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HOUSE BILL NO. 2174

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 20, 2021)

(Patron Prior to Substitute—Delegate Torian)

A BILL 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 2.2-2756, relating to VirginiaSaves Program; establishment.

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 2.2-2756, 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 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.**

121 *The provisions of § 23.1-706 relating to the standard of care and the investment and administration*

122 of the Plan shall apply, *mutatis mutandis*, to the Program authorized under this chapter.

123 **§ 2.2-2751. Program enrollment; participating employer liability and status under the Program.**

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

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

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

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

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

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

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

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

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

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

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

159 L. Eligible employers shall retain the option at all times to set up any type of employer-sponsored
160 retirement plan, including plans qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or
161 457(b) of the Internal Revenue Code, instead of having a payroll deposit retirement savings agreement
162 with the Program.

163 M. Nothing in this chapter shall be construed to require a participating employer to make a
164 contribution to a participating employee's account.

165 **§ 2.2-2752. Audit and annual reports.**

166 The Program shall be subject to the reporting requirements set forth in § 23.1-709. The Program
167 shall be subject to the applicable provisions of the Virginia College Savings Plan Oversight Act
168 (§ 30-330 et seq.).

169 **§ 2.2-2753. Virginia Freedom of Information Act.**

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

172 **§ 2.2-2754. Coverage limitations.**

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

178 **§ 2.2-2755. Duty and liability of the Commonwealth.**

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

183 applicable.

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

187 **§ 2.2-2756. Liberal construction of chapter.**

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

192 **§ 23.1-701. Plan established; moneys; governing board.**

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

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

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

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

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

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

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

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

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

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

242 **2. That in accordance with the provisions of Item 4-3.02 of the appropriation act, the Virginia**
243 **College Savings Plan (the Plan) shall receive a non-interest bearing treasury loan in an amount**
244 **not to exceed \$2 million each year of each biennium to cover the costs of designing and**

245 implementing the VirginiaSaves Program (the Program), until such time as the Program is
246 self-sustaining. Such loan may be renegotiated, as appropriate, and the Plan shall commence
247 repayment with Program fees and revenues once the Program has achieved at least one year of
248 Program cash flow positivity.