HOUSE BILL No. 2321

By Committee on Financial Institutions and Pensions

2-7

AN ACT concerning retirement and pensions; enacting the Kansas work and save program act; providing for administrative powers, duties and responsibilities of the state treasurer regarding such program; granting rules and regulations authority; allowing certain individuals to contribute to individual retirement accounts; prescribing requirements, limitations and responsibilities for eligible employees and employers relating to such individual retirement accounts; establishing the Kansas work and save administrative fund in the state treasury.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Sections 1 through 12, and amendments thereto, shall be known and may be cited as the Kansas work and save program act.

(b) For purposes of the Kansas work and save program act:

(1) "Act" means the Kansas work and save program act;

(2) (A) "eligible employee" means an individual who is employed by an eligible employer, who has been paid wages, commission, compensation, salary or other remuneration as defined by section 219(f)(1) of the federal internal revenue code, from a participating employer in this state and who is at least 18 years of age.

(B) "Eligible employee" does not include any:

(i) Employee covered under the federal railway labor act, 45 U.S.C. § 151;

(ii) employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension trust fund; or

(iii) individual who is an employee of the federal government, the state of Kansas, any other state, any county or local government or units or instrumentalities thereof;

(3) (A) "eligible employer" means a person or entity engaged in a business, industry, profession, trade or other enterprise in this state, whether for profit or not for profit, excluding the federal government, the state of Kansas, any county or local government or units or instrumentalities thereof.

(B) "Eligible employer" does not include an employer that maintains a specified tax-favored retirement plan for such employer's employees within the current or two immediately preceding calendar years. If an employer does not maintain a specified tax-favored retirement plan for a portion of a calendar year ending on or after July 1, 2023, and adopts such a plan effective for the remainder of that calendar year, the employer shall no longer be considered an "eligible employer" for such remainder of the year;

(4) "ERISA" means the employee retirement income security act of 1974, 29 U.S.C. § 1001 et seq.;

(5) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity under section 408(a), 408(b) or 408A of the federal internal revenue code;

(6) "participant" means an individual who is contributing to an IRA under the program or has an IRA account balance under the program;

(7) "participating employer" means an eligible employer that provides eligible employees a payroll deduction IRA as provided by this act;

(8) "payroll deduction IRA arrangement" or "payroll deduction IRA" means an arrangement by which an employer allows employees to contribute to an IRA by means of a payroll deduction;

(9) "program" means the Kansas work and save program established by this act;

(10) "Roth IRA" means a Roth individual retirement account or individual retirement annuity under section 408A of the federal internal revenue code;

(11) "specified tax-favored retirement plan" means a retirement plan that is tax-qualified under section 401(a), 401(k), 403(a), 403(b), 408(k) or 408(p) of the federal internal revenue code;

(12) "total fees and expenses" means all fees, costs and expenses, including, but not limited to, administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs and other miscellaneous costs;

(13) "traditional IRA" means a traditional individual retirement account or traditional individual retirement annuity under section 408(a) or (b) of the federal internal revenue code;

(14) "treasurer" means the state treasurer; and

(15) "trust" means the trust in which the assets of the program are held. Where applicable, except as may be otherwise specified, references throughout this act to the program generally are intended to refer also to the trust, including the assets, facilities, costs and expenses, receipts, expenditures, activities, operations, administration or management.

Sec. 2. (a) The treasurer shall be the trustee of the trust and shall have all powers necessary to carry out and implement the purpose, objectives and provisions of this act pertaining to the trust, including the power, authority and duty to:

(1) Establish, implement and maintain the program;

(2) cause the program, trust and arrangements and accounts established under the program to be designed, established and operated:

(A) In accordance with best practices for retirement saving vehicles;

(B) to encourage participation, saving, sound investment practices and appropriate selection of investment options, including any default investments;

(C) to maximize simplicity and ease of administration for eligible employers;

(D) to minimize costs, including by collective investment and other measures to achieve economies of scale and other efficiencies in program design and administration;

(E) to promote portability of benefits; and

(F) to ensure that the program is designed and operated in a manner that shall not cause the program to be subject to or preempted by ERISA;

(3) arrange for collective, common and pooled investment of assets of the program and trust, including investments in conjunction with other funds with which program assets are permitted by law to be collectively invested, to achieve economies of scale and other efficiencies designed to minimize costs for the program and program participants;

(4) develop and disseminate educational information designed to educate participants and citizens about the benefits of planning and saving for retirement and information to help individuals decide the level of participation and savings strategies that may be appropriate for such individuals, including information in furtherance of financial capability and financial literacy;

(5) if necessary, determine the eligibility of an employer, employee or other individual to participate in the program;

(6) adopt rules and regulations the treasurer deems necessary or advisable for the implementation of this act and the administration and operation of the program consistent with the federal internal revenue code and rules and regulations adopted thereunder, including to ensure that the program and arrangements established under the program satisfy all criteria for favorable federal tax treatment and complies, to the extent necessary, with any other applicable federal or state law;

(7) arrange for and facilitate compliance by the program or arrangements established under the program with all applicable requirements for the program under the federal internal revenue code, including requirements for favorable tax treatment of the IRAs, and under any other applicable federal or state law and accounting requirements;

(8) employ or retain a program administrator, executive director, staff, trustee, recordkeeper, investment managers, investment advisors, other administrative, professional, expert advisors and service providers, and determine their duties and compensation. The treasurer may authorize

the executive director and other officials to oversee requests for proposals or other public competitions and enter into contracts. The treasurer may authorize the executive director to enter into contracts, as described in paragraph (14), on behalf of the treasurer or conduct any business necessary for the efficient operation of the program;

(9) establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation;

(10) develop and implement an investment policy that defines the program's investment objectives, consistent with the objectives of the program, and that provides for policies and procedures consistent with such investment objectives. The treasurer shall designate appropriate default investments that include a mix of asset classes, such as target date and balanced funds. The treasurer shall seek to minimize participant fees and expenses of investment and administration. The treasurer shall design and implement investment options available to holders of accounts established as part of the program and other program features to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA-based environment consistent with the investment objectives under the policy. The investment options may include a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options shall be determined taking into account the nature and objectives of the program, the desirability, based on behavioral research findings, of limiting investment choices under the program to a reasonable number and the extensive investment choices available to participants in the event that such participant rolls over to an IRA outside the program. In accordance with paragraph (8), the treasurer, in the treasurer's discretion, may employ or retain appropriate entities or personnel to assist or advise the state treasurer or to whom to delegate the carrying out of such responsibilities and exercise of such powers;

(11) discharge the treasurer's duties as a fiduciary with respect to the program solely in the interest of the participants and:

(A) For the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the program; and

(B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims;

(12) cause expenses incurred to initiate, implement, maintain and administer the program be paid from contributions to, or investment returns or assets of, the program or other money collected by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law;

(13) collect application, account or administrative fees and to accept any grants, gifts, legislative appropriations, loans and other moneys from the state, any unit of federal, state or local government or any other person, firm or entity to defray the costs of administering and operating the program;

(14) make and enter into competitively procured contracts, agreements, memoranda of understanding, arrangements, partnerships or other arrangements to collaborate and cooperate with, and to retain, employ and contract with or for any of the following to the extent necessary or desirable for the effective and efficient design, implementation and administration of the program consistent with the purposes set forth in this act and to maximize outreach to eligible employers and eligible employees:

(A) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisers, investment administrators, investment management firms, other investment firms, third-party administrators, other professionals and service providers and state public retirement systems;

(B) research, technical, financial, administrative and other services; and

(C) services of other state agencies, including data services, to assist the treasurer in the exercise of the treasurer's powers and duties;

(15) make and enter into contracts, agreements, memoranda of understanding, arrangements, partnerships or other arrangements to collaborate, cooperate, coordinate, contract or combine resources, investments or administrative functions with other governmental entities, including states, or agencies or instrumentalities thereof, that maintain or are establishing retirement savings programs compatible with the program, including collective, common or pooled investments with other funds of other states' programs with which the assets of the program and trust are permitted by law to be collectively invested, to the extent necessary or desirable for the effective and efficient design, administration and implementation of the program consistent with the purposes set forth in this act, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and program participants;

(16) develop and implement an outreach plan to gain input and disseminate information regarding the program and retirement savings in general, including timely information to eligible employers regarding the program and how such program applies to such employers, with special emphasis on such employer's ability at any time to sponsor a specified tax-favored retirement plan;

(17) cause moneys to be held and invested and reinvested under the

program;

(18) ensure that all contributions to IRAs under the program may be used only to:

(A) Pay benefits to participants under the program;

(B) pay the cost of administering the program; and

(C) make investments for the benefit of the program;

(19) ensure that no assets of the program or trust are transferred to the state general fund or to any other fund of the state or are otherwise encumbered or used for any purpose other than those specified in this subsection;

(20) make provision for the payment of costs of administration and operation of the program and trust;

(21) evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets or activities of the program, including pooled private insurance;

(22) indemnify the treasurer from personal loss or liability resulting from action or inaction as trustee of the trust, including procurement of insurance as needed for this purpose;

(23) collaborate with, and evaluate the role of, financial advisors or other financial professionals, including in assisting and providing guidance for eligible employees; and

(24) carry out the treasurer's powers and duties under the program pursuant to this act and exercise any and all other powers as are appropriate to effectuate the purposes, objectives and provisions of this act pertaining to the program.

(b) The treasurer, program administrator and any employee or contractor thereof shall not:

(1) Directly or indirectly have any interest in the making of any investment under the program or in gains or profits accruing from any such investment;

(2) borrow any program-related funds or deposits, or use any such funds or deposits in any manner, for the treasurer or as an agent or partner of others; and

(3) become an endorser, surety or obligor on investments made under the program.

Sec. 3. The program established by the treasurer under this act shall:

(a) Allow eligible individuals in the state to voluntarily choose whether or not to contribute to an IRA under the program, including allowing eligible employees in the state the choice to contribute to an IRA through payroll deduction under the program;

(b) allow each eligible employer to offer such employer's employees the choice whether to contribute to a payroll deduction IRA by permitting automatic enrollment where employees may opt out of participation;

(c) provide that the IRA to which contributions are made will be a Roth IRA, except that the treasurer shall have the authority to add an option for all participants to affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA;

(d) provide that the treasurer or the treasurer's designee shall design a standard package that provides for a particular contribution rate and investment to be presented to eligible employees as the most prominent combination of options, provided that eligible employees shall be free to elect any other options, including nonparticipation or a different contribution rate, that may be as low as 1% of salary or wages, and a different investment offered under the program, subject to the IRA eligibility conditions and contribution dollar limits applicable under the federal internal revenue code;

(e) provide on a uniform basis for annual increases of each participant's contribution rate, by a rate of not more than 1% of salary or wages per year until a participant reaches a maximum contribution of 8% of salary or wages. As determined by the treasurer, any such increases shall apply to participants as part of the standard package. Such increases shall be subject to the IRA contribution limits applicable under the federal internal revenue code;

(f) provide for direct deposit of contributions into investments under the program;

(g) be professionally managed;

(h) permit no employer contributions by eligible employers;

(i) provide reports on the status of each participant's account to each participant at least annually;

(j) when possible and practicable, use existing or new employer, other private sector, public infrastructure, and common, collective or pooled investment arrangements to facilitate and enhance the effectiveness and efficiency of program outreach, enrollment, contributions, recordkeeping, investment, distributions, compliance and other aspects of program design, administration and implementation consistent with the purposes set forth in this act, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and program participants;

(k) provide that each account holder owns the contributions and earnings on amounts contributed to such account under the program and that the state and employers have no proprietary interest in such contributions or earnings;

(l) be designed and implemented in a manner consistent with federal law, including favorable federal tax treatment, to the extent that federal law applies and is consistent with the program not being preempted by ERISA;

(m) make provision for the participation in the program of individuals who are not employees;

(n) seek to keep total fees, costs and expenses of the program as low as practicable, except that any administrative fee imposed on an eligible employee for participating in the program shall not exceed a reasonable amount relative to fees charged by similar established programs in other states. Such fees may be an asset-based or investment return fee, flat fee or hybrid of the permissible fee structures identified in this paragraph;

(o) allow the treasurer to adopt rules and regulations and procedures governing the distribution of funds from the program, including such distributions as may be permitted or required by the program and any applicable provisions of state or federal tax laws, with the objectives of maximizing financial security in retirement, helping to protect spousal rights and assisting participants with the challenges of decumulation of savings. The treasurer shall have the authority to provide for one or more reasonably priced distribution options to provide a source of fixed regular retirement income, including income for life or for the participant's life expectancy or for joint lives and life expectancies, as applicable;

(p) allow the treasurer to adopt rules and regulations and procedures promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept such rollovers or transfers, provided any rollover is initiated by participants and not solicited by agents or brokers;

(q) (1) provide that, if a participating employer fails without reasonable cause to enroll an eligible employee as required under this section:

(A) The participating employer shall be subject to a penalty equal to $250 for each eligible employee for each calendar year or portion thereof during which the eligible employee neither was enrolled in the program nor had elected out of participation in the program and the eligible employee, or any appropriate official of the state, may bring a civil action to require the participating employer to enroll the eligible employee and shall recover such costs and reasonable attorney fees as may be allowed by the court; and

(B) for each calendar year beginning after the date on which a penalty has been assessed with respect to an eligible employee, assess a $500 penalty for any portion of such calendar year during which the eligible employee continues to be unenrolled without electing out of participation in the program.

(2) No penalty shall be imposed under paragraph (1) on any failure for which it is established that the participating employer subject to liability for the penalty did not know that the failure existed and exercised reasonable diligence to meet the requirements of this subsection.

(3) No penalty shall be imposed under paragraph (1) on any failure if the participating employer:

(A) Exercised reasonable diligence to meet such requirements; and

(B) complies with such requirements with respect to each eligible employee by the end of the 90-day period beginning on the first date the participating employer knew, or exercising reasonable diligence should have known, that the failure existed.

(4) In the case of a failure that is due to reasonable cause and not to willful neglect, all or part of the penalty may be waived to the extent that the payment of the penalty would be excessive or otherwise inequitable relative to the failure involved; and

(r) provide that, if a participating employer fails to transmit a payroll deduction contribution to the program on the earliest date the amount withheld from the participating employee's compensation can reasonably be segregated from the participating employer's assets, but not later than the 15th day of the month following the month in which the participating employee's contribution amounts are withheld from the participating employee's paycheck, the failure to remit such contributions on a timely basis shall be subject to the same sanctions as employer misappropriation of employee wage withholdings and to the penalties specified in subsection (q).

Sec. 4. The treasurer shall adopt rules and regulations on or before July 1, 2025, to implement the program that:

(a) Establish the processes for enrollment and contributions to payroll deduction IRAs under the program, including elections by eligible employees, withholding by eligible employers of employee payroll deduction contributions from wages and remittance for deposit to IRAs, and voluntary enrollment and contributions by others, including self-employed individuals and independent contractors, through payroll deduction or otherwise;

(b) establish the processes for withdrawals, rollovers and direct transfers from IRAs under the program to facilitate portability and maximization of benefits;

(c) conduct outreach to individuals, employers, other stakeholders and the public regarding the program; and

(d) specify the contents, frequency, timing and means of required disclosures from the program to eligible employees, participants, other individuals eligible to participate in the program, eligible employers and other interested parties. Such disclosures shall include, but not be limited to:

(1) The benefits associated with tax-favored retirement saving;

(2) the potential advantages and disadvantages associated with contributing to Roth IRAs and, if applicable, traditional IRAs under the

program;

(3) the eligibility rules for Roth IRAs and, if applicable, traditional IRAs;

(4) that the individual and not the employer, the state, the treasurer, other state officials or the program will be solely responsible for determining whether and in what amount the individual is eligible to contribute on a tax-favored basis to an IRA;

(5) the penalty for excess contributions to IRAs and the method of correcting excess contributions;

(6) instructions for enrolling, declining to contribute and making elections regarding contribution rates, type of IRA and investments;

(7) instructions for implementing and for changing the elections;

(8) the potential availability of a saver's tax credit, including the eligibility conditions for such credit and instructions on how to claim such credit;

(9) that employees seeking tax, investment or other financial advice should contact appropriate professional advisors and that eligible employers are not in a position to provide such advice and are not liable for decisions individuals make in relation to the program;

(10) that the payroll deduction IRAs are intended not to be employer-sponsored retirement plans and that the program is not an employer-sponsored retirement plan;

(11) the potential implications of account balances under the program for the application of asset limits under certain public assistance programs;

(12) that the account owner is solely responsible for investment performance, including market gains and losses, and that IRA accounts and rates of return are not guaranteed by any employer, the state, the treasurer, other state officials or the program;

(13) additional information about retirement and saving and other information designed to promote financial literacy and capability that may take the form of links to or explanations of how to obtain such information; and

(14) how to obtain additional information about the program.

Sec. 5. (a) An eligible employer or other employer shall not be liable for or bear responsibility for:

(1) An employee's decision to participate or not to participate in the program or a participant's specific elections under the program;

(2) participants' or the treasurer's investment decisions;

(3) the administration, investment, investment returns or investment performance of the program, including any interest rate or other rate of return on any contribution or account balance;

(4) the program design or the benefits paid to participants;

(5) individuals' awareness of or compliance with the conditions and

other provisions of state and federal tax laws that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount and in what time frame and manner; and

(6) any loss, failure to realize any gain or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits incurred by any person as a result of participating in the program.

(b) No eligible employer or other employer shall be considered a fiduciary in relation to the program, trust or any other arrangement under the program.

Sec. 6. (a) The state, the treasurer, other state officials, other state boards, commissions, agencies or any member, officer or employee thereof and the program shall:

(1) Have no responsibility for compliance by individuals with the conditions and other provisions of the federal internal revenue code that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount and in what time frame and manner;

(2) have no duty, responsibility or liability to any party for the payment of any benefits under the program, regardless of whether sufficient funds are available under the program to pay such benefits;

(3) not guarantee any interest rate or other rate of return or investment performance of any contribution or account balance; and

(4) not be liable or responsible for any loss, deficiency, failure to realize any gain or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits incurred by any person as a result of participating in the program.

(b) The debts, contracts and obligations of the program shall not be considered the debts, contracts and obligations of the state, and neither the faith and credit nor the taxing power of the state is pledged directly or indirectly to the payment of the debts, contracts and obligations of the program.

Sec. 7. (a) Individual account information relating to accounts under the program and relating to individual participants, including, but not limited to, names, addresses, telephone numbers, email addresses, personally identifiable information, investments, contributions and earnings is confidential and shall be maintained as confidential and shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto:

(1) Except to the extent necessary to administer the program in a manner consistent with this act, the tax laws of this state and the federal internal revenue code; or

(2) unless the individual who provides the information or is the

subject of the information expressly agrees in writing to the disclosure of the information.

(b) This section shall expire on July 1, 2028, unless the legislature reviews and reenacts this section pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

Sec. 8. The treasurer may enter into an intergovernmental agreement or memorandum of understanding with any state agency to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program or other services or assistance, subject to such obligations of confidentiality as may be agreed or required by law. The state and any state agency that enter into such agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the treasurer. The memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

Sec. 9. (a) There is hereby established in the state treasury the Kansas work and save administrative fund that shall be administered by the treasurer.

(b) The Kansas work and save administrative fund shall consist of:

(1) Moneys appropriated to the fund by the legislature;

(2) moneys transferred to the fund from the federal government, other state agencies or local governments;

(3) moneys from the payment of application, account, administrative or other fees and the payment of other moneys owed to the program;

(4) any gifts, donations or grants made to the treasurer for deposit in the fund;

(5) moneys collected for the fund from contributions to, or investment returns or assets of, the program or other moneys collected by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law; and

(6) all interest derived from the deposit and investment of moneys in such fund.

(c) The treasurer shall accept any grants, gifts, appropriations or other moneys from state, federal or local governments, or any other person, firm, partnership, corporation or other entity solely for deposit into the Kansas work and save administrative fund, whether for investment or administrative expenses.

(d) At the end of any fiscal year, all unexpended and unencumbered moneys in the Kansas work and save administrative fund shall remain therein and not be credited or transferred to the state general fund or to any other fund.

(e) The treasurer shall credit all moneys received in connection with the program to the Kansas work and save administrative fund.

(f) To enable or facilitate the start-up and continuing operation, maintenance, administration and management of the program until the program accumulates sufficient balances and can generate sufficient funding through fees assessed on program accounts for the program to become financially self-sustaining, the treasurer may:

(1) Borrow from the state, any unit of federal, state or local government, or any other person, firm, partnership, corporation or other entity working capital funds and other funds as may be necessary for such purpose, provided that such funds are borrowed in the name of the program and the treasurer only and that any such borrowings shall be payable solely from the revenues of the program; and

(2) enter into long-term procurement contracts with one or more financial providers that provide a fee structure that would assist the program in avoiding or minimizing the need to borrow from or to rely upon the state.

(g) Subject to appropriation acts, the treasurer may pay administrative costs associated with the creation, maintenance, operation and management of the program and trust until sufficient assets are available in the Kansas work and save administrative fund for such purpose. Thereafter, all administrative costs of the Kansas work and save administrative fund, including any repayment of start-up funds provided by the state, shall be repaid solely from moneys deposited therein. Private funds or federal funding received in order to implement the program until the Kansas work and save administrative fund is self-sustaining shall not be repaid unless such funds were offered contingent upon the promise of repayment.

(h) The treasurer shall use the moneys in the Kansas work and save administrative fund only to pay the administrative costs and expenses of the program.

Sec. 10. (a) The treasurer shall provide an accurate account of all of the program's activities, operations, receipts and expenditures to be maintained. Each year, a full audit of the books and accounts of the treasurer pertaining to such activities, operations, receipts, expenditures, personnel, services or facilities shall be conducted by a certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors and any other persons who are not state employees for the administration of the program. For purposes of the audit, the auditors shall have access to the records of the program and the records of the treasurer and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

(b) On or before August 1 of each year, the treasurer shall submit to the governor and the legislature an audited financial report, prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts and expenditures of the program and the treasurer during the preceding calendar year. The report shall also include projected activities of the program for the current calendar year.

(c) The treasurer shall prepare an annual report on the operation of the program and make such report available to the public and to state officials.

Sec. 11. (a) The Treasurer shall implement the program so that individuals can begin contributing under the program not later than July 1, 2025.

(b) The treasurer shall not implement the program if the treasurer determines that the program is preempted by ERISA. The treasurer shall implement the program in a severable fashion to the extent practicable if and to the extent that the treasurer determines that:

(1) A portion or aspect of the program is preempted by ERISA, the treasurer shall not implement such portion or aspect of the program but shall proceed to implement the remainder of the program to the extent practicable; or

(2) some, but not all, of the payroll deduction IRA arrangements or other arrangements under the program are or would be employee benefit plans under ERISA, the treasurer shall proceed to implement the program with respect to the other arrangements under the program to the extent practicable.

Sec. 12. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.