and all participating employers shall
245 promptly remit the participant's contributions under the Program to that account.

246 (2) Employers and non-participants may not contribute funds to Program accounts.

247 (3) Employers shall not be fiduciaries with respect to, or be liable for, program design, program-related
248 information, educational materials, or forms or disclosures approved by the Board, or the selection or performance of
249 vendors selected by the Board. No employer, the State or any agency or instrumentality of the State, the Program, its
250 administrator or personnel, shall be responsible for, or obligated to monitor a covered employee's or participant's
251 decision to participate in or opt out of the Program, or for contribution decisions, investment decisions, or failure to
252 comply with the statutory eligibility conditions or limits on IRA contributions. No employer shall guarantee any
253 investment, rate of return, or interest on assets in any participant account or the administrative fund or be liable for any
254 market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment
255 or public assistance benefits, incurred by any person as a result of participating in the Program. Nothing in this
256 subsection shall relieve an employer from liability for criminal, fraudulent, tortious or otherwise actionable conduct,
257 including liability related to the failure to remit employee contributions.

- 258 (4) When and as required by the Board, covered employers shall:
- 259 a. Register with the Program and provide the Program administrator relevant information about the
- 260 employer's employees.
- 261 b. Offer or assist the Program in offering all covered employees the choice to either participate in the
- 262 Program by voluntarily contributing to an IRA under the Program or opt out of the Program.
- 263 c. Provide or assist the Program administrator in providing program-related information, educational
- 264 materials, and disclosures to covered employees and participants.
- 265 d. Timely remit participant contributions.
- 266 e. Perform any other duties or functions the Board may require to facilitate enrollment and administration
- 267 of the Program.

268 (5) Covered employees who do not opt out shall be automatically enrolled in the Program at the default rate

269 specified by the Board or at the rate or amount expressly specified by an employee in connection with the payroll

270 deduction IRA arrangements. Participants shall have the right to modify their contribution rates or amounts, or

271 terminate their participation in the Program at any time, subject to such rules as may be adopted by the Board.

- 272 (6) The initial automatic default contribution rate shall be established by the Board in its discretion.
- 273 a. The automatic default contribution rate may be changed by the Board from time to time. It shall not be
- 274 less than 3% or more than 6% of compensation.
- 275 b. The Board may determine in its discretion to increase the automatic default contribution rate for all
- 276 participants based on their years of participation, provided that such increases shall be either 1% or 2% of
- 277 compensation and shall not occur more frequently than annually.
- 278 c. The maximum default contribution rate established by the Board shall not exceed 15%.
- 279 d. The initial or subsequent default contribution rates shall apply to all participants who do not
- 280 affirmatively select a different initial or subsequent contribution rate, or who do not affirmatively opt out of
- 281 automatic contribution rate increases.
- 282 e. All contribution rates are subject to the dollar limits on contributions provided by law.

283 (7) Except as otherwise provided in this chapter, all IRAs established under the Program shall be Roth IRAs.

284 The Board may authorize participants to utilize traditional IRAs in connection with the Program and allocate

285 contributions between Roth and traditional IRAs, subject in all cases to the IRA contribution and income eligibility

286 limits applicable under the Internal Revenue Code. If the board authorizes participants to maintain both Roth and

287 traditional IRAs, each shall be deemed to be a sub-account of the participant's single account under the Program
288 consistent with § 3704(1) of this title.

289 (8) Contributions shall be invested in the default investment option unless the participant affirmatively elects
290 to invest some or all balances in one or more approved investment options offered by the Program. A participant shall
291 have the opportunity to change investments for future contributions or existing balances or both, subject to rules
292 adopted by the Board.

293 (9) A participant's total annual contributions under the Program shall be subject to the limits established under
294 federal law.

295 (10) A participant's contributions and earnings thereon shall be held in the trust and combined for investment
296 purposes only. Separate records and accounting shall be required for each account. Reports on the status of each
297 participant's account must be provided to each participant at least annually. Participants must have online access to
298 their accounts.

299 (11) A participant's account shall be portable with respect to any covered or participating employer. A former
300 participant who is either unemployed, or who is employed by a non-covered employer, shall be permitted to contribute
301 to accounts outside of the Program. A participant shall be entitled to maintain an account within the Program regardless
302 of place of employment or to roll over or transfer balances into other IRAs or other retirement plans or accounts that
303 accept such rollovers or transfers.

304 (12) A participant's and former participant's ability to withdraw or roll over or transfer account balances is
305 subject to all fees, penalties, and taxes under applicable law.

306 (13) A participant's and former participant's ability to receive distributions of contributions and earnings is
307 subject to applicable law.

308 (14) Information relating to accounts under the Program, including personally identifiable information, is
309 confidential and shall be maintained as confidential except to the extent disclosure is necessary to administer the
310 Program, authorized by the participant in writing, or permissible or required under other applicable law, regulation, or
311 order.

312 § 3705. Remedies of employees and the Department of Labor.

313 (a) A covered employee or participant may file a civil action to recover misappropriated contributions and
314 resulting damages, or to compel compliance with this chapter or any regulation promulgated under this chapter, in any court
315 of competent jurisdiction.

316 (b) Whenever the Department of Labor determines that contributions have been misappropriated, or that an entity
317 or individual has failed to comply with this chapter or any regulation promulgated under this chapter, the Department may
318 bring any legal action necessary to address such misappropriation or noncompliance. With the consent of the aggrieved
319 person, the Department shall have the power to settle and adjust any claim related to misappropriated contributions to the
320 same extent as the aggrieved person. The Department shall have exclusive authority to settle any claim related to
321 noncompliance with this chapter or any regulation promulgated under this chapter.

322 (c) Any judgment entered for a plaintiff in an action brought under § 3705 of this chapter shall include an award
323 for the costs of the action, the necessary costs of prosecution and reasonable attorney's fees, all to be paid by the defendant.
324 In the case of actions brought under § 3705 of this chapter by the Department, awarded expenses and attorney's fees shall
325 be remitted by the Department to the State Treasurer. The Department shall not be required to pay the filing fee or other
326 costs of the action or fees of any nature or to file bond or other security of any nature in connection with an action under
327 this chapter or with supplementary proceedings as a condition precedent to the availability of any process in aid of the
328 action or proceedings. The Department shall have the power to join various claimants in 1 cause of action.

329 (d) Nothing in this chapter shall prevent any person or entity from pursuing an action at law or in equity against
330 any employer arising under other applicable law.

331 Section 2. Amend § 2722 of Title 29 of the Delaware Code by making deletions as shown by strike through and
332 insertions as shown by underline as follows:

333 § 2722. Plans Management Board.

334 (a) Establishment; purposes. — ~~There is hereby established the Plans Management Board (the "Board").~~ The Plans
335 Management Board is established. The Board's purpose ~~shall be~~ is to administer the Delaware College Investment Plan
336 established pursuant to subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program
337 established pursuant to Chapter 96A of Title 16, ~~and~~ the Deferred Compensation Program established pursuant to Chapter
338 60A of this ~~title~~ title, and the Expanding Access for Retirement and Necessary Saving Program (EARNS) established
339 pursuant to Chapter 37 of Title 19 (collectively, "the Plans"), in each case, in accordance with the individual purposes of
340 each of the Plans.

341 (d) Standard of care. — (1) With respect to the Deferred Compensation Program, and the EARNS Program,
342 ~~(Program)-(Programs)~~ the Board, its subcommittees, and each of their members shall discharge their duties with respect to
343 the ~~Program-Programs~~ solely in the interest of the participants and beneficiaries of the ~~Program-Programs~~ and for the
344 exclusive purpose of providing ~~Program-Programs~~ benefits to the participants and their beneficiaries, including defraying
345 reasonable expenses of administering the ~~Program-Programs~~, with the care, skill, prudence, and diligence under the

346 circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to
347 attain the purposes of the ~~Program~~ Programs.

348 (e) Powers and Duties of Board. —

349 (9) Assume the powers and duties of the Delaware EARNNS Program Board established under Chapter 37 of
350 Title 19.

351 Section 3. Section 1 of this Act takes effect following the date of publication in the Register of Regulations of a
352 notice submitted by the State Treasurer that funding necessary to implement the Program, as reflected in the fiscal note, has
353 been received from the General Assembly or other sources.

354 Section 4. Sections 2 of this Act takes effect on December 31, 2025 or upon the date the EARNNS Program Board
355 disbands and transfers all of its duties and authorities to the Plans Management Board, whichever is first to occur. In the
356 event that the Plans Management Board, by majority vote, agrees to assume all the duties and authority granted to the
357 EARNNS Program Board, it shall publish notice to that effect in the Register of Regulations.

SYNOPSIS

This Act establishes the Delaware Expanding Access for Retirement and Necessary Saving (“EARNNS”) program to serve as a vehicle through which eligible employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement savings program in a convenient, cost effective, and portable manner. The EARNNS program will be designed to serve small businesses who are unable to offer retirement plans to employees due to the cost and administrative burden.

Because there are documented wealth gaps in Delaware, disproportionately impacting women and people of color, a state-facilitated savings plan aims to alleviate barriers small employers face in offering options, close the wealth gap among low to modest wage earners and keep Delaware competitive with neighboring states by attracting talented workers to Delaware. A state-sponsored savings plan, funded by employees, facilitated by employers, and overseen by the State, will offer one solution to the quickly emerging crises stemming from generations of workers without adequate savings.

The Act creates the Delaware EARNNS Program Board to oversee initial design and implementation of the program. The board will be disbanded no later than December 31, 2025, at which point all duties and functions of the board will be transferred to and assumed by the Plans Management Board. The effective date of the Act is contingent upon an appropriation by the General Assembly necessary to implement the Program. This Act also makes technical changes to the existing law to make it conform to the standards of the Legislative Drafting Manual.