A BILL FOR AN ACT

CONCERNING THE CREATION OF THE COLORADO SECURE SAVINGS PLAN.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill establishes the Colorado secure savings plan (plan), which is a retirement savings plan for private-sector employees in the form of an automatic enrollment payroll deduction individual retirement account. Employers with a specified number of employees in the state are required to participate in the plan, but any employer may choose to participate in the plan.
The Colorado secure savings plan board of trustees (board) is created and consists of the state controller, the director of the governor's office of state planning and budgeting, and 7 additional trustees with certain experience who are appointed by the governor and confirmed by the senate. The trustees on the board have a fiduciary duty to the plan's enrollees and beneficiaries and are required to:

- Establish investment options that offer employees returns on contributions without incurring debt or liabilities to the state;
- Establish the process for allocating investment earnings and losses to individual plan accounts on a pro rata basis;
- Make and enter into contracts and hire staff as necessary for the administration of the plan;
- Conduct a periodic review of the performance of any investment vendors;
- Cause money in the Colorado secure savings plan fund (fund) to be invested with the intent to achieve cost savings through efficiencies and economies of scale;
- Establish the process for an enrollee to contribute a portion of his or her wages to the plan for automatic deposit and establish the process by which the participating employer forwards those contributions to the plan;
- Establish the process for enrollment in the plan including the process by which an employee can opt not to participate in the plan;
- Accept gifts, grants, and donations from specified entities and pursue options for bank loans or a line of credit to cover the start-up costs of the plan;
- Procure, as needed, insurance against loss in connection with the property, assets, or activities of the plan;
- Allocate administrative fees to individual retirement accounts in the plan on a pro rata basis;
- Set minimum and maximum contribution levels;
- Facilitate education and outreach to employers and employees;
- Ensure that the plan complies with all applicable state and federal laws;
- Deposit all gifts, grants, donations, fees, and earnings from investment of money in the fund into the fund and pay the administrative costs and expenses for the creation, management, and operation of the plan from money in the fund;
- Determine any nominal and reasonable assistance that may be provided to businesses to offset the initial costs of enrolling employees in the plan and complying with audits.
and plan implementation;

! Prepare or cause to be prepared certain annual audits and annual reports regarding the plan;

! Develop a process to ensure that employers are in compliance with the requirements of the plan and develop a penalty structure for employers who fail, without reasonable cause, to enroll employees in the plan;

! Conduct or cause to be conducted a financial feasibility study to ensure that the plan will be self-sustaining; and

! Conduct an analysis of relevant consumer protections available under federal law and make recommendations to the general assembly regarding additional necessary consumer protections that should be included in legislation implementing the plan.

The bill specifies the process by which the board is required to engage an investment manager to invest the assets of the plan and specifies the investment options that the board is required to create.

The bill creates the fund as a trust outside of the state treasury, specifies that the fund will include the individual retirement accounts of enrollees in the plan, and allows the board to use a certain percentage of money in the fund for the administrative expenses of the plan. The money in the fund is not property of the state and cannot be commingled with state money.

The board must design and disseminate employer and employee information packets regarding the plan and the options for employee participation in the plan to all employers that participate in the plan.

If, based on the required financial feasibility study, the board determines that the plan will be self-sustaining and would promote greater retirement savings for private-sector employees, the board must recommend to the general assembly that the plan be implemented. The board may not implement the plan unless the general assembly, acting by bill, directs the board to implement the plan.

The bill dictates the timing for the board to implement the plan, if directed to do so by the general assembly, and a time frame for employers to establish a system by which enrollees in the plan can remit payroll deduction contributions to the plan. Employers must automatically enroll employees in the plan unless an employee has opted out of participation in the plan. Enrollees may select an investment option and contribution level or use the default investment option and contribution amount established by the board.

The bill specifies that the state and employers do not have any duty or liability to any party for the payments of any retirement savings benefits accrued by any individual through the plan.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Nearly half of all families in the United States have no retirement assets. Even among those families who are nearing retirement, four out of ten have no retirement assets.

(b) Middle-class working-age families whose incomes are at the fiftieth percentile have, on average, only five thousand dollars saved in retirement accounts. The average for families with incomes at the ninetieth percentile is two hundred seventy-four thousand dollars.

(c) Only three in ten women aged sixty-five and older and slightly more than four in ten men aged sixty-five and older receive any income from pensions or retirement savings;

(d) Most African-American and Hispanic families have no retirement savings. About four out of ten African-American families and one out of four Hispanic families have retirement savings. The median white family with retirement savings has over three times as much saved as the median African-American or median Hispanic family.

(e) Coloradans are less prepared for retirement today than in previous decades. Eighty-two percent of Coloradans agree that the nation faces a retirement crisis and seventy-eight percent of Coloradans say that it is getting harder to prepare for retirement.

(f) Older workers are working longer and delaying their retirement. Many of today's seniors rely on their children, who are already struggling to raise their own families, or on other social services that are underfunded.

(g) Almost five out of ten Coloradans, aged twenty-five to
sixty-four, working in the private sector lack access to a retirement plan at work;

(h) Colorado's younger workers are disproportionately affected, with forty-nine percent of workers between the age of twenty-five and twenty-nine, forty-five percent of workers between the age of thirty and thirty-four, and forty-eight percent of workers between the age of thirty-five and thirty-nine, lacking access to a retirement plan at work;

(i) Minority workers in Colorado are also disproportionately affected, with forty-nine percent of African-American workers and fifty-six percent of Hispanic workers lacking access to a retirement plan at work;

(j) Colorado's lowest wage workers are also less likely to have access to a workplace retirement savings plan. Seventy-six percent of Colorado's workers in the lowest income quintile and fifty-two percent of Colorado's workers in the second lowest income quintile have no access to a retirement plan at work.

(k) The major reason why many workers do not participate in retirement savings plans is their employers do not offer them. Experts on retirement recommend that the best way to increase retirement savings is to offer a workplace savings plan to all workers and enroll them automatically with the right to opt out.

(l) For decades, Americans have built their retirement with traditional pensions, social security, and individual savings, but America's retirement system has unraveled. About half of Colorado workers in the private sector do not have any type of employer-sponsored retirement plan, and individual savings plans are not filling the gap and have proved risky and unreliable.
The future of Colorado's economic growth relies on our aging population having sufficient income in retirement so they can afford to live independently and have quality healthcare. Our seniors contribute significantly to local economies throughout the state, and their retirement investment spending provides stability to those communities.

Colorado needs a remedy to the retirement security crisis so that Coloradans can look forward to a retirement free from financial anxiety or hardship; and

Coloradans have a history of creating unique solutions to the challenges that the state faces. The state has an opportunity to craft a plan for the future that can ensure all Coloradans have the ability to save for retirement.

The general assembly further finds and declares that it is therefore in the best interest of the state to establish the Colorado secure savings plan to provide a workplace savings plan for all Colorado workers whose employers do not provide such a plan.

SECTION 2. In Colorado Revised Statutes, add article 54.3 to title 24 as follows:

ARTICLE 54.3

Colorado Secure Savings Plan Act

24-54.3-101. Short title. The short title of this article 54.3 is the "COLORADO SECURE SAVINGS PLAN ACT".

24-54.3-102. Definitions. As used in this article 54.3, unless the context otherwise requires:

(1) "BOARD" MEANS THE COLORADO SECURE SAVINGS PLAN BOARD OF TRUSTEES ESTABLISHED IN SECTION 24-54.3-104.

(2) "EMPLOYEE" MEANS ANY INDIVIDUAL WHO IS EIGHTEEN YEARS...
OR OLDER, WHO IS EMPLOYED BY AN EMPLOYER FOR AT LEAST ONE
HUNDRED TWENTY DAYS, AND WHO EARN WAGES SUBJECT TO INCOME
TAX PURSUANT TO SECTION 39-22-104.

(3) "EMPLOYER" MEANS A PERSON OR ENTITY ENGAGED IN A
BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE
STATE, WHETHER FOR PROFIT OR NOT-FOR-PROFIT, THAT EMPLOYS THE
NUMBER OF EMPLOYEES SPECIFIED IN SUBSECTION (3)(a) OR (3)(b) OF THIS
SECTION. "EMPLOYER" DOES NOT INCLUDE A PERSON OR ENTITY THAT
OFFERS EMPLOYEES A QUALIFIED RETIREMENT PLAN AS SPECIFIED IN
SUBSECTION (3)(a)(III) OF THIS SECTION. "EMPLOYER" INCLUDES A PERSON
OR ENTITY THAT:

(a) (I) EMPLOYS THE FOLLOWING NUMBER OF EMPLOYEES IN THE
STATE:

(A) FOR THE FIRST YEAR OF OPERATION OF THE PLAN, ONE
HUNDRED OR MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS
CALENDAR YEAR;

(B) FOR THE SECOND YEAR OF OPERATION OF THE PLAN, FIFTY OR
MORE EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;

AND

(C) FOR THE THIRD YEAR OF OPERATION OF THE PLAN AND FOR
EVERY YEAR OF OPERATION OF THE PLAN THEREAFTER, FIVE OR MORE
EMPLOYEES AT ANY TIME DURING THE PREVIOUS CALENDAR YEAR;

(II) HAS BEEN IN BUSINESS AT LEAST TWO YEARS; AND

(III) HAS NOT OFFERED A QUALIFIED RETIREMENT PLAN TO ANY
EMPLOYEES, INCLUDING, BUT NOT LIMITED TO, A PLAN QUALIFIED UNDER
SECTIONS 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), OR 457(b) OF
THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, IN THE
PRECEDING TWO YEARS; OR

(b) EMPLOYS FEWER THAN THE NUMBER OF EMPLOYEES SPECIFIED
IN SUBSECTION (3)(a)(I) OF THIS SECTION FOR THE APPLICABLE YEAR OF
OPERATION OF THE PLAN, HAS NOT OFFERED A QUALIFIED RETIREMENT
PLAN AS SPECIFIED IN SUBSECTION (3)(a)(III) OF THIS SECTION, AND
CHOSES TO PARTICIPATE IN THE PLAN.

(4) "ENROLLEE" MEANS ANY EMPLOYEE WHO IS ENROLLED IN THE
PLAN.

(5) "FUND" MEANS THE COLORADO SECURE SAVINGS PLAN FUND
CREATED IN SECTION 24-54.3-110.

(6) "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL
REVENUE CODE OF 1986", AS AMENDED, OR ANY SUCCESSOR LAW.

(7) "IRA" MEANS A ROTH INDIVIDUAL RETIREMENT ACCOUNT
AUTHORIZED PURSUANT TO SECTION 408A OF THE INTERNAL REVENUE
CODE OR A TRADITIONAL INDIVIDUAL RETIREMENT ACCOUNT, TO BE
DETERMINED BY THE BOARD.

(8) "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT
PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT AS
PROVIDED FOR IN THIS ARTICLE 54.3 FOR ITS EMPLOYEES WHO ARE
ENROLLEES IN THE PLAN.

(9) "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT"
MEANS AN ARRANGEMENT BY WHICH A PARTICIPATING EMPLOYER ALLOWS
ENROLLEES TO REMIT PAYROLL DEDUCTION CONTRIBUTIONS TO THE PLAN.

(10) "PLAN" MEANS THE COLORADO SECURE SAVINGS PLAN
CREATED IN THIS ARTICLE 54.3.

(11) "WAGES" MEANS ANY COMPENSATION WITHIN THE MEANING
OF SECTION 219(f)(1) OF THE INTERNAL REVENUE CODE THAT IS RECEIVED
24-54.3-103. Colorado secure savings plan - established. A retirement savings plan in the form of an automatic enrollment payroll deduction IRA, known as the Colorado secure savings plan, is hereby established. This plan is not a defined benefit pension plan. The board shall administer the plan for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner.

24-54.3-104. Colorado secure savings plan board - creation - composition. (1) There is hereby created the board of trustees of the plan, which has the responsibilities, duties, and authorities set forth in this article 54.3.

(2) The board consists of the following nine trustees:

(a) The state controller, or his or her designee;

(b) The director of the governor's office of state planning and budgeting, or his or her designee; and

(c) Seven trustees appointed by the governor and confirmed by the senate as follows:

(I) Four public representatives with expertise in investment or retirement savings plan administration, including the day-to-day operations of plans, maintaining individual accounts, and keeping track of transactions and assets at the individual participant account level;

(II) A representative of participating employers;

(III) A representative of enrollees or potential enrollees;
AND

(IV) A RETIRED COLORADO RESIDENT.

(3) THE INITIAL APPOINTMENTS FOR THE GOVERNOR'S APPOINTEES ARE TWO PUBLIC REPRESENTATIVES FOR FOUR YEARS; THE REPRESENTATIVE OF PARTICIPATING EMPLOYERS AND THE RETIRED COLORADO RESIDENT FOR THREE YEARS; AND TWO PUBLIC REPRESENTATIVES AND THE REPRESENTATIVE OF ENROLLEES OR POTENTIAL ENROLLEES FOR TWO YEARS. THEREAFTER, ALL OF THE GOVERNOR'S APPOINTEES ARE APPOINTED FOR TERMS OF FOUR YEARS.

(4) IN MAKING APPOINTMENTS TO THE BOARD, THE GOVERNOR SHALL MAKE A CONCERTED EFFORT TO INCLUDE MEMBERS OF DIVERSE POLITICAL, RACIAL, CULTURAL, INCOME, AND ABILITY GROUPS AND MEMBERS FROM URBAN AND RURAL AREAS OF THE STATE.

(5) THE TRUSTEES SHALL ELECT FROM AMONG THEMSELVES A CHAIRPERSON AND ANY OTHER OFFICERS AS MAY BE NECESSARY FOR THE BOARD TO CARRY OUT ITS DUTIES AND RESPONSIBILITIES.

(6) A VACANCY IN THE TERM OF AN APPOINTED BOARD TRUSTEE SHALL BE FILLED FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

(7) TRUSTEES OF THE BOARD SERVE WITHOUT COMPENSATION BUT MAY BE REIMBURSED FOR NECESSARY TRAVEL EXPENSES INCURRED IN CONNECTION WITH THEIR BOARD DUTIES FROM MONEY IN THE FUND.

(8) AN INDIVIDUAL SHALL NOT BE OR CONTINUE TO BE A TRUSTEE OF THE BOARD IF THAT INDIVIDUAL HAS BEEN ADJUDICATED OF VIOLATING ANY PROVISIONS OF THIS ARTICLE 54.3 OR HAS BEEN CONVICTED OF A FELONY OR ANY CRIME INVOLVING THE MISAPPROPRIATION OF FUNDS.

24-54.3-105. Standard of conduct - fiduciary duty. (1) THE
TRUSTEES OF THE BOARD, ANY OTHER AGENTS APPOINTED OR ENGAGED BY
THE BOARD, AND ALL PERSONS SERVING AS PLAN STAFF SHALL DISCHARGE
THEIR DUTIES WITH RESPECT TO THE PLAN SOLELY IN THE INTEREST OF THE
PLAN’S ENROLLEES AND BENEFICIARIES AS FOLLOWS:
(a) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO
ENROLLEES AND BENEFICIARIES AND DEFRAYING REASONABLE EXPENSES
OF ADMINISTERING THE PLAN; AND
(b) BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND
DILIGENCE UNDER THE PREVAILING CIRCUMSTANCES THAT A PRUDENT
PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH RELEVANT
MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE
CHARACTER AND WITH LIKE AIMS.
(2) THE TRUSTEES OF THE BOARD SHALL NOT ENGAGE IN ANY
ACTIVITIES THAT MIGHT RESULT IN A CONFLICT OF INTEREST WITH THEIR
FUNCTIONS AS FIDUCIARIES FOR THE PLAN.
24-54.3-106. Additional duties of the board. (1) IN ADDITION
TO THE OTHER DUTIES AND RESPONSIBILITIES SPECIFIED IN THIS ARTICLE
54.3, THE BOARD SHALL:
(a) CAUSE THE PLAN TO BE DESIGNED, ESTABLISHED, AND
OPERATED IN A MANNER THAT:
(I) IS IN ACCORDANCE WITH BEST PRACTICES FOR RETIREMENT
SAVINGS VEHICLES AND IS BASED ON THE RESULTS OF A FINANCIAL
FEASIBILITY STUDY, CONDUCTED PURSUANT TO SUBSECTION (1)(u) OF THIS
SECTION, TO ENSURE THAT THE PLAN IS SELF-SUSTAINING;
(II) MAXIMIZES PARTICIPATION, SAVINGS, AND SOUND
INVESTMENT PRACTICES;
(III) MAXIMIZES SIMPLICITY, INCLUDING EASE OF ADMINISTRATION
FOR PARTICIPATING EMPLOYERS AND ENROLLEES;

(IV) PROVIDES AN EFFICIENT PRODUCT TO ENROLLEES BY POOLING INVESTMENT FUNDS;

(V) ENSURES THE PORTABILITY OF BENEFITS AND CONSIDERS THE TYPE OF IRA OFFERED AS A WAY OF INCREASING THE PORTABILITY OF BENEFITS; AND

(VI) PROVIDES FOR THE INVESTMENT AND DEACCUMULATION OF ENROLLEE ASSETS IN A MANNER THAT MAXIMIZES FINANCIAL SECURITY IN RETIREMENT;

(b) EXPLORE AND ESTABLISH INVESTMENT OPTIONS PURSUANT TO SECTION 24-54.3-109 THAT OFFER EMPLOYEES RETURNS ON CONTRIBUTIONS AND LIFETIME RETIREMENT INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE;

(c) MAKE AND ENTER INTO CONTRACTS NECESSARY FOR THE ADMINISTRATION OF THE PLAN AND FUND, INCLUDING, BUT NOT LIMITED TO, RETAINING AND CONTRACTING WITH RECORD KEEPERS, INVESTMENT MANAGERS, PRIVATE FINANCIAL INSTITUTIONS, PUBLIC ENTITIES, OTHER FINANCIAL AND SERVICE PROVIDERS, CONSULTANTS, ACTUARIES, COUNSEL, AUDITORS, THIRD-PARTY ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECESSARY;

(d) CONDUCT A REVIEW OF THE PERFORMANCE OF ANY INVESTMENT VENDORS EVERY FOUR YEARS, INCLUDING, BUT NOT LIMITED TO, A REVIEW OF RETURNS, FEES, AND CUSTOMER SERVICE. THE BOARD SHALL MAKE THE RESULTS OF THE REVIEWS CONDUCTED PURSUANT TO THIS SUBSECTION (1)(d) AVAILABLE TO THE PUBLIC.

(e) DETERMINE THE NUMBER AND DUTIES OF STAFF MEMBERS NEEDED TO ADMINISTER THE PLAN AND ASSEMBLE SUCH A STAFF,
INCLUDING, AS NEEDED, THE EMPLOYMENT OF STAFF AND THE
APPOINTMENT OF A PLAN ADMINISTRATOR. THE BOARD MAY CONTRACT
WITH THIRD PARTIES, INCLUDING STATE AGENCIES, TO ASSIST IN
ADMINISTERING THE PLAN.

(f) INVEST MONEY IN THE FUND TO ACHIEVE COST SAVINGS
THROUGH EFFICIENCIES AND ECONOMIES OF SCALE;

(g) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN
ENROLLEE IS ABLE TO CONTRIBUTE A PORTION OF HIS OR HER WAGES TO
THE PLAN FOR AUTOMATIC DEPOSIT OF THOSE CONTRIBUTIONS TO AN IRA
AND THE PROCESS BY WHICH THE PARTICIPATING EMPLOYER PROVIDES A
PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO FORWARD
THOSE CONTRIBUTIONS AND RELATED INFORMATION TO THE PLAN,
INCLUDING, BUT NOT LIMITED TO, CONTRACTING WITH FINANCIAL SERVICE
COMPANIES AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO
RECEIVE AND PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR
PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENTS OR SIMILAR
ARRANGEMENTS;

(h) DESIGN AND ESTABLISH THE PROCESS FOR ENROLLMENT
PURSUANT TO SECTION 24-54.3-113, INCLUDING THE PROCESS BY WHICH
AN EMPLOYEE CAN OPT NOT TO PARTICIPATE IN THE PLAN, SELECT A
CONTRIBUTION LEVEL, SELECT AN INVESTMENT OPTION, AND TERMINATE
PARTICIPATION IN THE PLAN;

(i) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN
INDIVIDUAL MAY VOLUNTARILY ENROLL IN AND MAKE CONTRIBUTIONS TO
THE PLAN;

(j) ACCEPT ANY GIFTS, GRANTS, AND DONATIONS, OR OTHER
MONEY FROM THE STATE, ANY UNIT OF FEDERAL, STATE, OR LOCAL
GOVERNMENT, OR ANY OTHER PERSON, FIRM, PARTNERSHIP, OR CORPORATION THAT HAS OPERATIONS IN THE STATE TO COVER START-UP COSTS OF THE PLAN. THE BOARD MAY ALSO PURSUE OPTIONS FOR BANK LOANS OR A LINE OF CREDIT TO COVER THE START-UP COSTS OF THE PLAN.

(k) EVALUATE THE NEED FOR, AND PROCURE AS NEEDED, INSURANCE AGAINST ANY AND ALL LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES OF THE PLAN, AND INDEMNIFY AS NEEDED EACH MEMBER OF THE BOARD FROM PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION AS A MEMBER OF THE BOARD;

(l) MAKE PROVISIONS FOR THE PAYMENT OF ADMINISTRATIVE COSTS AND EXPENSES FOR THE CREATION, MANAGEMENT, AND OPERATION OF THE PLAN. ALL ADMINISTRATIVE COSTS OF THE PLAN, INCLUDING REPAYMENT OF ANY START-UP MONEY, SHALL BE PAID BY ENROLLEES. ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO SUBSECTION (1)(j) OF THIS SECTION TO IMPLEMENT THE PLAN UNTIL THE PLAN IS SELF-SUSTAINING SHALL NOT BE REPAYED UNLESS THAT MONEY WAS OFFERED CONTINGENT UPON A PROMISE OF REPAYMENT.

(m) SET MINIMUM AND MAXIMUM CONTRIBUTION LEVELS IN ACCORDANCE WITH LIMITS ESTABLISHED FOR IRAs BY THE INTERNAL REVENUE CODE;

(n) FACILITATE EDUCATION AND OUTREACH TO EMPLOYERS AND EMPLOYEES;

(o) FACILITATE COMPLIANCE BY THE PLAN WITH ALL APPLICABLE REQUIREMENTS FOR THE PLAN UNDER THE INTERNAL REVENUE CODE, INCLUDING TAX QUALIFICATION REQUIREMENTS OR ANY OTHER APPLICABLE LEGAL AND ACCOUNTING REQUIREMENTS;
(p) Carry out the duties and obligations of the plan in an effective, efficient, and low-cost manner;
(q) Exercise any and all other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of this Article 54.3;
(r) Deposit into the fund all gifts, grants, donations, and fees that are used to recover administrative costs. All expenses of the board shall be paid from the fund.
(s) Consider processes to implement the plan to reduce the actions required by employers;
(t) Determine any nominal and reasonable assistance that may be provided from money in the fund to businesses to offset the initial costs of enrolling employees in the plan and complying with audits and plan implementation;
(u) Conduct or cause to be conducted a financial feasibility study to ensure that the plan will be self-sustaining;
(v) Regularly and automatically provide plan participants important information about plan features and funding;
(w) Conduct or cause to be conducted a study assessing the effects that greater financial education among Colorado residents would have on increasing their retirement savings and make recommendations for improving the level of financial education;
(x) Conduct or cause to be conducted a study assessing the effectiveness of a small business retirement marketplace as a way to increase the number of Colorado businesses that offer
RETIREMENT SAVINGS PLANS FOR THEIR EMPLOYEES AND MAKE A
RECOMMENDATION TO THE GENERAL ASSEMBLY REGARDING CREATING A
SMALL BUSINESS RETIREMENT MARKETPLACE OPTION.

(y) CONDUCT AN ANALYSIS OF ALL RELEVANT FEDERAL CONSUMER
PROTECTIONS AVAILABLE UNDER THE FEDERAL "EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974", AS AMENDED, AND MAKE
RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING ANY
ADDITIONAL NECESSARY CONSUMER PROTECTIONS THAT SHOULD BE
INCLUDED IN LEGISLATION IMPLEMENTING THE PLAN.

24-54.3-107. Risk management. The board shall annually
prepare and adopt a written statement of investment policy that
includes a risk management and oversight program. This
investment policy shall prohibit the board, plan, and fund from
borrowing for investment purposes. The risk management and
oversight program shall be designed to ensure that an effective
risk management system is in place to monitor the risk levels of
the plan and fund portfolio, to ensure that the risks taken are
prudent and properly managed, to provide an integrated process
for overall risk management, and to assess investment returns
as well as risks in order to determine if the risks taken are
adequately compensated compared to applicable performance
benchmarks and standards. The board shall consider the
statement of investment policy and any changes in the
investment policy at a public hearing.

24-54.3-108. Financial services vendors. (1) The board shall
engage, after an open bid process, one or more financial services
vendors to serve as an investment manager for the plan, invest
ANY OTHER ASSETS OF THE PLAN, AND HANDLE THE RECORD KEEPING FOR
THE PLAN. IN SELECTING THE VENDOR OR VENDORS, THE BOARD SHALL
TAKE INTO CONSIDERATION AND GIVE WEIGHT TO THE VENDOR'S FEES AND
CHARGES IN ORDER TO REDUCE THE PLAN'S ADMINISTRATIVE EXPENSES.

(2) THE VENDOR OR VENDORS SHALL COMPLY WITH ALL
APPLICABLE FEDERAL AND STATE LAWS, RULES, AND REGULATIONS, AS
WELL AS ALL RULES, POLICIES, AND GUIDELINES PROMULGATED BY THE
BOARD WITH RESPECT TO THE PLAN AND THE INVESTMENT OF MONEY IN
THE FUND, INCLUDING, BUT NOT LIMITED TO, THE INVESTMENT POLICY.

(3) THE VENDOR OR VENDORS SHALL PROVIDE SUCH REPORTS AS
THE BOARD DEEMS NECESSARY FOR THE BOARD TO OVERSEE EACH
INVESTMENT MANAGER'S PERFORMANCE AND THE PERFORMANCE OF THE
FUND.

(4) THE BOARD MAY AWARD AN INITIAL RECORD KEEPING
CONTRACT FOR A TERM OF UP TO TEN YEARS TO PERMIT THE FINANCIAL
SERVICES VENDOR OR VENDORS TO RECOVER START-UP COSTS AND INITIAL
LOSSES.

24-54.3-109. Investment options. (1) THE BOARD MAY
ESTABLISH THE FOLLOWING INVESTMENT OPTIONS:

(a) A LOW-RISK INVESTMENT PORTFOLIO; AND

(b) A TARGET DATE FUND.

(2) THE TARGET DATE FUND AND LIFETIME INCOME OPTIONS MUST
BE THE DEFAULT INVESTMENT OPTION FOR ENROLLEES WHO FAIL TO ELECT
AN INVESTMENT OPTION UNLESS THE BOARD DESIGNATES BY RULE A NEW
INVESTMENT OPTION AS THE DEFAULT PURSUANT TO SUBSECTION (4) OF
THIS SECTION.

(3) UNDER NO CIRCUMSTANCES SHALL THE BOARD, PLAN, FUND,
STATE, OR ANY PARTICIPATING EMPLOYER ASSUME ANY LIABILITY FOR
INVESTMENT OR ACTUARIAL RISK. THE BOARD SHALL DETERMINE
WHETHER TO ESTABLISH INVESTMENT OPTIONS PURSUANT TO THIS SECTION
BASED UPON AN ANALYSIS OF THEIR COST, RISK PROFILE, BENEFIT LEVEL,
FEASIBILITY, AND EASE OF IMPLEMENTATION.

(4) IF THE BOARD ELECTS TO ESTABLISH A LOW-RISK INVESTMENT
PORTFOLIO, THE BOARD SHALL DETERMINE WHETHER THE PORTFOLIO WILL
REPLACE THE TARGET DATE FUND AS THE DEFAULT INVESTMENT OPTION
FOR ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION. IN MAKING
THE DETERMINATION, THE BOARD SHALL CONSIDER THE COST, RISK
PROFILE, BENEFIT LEVEL, AND EASE OF ENROLLMENT IN THE LOW-RISK
INVESTMENT PORTFOLIO. THE BOARD MAY AT ANY TIME THEREAFTER
REVISIT THIS QUESTION AND, BASED ON AN ANALYSIS OF THESE CRITERIA,
ESTABLISH THE LOW-RISK INVESTMENT PORTFOLIO AS THE DEFAULT FOR
ENROLLEES WHO DO NOT ELECT AN INVESTMENT OPTION.

24-54.3-110. Colorado secure savings plan fund - creation.

(1) (a) THE COLORADO SECURE SAVINGS PLAN FUND IS HEREBY
ESTABLISHED AS A TRUST OUTSIDE OF THE STATE TREASURY. THE BOARD
IS THE TRUSTEE OF THE FUND.

(b) THE FUND CONSISTS OF MONEY RECEIVED FROM ENROLLEES
AND PARTICIPATING EMPLOYERS PURSUANT TO AUTOMATIC PAYROLL
DEDUCTIONS, CONTRIBUTIONS TO SAVINGS MADE UNDER THIS ARTICLE
54.3, AND ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO
THIS ARTICLE 54.3.

(c) FOR THE FIRST FIVE YEARS OF THE OPERATION OF THE PLAN,
THE BOARD MAY USE UP TO ONE PERCENT OF THE MONEY IN THE FUND TO
PAY FOR THE ADMINISTRATIVE COSTS THAT IT INCURS IN THE
PERFORMANCE OF ITS DUTIES UNDER THIS ARTICLE 54.3, INCLUDING START-UP ADMINISTRATIVE EXPENSES. IN THE SIXTH YEAR OF THE OPERATION OF THE PLAN AND IN EACH YEAR THEREAFTER, THE BOARD MAY USE UP TO THREE-QUARTERS OF ONE PERCENT OF THE MONEY IN THE FUND FOR SUCH ADMINISTRATIVE PURPOSES.

(2) Money deposited in the fund is not property of the state, and the fund is not a department, institution, or agency of the state. Amounts on deposit in the fund shall not be commingled with state money and the state has no claim to or against, or interest in, such money.

(3) Except to the extent necessary to administer the plan in accordance with the Internal Revenue Code and state tax laws, all information contained in the accounts of individual enrollees of the plan, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed, and earnings on amounts contributed, shall be kept confidential by the board and by any person or entity working on behalf of the board. This section does not apply to the extent that an individual enrollee of the plan expressly agrees in writing that certain information contained in his or her account may be disclosed.

24-54.3-111. Employer and employee information packets - disclosure forms. (1) Prior to the opening of the plan for enrollment, the board shall design and disseminate to all employers an employer information packet and an employee information packet, which must include background information on the plan and appropriate disclosures for employees.
(2) The board shall determine the contents of both the employee information packet and the employer information packet.

(3) The employee information packet must include a disclosure form that explains the following:

(a) The benefits and risks associated with making contributions to the plan;

(b) The mechanics of how to make contributions to the plan;

(c) How to opt out of the plan;

(d) How to participate in the plan with a level of employee contributions other than five percent of the employee’s wages;

(e) The process to withdraw retirement savings;

(f) How to obtain additional information about the plan;

(g) That employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this article 54.3;

(h) That the plan is not an employer-sponsored retirement plan;

(i) That investments are not guaranteed by the state;

(j) Financial education information concerning the importance of saving and planning for retirement; and

(k) Any other information deemed necessary by the board.

(4) The employee information packet shall also include a form for an employee to note his or her decision to opt out of

-20-  

HB18-1298
PARTICIPATION IN THE PLAN OR ELECT TO PARTICIPATE WITH A LEVEL OF EMPLOYEE CONTRIBUTIONS OTHER THAN FIVE PERCENT OF THE EMPLOYEE’S WAGES.

(5) Participating employers shall supply the employee information packet to employees upon launch of the plan. Participating employers shall supply the employee information packet to new employees at the time of hiring, and new employees may opt out of participation in the plan or elect to participate with a level of employee contributions other than five percent of the employee's wages at that time.

24-54.3-112. Plan implementation - authorization. If, after conducting or causing to be conducted a financial feasibility study in accordance with section 24-54.3-106 (1)(u), the board finds and determines that the plan will be self-sustaining and would promote greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner, the board shall recommend to the general assembly that the plan be implemented. The board shall not implement the plan unless the general assembly, acting by bill, directs the board to implement the plan. If the board is directed to implement the plan, it shall begin implementation on a date specified by the general assembly in the bill.

24-54.3-113. Plan implementation - enrollment. (1) Except as otherwise provided in section 24-54.3-119, the board shall ensure that the plan is fully implemented and that enrollment of employees begins within twenty-four months of the date that the board was authorized to begin implementing the plan as
SPECIFIED IN THE BILL ENACTED BY THE GENERAL ASSEMBLY PURSUANT TO
SECTION 24-54.3-112.

(2) EACH EMPLOYER SHALL ESTABLISH A PAYROLL DEPOSIT
RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EACH EMPLOYEE TO
PARTICIPATE IN THE PLAN AS FOLLOWS:

(a) FOR AN EMPLOYER THAT EMPLOYS ONE HUNDRED OR MORE
EMPLOYEES AT ANY TIME DURING THE CALENDAR YEAR IMMEDIATELY
PRECEDING THE YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER
SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS
ARRANGEMENT WITHIN NINE MONTHS AFTER THE IMPLEMENTATION DATE
OF THE PLAN;

(b) FOR AN EMPLOYER THAT EMPLOYS FIFTY OR MORE EMPLOYEES
AT ANY TIME DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE
SECOND YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL
ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT
WITHIN ONE YEAR AND NINE MONTHS AFTER THE IMPLEMENTATION DATE
OF THE PLAN; AND

(c) FOR AN EMPLOYER THAT EMPLOYS FIVE OR MORE EMPLOYEES
AT ANY TIME DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE
THIRD YEAR IN WHICH THE PLAN IS OPERATING OR IN ANY SUCCEEDING
YEAR IN WHICH THE PLAN IS OPERATING, THE EMPLOYER SHALL ESTABLISH
A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT WITHIN TWO
YEARS AND NINE MONTHS AFTER THE IMPLEMENTATION DATE OF THE
PLAN.

(3) EMPLOYERS SHALL AUTOMATICALLY ENROLL IN THE PLAN
EACH OF THEIR EMPLOYEES WHO HAS NOT OPTED OUT OF PARTICIPATION
IN THE PLAN AND SHALL PROVIDE PAYROLL DEDUCTION RETIREMENT
SAVINGS ARRANGEMENTS FOR SUCH EMPLOYEES AND DEPOSIT, ON BEHALF OF SUCH EMPLOYEES, THE MONEY DEDUCTED INTO THE PLAN. ANY EMPLOYER MAY, BUT IS NOT REQUIRED TO, PROVIDE PAYROLL DEDUCTION RETIREMENT SAVINGS ARRANGEMENTS FOR EACH EMPLOYEE WHO ELECTS TO PARTICIPATE IN THE PLAN.

(4) ENROLLEES MAY SELECT A LEVEL OF CONTRIBUTION INTO THE FUND. THIS LEVEL MAY BE EXPRESSED AS A PERCENTAGE OF WAGES OR AS A DOLLAR AMOUNT UP TO THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE’S TAXABLE YEAR UNDER SECTION 219(b)(1)(A) OF THE INTERNAL REVENUE CODE. ENROLLEES MAY CHANGE THEIR LEVEL OF CONTRIBUTION AT ANY TIME, SUBJECT TO RULES PROMULGATED BY THE BOARD. IF AN ENROLLEE FAILS TO SELECT A LEVEL OF CONTRIBUTION, THEN HE OR SHE SHALL CONTRIBUTE FIVE PERCENT OF HIS OR HER WAGES TO THE PLAN, SO LONG AS SUCH CONTRIBUTIONS SHALL NOT CAUSE THE ENROLLEE’S TOTAL CONTRIBUTIONS TO IRAs FOR THE YEAR TO EXCEED THE DEDUCTIBLE AMOUNT FOR THE ENROLLEE’S TAXABLE YEAR UNDER SECTION 219(b)(1)(A) OF THE INTERNAL REVENUE CODE.

(5) ENROLLEES MAY SELECT AN INVESTMENT OPTION FROM THE PERMITTED INVESTMENT OPTIONS SPECIFIED IN SECTION 24-54.3-109. ENROLLEES MAY CHANGE THEIR INVESTMENT OPTION AT ANY TIME, SUBJECT TO RULES PROMULGATED BY THE BOARD. IN THE EVENT THAT AN ENROLLEE FAILS TO SELECT AN INVESTMENT OPTION, THAT ENROLLEE SHALL BE PLACED IN THE INVESTMENT OPTION SELECTED BY THE BOARD AS THE DEFAULT PURSUANT TO SECTION 24-54.3-109. IF THE BOARD HAS NOT SELECTED A DEFAULT INVESTMENT OPTION PURSUANT TO SECTION 24-54.3-109, THEN AN ENROLLEE WHO FAILS TO SELECT AN INVESTMENT OPTION SHALL BE PLACED IN THE TARGET DATE FUND.
(6) Following initial implementation of the plan pursuant to this section, at least once every year, participating employers shall designate an open enrollment period during which employees who previously opted out of the plan may enroll in the plan. An employee who opts out of the plan who subsequently wants to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or, if permitted by the participating employer, at an earlier time.

(7) Employers shall retain the option at all times to establish any type of employer-sponsored retirement plan, such as a defined benefit plan or 401(k) plan, simplified employee pension plan, or savings incentive match plan for employees plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the plan.

(8) An employee may terminate his or her participation in the plan at any time in a manner prescribed by the board.

24-54.3-114. Payments. (1) Employee contributions deducted by the participating employer through payroll deductions shall be paid by the participating employer to the fund or the IRA custodian using one or more payroll deposit retirement savings arrangements established by the board pursuant to section 24-54.3-106 (1)(h) either:

(a) On or before the last day of the month following the month in which the compensation would have otherwise been
PAYABLE TO THE EMPLOYEE IN CASH; OR

(b) BEFORE SUCH LATER DEADLINE PRESCRIBED BY THE BOARD
FOR MAKING SUCH PAYMENTS BUT NOT LATER THAN THE DUE DATE FOR
THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD
RELATING TO COLLECTION OF INCOME TAX ON WAGES OR FOR THE DEPOSIT
OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE
SYSTEM FOR THE PAYROLL PERIOD TO WHICH SUCH PAYMENTS RELATE.

24-54.3-115. Duty and liability - state. (1) The state has no
duty or liability to any party for the payment of any retirement
savings benefits accrued by any individual under the plan. Any
financial liability for the payment of retirement savings
benefits in excess of funds available under the plan shall be
borne solely by the entities with whom the board contracts to
provide insurance to protect the value of the plan.

(2) No state board, commission, agency, or any officer or
employee thereof is liable for any loss or deficiency resulting
from particular investments selected under this article 54.3.

24-54.3-116. Duty and liability - participating employers.
(1) Participating employers have no liability for an employee’s
decision to participate in, or opt out of, the plan or for the
investment decisions of the board or of any enrollee.

(2) A participating employer is not a fiduciary, or
considered to be a fiduciary, over the plan. A participating
employer does not bear responsibility for the administration,
investment, or investment performance of the plan. A
participating employer is not liable with regard to investment
returns, plan design, and benefits paid to plan enrollees.
24-54.3-117. Audit and reports. (1) The board shall prepare or cause to be prepared the following on an annual basis:

(a) An annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the plan during the previous calendar year;

(b) A report that includes, but is not limited to, a summary of the benefits provided by the plan, the number of enrollees in the plan, the percentage and amounts of investment options and rates of return for the plan, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the plan and the fund; and

(c) An audit to be made by an independent certified public accountant chosen by the board that shall include, but is not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons for the administration of the plan during the previous calendar year.

(2) One year after the inception of the plan, and on or before such date each year thereafter, the board shall submit the reports and the audit required in this section to the governor, the state controller, the state treasurer, and the general assembly.

(3) In addition to any other statements or reports required by law, the board shall provide annual reports to participating employers, reporting the names of each enrollee employed by the participating employer and the contribution amounts made by the participating employer on behalf of each
EMPLOYEE DURING THE REPORTING PERIOD, AS WELL AS ANNUAL REPORTS
TO ENROLLEES, REPORTING CONTRIBUTIONS AND INVESTMENT INCOME
ALLOCATED TO, WITHDRAWALS FROM, AND BALANCES IN THEIR PLAN
ACCOUNTS FOR THE REPORTING PERIOD. THE REPORTS MAY INCLUDE ANY
OTHER INFORMATION REGARDING THE PLAN AS DEEMED NECESSARY BY
THE BOARD.

24-54.3-118. Penalties. (1) The board shall develop a
process and contract with third parties, which may include
state agencies, to ensure that businesses are in compliance with
the requirements of this Article 54.3.

(2) The board shall determine a penalty structure for
employers who fail, without reasonable cause, to enroll
employees in the plan within the time specified in section
24-54.3-113. The structure should include only a warning for the
initial offense and gradually increase the amount of the
penalties over time based on the number of and nature of the
violations; except that the penalty imposed on an employer
shall not exceed two hundred fifty dollars for each employee
for each calendar year or portion of a calendar year during
which the employee was neither enrolled in the plan nor had
opted out of participating in the plan.

(3) The board shall develop a process for employees to
report employer noncompliance with the provisions of this
article 54.3. An employer shall not take disciplinary action or
otherwise retaliate against an employee who reports, in
accordance with the process established by the board, his or her
employer’s noncompliance with this article 54.3.
24-54.3-119. Delayed implementation. If the board does not obtain adequate money to implement the plan within the time specified in section 24-54.3-113, the board may delay the implementation of the plan.

24-54.3-120. Federal considerations. (1) The board shall not implement the plan if the IRA arrangements offered under the plan fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the internal revenue code or if it is determined that the plan is an employee benefit plan and state or employer liability is established under the federal "Employee Retirement Income Security Act", 29 U.S.C. sec. 1001 et seq.

(2) The board shall ensure that the plan complies with any applicable labor regulations promulgated by the federal department of labor.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.