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HOUSE BILL NO. 2174

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL* to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 27.1, consisting of sections numbered 2.2-2744 through 2.2-2756, relating to VirginiaSaves Program; establishment.

Patrons—Torian, Helmer and Ayala

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 27.1, consisting of sections numbered 2.2-2744 through 2.2-2756, as follows:

CHAPTER 27.1.**VIRGINIASAVES PROGRAM.****§ 2.2-2744. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Board" means the governing board of the Virginia College Savings Plan.

"Committee" means the Program Advisory Committee established pursuant to § 2.2-2746.

"Eligible employee" means any individual who is (i) 18 years of age or older; (ii) is currently employed by an eligible employer; (iii) is receiving wages; and (iv) meets the federal Internal Revenue Service requirements to be eligible to participate in a plan qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code.

"Eligible employer" means a self-employed individual, sole proprietor, or nongovernmental business, industry, trade, profession, or other enterprise in the Commonwealth, whether conducted on a for-profit or nonprofit basis, that employed five or more employees at any time during the previous calendar year and has been operating for at least two years prior to Program implementation. "Eligible employer" does not include an employer that currently provides a qualified retirement plan to its employees, including plans qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code. An employer shall become an eligible employer at any time if it meets the eligibility requirements under this chapter.

"Fee" means any investment management charges, administrative charges, investment advice charges, trading fees, marketing and sales fees, revenue sharing, broker fees, and other costs necessary to run the Program.

"Individual retirement account" or "IRA" means a Roth or traditional individual retirement account under § 408 of the Internal Revenue Code.

"Participating employee" means any employee who is enrolled in the Program.

"Participating employer" means an employer that facilitates a payroll deposit retirement savings agreement pursuant to this chapter for its employees.

"Payroll deposit retirement savings agreement" means an arrangement by which an employer allows employees to remit payroll deduction contributions to the Program.

"Plan" means the Virginia College Savings Plan.

"Program" means the VirginiaSaves Program established in this chapter and administered by the Plan.

"Wages" means any compensation, as such term is defined in § 219(f)(1) of the Internal Revenue Code, that is received by a participating employee from a participating employer during the calendar year.

§ 2.2-2745. VirginiaSaves Program authorized.

To promote greater retirement savings for private-sector employees in a convenient and portable manner, the Plan is authorized, in accordance with this chapter, to establish an automatic enrollment payroll deduction IRA savings program for private-sector employees to be known as the VirginiaSaves Program. The Program shall be sponsored and administered by the Plan. In addition to the provisions of this chapter, the Program shall be subject to the provisions of Chapter 7 (§ 23.1-700 et seq.) of Title 23.1.

§ 2.2-2746. Program Advisory Committee; membership; qualifications; duties.

A. In order to assist the Board in fulfilling its duties under § 23.1-704 and this chapter and to assist the Plan's chief executive officer in directing, managing, and administering the Program, the Board shall appoint the Program Advisory Committee to provide sophisticated, objective, and prudent administrative and investment advice and direction, as requested by the Board. The Committee may

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59 develop Program recommendations for the Board and perform such other duties as the Board may
60 delegate to the Committee.

61 B. The Board shall develop requirements, procedures, and guidelines regarding Committee
62 membership.

63 C. Members of the Committee shall demonstrate extensive experience in one or more of the following
64 areas: retirement plan design, retirement plan investments, domestic or international equity or
65 fixed-income securities, cash management, alternative investments, institutional real estate investments,
66 or managed futures.

67 D. Members of the Committee shall serve at the pleasure of the Board and may be removed by a
68 majority vote of the Board.

69 E. Members of the Committee shall receive no compensation but shall be reimbursed for actual
70 expenses incurred in the performance of their duties.

71 F. The recommendations of the Committee shall not be binding upon the Board.

72 G. The disclosure requirements of subsection B of § 2.2-3114 shall apply to each member of the
73 Committee who is not also a Board member.

74 H. The Board may appoint such other advisory committees as it deems necessary and shall set the
75 qualifications for members of any such advisory committee by resolution.

76 **§ 2.2-2747. Powers and duties of the Board.**

77 The Board shall:

78 1. Administer the Program authorized by this chapter;

79 2. Invest moneys in the Program in any instruments, obligations, securities, or property deemed
80 appropriate by the Board;

81 3. Develop requirements, procedures, and guidelines for the Program, including:

82 a. Eligibility requirements for employers and employees, in accordance with this chapter;

83 b. Procedures for enrollment and disenrollment of participating employers and participating
84 employees;

85 c. Procedures for eligible employees who wish to opt out of Program participation;

86 d. Default contribution rates;

87 e. Default annual escalation rates;

88 f. Minimum and maximum contribution levels in accordance with applicable qualified retirement
89 program limits established by the Internal Revenue Code;

90 g. A fee structure;

91 h. Procedures for noncompliance with this chapter, including development of enforcement
92 mechanisms and penalties not to exceed \$200 per eligible employee annually; and

93 i. Education and outreach campaigns to eligible employers and eligible employees;

94 4. Enter into all contractual agreements, including contracts for legal, financial, program
95 management, and consulting services necessary to develop and administer the Program;

96 5. Procure insurance as determined appropriate by the Board (i) against any loss in connection with
97 the Program's property, assets, or activities and (ii) indemnifying Board and Committee members from
98 personal loss, accountability, or liability arising from any action or inaction as a Board or Committee
99 member;

100 6. Adopt regulations and procedures and perform any act or function consistent with the purposes of
101 this chapter;

102 7. Explore incentives to encourage participation in the Program by eligible employers and eligible
103 employees, including a grant program to incentivize compliance with the Program and to defray the
104 costs of small businesses with five to 25 eligible employees;

105 8. Assess the feasibility of multistate or regional agreements to administer the Program through
106 shared administrative resources and enter into those agreements if deemed beneficial to the Program;
107 and

108 9. Establish procedures for receiving and providing data relevant to Program administration. This
109 shall include information collected from other state agencies, including the Department of Labor and
110 Industry, the Department of Taxation, and the Virginia Employment Commission, as appropriate.

111 **§ 2.2-2748. Cooperation of other agencies.**

112 All agencies of the Commonwealth shall cooperate as requested by the Plan in the performance of
113 its duties under this chapter, including, unless otherwise prohibited, the sharing of relevant data as the
114 parties shall mutually agree.

115 **§ 2.2-2749. Board actions not a debt of the Commonwealth.**

116 No act or undertaking of the Board is a debt or pledge of the full faith and credit of the
117 Commonwealth or any political subdivision of the Commonwealth, and all such acts and undertakings
118 are payable solely from the Program. The Commonwealth shall have no obligation for payment of
119 benefits arising from this chapter.

120 **§ 2.2-2750. Standard of care; investment and administration of the Program.**

The provisions of § 23.1-706 relating to the standard of care and the investment and administration of the Plan shall apply, *mutatis mutandis*, to the Program authorized under this chapter.

§ 2.2-2751. Program enrollment; participating employer liability and status under the Program.

A. Any employer in the Commonwealth who is not required to participate in the Program may choose to have a payroll deposit retirement savings agreement to allow employee participation in the Program under the terms and conditions prescribed by the Board.

B. The Program shall be established and enrollment of eligible employers shall begin no later than July 1, 2023. The Board shall establish an implementation timeline under which eligible employers shall enroll their eligible employees in the Program.

C. The Board shall develop a Program rollout timeline, including deadlines for the enrollment of eligible employers. The Board may alter the rollout timeline in its discretion, though in all instances any alterations of established rollout dates shall include reasonable notice to affected eligible employers.

D. Participation in the Program shall be mandatory for eligible employers. Eligible employers shall enroll in the Program in accordance with the timeline established by the Plan. Eligible employers shall facilitate a payroll deposit retirement savings agreement pursuant to this chapter for their employees.

E. Each eligible employee shall be enrolled in the Program unless the employee elects not to participate in the Program in a manner prescribed by the Board.

F. An eligible employee may also terminate his participation in the Program at any time in a manner prescribed by the Board.

G. Eligible employers shall not have any liability for a participating employee's decision to participate in or opt out of the Program, or for the investment decisions of participating employees whose assets are deposited in the Program.

H. Eligible employers shall not be a fiduciary, or considered to be a fiduciary, over the Program. The Program is a state-administered program, not an employer-sponsored program. If the Program is subsequently found to be preempted by any federal law or regulation, participating employers shall not be liable as Program sponsors. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the Program. A participating employer shall not be liable with regard to investment returns, Program design, and benefits paid to Program participants.

I. A participating employer shall not have civil liability, and no cause of action shall arise against a participating employer, for acting pursuant to this chapter.

J. Following initial implementation of the Program, at least once every year, participating employers shall designate an open enrollment period during which employees who previously opted out of the Program may enroll in the Program.

K. An eligible employee who opts out of the Program who subsequently wants to participate through the participating employer's payroll deposit retirement savings agreement may only enroll during the participating employer's designated open enrollment period or, if permitted by the participating employer, at an earlier time.

L. Eligible employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, including plans qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Internal Revenue Code, instead of having a payroll deposit retirement savings agreement with the Program.

§ 2.2-2752. Audit and annual reports.

The Program shall be subject to the reporting requirements set forth in § 23.1-709. The Program shall be subject to the applicable provisions of the Virginia College Savings Plan Oversight Act (§ 30-330 et seq.).

§ 2.2-2753. Virginia Freedom of Information Act.

The provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) applicable to the Plan shall also apply to the Program.

§ 2.2-2754. Coverage limitations.

Nothing in this chapter or any payroll deposit retirement savings agreement entered into pursuant to this chapter shall be construed as a promise or guarantee that the expenses associated with a participating employee's retirement will be covered in full by contributions to or earnings on any account, nor that the contributions to or earnings on any account will be sufficient to fund any particular level of benefit upon retirement.

§ 2.2-2755. Duty and liability of the Commonwealth.

A. The Commonwealth shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Program. Any financial liability for the payment of retirement savings benefits in excess of funds available under the Program shall be borne solely by the entities with whom the Board contracts to provide insurance to protect the value of the Program, if applicable.

182 *B. No Commonwealth board, commission, political subdivision, or agency, or any officer, employee,*
183 *or member thereof, is liable for any loss or deficiency resulting from particular investments selected*
184 *under this chapter, except for any liability that arises out of a breach of fiduciary duty.*

185 **§ 2.2-2756. Liberal construction of chapter.**

186 *Insofar as the provisions of this chapter are inconsistent with the provisions of any other general,*
187 *special, or local law, the provisions of this chapter shall control. This chapter constitutes full and*
188 *complete authority, without regard to the provisions of any other law, for performing the acts authorized*
189 *in this chapter and shall be liberally construed to effect the purposes of this chapter.*

190 **2. That the governing board of the Virginia College Savings Plan shall establish the VirginiaSaves**
191 **Program, as created by this act, so that eligible employers may begin participating in the**
192 **VirginiaSaves Program no later than July 1, 2023.**

193 **3. In accordance with the provisions of Item 4-3.02 of the appropriation act, the Virginia College**
194 **Savings Plan (the Plan) shall receive a non-interest bearing treasury loan in an amount not to**
195 **exceed \$2 million each year of each biennium to cover the costs of designing and implementing the**
196 **VirginiaSaves Program (the Program), until such time as the Program is self-sustaining. Such loan**
197 **may be renegotiated, as appropriate, and the Plan shall commence repayment with Program fees**
198 **and revenues once the Program has achieved at least one year of Program cash flow positivity.**