

VIRGINIA ACTS OF ASSEMBLY -- 2021 RECONVENED SPECIAL SESSION I

CHAPTER 556

An Act to amend and reenact § 23.1-701 of the Code of Virginia and 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 2.2-2757, relating to state-facilitated IRA savings program; establishment.

[H 2174]

Approved April 15, 2021

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-701 of the Code of Virginia is amended and reenacted and 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 2.2-2757, as follows:

CHAPTER 27.1.

STATE-FACILITATED IRA SAVINGS 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) currently employed at least 30 hours a week, and (iii) receiving wages.

"Eligible employer" means a nongovernmental business, industry, trade, profession, or other enterprise in the Commonwealth, whether conducted on a for-profit or nonprofit basis, that employed 25 or more eligible employees, as reported to the Virginia Employment Commission pursuant to 16VAC5-32-20, or any successor regulation, for the quarter ending December 31 and the preceding three quarters of the preceding calendar year and has been operating for at least two years prior to Program implementation. "Eligible employer" does not include an employer that sponsors, maintains, or contributes to an automatic enrollment payroll deduction IRA or a qualified retirement plan in compliance with federal law for its employees, including plans qualified under § 401(a), 403(a), 403(b), 408(k), or 408(p) 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 or annuity under § 408 or 408A of the Internal Revenue Code.

"Participating employee" means any eligible 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 eligible employees.

"Participating individual" means any individual who enrolls in the Program independent of an employment relationship with an eligible employer, maintains an account in the Program, and is not a participating employee.

"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 state-facilitated IRA savings program established in this chapter and administered by the Plan.

"Program Trust" means the Program trust fund established by § 2.2-2752.

"Wages" means any compensation, as such term is defined in § 219(f)(1) of the Internal Revenue Code, that is paid to an eligible employee by his employer during the calendar year.

§ 2.2-2745. Program authorized.

To promote greater voluntary retirement savings for private-sector workers in a convenient and portable manner, the Plan is authorized, in accordance with this chapter, to establish a state-facilitated IRA savings program for private-sector workers. 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

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

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

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

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

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

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

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

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

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

The Board shall:

1. Administer the Program authorized by this chapter;
2. Invest moneys in the Program in any instruments, obligations, securities, or property deemed appropriate by the Board;
3. Develop requirements, procedures, and guidelines for the Program, including:
 - a. Eligibility requirements for employers and employees, in accordance with this chapter;
 - b. Procedures for enrollment and disenrollment of participating employees;
 - c. Selecting whether to offer Roth IRAs, traditional IRAs, or both, and if both, which type of IRA shall be the default IRA;
 - d. Default contribution rates;
 - e. Default annual escalation rates;
 - f. Selecting one or more investment funds in which Program participants may elect to invest their savings and a default investment fund for participants who do not make an affirmative investment election;
 - g. Minimum and maximum contribution levels in accordance with applicable limits established by the Internal Revenue Code;
 - h. A fee structure;
 - i. Procedures for noncompliance with this chapter, including development of enforcement mechanisms and penalties not to exceed \$200 per eligible employee annually;
 - j. Education and outreach campaigns to eligible employers and eligible employees; and
 - k. Procedures for enrollment and disenrollment of participating individuals;
4. Enter into all contractual agreements, including contracts for legal, financial, program management, and consulting services necessary to develop and administer the Program;
5. Procure insurance as determined appropriate by the Board (i) against any loss in connection with the Program's property, assets, or activities and (ii) indemnifying Board and Committee members from personal loss, accountability, or liability arising from any action or inaction as a Board or Committee member;
6. Adopt regulations and procedures and perform any act or function consistent with the purposes of this chapter;
7. Explore and, as appropriate, establish incentives to encourage participation in the Program by eligible employers and eligible employees, including a grant program to incentivize compliance with the Program and to defray the costs of small businesses;
8. Assess the feasibility of multistate or regional agreements to administer the Program through shared administrative and operational resources and enter into those agreements if deemed beneficial to the Program;
9. Establish procedures for receiving and providing data relevant to Program administration. This shall include information collected from other state agencies, including the Department of Labor and Industry, the Department of Taxation, and the Virginia Employment Commission, as appropriate;
10. Accept any funds appropriated to the Program and any gifts, donations, grants, bequests, and other funds received on its behalf, including any funds made available for use in facilitating education and outreach initiatives for the Program; and
11. Design and operate the Program in a manner that will cause it not to be an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974.

§ 2.2-2748. Cooperation of other agencies.

All agencies of the Commonwealth shall cooperate as requested by the Plan in the performance of its duties under this chapter, including, unless otherwise prohibited, the sharing of relevant data as the

parties shall mutually agree.

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

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

§ 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. 1. Any employer that is not an eligible employer may facilitate the participation of its eligible employees in the Program. However, such employer shall take all steps necessary to ensure that such facilitation does not constitute an employee benefit plan regulated under Title I of the Employee Retirement Income Security Act (ERISA).

2. Any eligible employee whose employer does not facilitate his participation in the Program pursuant to subdivision 1 or any self-employed individual may participate in the Program under terms and conditions prescribed by the Board.

3. No eligible employee or self-employed individual shall be permitted to participate in the Program unless such individual has Virginia taxable income, as defined in Article 2 (§ 58.1-320 *et seq.*) of Chapter 3 of Title 58.1.

B. The Program shall be established and enrollment of eligible employers shall begin on July 1, 2023, or as soon thereafter as practicable. 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 eligible employees.

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

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

G. Participating 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. Participating 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. The Board shall develop and provide to participating employees and participating individuals Program summaries and other information concerning participation in the Program, including information on Program investments and fees, and the consequences of contributing to an IRA, and a statement that the Program is not an employer-sponsored retirement plan, as required by applicable law and as otherwise determined by the Board.

K. Participating employers shall retain the option at all times to set up any type of employer retirement plan, including plans qualified under § 401(a), 403(a), 403(b), 408(k), or 408(p), of the Internal Revenue Code, in which event such employer shall no longer be considered an eligible employer and shall cease facilitating contributions to the Program in accordance with such procedures as shall be established by the Board.

L. No employer shall be permitted to contribute to the Program or to endorse or otherwise promote the Program.

M. The Program shall be exempt from the provisions of subsection C of § 40.1-29.

§ 2.2-2752. Program Trust Fund.

A. There is hereby established a permanent and perpetual fund to be known as the Program Trust Fund (the Fund). The moneys in the Fund shall be (i) deemed separate and independent trust funds, (ii) segregated and accounted for separately from all other funds of the Commonwealth, and (iii) administered solely in the interests of the individuals who are participants in the Program established

pursuant to this chapter.

B. The assets of IRAs established for Program participants shall be allocated to the Fund and combined for investment purposes. Fund assets shall be managed and administered for the exclusive purpose of providing benefits to Program participants and defraying reasonable expenses of administering, maintaining, and managing investments of the IRAs and the Program Trust. No property rights in Fund assets shall exist in favor of the Commonwealth or any participating employer.

C. The Board shall establish within the Fund one or more investment funds, each pursuing an investment strategy and policy established by the Board in accordance with § 2.2-2747.

D. Notwithstanding any provision to the contrary, the Fund shall be exempt from the securities registration requirements provided in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1.

§ 2.2-2753. 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.).

§ 2.2-2754. 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.

§ 2.2-2755. 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 or participating individual'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. In no event shall the Commonwealth, the Program, the Board, any Board member, or any participating employer be liable for any losses incurred by Program Trust investments or otherwise by any employee or other person as a result of participating in the Program.

§ 2.2-2756. 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.

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

§ 2.2-2757. Liberal construction of chapter.

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

§ 23.1-701. Plan established; moneys; governing board.

A. To enhance the accessibility and affordability of higher education for all citizens of the Commonwealth, and assist families and individuals to save for qualified disability expenses, the Virginia College Savings Plan is established as a body politic and corporate and an independent agency of the Commonwealth.

B. Moneys of the Plan that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.

C. All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts, bequests, endowments, grants from the United States government or its agencies or instrumentalities, and any other available public or private sources of funds shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys shall then be deposited as soon as practicable in a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Benefits relating to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

D. The Plan may maintain an independent disbursement system for the disbursement of prepaid

tuition contract benefits and, in connection with such system, open and maintain a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Such independent disbursement system and any related procedures shall be subject to review and approval by the State Comptroller. Nothing in this subsection shall be construed to relieve the Plan of its duty to provide prepaid tuition contract benefit transactions to the Commonwealth's system of general accounting maintained by the State Comptroller pursuant to § 2.2-802.

E. The Plan shall be administered by an 11-member board that consists of (i) the director of the Council or his designee, the Chancellor of the Virginia Community College System or his designee, the State Treasurer or his designee, and the State Comptroller or his designee, all of whom shall serve ex officio with voting privileges, and (ii) seven nonlegislative citizen members, four of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, two of whom shall be appointed by the Speaker of the House of Delegates, and all of whom shall have significant experience in finance, accounting, law, investment management, higher education, or disability advocacy. *In addition, at least one of the nonlegislative citizen members shall have expertise in the management and administration of private defined contribution retirement plans.*

F. Members appointed to the board shall serve terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member appointed to the board shall serve more than two consecutive four-year terms; however, a member appointed to serve an unexpired term is eligible to serve two consecutive four-year terms immediately succeeding such unexpired term.

G. Ex officio members of the board shall serve terms coincident with their terms of office.

H. Members of the board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

I. The board shall elect from its membership a chairman and a vice-chairman annually.

J. A majority of the members of the board shall constitute a quorum.

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

3. That the governing board of the Virginia College Savings Plan (the Board) shall convene a group of stakeholders to identify and make recommendations as to other amendments to the Code of Virginia necessary and prudent to effectuate the provisions of this act. The Board shall (i) recommend any technical amendments necessary to clarify the scope of the state-facilitated IRA savings program (the Program) and ensure compliance with law, (ii) examine the experience of other states that have enacted similar legislation, (iii) assess potential incentives to encourage participation in the Program and defray the costs of participation for small businesses, and (iv) assess the costs and benefits, to employers and to the Commonwealth, of reducing the threshold number of employees of an eligible employer under the provisions of this act. The Board shall submit its findings to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations no later than October 31, 2021.