

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-2744, 2.2-2746, 2.2-2747, 2.2-2748, and 2.2-2751 of the Code of*  
 3 *Virginia, relating to state-facilitated IRA savings program.*

4 [S 149]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 2.2-2744, 2.2-2746, 2.2-2747, 2.2-2748, and 2.2-2751 of the Code of Virginia are amended and**  
 8 **reenacted as follows:**

9 **§ 2.2-2744. Definitions.**

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

11 "Board" means the governing board of the Commonwealth Savers Plan.

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

13 "Eligible employee" means any individual who is (i) 18 years of age or older, (ii) currently employed at  
 14 least 30 hours a week, and (iii) receiving wages.

15 "Eligible employer" means a nongovernmental business, industry, trade, profession, or other enterprise in  
 16 the Commonwealth, whether conducted on a for-profit or nonprofit basis, that employed ~~25~~ five or more  
 17 eligible employees, as reported to the Virginia Employment Commission pursuant to 16VAC5-32-20, or any  
 18 successor regulation, for the quarter period ending December 31 and the preceding three quarters of the  
 19 preceding calendar year and has been operating for at least two years prior to Program implementation the  
 20 Program's open enrollment period for that calendar year. "Eligible employer" does not include an employer  
 21 that sponsors, maintains, or contributes to an automatic enrollment payroll deduction IRA or a qualified  
 22 employer-sponsored retirement plan in compliance with federal law for its employees, including plans  
 23 qualified under § 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code. An  
 24 employer shall become an eligible employer at any time if it meets the eligibility requirements under this  
 25 chapter.

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

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

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

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

34 "Participating individual" means any individual who enrolls in the Program independent of an  
 35 employment relationship with an eligible employer, is at least 18 years of age, maintains an account in the  
 36 Program, and is not a participating employee.

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

39 "Plan" means the Commonwealth Savers Plan.

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

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

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

45 **§ 2.2-2746. Program Advisory Committee; membership; qualifications; duties.**

46 A. In order to assist the Board in fulfilling its duties under § 23.1-704 and this chapter and to assist the  
 47 Plan's chief executive officer in directing, managing, and administering the Program, the Board shall appoint  
 48 the Program Advisory Committee to provide sophisticated, objective, and prudent administrative and  
 49 investment advice program administration, advice, design, and direction, as requested by the Board. The  
 50 Committee may develop Program recommendations for the Board and perform such other duties as the Board  
 51 may delegate to the Committee.

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

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

ENROLLED

SB149ER

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

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

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

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

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

66 **§ 2.2-2747. Powers and duties of the Board.**

67 The Board shall:

68 1. Administer the Program authorized by this chapter;

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

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

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

73 b. Procedures for enrollment, *reenrollment*, and disenrollment of participating employees;

74 c. Selecting whether to offer Roth IRAs, traditional IRAs, or both, and if both, which type of IRA shall be  
75 the default IRA;

76 d. Default contribution rates;

77 e. Default annual escalation rates;

78 f. Selecting one or more investment funds in which Program participants may elect to invest their savings,  
79 *including a lifetime income option*, and a default investment fund for participants who do not make an  
80 affirmative investment election;

81 g. Minimum and maximum contribution levels in accordance with applicable limits established by the  
82 Internal Revenue Code;

83 h. A fee structure;

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

86 j. Education and outreach campaigns to eligible employers and eligible employees; ~~and~~

87 k. Procedures for enrollment, *reenrollment*, and disenrollment of participating individuals;

88 *l. Resources, tools, and incentives to promote greater financial education and literacy for Program*  
89 *participants consistent with the purposes of this chapter; and*

90 *m. Procedures for receiving and crediting federal matching contributions to an IRA or qualified*  
91 *retirement savings account for eligible Program participants in accordance with the requirements*  
92 *established by federal law.*

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

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

98 6. Adopt ~~regulations~~ *policies* and procedures and perform any act or function consistent with the purposes  
99 of this chapter;

100 7. Explore and, as appropriate, establish incentives to encourage participation in the Program by eligible  
101 employers and eligible employees, including ~~a grant program to incentivize compliance with the Program and~~  
102 ~~to defray the costs of small businesses initiatives that incentivize compliance with the Program or defray any~~  
103 ~~costs incurred by an eligible employer to facilitate Program participation;~~

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

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

109 10. Accept any funds appropriated to the Program and any gifts, donations, grants, bequests, and other  
110 funds received on its behalf, including any funds made available for use in facilitating education and outreach  
111 initiatives for the Program; ~~and~~

112 11. Design and operate the Program in a manner that will cause it not to be an employee benefit plan  
113 within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974; *and*

114 12. *Explore and, as appropriate, establish requirements for which Program participants may elect to*  
115 *defer contributions at a level deemed appropriate by the Board to a short-term emergency savings*  
116 *mechanism that provides additional flexibility and access to savings.*

117 **§ 2.2-2748. Cooperation of other agencies.**

118 All agencies, departments, and commissions of the Commonwealth shall cooperate as requested by the

119 Plan in the performance of its duties under this chapter, including, unless otherwise prohibited, the sharing of  
 120 relevant data, *technical assistance*, and *compliance and enforcement mechanisms* as the parties shall mutually  
 121 agree.

122 **§ 2.2-2751. Program enrollment; participating employer liability and status under the Program.**

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

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

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

133 B. The Program shall be established and enrollment of eligible employers shall begin on July 1, 2023, or  
 134 as soon thereafter as practicable. The Board shall establish an implementation timeline under which eligible  
 135 employers shall enroll their eligible employees in the Program.

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

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

142 E. *Eligible employers that withhold a contribution from a participating employee's wages in connection*  
 143 *with the Program shall remit such contribution on the earliest date the amount withheld from the eligible*  
 144 *employee's compensation can be transmitted, but not later than 10 business days following the date upon*  
 145 *which the eligible employee's contribution amount was withheld from the employee's paycheck.*

146 F. *An eligible employer who withholds wages but fails to submit contributions to the Program in*  
 147 *accordance with the payroll deposit retirement savings agreement and in the time and manner specified may*  
 148 *be subject to a violation of federal and state labor laws and incur penalties thereof.*

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

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

153 ~~G. I.~~ Participating employers shall not have any liability for a participating employee's decision to  
 154 participate in or opt out of the Program or for the investment decisions of participating employees whose  
 155 assets are deposited in the Program.

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

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

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

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

174 ~~L. N.~~ No employer shall be permitted to contribute to the Program or to endorse or otherwise promote the  
 175 Program.

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