



SENATE BILL 1377

By Watson

**AN ACT to amend Tennessee Code Annotated, Title 50
and Title 65, Chapter 15, Part 3, relative to
employer-employee relationships.**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following as a new part:

50-1-1101.

This part is known and may be cited as the "Voluntary Portable Benefit Plan Act."

50-1-1102.

As used in this part:

(1) "Employee" means an individual who performs services for an employer for wages, and the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the twenty-factor test described in § 50-2-111;

(2) "Hiring party" means a person who hires or enters into a contract with an independent contractor;

(3) "Independent contractor" means an individual who performs services for a hiring party in exchange for compensation, and the relationship with the hiring party qualifies the individual as an independent contractor based upon consideration of the twenty-factor test described in § 50-2-111;

(4) "Portable benefit plan":

(A) Means a benefit plan administered by a third-party portable benefit plan provider chosen by a self-employed worker and assigned to a beneficiary rather than an employer or hiring party; and

(B) Includes:

- (i) Health insurance;
- (ii) Unemployment insurance;
- (iii) Disability insurance;
- (iv) Life insurance; and
- (v) Retirement benefits; and

(5) "Portable benefit plan provider" means a bank, as defined in Section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(a)(1)); an investment management firm; a technology provider or program manager that offers services through a bank or investment management firm; or another person who demonstrates to the satisfaction of the commissioner of financial institutions that the manner in which such bank or person will administer the portable benefit account will be consistent with the portable benefit account requirements under this chapter.

50-1-1103.

(a) A public or private entity, including an internet or application-based company, may voluntarily contribute funds to a portable benefit plan as a form of compensation to an independent contractor.

(b) Contributions to a portable benefit plan must not be used as a criterion for determining a worker's employment classification under chapter 1, 2, 6, 7, or 8 of this title, or title 65, chapter 15.

(c) Contributions to a portable benefit plan may be made using the funds of a hiring party or a percentage of funds withheld from the compensation owed to an independent contractor, as long as:

- (1) Withholding such compensation is expressed in a written agreement;
- (2) Such written agreement is clear, unambiguous, and prominently displayed either in the work contract or a separate notice;
- (3) Such withholdings are voluntary and require the independent contractor to opt-in; and
- (4) The independent contractor may choose to opt-out of such withholdings at any time.

SECTION 2. Tennessee Code Annotated, Section 50-8-101(1)(B), is amended by deleting the language "In return for compensation from the third-party or marketplace platform, offers" and substituting "In return for compensation from the third-party or marketplace platform, including compensation in the form of a contribution to a portable benefit account as described in § 50-1-1103, offers".

SECTION 3. Tennessee Code Annotated, Section 50-8-102(a)(9), is amended by deleting the language "marketplace platform provides no medical or other insurance benefits to the marketplace contractor, and the".

SECTION 4. Tennessee Code Annotated, Section 65-15-301(4), is amended by deleting the language "control, direct, or manage the personal vehicles" and substituting "control, direct, or manage, as the applicability of such terms are understood pursuant to § 50-2-111, the personal vehicles".

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to SB1377

Bailey
Signature of Sponsor

AMEND Senate Bill No. 1377

House Bill No. 494*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following as a new part:

50-1-1101.

This part is known and may be cited as the "Voluntary Portable Benefit Act."

50-1-1102.

As used in this part:

(1) "Benefit plan" includes:

- (A) Health insurance;
- (B) Income replacement insurance;
- (C) Life insurance;
- (D) Retirement benefits; and
- (E) Other benefits that may customarily be provided as part of a benefit plan;

(2) "Employee" means an individual who performs services for an employer for wages, and the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the twenty-factor test described in § 50-2-111;

(3) "Hiring party" means a person who hires or enters into a contract with an independent contractor;

(4) "Independent contractor" means an individual who performs services for a hiring party in exchange for compensation, and the relationship with the hiring party qualifies the individual as an independent contractor based upon consideration of the twenty-factor test described in § 50-2-111;

(5) "Portable benefit account" means an account opened by an independent contractor to fund the purchase of one (1) or more benefit plans and that is administered by a third-party portable benefit account provider chosen by the independent contractor and assigned to a beneficiary of one (1) or more benefit plans rather than a hiring party; and

(6) "Portable benefit account provider" means a bank, as defined in Section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(a)(1)); an investment management firm; or a technology provider or program manager that offers services through a bank or investment management firm.

50-1-1103.

(a) An individual or entity, including a hiring party, whether public or private, an independent contractor, or an internet or application-based company, may voluntarily contribute funds to a portable benefit account for an independent contractor.

(b) Contributions to a portable benefit account must not be used as a criterion for determining a worker's employment classification under this title, or title 65, chapter 15.

(c) Contributions to a portable benefit account may be made using the funds of a hiring party or a percentage of funds withheld from the compensation owed to an independent contractor, as long as:

(1) Withholding such compensation is expressed in a written agreement;

(2) Such written agreement is clear, unambiguous, and prominently displayed either in the work contract or a separate notice;

(3) Such withholdings are voluntary and require the independent contractor to opt-in; and

(4) The independent contractor may choose to opt-out of such withholdings at any time.

SECTION 2. Tennessee Code Annotated, Section 50-8-101(1)(B), is amended by deleting the language "In return for compensation from the third-party or marketplace platform, offers" and substituting "In return for compensation from the third-party or marketplace platform, including compensation in the form of a contribution to a portable benefit account as described in § 50-1-1103, offers".

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