

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1890

By: Montgomery of the Senate

and

6 McEntire of the House

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to public finance; creating the
11 Oklahoma Prosperity Act; limiting application of act
12 to receiving certain funds; defining terms;
13 establishing powers and duties of State Treasurer to
14 implement provisions of this act; authorizing
15 Treasurer to establish and operate the Oklahoma
16 Prosperity Act Program; authorizing Treasurer to
17 collect certain fees and enter into certain
18 contracts; authorizing Treasurer to hire certain
19 persons for implementation of Program; authorizing
20 Treasurer to provide certain information on Program;
21 authorizing Treasurer to establish rules and
22 procedures of Program; establishing fiduciary duty
23 for certain persons and establishing exemption from
24 duty for certain employers; requiring employers to
provide certain information; clarifying fiduciary
duty of certain persons; creating the Oklahoma
Prosperity Act Program; requiring participating
employers to offer employees opportunity to
contribute to certain account created under Program;
establishing automatic enrollment in Program;
establishing a minimum contribution rate for Program;
establishing terms for deposit, withdrawals,
distributions, transfers and rollovers of funds to
IRAs under the Program; requiring Program information
be published on website; requiring certain audited
financial reports be submitted; establishing
information, forms and instructions that shall be
provided to certain employees; establishing that

1 Program is not an employee benefit plan under certain
2 definition; creating the Oklahoma Prosperity Act
3 Administrative Fund; establishing terms of fund;
4 creating the Oklahoma Prosperity Act Trust;
5 authorizing State Treasurer to appoint trustee or
6 custodian of certain Program accounts; establishing
7 terms of managing trust assets; requiring creation of
8 certain investment funds; establishing terms of
9 investment funds; authorizing certain employees to
10 place certain assets in default investment funds;
11 specifying no liability for state, Program, Treasurer
12 or employees for Program participation; exempting
13 trust and certain investment funds from income taxes
14 authorizing Program to establish trust of other
15 states in certain circumstances; establishing
16 timeline for beginning contributions made under the
17 Program; authorizing Treasurer to establish certain
18 pilot program or staggered implementation of Program
19 in certain circumstances; providing for codification;
20 and providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3600 of Title 62, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma
Prosperity Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3601 of Title 62, unless there
is created a duplication in numbering, reads as follows:

A. Implementation of this act shall be subject to the receipt
of appropriations sufficient to establish the Oklahoma Prosperity
Act Program, as defined in this section.

1 B. As used in this act:

2 1. "Administrative fund" shall mean the Oklahoma Prosperity Act
3 administrative fund established under this act;

4 2. "Contribution rate" means the percentage of the wages of a
5 covered employee that is withheld from his or her wages and paid to
6 the IRA established for the covered employee under the Program;

7 3. "Covered employee" means any individual who is eighteen (18)
8 years of age or older, who is employed by a covered employer and who
9 has wages that are allocable to the state. For purposes of the
10 investment, withdrawal, transfer, rollover or other distribution of
11 an IRA, the term covered employee also includes the beneficiary of a
12 deceased covered employee;

13 4. "Covered employer" means an employer that either:

14 a. satisfies the following requirements:

15 (1) has at no time during the previous calendar year
16 employed fewer than ten (10) employees in this
17 state,

18 (2) has been in business for at least two (2) years,
19 and

20 (3) has not been a participating or contributing
21 employer in a retirement plan under Section
22 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p)
23 of Title 26 of Internal Revenue Code at any time
24 during the preceding two (2) calendar years, or

b. elects to be a covered employer if and as permitted in accordance with rules and procedures established by the Oklahoma Prosperity Act Program;

5. "Employer" means a person or entity engaged in a business, profession, trade or other enterprise in the state, whether for profit or not-for-profit, that employs one or more individuals in the state; provided, that a federal or state entity, agency or instrumentality or any political subdivision thereof, shall not be an employer;

6. "Enrollee" means any covered employee enrolled in the Oklahoma Prosperity Act Program;

7. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended;

8. "Investment adviser" means either:

a. an investment adviser registered as such under the U.S. Investment Advisers Act of 1940, or

b. a bank or other institution exempt from registration under the U.S. Investment Advisers Act of 1940;

9. "Investment fund" means each investment portfolio established within the trust for investment purposes;

10. "IRA" means either an individual retirement account or individual retirement annuity established under Section 408 or 408A of Title 26 of the Internal Revenue Code;

1 11. "Program" means the Oklahoma Prosperity Act Program
2 established under this act;

3 12. "State" means the State of Oklahoma;

4 13. "State Treasurer" means the Oklahoma State Treasurer;

5 14. "Trust" means the IRA retirement trust or annuity contract
6 established under Section 7 of this act;

7 15. "Trustee" means the trustee of the trust, including an
8 insurance company issuing an annuity contract, selected under
9 Section 4 of this act; and

10 16. "Wages" means compensation within the meaning of Section
11 219(f) (1) of Title 26 the Internal Revenue Code that is received by
12 a covered employee from a covered employer.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3602 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 The State Treasurer shall have the following powers and duties
17 in implementing the provisions of this act:

18 1. To design, establish and operate the Oklahoma Prosperity Act
19 Program in accordance with the requirements established in this act;

20 2. To collect fees to defray the costs of administering the
21 Program;

22 3. To enter into contracts necessary or desirable for the
23 establishment and administration of the Program;

1 4. To hire, retain and terminate third-party service providers
2 for the Program, including, but not limited to, consultants,
3 investment managers or advisors, trustees, custodians, insurance
4 companies, record keepers, administrators, actuaries, counsel,
5 auditors and other professionals; provided, that each service
6 provider shall be authorized to do business in this state. For
7 purposes of selecting a third-party service provider, the Office of
8 the State Treasurer shall be exempt from the Oklahoma Central
9 Purchasing Act; provided, that a competitive process shall be
10 developed and utilized to select service providers;

11 5. To determine the type or types of IRAs to be offered;

12 6. To employ a program administrator and any other individuals
13 necessary to administer the Program and the administrative fund;

14 7. To develop and implement an outreach plan and disseminate
15 information regarding the Program and retirement and financial
16 education in general, to employees, employers and other constituents
17 in the state;

18 8. Determine the number of days by which an eligible employer
19 must make the Program available to a covered employee upon first
20 becoming an eligible employer or covered employee;

21 9. To adopt rules and procedures for the establishment and
22 operation of the Program and to take such other actions as necessary
23 to operate the Program in accordance with the provisions of this
24 act. Any guidelines or procedures affecting the Program may be

1 implemented after reasonable notice to the public and a public
2 comment period, in a manner similar to the requirements of the
3 Administrative Procedures Act. However, the Administrative
4 Procedures Act shall not apply for purposes of this section; and

5 10. To establish and maintain the Program by contracting with
6 another state, partnering with one or more states to create a joint
7 auto-IRA Program, allowing states to participate in the Program or
8 forming a consortium with one or more other states in which certain
9 aspects of the Program of each state are combined for administrative
10 convenience and efficiency.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3603 of Title 62, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The trustee and each investment adviser shall be a fiduciary
15 with respect to the trust and IRAs established and maintained under
16 the Oklahoma Prosperity Act Program.

17 B. Each covered employer shall be required to provide covered
18 employees with such information as required by the Program. No
19 employer acting as such shall be considered a fiduciary with respect
20 to the trust or an IRA or have fiduciary responsibilities under the
21 act.

22 C. Each fiduciary shall discharge its duties with respect to
23 the Program solely in the interests of covered employees and with
24 the care, skill, prudence and diligence under the circumstances then

1 prevailing that a prudent person acting in a similar capacity and
2 familiar with those matters would use in the conduct of an
3 enterprise of like character and aims.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3604 of Title 62, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Oklahoma Prosperity Act Program shall be designed,
8 established and operated in accordance with the following
9 provisions:

10 1. Each covered employer shall be required to offer to each
11 covered employee an opportunity to contribute to an IRA established
12 under the Program for the benefit of the covered employee through
13 withholding from his or her wages. No employer shall be permitted
14 to contribute to the Program;

15 2. Unless the covered employee elects not to participate in the
16 Program, he or she shall be automatically enrolled in the Program
17 and contributions shall be withheld from the wages of the covered
18 employee;

19 3. The minimum contribution rate of each covered employee shall
20 be three percent (3%); the minimum contribution rate shall be the
21 default contribution rate;

22 4. The IRAs shall qualify for favorable federal income tax
23 treatment under Sections 408 and 408A of Title 26, as appropriate,
24 of the Internal Revenue Code;

1 5. Each covered employer shall deposit withheld contributions
2 of the covered employee under the Program with the trustee in such
3 manner as is determined by the State Treasurer, provided that the
4 employer shall deliver the amounts withheld to the trustee within
5 ten (10) business days after the date the amounts otherwise would
6 have been paid to the covered employee;

7 6. Additional rules and procedures may be adopted in
8 conjunction with established IRS regulations for withdrawals,
9 distributions, transfers and rollovers of IRAs and for the
10 designation of IRA beneficiaries;

11 7. Information regarding the Program shall be made available to
12 the public on a website maintained for the Program;

13 8. Audited financial reports shall be submitted to the Governor
14 and Legislature;

15 9. Each covered employer shall be provided information
16 regarding the Program and disclosures including:

- 17 a. a description of the benefits and risks associated
18 with investments offered in the Program,
- 19 b. instructions about how to obtain additional
20 information about the Program,
- 21 c. a description of the federal and state income tax
22 consequences of an IRA, which may consist of or
23 include the disclosure statement required to be
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distributed under the Internal Revenue Code and the Treasury Regulations thereunder,

d. a statement that covered employees seeking financial advice should contact their own financial advisors, that covered employers shall not provide financial advice and that covered employers are not liable for decisions covered employees make under the act,

e. a statement that the Program is not an employer-sponsored retirement plan,

f. a statement that neither the Program nor the IRA of the covered employee established under the Program is guaranteed by the state,

g. a statement that neither a covered employer nor the state will monitor or has an obligation to monitor the eligibility of the covered employee under the Internal Revenue Code to make contributions to an IRA or to monitor whether the contributions of the covered employee to the IRA established for the covered employee under the Program exceeds the maximum permissible IRA contribution; it shall be the responsibility of the covered employee, and

h. a statement that neither the State nor the covered employer will have any liability with respect to any failure of the covered employee to be eligible to make

1 IRA contributions or any contribution in excess of the
2 maximum IRA contribution;

3 10. Any information, forms or instructions to be furnished to
4 covered employees that provide the covered employee with the
5 procedures for:

6 a. making contributions to the IRA of the covered
7 employee established under the Program, including a
8 description of the minimum contribution rate and the
9 right to elect to make no contribution or to change
10 the contribution rate under the Program,

11 b. making an investment election with respect to the IRA
12 of the covered employee established under the Program,
13 including a description of the default investment
14 fund, and

15 c. making transfers, rollovers, withdrawals and other
16 distributions from the IRA of the covered employee;

17 11. Each covered employer shall deliver or facilitate the
18 delivery of the information about the Program to each covered
19 employee at the time and in the manner as established by Program
20 guidelines; and

21 12. The Program shall be designed and operated in a manner that
22 will cause it not to be an employee benefit plan within the meaning
23 of Section 3(3) of the Employee Retirement Income Security Act of
24 1974.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3605 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 There is hereby created in the Office of the State Treasurer a
5 fund to be designated as the "Oklahoma Prosperity Act Administrative
6 Fund". The fund shall be a continuing fund, not subject to fiscal
7 year limitations, and shall consist of monies appropriated for the
8 administration of the Oklahoma Prosperity Act Program, all
9 administrative fees collected and any other monies designated to the
10 fund by law. All monies accruing to the credit of the fund are
11 hereby appropriated and may be budgeted and expended by the State
12 Treasurer for expenses related to the administration and support of
13 the Program. Expenditures from the fund shall be made upon warrants
14 issued by the State Treasurer against claims filed as prescribed by
15 law with the Director of the Office of Management of Enterprise
16 Services for approval and payment.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3606 of Title 62, unless there
19 is created a duplication in numbering, reads as follows:

20 A. There is hereby created as an instrumentality of the state a
21 trust to be known as the "Oklahoma Prosperity Act Trust".

22 B. The State Treasurer may appoint qualified financial
23 institutions to act as trustee or custodian of the IRA accounts.
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1 C. The assets of IRAs established for covered employees shall
2 be allocated to the trust and combined for investment purposes.
3 Trust assets shall be managed and administered for the purposes of
4 providing services to covered employees and defraying reasonable
5 administrative expenses of the Oklahoma Prosperity Act Program.

6 D. There shall be established within the trust one or more
7 investment funds. The first One Thousand Dollars (\$1,000.00) in
8 contributions made by, or on behalf of, an enrollee may be deposited
9 into a default capital preservation investment fund and the enrollee
10 may be provided an account revocation period during which, if the
11 enrollee chooses to end participation in the Program, the enrollee
12 may withdraw the deposited amounts from the default investment
13 without penalty.

14 E. Covered employees may allocate assets of their IRAs among
15 investment funds and a default investment fund may be designated for
16 the IRAs of covered employees who do not select an investment fund.

17 F. The State Treasurer may retain investment advisers to select
18 and manage the investments of investment funds on a discretionary
19 basis, subject to ongoing review and oversight.

20 G. The assets of the trust shall be maintained, invested and
21 expended solely for the purposes of the trust and no property rights
22 therein shall exist in favor of the state or any covered employer.
23 Trust assets shall not be transferred or used by the state for any
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1 purposes other than the purposes of the trust or funding the
2 expenses of operating the Program.

3 H. The assets of the trust shall be held separate and apart
4 from the assets of the state.

5 I. There shall be no liability for the state, the Program, the
6 State Treasurer, or any employer for investment losses incurred by
7 any covered employee as a result of participating in the Program.

8 J. The trust and each investment fund shall not be subject to
9 income tax of this state.

10 K. If the Program is established by using the auto-IRA Program
11 of another state, a joint Program or a consortium with one or more
12 other states, then the trust may be established by adopting the
13 trust established under the Program of the other state or states or
14 as a master trust or similar arrangement with the other state or
15 states; provided, that the trust, master trust or similar
16 arrangement satisfies the requirements of this section.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3607 of Title 62, unless there
19 is created a duplication in numbering, reads as follows:

20 The Oklahoma Prosperity Act Program shall be established so that
21 covered employees may begin making contributions within twenty-four
22 (24) months of the effective date of this act; provided, that the
23 State Treasurer may extend the time period within which the Program
24 is implemented by twelve (12) months. The State Treasurer may

1 establish a pilot program for certain covered employers, may provide
2 for a staggered rollout of the Program so that covered employers are
3 initially required to offer the Program to covered employees in
4 stages based on employee headcount or other criteria, or both.

5 SECTION 9. This act shall become effective November 1, 2020.

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