

Chapter 148: DEFERRED COMPENSATION PROGRAM

148.01 Deferred compensation program definitions.

(A) As used in this chapter:

(1) "Eligible employee" means any public employee, as defined in division (A) of section [145.01](#) of the Revised Code; any person eligible to become a member of the public employees retirement system under section [145.20](#) of the Revised Code; any employee, as defined in division (C) of section [742.01](#), division (B) of section [3309.01](#), or division (A) of section [5505.01](#) of the Revised Code; any electing employee, as defined in section [3305.01](#) of the Revised Code; and any member of the state teachers retirement system.

(2) "Participant account" means any of the following accounts:

(a) An account that is maintained by the Ohio public employees deferred compensation board and that evidences moneys that have been deferred by a continuing member or participating employee and transmitted to the board by the retirement system of the continuing member or participating employee;

(b) An account that is maintained by the governing board, administrator, depository, or trustee of a deferred compensation program of a municipal corporation and that evidences moneys that have been deferred by an officer or employee of that municipal corporation and transmitted to the governing board, administrator, depository, or trustee by the retirement system of the officer or employee or in another manner;

(c) An account that is maintained by a governing board, as defined in section [148.06](#) of the Revised Code, and that evidences moneys that have been deferred by an officer or employee of a government unit, as defined in that section, and transmitted to the governing board by the retirement system of the officer or employee or in another manner.

(3) "Participating employee" means any eligible employee who is having compensation deferred pursuant to a contract that is executed before the compensation is earned and that is with the eligible employee's employer and the Ohio public employees deferred compensation board.

(4) "Continuing member" means any former participating employee who is not currently having compensation deferred, or the former participating employee's beneficiary, to whom payment has not been made of all deferred compensation distributions.

(B) Notwithstanding section [145.01](#) of the Revised Code, the definitions of that section are applicable to this chapter only to any extent necessary to fully understand the provisions of this chapter. Reference may also be had to Chapters 742., 3305., 3307., 3309., and 5505. of the Revised Code for that purpose.

Effective Date: 04-01-2001.

148.02 Public employees deferred compensation board.

The Ohio public employees deferred compensation board shall be comprised of a member of the house of representatives and a member of the senate, who shall not be of the same political party, each to be appointed to serve at the pleasure of the member's respective leadership, and the members of the public employees retirement board as constituted by section [145.04](#) of the Revised Code, who are hereby created as a separate legal entity for the purpose of administering a deferred compensation system for all eligible employees. The public employees retirement board may utilize its employees and property in the administration of the system on behalf of the Ohio public employees deferred compensation board, in consideration of a reasonable service charge to be applied in a nondiscriminatory manner to all amounts of compensation deferred under this system.

The Ohio public employees deferred compensation board may exercise the same powers granted by section [145.09](#) of the Revised Code necessary to its functions. The attorney general shall be the legal adviser of the board. The Ohio public employees deferred compensation receiving account shall be in the custody of the treasurer of state, but shall not be part of the state treasury.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-21-2000 .

148.04 Program for deferral of compensation.

(A) The Ohio public employees deferred compensation board shall initiate, plan, expedite, and, subject to an appropriate assurance of the approval of the internal revenue service, promulgate and offer to all eligible employees, and thereafter administer on behalf of all participating employees and continuing members, and alter as required, a program for deferral of compensation, including a reasonable number of options to the employee for the investment of deferred funds, always in such form as will assure the desired tax treatment of such funds. The members of the board are the trustees of any deferred funds and shall discharge their duties with respect to the funds solely in the interest of and for the exclusive benefit of participating employees, continuing members, and their beneficiaries. With respect to such deferred funds, section [148.09](#) of the Revised Code shall apply to claims against participating employees or continuing members and their employers.

(B) The Ohio public employees deferred compensation program shall provide informational materials and acknowledgment forms to employers required to comply with division (C) of this section.

(C)

(1) Whenever an individual becomes employed in a position paid by warrant of the director of budget and management, the individual's employer shall do both of the following at the time the employee completes the employee's initial employment paperwork:

(a) Provide to the employee materials provided by the Ohio public employees deferred compensation program under division (B) of this section regarding the benefits of long-term savings through deferred compensation;

(b) Secure, in writing or by electronic means, the employee's acknowledgment form regarding the employee's desire to participate or not participate in a deferred compensation program offered by the board.

An election regarding participation under this section shall be made in such manner and form as is prescribed by the Ohio public employees deferred compensation program and shall be filed with the program.

The employer shall forward each acknowledgment form completed under this division to the deferred compensation program not later than forty-five days after the date on which the employee's employment begins.

(2) Every employer of an eligible employee shall contract with the employee upon the employee's application for participation in a deferred compensation program offered by the board.

(D) The board shall, subject to any applicable contract provisions, undertake to obtain as favorable conditions of tax treatment as possible, both in the initial programs and any permitted alterations of them or additions to them, as to such matters as terms of distribution, designation of beneficiaries, withdrawal upon disability, financial hardship, or termination of public employment, and other optional provisions.

The board may establish a designated Roth account feature or any other feature in which an employee may make tax-deferred or nontax-deferred contributions to an eligible government plan in accordance with 26 U.S.C. 457, as amended.

(E) In no event shall the total of the amount of deferred compensation to be set aside under a deferred compensation program and the employee's nondeferred income for any year exceed the total annual salary or

compensation under the existing salary schedule or classification plan applicable to the employee in that year.

Such a deferred compensation program shall be in addition to any retirement or any other benefit program provided by law for employees of this state. The board shall adopt rules pursuant to Chapter 119. of the Revised Code to provide any necessary standards or conditions for the administration of its programs, including any limits on the portion of a participating employee's compensation that may be deferred in order to avoid adverse treatment of the program by the internal revenue service or the occurrence of deferral, withholding, or other deductions in excess of the compensation available for any pay period.

Both of the following apply to a deferred compensation program established under this section:

(1) Any income deferred under the program shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the retirement system of an employee;

(2) Any sums deferred shall not be included in the computation of any federal and state income taxes withheld on behalf of an employee. Sums contributed to a Roth account feature or other feature to which nontax-deferred contributions are made shall be included in the computation of any federal and state income taxes withheld on behalf of an employee.

(F) This section does not limit the authority of any municipal corporation, county, township, park district, conservancy district, sanitary district, health district, public library, county law library, public institution of higher education, or school district to provide separate authorized plans or programs for deferring compensation of their officers and employees in addition to the program for the deferral of compensation offered by the board. Any municipal corporation, township, public institution of higher education, or school district that offers such plans or programs shall include a reasonable number of options to its officers or employees for the investment of the deferred funds, including annuities, variable annuities, regulated investment trusts, or other forms of investment approved by the municipal corporation, township, public institution of higher education, or school district, that will assure the desired tax treatment of the funds.

Amended by 131st General Assembly File No. TBD, SB 220, §1, eff. 3/21/2017.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-21-2000; 09-21-2006

148.05 Confidentiality of records.

(A)

(1) As used in this division, "personal history record" means information maintained by the Ohio public employees deferred compensation board on an individual who is a participating employee or continuing member that includes the address, telephone number, social security number, record of contributions, records of benefits, correspondence with the Ohio public employees deferred compensation program, or other information the board determines to be confidential.

(2) The records of the board shall be open to public inspection, except that the following shall be excluded, except with the written authorization of the individual concerned:

(a) Information pertaining to an individual's participant account;

(b) The individual's personal history record.

(B)

(1) All medical reports, records, and recommendations of a participating employee or a continuing member that are in the possession of the board are privileged.

(2) All tax information of a participating employee, continuing member, or former participant or member that is in the possession of the board shall be confidential to the extent the information is confidential under Title LVII or any other provision of the Revised Code.

(C) Notwithstanding the exceptions to public inspection in division (A)(2) of this section, the board may furnish the following information:

(1) If a participating employee, continuing member, or former participant or member is subject to an order issued under section [2907.15](#) of the Revised Code or is convicted of or pleads guilty to a violation of section [2921.41](#) of the Revised Code, on written request of a prosecutor as defined in section [2935.01](#) of the Revised Code, the board shall furnish to the prosecutor the information requested from the individual's personal history record or participant account.

(2) Pursuant to a court or administrative order issued pursuant to Chapter 3119., 3121., 3123., or 3125. of the Revised Code, the board shall furnish to a court or child support enforcement agency the information required under that section.

(3) Pursuant to an administrative subpoena issued by a state agency, the board shall furnish the information required by the subpoena.

(4) The board shall comply with orders issued under section [3105.87](#) of the Revised Code.

(D) A statement that contains information obtained from the program's records that is signed by the executive director or the director's designee and to which the board's official seal is affixed, or copies of the program's records to which the signature and seal are attached, shall be received as true copies of the board's records in any court or before any officer of this state.

Added by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009. .

148.06 Additional programs for deferral of compensation.

(A) As used in this section:

(1) "Government unit" means a county, park district of any kind, conservancy district, sanitary district, regional water and sewer district, regional transit authority, health district, public library district, county law library, joint county department of job and family services, or a detention facility district of any kind.

(2) "Governing board" means, in the case of the county, the board of county commissioners; in the case of a park district, the board of park commissioners; in the case of a conservancy district, the district's board of directors; in the case of a sanitary district, the district's board of directors; in the case of a regional water and sewer district, the district's board of trustees; in the case of a regional transit authority, the authority's board of trustees; in the case of a health district, the board of health; in the case of a public library district, the board of library trustees; in the case of a county law library, the board of trustees of the law library association; in the case of a joint county department of job and family services, the department's board of directors; and in the case of a detention facility district, the board or joint board of county commissioners.

(B) In addition to the program of deferred compensation that may be offered under this chapter, a governing board may offer to all of the officers and employees of the government unit not to exceed two additional programs for deferral of compensation designed for favorable tax treatment of the compensation so deferred. Any such program shall include a reasonable number of options to the officer or employee for the investment of the deferred funds, including annuities, variable annuities, regulated investment trusts, or other forms of investment approved by the governing board, that will assure the desired tax treatment of the funds.

A governing board may establish a designated Roth account feature or any other feature in which an officer or employee of the government unit may make tax-deferred or nontax-deferred contributions to an eligible

government plan in accordance with 26 U.S.C. 457, as amended.

Both of the following apply to a deferred compensation program established under this section:

- (1) Any income deferred under the program shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the officer's or employee's retirement system ;
- (2) Any sums deferred shall not be included in the computation of any federal and state income taxes withheld on behalf of an officer or employee. Sums contributed to a Roth account feature or other feature to which nontax-deferred contributions are made shall be included in the computation of any federal and state income taxes withheld on behalf of an officer or employee.

Amended by 131st General Assembly File No. TBD, SB 220, §1, eff. 3/21/2017.

Amended by 129th General Assembly File No. 174, HB 481, §1, eff. 3/22/2013.

Amended by 128th General Assembly File No. 47, SB 181, §1, eff. 9/13/2010.

Effective Date: 09-21-2000; 09-21-2006

148.061 Tax treatment of deferred compensation.

In addition to the program of deferred compensation that may be offered under this chapter, a board of township trustees may offer to all of the officers and employees of the township plans or programs for deferring compensation designed for favorable tax treatment of the compensation so deferred. A plan or program shall present a reasonable number of options to the township's officers and employees for the investment of the deferred funds that will assure the desired tax treatment of the funds.

Any income deferred under a plan or program shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from each officer's or employee's retirement system, but shall not be included in the computation of any federal and state income taxes withheld on behalf of the officer or employee.

Added by 129th General Assembly File No. 64, HB 225, §1, eff. 3/22/2012.

148.09 Exemption of benefits from rights of creditors.

Except as provided in sections [3105.171](#) and [3105.63](#) and Chapters 3119., 3121., 3123., and 3125. of the Revised Code and this chapter, a participant account or any benefit or other right accrued or accruing to any person under this chapter or under a deferred compensation program offered by a government unit, as defined in section [148.06](#) of the Revised Code, or by a municipal corporation shall not be subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

Effective Date: 03-22-2001.

148.10 Withholding of restitution for certain sex offenses or theft in office from deferred compensation.

(A) Notwithstanding any other provision of this chapter, any payment, other than a survivorship benefit, that is to be made to a person by a deferred compensation program pursuant to those sections or a deferred compensation program offered by a government unit, as defined in section [148.06](#) of the Revised Code, or by a municipal corporation is subject to any withholding order issued pursuant to section [2907.15](#) or division (C)(2)(b) of section [2921.41](#) of the Revised Code. The Ohio public employees deferred compensation board, the governing board, as defined in section [148.06](#) of the Revised Code, that is associated with a government unit, and the governing board, administrator, depository, or trustee of a deferred compensation program of a municipal corporation shall comply with that withholding order in making payment.

(B) Notwithstanding any other provision of this chapter, if a deferred compensation program receives a notice pursuant to section [2907.15](#) or division (D) of section [2921.41](#) of the Revised Code that a person who has a participant account has been charged with a violation of section [2907.02](#), [2907.03](#), [2907.04](#), [2907.05](#), or [2921.41](#) of the Revised Code, no payment from that account shall be made prior to whichever of the following is applicable:

(1) If the person is convicted of or pleads guilty to the violation and a motion for a withholding order for purposes of restitution has not been filed under section [2907.15](#) or division (C)(2)(b)(i) of section [2921.41](#) of the Revised Code, thirty days after the day on which the person is sentenced for the violation;

(2) If the person is convicted of or pleads guilty to the violation and a motion for a withholding order for purposes of restitution has been filed under section [2907.15](#) or division (C)(2)(b)(i) of section [2921.41](#) of the Revised Code, the day on which the court decides the motion;

(3) If the charge is dismissed or the person is found not guilty or not guilty by reason of insanity of the violation, the day on which the dismissal of the charge or the verdict is entered in the journal of the court.

Effective Date: 09-21-2000.