

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0578.01 Kate Meyer

SENATE BILL 10-035

SENATE SPONSORSHIP

Newell,

HOUSE SPONSORSHIP

Bradford,

Senate Committees

Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING AUTOMATIC ENROLLMENT IN EMPLOYEE RETIREMENT**
102 **PLANS.**

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://www.leg.state.co.us/billsummaries>.)

The bill allows wage deductions for contributions attributable to automatic enrollment in an employee retirement plan (plan) regardless of whether the federal "Employee Retirement Income Security Act of 1974", as amended (ERISA), applies to the plan. "Automatic enrollment" is defined to allow an employee to specify the amount of his or her wage

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

deduction, or to elect affirmatively to have no wage deduction, under an employee retirement plan. Employers or other plan officials are relieved from liability related to investment decisions if the following conditions are met:

- ! The plan allows the participating employee at least quarterly opportunities to select investments for the employee's contributions among investment alternatives available under the plan;
- ! The employee is given notice of the investment decisions that will be made in the absence of participant direction, a description of all the investment alternatives available for employee investment direction under the plan, and a brief description of procedures available for the employee to change investments; and
- ! The employee is given at least annual notice of the actual default investments made of contributions attributable to the employee.

The bill will take effect January 1, 2011.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 8-4-105 (1) (d), Colorado Revised Statutes, is
3 amended, and the said 8-4-105 (1) is further amended BY THE
4 ADDITION OF A NEW PARAGRAPH, to read:

5 **8-4-105. Payroll deductions permitted.** (1) No employer shall
6 make a deduction from the wages or compensation of an employee except
7 as follows:

8 (a.5) DEDUCTIONS FOR CONTRIBUTIONS ATTRIBUTABLE TO
9 AUTOMATIC ENROLLMENT IN AN EMPLOYEE RETIREMENT PLAN, AS
10 DEFINED IN SECTION 8-4-105.5, REGARDLESS OF WHETHER THE PLAN IS
11 SUBJECT TO THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY
12 ACT OF 1974", AS AMENDED;

13 (d) Any deduction, not listed in ~~paragraph (a)~~ PARAGRAPH (a),
14 (a.5), (b), or (c) of this subsection (1), ~~which~~ THAT is authorized by an
15 employee if ~~such~~ THE authorization is revocable, including ~~but not limited~~

1 to deductions for hospitalization and medical insurance, other insurance,
2 savings plans, stock purchases, voluntary pension SUPPLEMENTAL
3 RETIREMENT plans, charities, and deposits to financial institutions;

4 **SECTION 2.** Article 4 of title 8, Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW SECTION to read:

6 **8-4-105.5. Automatic enrollment in retirement plans - relief**
7 **from liability - conditions - definitions.** (1) (a) (I) AN EMPLOYER THAT
8 PROVIDES AUTOMATIC ENROLLMENT IN AN EMPLOYEE RETIREMENT PLAN
9 IS NOT LIABLE FOR THE INVESTMENT DECISIONS MADE BY THE EMPLOYER
10 ON BEHALF OF ANY PARTICIPATING EMPLOYEE WITH RESPECT TO THE
11 DEFAULT INVESTMENT OF CONTRIBUTIONS MADE FOR THAT EMPLOYEE TO
12 THE PLAN IF:

13 (A) THE PLAN PROVIDES THE PARTICIPATING EMPLOYEE AT LEAST
14 QUARTERLY OPPORTUNITIES TO SELECT INVESTMENTS FOR THE
15 EMPLOYEE'S CONTRIBUTIONS AMONG INVESTMENT ALTERNATIVES
16 AVAILABLE UNDER THE PLAN;

17 (B) THE PARTICIPATING EMPLOYEE IS GIVEN NOTICE OF THE
18 INVESTMENT DECISIONS THAT WILL BE MADE IN THE ABSENCE OF
19 DIRECTION FROM THE EMPLOYEE, A DESCRIPTION OF ALL THE INVESTMENT
20 ALTERNATIVES AVAILABLE FOR EMPLOYEE INVESTMENT DIRECTION UNDER
21 THE PLAN, AND A BRIEF DESCRIPTION OF PROCEDURES AVAILABLE FOR THE
22 EMPLOYEE TO CHANGE INVESTMENTS; AND

23 (C) THE EMPLOYEE IS GIVEN AT LEAST ANNUAL NOTICE OF THE
24 ACTUAL DEFAULT INVESTMENTS MADE OF CONTRIBUTIONS ATTRIBUTABLE
25 TO THE EMPLOYEE.

26 (II) THE RELIEF FROM LIABILITY OF THE EMPLOYER UNDER THIS
27 SUBSECTION (1) EXTENDS TO ANY EMPLOYEE RETIREMENT PLAN OFFICIAL

1 WHO MAKES THE ACTUAL DEFAULT INVESTMENT DECISIONS ON BEHALF OF
2 PARTICIPATING EMPLOYEES.

3 (b) NOTHING IN THIS SUBSECTION (1) MODIFIES ANY EXISTING
4 RESPONSIBILITY OF EMPLOYERS OR OTHER PLAN OFFICIALS FOR THE
5 SELECTION OF INVESTMENT FUNDS FOR PARTICIPATING EMPLOYEES.

6 (2) AS USED IN THIS SECTION:

7 (a) "AUTOMATIC ENROLLMENT" MEANS AN EMPLOYEE
8 RETIREMENT PLAN PROVISION UNDER WHICH AN EMPLOYEE WILL HAVE A
9 SPECIFIED CONTRIBUTION MADE TO THE PLAN, EQUAL TO A COMPENSATION
10 REDUCTION, THAT WILL BE MADE FOR THE EMPLOYEE UNLESS THE
11 EMPLOYEE AFFIRMATIVELY ELECTS, IN ACCORDANCE WITH THE FEDERAL
12 "PENSION PROTECTION ACT OF 2006", PUB.L. 109-280, EITHER NOT TO
13 HAVE ANY COMPENSATION REDUCTION CONTRIBUTIONS OR A
14 COMPENSATION REDUCTION CONTRIBUTION IN AN ALTERNATIVE AMOUNT.

15 (b) "EMPLOYEE RETIREMENT PLAN" MEANS A PLAN DESCRIBED IN
16 SECTIONS 401(k) OR 403(b) OF THE FEDERAL "INTERNAL REVENUE CODE
17 OF 1986", AS AMENDED; A GOVERNMENTAL DEFERRED COMPENSATION
18 PLAN DESCRIBED IN SECTION 457 OF THE FEDERAL "INTERNAL REVENUE
19 CODE OF 1986", AS AMENDED; OR A PAYROLL DEDUCTION INDIVIDUAL
20 RETIREMENT ACCOUNT PLAN DESCRIBED IN SECTIONS 408 OR 408A OF THE
21 FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

22 **SECTION 3. Act subject to petition - specified effective date.**
23 This act shall take effect January 1, 2011; except that, if a referendum
24 petition is filed pursuant to section 1 (3) of article V of the state
25 constitution against this act or an item, section, or part of this act within
26 the ninety-day period after final adjournment of the general assembly,
27 then the act, item, section, or part shall not take effect unless approved by

1 the people at the general election to be held in November 2010 and shall
2 take effect on January 1, 2011, or on the date of the official declaration
3 of the vote thereon by the governor, whichever is later.