

By: Walle

H.B. No. 4037

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state-administered retirement plan;
authorizing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by
adding Chapter 83 to read as follows:

CHAPTER 83. SECURE RETIREMENT SAVINGS PROGRAM OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 83.001. DEFINITIONS. In this chapter:

(1) "Annuity" means a fixed sum of money paid on a
monthly basis to a participant on retirement.

(2) "Board" means the board of trustees established
under Section 83.002.

(3) "Compensation," unless the context otherwise
requires, means compensation within the meaning of Section
219(f)(1), Internal Revenue Code, that is received by an eligible
employee from an eligible employer.

(4) "Contribution rate" means the percentage of an
eligible employee's compensation that is withheld from their
compensation and paid to the employee's individual retirement
account under the program.

(5) "Eligible employee" means any individual who is 18
years of age or older, who is employed by an eligible employer, and
whose compensation is subject to federal income taxes.

1 (6) "Eligible employer" means an employer that:

2 (A) has not been a participating or contributing
3 employer in a retirement plan under Sections 401(a), 401(k),
4 403(a), 403(b), 408(k), or 408(p), Internal Revenue Code, at any
5 time during the preceding two calendar years; and

6 (B) elects to be a participating employer as
7 permitted in accordance with rules and procedures established by
8 the board.

9 (7) "Employer":

10 (A) means a person that:

11 (i) is engaged in a business, profession,
12 trade, or other enterprise in this state, whether for profit or not
13 for profit, that employs two or more individuals living in this
14 state; or

15 (ii) for the purpose of this chapter only,
16 issues an Internal Revenue Service Form 1099-Miscellaneous Income
17 to five or more individuals living in this state; and

18 (B) does not include a federal or state entity,
19 agency, instrumentality, or political subdivision.

20 (8) "Individual retirement account" means an
21 individual retirement account or individual retirement annuity as
22 defined by Section 408, Internal Revenue Code, or a Roth IRA as
23 defined by Section 408A, Internal Revenue Code.

24 (9) "Internal Revenue Code" means the Internal Revenue
25 Code of 1986.

26 (10) "IRA plan" means a plan described by Section
27 83.059(b)(1).

1 (11) "IRA trust account" means the IRA plan's account
2 within the trust fund established under Section 83.059.

3 (12) "Multiple-employer plan" means a plan described
4 by Section 83.059(b)(2).

5 (13) "Multiple-employer plan account" means a
6 participant's account that accepts contributions from the
7 participant, the participant's employer, or both, and that is
8 established under Sections 401(a) and 414(i), Internal Revenue
9 Code.

10 (14) "Multiple-employer trust account" means the
11 multiple-employer plan's account within the trust fund established
12 under Section 83.059.

13 (15) "Participant" means an individual who
14 contributes or has contributed through payroll deductions or
15 through voluntary contributions to the program and includes:

16 (A) an individual who moves out of state and
17 elects to continue participating in the program by making direct
18 contributions; and

19 (B) the beneficiary of a deceased individual who
20 contributed to the program and an alternate payee under state law
21 for purposes of the withdrawal, transfer, rollover, or other
22 distribution of savings.

23 (16) "Participating employer" means an eligible
24 employer that provides a payroll deposit retirement savings
25 arrangement under this chapter for an eligible employee.

26 (17) "Payroll" means any method of transferring
27 compensation to an employee of an employer.

1 (18) "Program" means the secure retirement savings
2 program established by this chapter.

3 Sec. 83.002. BOARD OF TRUSTEES. (a) The board of trustees
4 is composed of five trustees as follows:

5 (1) the comptroller, or a designee, who serves as
6 chair;

7 (2) a participating employer, appointed by the
8 governor;

9 (3) a participant, appointed by the speaker of the
10 house of representatives;

11 (4) a resident of this state with expertise in
12 regulatory matters relating to retirement savings, appointed by the
13 chief justice of the supreme court; and

14 (5) a resident of this state with expertise in
15 investment matters relating to retirement savings, appointed by the
16 attorney general.

17 (b) Appointments to the board are subject to the advice and
18 consent of the senate.

19 (c) The term of office for each trustee is two years.

20 (d) In the event of a trustee vacancy, the appointing
21 official shall appoint a replacement to serve for the trustee's
22 unexpired term.

23 (e) A majority of the board constitutes a quorum for the
24 transaction of business.

25 (f) A trustee serves without compensation but is entitled to
26 receive reimbursement of travel expenses incurred by the trustee
27 while conducting the business of the board as provided in the

1 General Appropriations Act.

2 Sec. 83.003. BOARD POWERS AND DUTIES; ANNUAL FINANCIAL
3 REPORT REQUIRED. (a) The board shall:

4 (1) design, establish, administer, and enforce the
5 program in accordance with Subchapter B;

6 (2) employ a program director and other individuals as
7 the board considers necessary to administer the program and the
8 administrative fund;

9 (3) adopt administrative rules and procedures,
10 including contested case and enforcement provisions, to carry out
11 the purposes of this chapter;

12 (4) enter into contracts necessary or recommended to
13 administer the program;

14 (5) request and receive information from any state
15 agency or entity as needed to administer the program;

16 (6) request and receive information from employers of
17 eligible employees residing in this state as needed to administer
18 the program;

19 (7) annually publish an audited financial report on
20 the operations of the program in accordance with Subsection (b);
21 and

22 (8) annually prepare and adopt a written statement of
23 investment policy that includes a risk management and oversight
24 program.

25 (b) The audited financial report required by Subsection
26 (a)(7) must be prepared in accordance with generally accepted
27 accounting principles. The audited financial report must include a

1 calculation of the program's actual net rate of return less
2 expenses. The audit must:

3 (1) be conducted by an independent certified public
4 accountant; and

5 (2) include direct and indirect costs attributable to
6 the use of outside consultants, independent contractors, and any
7 other persons who are not employees of the program.

8 Sec. 83.004. FIDUCIARY DUTIES. (a) The board and each
9 investment adviser or other person who has control over the assets
10 of the trust funds established under this chapter are fiduciaries
11 and subject to the fiduciary standards established under the
12 Employee Retirement Income Security Act of 1974 (29 U.S.C. Section
13 1001 et seq.) with respect to the trust funds and the individual
14 accounts.

15 (b) Each fiduciary shall discharge duties with respect to
16 the program solely in the interest of the participants and with the
17 care, skill, prudence, and diligence under the circumstances then
18 prevailing that a prudent person acting in a like capacity and
19 familiar with those matters would use in the conduct of the same or
20 similar enterprise.

21 (c) The board may require each eligible employer to provide
22 eligible employees with certain information as the board directs.
23 An employer acting in that capacity:

24 (1) is not a fiduciary with respect to the trust funds
25 established under this chapter or the participants' accounts within
26 a trust fund; and

27 (2) does not have fiduciary duties under this chapter.

1 Sec. 83.005. IMMUNITY FROM LIABILITY. (a) The board,
2 executive director, plan administrator, members of any advisory
3 committee appointed by the board, and employees of the program are
4 not liable for any action taken or omission made or suffered by them
5 in good faith in the performance of any duty in connection with any
6 program or trust administered under this chapter.

7 (b) This section does not waive the state's immunity from
8 suit or liability.

9 SUBCHAPTER B. PROGRAM DESIGN AND OPERATION

10 Sec. 83.051. PROGRAM DESIGN. (a) The board shall design and
11 implement the secure retirement savings program. The board shall
12 design, establish, and administer the program in accordance with
13 this subchapter.

14 (b) The board shall require an eligible employer to offer to
15 each eligible employee an opportunity to contribute through payroll
16 deduction to:

17 (1) an individual retirement account in the IRA plan;
18 and

19 (2) a savings account in the multiple-employer plan.

20 (c) Unless an eligible employee chooses otherwise, the
21 board shall automatically enroll the employee in the IRA plan.

22 (d) A participant is not responsible for choosing
23 investments in the program.

24 (e) The board shall allow the following persons to enroll in
25 the program:

26 (1) self-employed individuals; and

27 (2) employers who are not eligible employers.

1 (f) The board shall operate the program in a manner that
2 prevents the program from being considered an employee pension
3 benefit plan as defined by Section 3(2)(A), Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. Section 1002(2)(A)).

5 Sec. 83.052. PARTICIPANT BENEFIT. (a) A participant's
6 retirement savings benefit is calculated from the participant's
7 plan account balance on the date the retirement savings benefit
8 becomes payable.

9 (b) The board shall establish the minimum savings
10 requirement to create an adequate lifetime annuity.

11 (c) The board may establish benefits other than a lifetime
12 annuity when the minimum savings requirement is not met.

13 (d) For a married participant, the automatic form of benefit
14 payment is a joint and survivor annuity.

15 Sec. 83.053. PARTICIPANT CONTRIBUTIONS. (a) The
16 employee's employer shall deduct contributions from the employee's
17 compensation at a rate set by the board, unless the employee elects
18 not to contribute or to contribute at a higher rate.

19 (b) The board shall set the default contribution rate of at
20 least three percent of an eligible employee's gross income. Subject
21 to Subsection (c), the board may increase the default contribution
22 rate of each IRA plan participant in an amount and at intervals
23 determined by the board.

24 (c) An IRA plan participant may opt out of increases
25 determined by the board.

26 Sec. 83.054. PARTICIPATING EMPLOYER POWERS AND DUTIES. (a)
27 A participating employer shall:

1 (1) make the program available to an eligible employee
2 not later than the 15th day after the date the employee begins
3 employment; and

4 (2) deposit a participant's deduction in a manner
5 determined by the board, provided that the employer delivers the
6 amount withheld in a reasonable time period and not later than the
7 10th business day after the date the amount otherwise would have
8 been paid to the participant.

9 (b) A participating employer may not contribute to the IRA
10 plan.

11 (c) A participating employer may:

12 (1) make voluntary contributions to a participating
13 employee's multiple-employer plan account in the manner
14 established by the board; and

15 (2) elect to contribute an amount above the payroll
16 deduction amount by contributing from an eligible rollover that an
17 individual retirement account or Roth IRA may accept under the
18 Internal Revenue Code.

19 (d) Participating employer contributions under Subsection
20 (c) must be equal to or less than the applicable limitation to
21 contributions to a defined contribution plan prescribed by Section
22 415(c), Internal Revenue Code.

23 Sec. 83.055. VESTING. Contributions to a participant's
24 account vest immediately with the participant.

25 Sec. 83.056. ADMINISTRATIVE FEES AND INVESTMENT EXPENSES.

26 (a) The board shall allocate administrative fees and investment
27 expenses to each participant's account balance or annuity on a pro

1 rata basis or another basis as the board determines fair and
2 equitable.

3 (b) The board shall keep the program's administrative fees
4 and investment expenses as low as possible, and the fees and
5 expenses combined may not exceed 0.25 percent of the total balance
6 of the trust funds established under this chapter.

7 Sec. 83.057. REQUIRED DISCLOSURES. (a) The board shall
8 design and disseminate to participating employers an employee
9 information packet to be further distributed to the employer's
10 employees. The packet must include background information on the
11 program, the two plans offered under the program, and appropriate
12 disclosures for employees with regard to a lifetime annuity.

13 (b) The disclosure form must:

14 (1) include information about:

15 (A) federal income tax and retirement benefits
16 and investment risks associated with participating in the plans;

17 (B) how to join each plan;

18 (C) how to opt out of the IRA plan, including an
19 opt-out form;

20 (D) how to apply for payment of retirement
21 benefits; and

22 (E) how to obtain additional information on the
23 program; and

24 (2) clearly state:

25 (A) the program is not an employer-sponsored
26 retirement plan;

27 (B) an employer is not liable for an employee's

1 decision under this chapter; and

2 (C) plan investments are not guaranteed by the
3 state.

4 (c) The board shall provide the required disclosures in
5 English. An employer may notify the board of an eligible employee
6 who speaks a language other than English, and the board shall
7 provide a translation of the required disclosures in the eligible
8 employee's language to the employer to distribute to the employee.

9 Sec. 83.058. SECURE RETIREMENT SAVINGS PROGRAM
10 ADMINISTRATIVE FUND. (a) The secure retirement savings program
11 administrative fund is established as a trust fund held outside the
12 treasury by the comptroller and administered by the board. The
13 board shall use money in the administrative fund to pay for
14 administrative and investment expenses the board incurs in the
15 performance of the board's duties under this chapter.

16 (b) The administrative fund is separate from the trust fund
17 established under Section 83.059.

18 (c) The administrative fund may receive gifts, grants, or
19 other money deposited to the administrative fund, including money
20 received from a governmental entity.

21 (d) The legislature may appropriate money to the fund for
22 the initial administrative costs required to establish the program.
23 The board shall repay to the state any amount appropriated under
24 this subsection.

25 Sec. 83.059. SECURE RETIREMENT SAVINGS PROGRAM TRUST FUND.

26 (a) The secure retirement savings program trust fund is
27 established as a trust fund held outside the treasury by the

1 comptroller and administered by the board. The board shall:

2 (1) invest the trust fund assets as a pooled single
3 fund without distinction as to their source;

4 (2) hold the trust fund assets collectively for the
5 proportionate benefit of the participants; and

6 (3) use the trust fund assets to defray reasonable
7 expenses of administering, maintaining, and managing investments
8 of the trust.

9 (b) The trust fund is intended to provide participants with
10 a source of retirement income for life. The trust fund holds
11 separate accounts for each plan within the program as follows:

12 (1) the IRA trust account is established to accept
13 individual contributions into individual retirement accounts
14 established under Sections 408 and 408A, Internal Revenue Code, in
15 an IRA plan established by the board; and

16 (2) the multiple-employer trust account is
17 established for purposes of administering a defined contribution
18 plan under Sections 401(a)(27) and 414(i), Internal Revenue Code
19 that:

20 (A) is a qualified plan under Section 401(a),
21 Internal Revenue Code; and

22 (B) may accept contributions from an employer and
23 employee participating in the multiple-employer plan established
24 by the board.

25 (c) The board shall establish investments within the trust
26 fund that pursue an investment strategy set by the board. The
27 underlying investments of the trust fund must be diversified so as

1 to maintain an overall rate of return that is reflective of a medium
2 level of risk, as determined by the board.

3 (d) Subject to Subsection (e), money in the trust accounts
4 may be invested or reinvested by the comptroller or may be invested
5 wholly or partly under contract with other retirement systems,
6 private money managers, or both, as determined by the board.

7 (e) The board shall preserve, invest, and expend the assets
8 of the trust fund at all times solely for the benefit of
9 participants.

10 (f) The state or an eligible employer has no property rights
11 in the trust fund.

12 (g) The state may not transfer or use trust fund assets for
13 any purpose other than the purpose of the trust fund or funding the
14 expenses of operating the program. Amounts deposited in the trust
15 fund are not property of the state and may not be commingled with
16 state money. The state has no claim to or against, or interest in,
17 the trust fund assets.

18 (h) The trust fund assets must at all times be held separate
19 and apart from the assets of the state. The state, the program, the
20 board, a board member, or an employer may not make a representation
21 of a guaranty on any investment, rate of return, or interest rate on
22 amounts held in the trust fund.

23 SUBCHAPTER C. ENFORCEMENT

24 Sec. 83.101. ATTORNEY GENERAL. (a) The attorney general is
25 the legal adviser to the board and shall represent the board in all
26 litigation.

27 (b) The attorney general may enforce the provisions of this

1 chapter.

2 Sec. 83.102. ADMINISTRATIVE PENALTIES. (a) The board may
3 impose an administrative penalty on a participating employer for
4 failure to comply with the requirements under this chapter or a rule
5 or order adopted under this chapter. The amount of the penalty may
6 not exceed \$1,000 per employee per year.

7 (b) The amount of an administrative penalty must be based
8 on:

9 (1) the seriousness of the violation, including the
10 nature, circumstances, extent, and gravity of the violation;

11 (2) the economic harm caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter a future violation;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 (c) The enforcement of the penalty may be stayed during the
17 time the order is under judicial review if the participating
18 employer pays the penalty to the clerk of the court or files a
19 supersedeas bond with the court in the amount of the penalty. A
20 participating employer who cannot afford to pay the penalty or file
21 the bond may stay the enforcement by filing an affidavit in the
22 manner required by the Texas Rules of Civil Procedure for a party
23 who cannot afford to file security for costs, subject to the right
24 of the board to contest the affidavit as provided by those rules.

25 (d) The board or the attorney general may recover reasonable
26 expenses, including attorney's fees, incurred in recovering the
27 administrative penalty.

1 (e) Except as provided by Subsection (g), an administrative
2 penalty collected under this section shall be deposited to the
3 credit of the secure retirement savings program trust fund
4 established under Section 83.059.

5 (f) In addition to the penalty prescribed by Subsection (a),
6 the board may impose an administrative penalty on a participating
7 employer that does not deposit a participant's deduction within the
8 time required by Section 83.054. The amount of the penalty is equal
9 to the lost earnings and interest on the participant's
10 contribution. The comptroller shall prescribe a methodology for
11 calculating the lost earnings and interest.

12 (g) An administrative penalty collected under Subsection
13 (f) shall be deposited to the credit of the secure retirement
14 savings program trust fund established under Section 83.059 and
15 credited to the accounts of the affected participants on a pro rata
16 basis.

17 SUBCHAPTER D. UNCLAIMED PROPERTY

18 Sec. 83.151. UNCLAIMED PROPERTY. (a) Subject to this
19 section, the board shall adopt rules regarding the disposition of
20 unclaimed proceeds from a participant's account.

21 (b) The board shall, using due diligence, contact the
22 participant or the participant's beneficiaries.

23 (c) Unclaimed proceeds of an account must be delivered to
24 the comptroller as provided by Chapter 74, Property Code, except if
25 the participant's or beneficiary's last known address is in this
26 state, the comptroller may elect to leave the proceeds deposited in
27 the fund under the program until a claim is made.

1 SECTION 2. (a) Not later than December 1, 2019, the state
2 officials described by Section 83.002, Labor Code, as added by this
3 Act, shall appoint individuals to the board of trustees as required
4 by that section.

5 (b) The board of trustees of the secure retirement savings
6 program established under Chapter 83, Labor Code, as added by this
7 Act, shall:

8 (1) not later than September 1, 2020, design and
9 establish the secure retirement savings program required under
10 Chapter 83, Labor Code, as added by this Act, including
11 establishing and opening up for enrollment the IRA plan described
12 by Section 83.059(b)(1), Labor Code, as added by this Act;

13 (2) not later than December 1, 2020, allow eligible
14 employers, as defined by Section 83.001, Labor Code, as added by
15 this Act, with more than 100 eligible employees, as defined by
16 Section 83.001, Labor Code, as added by this Act, to implement a
17 board-approved procedure that allows each of its eligible employees
18 to participate in the plan;

19 (3) not later than March 1, 2020, allow eligible
20 employers with more than 50 eligible employees to implement a
21 board-approved procedure that allows each of its eligible employees
22 to participate in the plan; and

23 (4) not later than June 1, 2020, allow all eligible
24 employers and other employers permitted to participate in the
25 program under Section 83.051(e), Labor Code, as added by this Act,
26 to implement a board-approved procedure that allows each of its
27 eligible employees to participate in the plan.

1 SECTION 3. This Act takes effect September 1, 2019.