

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 633

Short Title: Small Business Retirement Program. (Public)

Sponsors: Representatives Hardister, Ross, Goodman, and R. Moore (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Pensions and Retirement, if favorable, Banking

April 10, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE VOLUNTARY SMALL BUSINESS RETIREMENT  
3 ACCOUNTS PROGRAM.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 10 of Chapter 143B of the General Statutes is amended by  
6 adding a new Part to read:

7 "Part 2L. North Carolina Voluntary Small Business Retirement Accounts Program.

8 "§ 143B-437.105. Title.

9 This Part shall be known as the "North Carolina Voluntary Small Business Retirement  
10 Accounts Program."

11 "§ 143B-437.106. Definitions.

12 As used in this Article, the following shall mean:

13 (1) Board. – The North Carolina Voluntary Small Business Retirement  
14 Accounts Board.

15 (2) Fiduciary or commercial information. – Information that is either of the  
16 following:

17 a. Related to any subject, if the disclosure of the information would  
18 conflict with a fiduciary obligation or is prohibited by an insider  
19 trading provision.

20 b. Of a commercial nature, including information related to account  
21 holders.

22 (3) Investment product. – A fixed or variable rate annuity, savings account,  
23 certificate of deposit, money market account, bond, mutual fund, or any  
24 other form of investment not prohibited by the Internal Revenue Code and  
25 authorized by the Program.

26 (4) IRA. – An individual retirement account or individual retirement annuity  
27 under section 408(a) or 408(b) of the Internal Revenue Code.

28 (5) Nonparticipating employer. – A small nongovernmental employer in the  
29 State that does not elect to participate in the Program.

30 (6) Participating employee. – An individual who is all of the following:

31 a. Is employed in this State by a small nongovernmental employer.

32 b. Has chosen to have contributions made to an account in the Program.

33 c. Has at least one dollar (\$1.00) in an account in the Program.

34 (7) Participating employer. – A small nongovernmental employer in the State  
35 that elects to participate in the Program.



1           (8) Program. – The North Carolina Voluntary Small Business Employee  
2           Retirement Accounts Program.

3           (9) Small nongovernmental employer. – A business entity registered in this  
4           State that employs no more than 50 employees in the State for each working  
5           day in each of 20 calendar weeks or more in the current or preceding  
6           calendar year.

7 **"§ 143B-437.107. Liberal construction.**

8           (a) This Article shall be liberally construed so as to provide a tax-qualified retirement  
9           Program for participating employers and participating employees. The Program shall comply  
10           with the Internal Revenue Code and other applicable federal and State law.

11           (b) The Board shall not recommend or implement standards or requirements for the  
12           Program if doing so would cause an IRA arrangement or other investment product offered  
13           under the Program to be an employee benefit plan that would result in state or employer  
14           liability under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et  
15           seq.

16 **"§ 143B-437.108. Program created.**

17           (a) There is established the North Carolina Voluntary Small Business Retirement  
18           Accounts Program as part of the Department of Commerce. The Board shall create the Program  
19           to provide a cost-effective group retirement option for small nongovernmental employers and  
20           employees of small nongovernmental employers. The Program does not create or constitute a  
21           debt, obligation, or liability of the State.

22           (b) Any contract entered into by the Board in connection with the Program shall require  
23           the person contracting with the Board to indemnify the State for any damages arising out of the  
24           negligence of the vendor.

25           (c) The corpus, assets, and earnings under the Program are not public funds of the State,  
26           shall not be considered part of the State treasury, and are solely available to carry out the  
27           purposes of this Article.

28 **"§ 143B-437.109. Board.**

29           (a) There is created the North Carolina Voluntary Employee Retirement Accounts  
30           Board. The Board shall be administratively housed in the Department of Commerce and the  
31           Secretary shall provide staff and meeting space. The Board shall consist of six members as  
32           follows:

33           (1) Two appointed by the Governor, at least one of whom shall have experience  
34           in the financial industry related to retirement.

35           (2) Two appointed by the Senate upon the recommendation of the President Pro  
36           Tempore of the Senate, at least one of whom shall have experience in the  
37           financial industry related to retirement.

38           (3) Two appointed by the House of Representatives upon the recommendation  
39           of the Speaker of the House of Representatives, at least one of whom shall  
40           have experience in the financial industry related to retirement.

41           (b) The Governor shall designate an interim chair who will be responsible for calling  
42           the first meeting of the Board. The first order of business for the Board will be to elect a chair  
43           and the Board shall meet thereafter upon the call of the elected chair. The Board shall annually  
44           elect a chair from among its membership. A majority of the board shall constitute a quorum.  
45           The members of the Board shall not receive compensation but shall receive per diem pursuant  
46           to G.S. 138-5 or G.S. 138-6 as appropriate.

47           (c) The terms of the members of the Board shall be four years commencing on July 1 of  
48           each year an appointment is made. In order to ensure staggered terms, one of each of the  
49           appointees initially appointed pursuant to subdivisions (1), (2), and (3) of subsection (a) of this  
50           section shall serve for two years and the appointees' terms shall expire on June 30, 2010. A  
51           member may not serve more than two full consecutive terms. A member of the Board may be

1 removed by the Governor for nonfeasance, misfeasance, or maleficence pursuant to  
2 G.S. 143B-16. The appointing authority shall fill any vacancy that occurs in the membership.

3 **"§ 143B-437.110. Administration.**

4 (a) The Board shall develop standards and requirements for operation of the Program  
5 consistent with this Article and applicable federal law, including:

- 6 (1) Providing for a payroll deduction IRA.
- 7 (2) Procedures for payroll deductions and remittances.
- 8 (3) Procedures for a participating employee to make deposits into an account if  
9 the participating employee is employed by a nonparticipating employer.
- 10 (4) Procedures for portability or discontinuing participation in the Program.
- 11 (5) A procedure for a participating employee to increase or decrease the  
12 participating employee's contribution to an account or cease participation in  
13 the Program including providing for automatic increases in amounts  
14 deducted for an IRA.

15 (b) The Board shall, in accordance Article 3 of Chapter 143 of the General Statutes,  
16 contract with one or more providers to provide for the following:

- 17 (1) Options for accounts and investment products under the program.
- 18 (2) A Web-based portal that allows the following:
  - 19 a. A small nongovernmental employer to become a participating  
20 employer.
  - 21 b. An employee of a small nongovernmental employer to become a  
22 participating employee and to select an investment product.
- 23 (3) Record-keeping, reporting, and other administrative services.
- 24 (4) Management of money being deposited in an investment product.
- 25 (5) Educating the general public about the Program.

26 (c) The Board may receive grants, gifts, or other money to cover the costs of  
27 administering the Program.

28 (d) The Board shall develop incentives to encourage employer and employee  
29 participation in the Program.

30 (e) The Department of Commerce shall include on its Web site a listing of the  
31 participating employers. A participating employer may request to not be included in the list.

32 **"§ 143B-437.111. Reporting.**

33 (a) Beginning June 30, 2018, and annually thereafter, the Board shall report to the  
34 Governor and to the Joint Legislative Commission on Governmental Operations all of the  
35 following:

- 36 (1) An evaluation of the Program.
- 37 (2) A summary of the benefits provided by the Program, including the number  
38 of participating employers and participating employees in the Program.
- 39 (3) Any other relevant information to make a full, fair, and effective disclosure  
40 of the operation of the Program.

41 (b) Nothing in this section shall be construed to require the public disclosure of  
42 information that that is fiduciary or commercial information.

43 **"§ 134B-437.112. Confidentiality of information.**

44 (a) Information held by the Board or any entity contracting with the Board that is  
45 specific to a participating employee is confidential and is not a public record as defined in  
46 G.S. 132-1.

47 (b) As used in this section, information that is specific to a participating employee  
48 includes:

- 49 (1) Personally identifying information.
- 50 (2) Account balances.
- 51 (3) Details of transactions.

1 **"§ 143B-437.113. Education of the public.**

2 The Board shall contract with at least one provider pursuant to G.S. 143B-437.110(b) to  
3 develop educational information to inform the public about the Program.

4 **"§ 143B-437.114. Participation.**

5 (a) A small nongovernmental employer in this State may elect to participate in the  
6 Program if, as of January 1, 2018, the small nongovernmental employer does not offer an active  
7 retirement program for its employees before electing to participate in the Program.

8 (b) A participating employer shall comply with all Program requirements, including  
9 making payroll deductions and remittances as required by the Program. A participating  
10 employer may elect to discontinue participation in accordance with Program requirements.

11 (c) No small nongovernmental employer in this State is required to participate in the  
12 Program.

13 (d) If an employee of a nonparticipating employer in this State elects to participate in  
14 the Program, the participating employee shall make deposits in the participating employee's  
15 account in accordance with the procedures established by the Program, except that a  
16 nonparticipating employer may not be required to make payroll deductions and remittances.

17 **"§ 143B-437.115. Information given to employees.**

18 (a) If a small nongovernmental employer participates in the Program, it shall annually  
19 notify its employees of all of the following:

20 (1) Whether the small nongovernmental employer is a participating employer.

21 (2) The steps an employee may take to become a participating employee.

22 (3) Any other information required by the Board.

23 (b) The Board shall establish all of the following:

24 (1) The information required to be provided in the notification required by  
25 subsection (a) of this section.

26 (2) At least one method a small nongovernmental employer may use to comply  
27 with the requirements of G.S. 143B-437.114."

28 **SECTION 2.** This act becomes effective October 1, 2017.