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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO PUBLIC FINANCE - RHODE ISLAND SECURE CHOICE RETIREMENT
SAVINGS PROGRAM ACT

Introduced By: Representatives Williams, Shekarchi, Ackerman, Marszalkowski, and
Almeida

Date Introduced: February 27, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 35 of the General Laws entitled "PUBLIC FINANCE" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 15.1

4 RHODE ISLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM ACT

5 **35-15.1-1. Short title.**

6 This chapter shall be known and may be cited as the "Rhode Island Secure Choice
7 Retirement Savings Program Act."

8 **35-15.1-2. Legislative purpose and policy.**

9 The general assembly finds as follows:

10 (1) Large numbers of households in this state have no or inadequate retirement savings
11 and many of those households do not have access to any savings plan at work.

12 (2) This lack of retirement savings and coverage is more prevalent among low-income
13 households.

14 (3) It is well-established that most workers will save for retirement if they are offered a
15 workplace savings program using an opt-out approach.

16 (4) Rhode Island is deeply concerned about the retirement prospects of its citizens and the
17 strain that large numbers of ill-prepared retirees may impose on taxpayer-financed elderly
18 assistance programs for housing, food, medical care, and other necessities. Accordingly, this

1 chapter will facilitate voluntary retirement savings by workers in this state by establishing an IRA
2 savings program and requiring employers in this state that do not offer a retirement plan to make
3 the program available to their employees.

4 **35-15.1-3. Definitions.**

5 (1) "Administrative fund" means the Rhode Island secure choice retirement savings
6 administrative fund established under § 35-15.1-8.

7 (2) "Board" means the Rhode Island secure choice retirement savings board established
8 under § 35-15.1-4.

9 (3) "Compensation" means compensation within the meaning of 26 U.S.C. § 219(f)(1)
10 that is received by a covered employee from a covered employer.

11 (4) "Contribution rate" means the percentage of a covered employee's compensation that
12 is withheld from his or her compensation and paid to the IRA established for the covered
13 employee under the program.

14 (5) "Covered employee" means any individual who is twenty-one (21) years of age or
15 older, who is employed by a covered employer, and who has compensation that is allocable to the
16 state. For purposes of the investment, withdrawal, transfer, rollover or other distribution of an
17 IRA, the term covered employee also includes the beneficiary of a deceased covered employee
18 and an "alternate payee" under state domestic relations law.

19 (6) "Covered employer" means an employer that either:

20 (i) Satisfies all of the following requirements:

21 (A) Has at no time during the previous calendar year employed fewer than twenty-five
22 (25) employees in the state;

23 (B) Has been in business for at least ten (10) years; and

24 (C) Has not been a participating or contributing employer in a retirement plan under 26
25 U.S.C. §§ 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) at any time during the preceding two
26 (2) calendar years; or

27 (ii) Elects to be a covered employer as permitted in accordance with rules and procedures
28 established by the board.

29 (7) "Employer" means a person or entity engaged in a business, profession, trade or other
30 enterprise in the state, whether for-profit or not-for-profit, that employs one or more individuals
31 in the state; provided that a federal or state entity, agency or instrumentality (or any political
32 subdivision thereof) shall not be an employer.

33 (8) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as
34 amended.

1 (9) "Investment adviser" means:

2 (i) An investment adviser registered as such under the U.S. Investment Advisers Act of
3 1940; or

4 (ii) A bank or other institution exempt from registration under the Investment Advisers
5 Act.

6 (10) "Investment fund" means each investment portfolio established by the board within
7 the trust for investment purposes.

8 (11) "IRA" means either an individual retirement account or individual retirement annuity
9 established under 26 U.S.C. § 408 (traditional) or § 408A (Roth).

10 (12) "Program" means the Rhode Island secure choice retirement savings program
11 established under this chapter.

12 (13) "Trust" means the IRA retirement trust (or annuity contract) established under § 35-
13 15.1-9.

14 (14) "Trustee" means the trustee of the trust (including an insurance company issuing an
15 annuity contract) selected by the board under § 35-15.1-9.

16 **35-15.1-4. Rhode Island secure choice retirement savings board.**

17 (a) There is hereby created the Rhode Island secure choice retirement savings board.

18 (b) The board shall consist of five (5) members as follows:

19 (1) The general treasurer, or designee.

20 (2) The following three (3) members appointed by the governor:

21 (i) An individual with experience in the investment field;

22 (ii) An individual with experience in the retirement field; and

23 (iii) An individual with experience in employment matters.

24 (3) An individual with experience in small business appointed by the general treasurer.

25 (c) The term of office of each member of the board appointed by the governor or general
26 treasurer shall be four (4) years, but each such member serves at the pleasure of the governor or
27 general treasurer as the case may be. If there is a vacancy by any such member, the governor or
28 general treasurer shall appoint a replacement to serve for such member's unexpired term.

29 (d) The general treasurer, or designee, shall serve as the chairperson of the board.

30 (e) A majority of the members of the board shall constitute a quorum for the transaction
31 of business.

32 (f) Members of the board shall serve without compensation, but may be reimbursed for
33 reasonable and appropriate expenses incurred in connection with their board duties from the
34 administrative fund.

1 **35-15.1-5. Powers and duties of the board.**

2 (a) The board shall have the following powers and duties:

3 (1) To design, establish, and operate the program in accordance with the requirements set
4 forth in § 35-15.1-6;

5 (2) To collect fees to defray the costs of administering the program;

6 (3) To enter into contracts necessary or desirable for the administration of the program;

7 (4) To hire, retain and terminate third-party service providers as the board deems
8 necessary or desirable for the program, including, but not limited to, consultants, investment
9 managers or advisors, trustees, custodians, insurance companies, recordkeepers, administrators,
10 actuaries, counsel, auditors and other professionals, provided that each service provider shall be
11 authorized to do business in the state;

12 (5) To determine the type(s) of IRAs to be offered, the default contribution rate and
13 automatic escalation rate;

14 (6) To employ a program director and such other individuals as the board determines to
15 be necessary or desirable to administer the program and the administrative fund;

16 (7) To develop and implement an outreach plan to gain input and disseminate information
17 regarding the program and retirement and financial education in general, to employees, employers
18 and other constituents in the state;

19 (8) Determine the number of days by which an eligible employer must make the program
20 available to a covered employee upon first becoming an eligible employer or covered employee;
21 and

22 (9) To adopt rules and procedures for the establishment and operation of the program and
23 to take such other actions necessary or desirable to establish and operate the program in
24 accordance with this chapter.

25 (b) All state agencies shall provide assistance to the board as may be requested by the
26 board from time to time.

27 (c) The board shall be independent of the state and may not impose any obligations on the
28 state, nor may it pledge the credit of the state.

29 **35-15.1-6. Consumer protection; fiduciary duties.**

30 (a) The board, the trustee, and each investment adviser or other person which has control
31 of the assets of the trust shall be a fiduciary with respect to the trust and IRAs established and
32 maintained under the program.

33 (b) Each covered employer shall be required to provide covered employees with such
34 information as the board directs. No employer acting as such shall be considered a fiduciary with

1 respect to the trust or an IRA or have fiduciary responsibilities under this chapter.

2 (c) Each fiduciary shall discharge its duties with respect to the program solely in the
3 interests of covered employees and with the care, skill, prudence and diligence under the
4 circumstances then prevailing that a prudent person acting in a like capacity and familiar with
5 those matters would use in the conduct of an enterprise of like character and aims.

6 **35-15.1-7. Rhode Island secure choice retirement savings program.**

7 The Rhode Island secure choice retirement savings program shall be designed,
8 established and operated in accordance with the following:

9 (1) Each covered employer shall be required to offer to each covered employee an
10 opportunity to contribute to an IRA established under the program for the benefit of the covered
11 employee through withholding from their compensation. No employer shall be permitted to
12 contribute to the program or to endorse or otherwise promote the program;

13 (2) Unless the covered employee chooses otherwise, they shall be automatically enrolled
14 in the program and contributions shall be withheld from such covered employee's compensation
15 at a rate set by the board unless the covered employee elects not to contribute or to contribute at a
16 different rate;

17 (3) The contribution rate of each covered employee shall be increased at such rate and at
18 such intervals as from time to time established by the board, unless the covered employee elects
19 not to have such automatic increases apply;

20 (4) The IRAs shall qualify for favorable federal income tax treatment under 26 U.S.C. §
21 408 and § 408A (as appropriate);

22 (5) The board may establish intervals after which a covered employee must reaffirm
23 elections with regard to participation or escalation;

24 (6) Each covered employer shall deposit covered employees' withheld contributions
25 under the program with the trustee in such manner as is determined by the board, provided that
26 the employer shall deliver the amounts withheld to the trustee in good order within ten (10)
27 business days after the date such amounts otherwise would have been paid to the covered
28 employee;

29 (7) The board shall determine the rules and procedures for withdrawals, distributions,
30 transfers and rollovers of IRAs and for the designation of IRA beneficiaries;

31 (8) The board shall report annually to the governor and general assembly detailing the
32 board's activities and the program's operations and shall submit an annual audited financial report,
33 prepared in accordance with generally accepted accounting principles, on the operations of the
34 trust to the governor, the state auditor, and the general assembly. The annual audit shall be

1 conducted by an independent certified public accountant.

2 (9) The board shall cause to be furnished to each covered employer:

3 (i) Information regarding the program;

4 (ii) Required disclosures to be furnished to covered employees. Such disclosures shall

5 include:

6 (A) A description of the benefits and risks associated with making contributions under

7 the program;

8 (B) Instructions about how to obtain additional information about the program;

9 (C) A statement that covered employees contact their own financial advisors seeking

10 financial advice and the federal and state income tax consequences of an IRA, which may consist

11 of or include the disclosure statement required to be distributed by the trustee under the Internal

12 Revenue Code;

13 (D) A statement that covered employers are not in a position to provide financial advice

14 and that covered employers are not liable for decisions covered employees make under this

15 chapter;

16 (E) A statement that the program is not an employer-sponsored retirement plan;

17 (F) A statement that neither the program nor the covered employee's IRA established

18 under the program is guaranteed by the state; and

19 (G) A statement that neither a covered employer nor the state will monitor or has an

20 obligation to monitor the covered employee's eligibility under the Internal Revenue Code to make

21 contributions to an IRA or to monitor whether the covered employee's contributions to the IRA

22 established for the covered employee under the program exceed the maximum permissible IRA

23 contribution; that it is the covered employee's responsibility to monitor such matters; and that

24 neither the state nor the covered employer will have any liability with respect to any failure of the

25 covered employee to be eligible to make IRA contributions or any contribution in excess of the

26 maximum IRA contribution.

27 (iii) Information, forms and instructions to be furnished to covered employees at such

28 times as the board determines that provide the covered employee with the procedures for:

29 (A) Making contributions to the covered employee's IRA established under the program,

30 including a description of the automatic enrollment rate, the automatic escalation rate and

31 frequency and the right to elect to make no contribution or to change the contribution rate under

32 the program;

33 (B) Making an investment election with respect to the covered employee's IRA

34 established under the program, including a description of the default investment fund; and

1 (C) Making transfers, rollovers, withdrawals and other distributions from the covered
2 employee's IRA;

3 (10) Each covered employer shall deliver or facilitate the delivery of the items set forth in
4 subsections (9)(ii) and (9)(iii) of this section to each covered employee at such time and in such
5 manner as determined by the board; and

6 (11) The program shall be designed and operated in a manner that will not cause it to be
7 an employee pension benefit plan within the meaning of 29 U.S.C. chapter 18, the "Employee
8 Retirement Income Security Program."

9 **35-15.1-8. Rhode Island secure choice retirement savings administrative fund.**

10 The Rhode Island secure choice retirement savings administrative fund is hereby
11 established in the department of the treasury as a nonappropriated fund, separate and apart from
12 the trust. The board shall use monies in the administrative fund to pay for administrative expenses
13 it incurs in the performance of its duties under this chapter. The administrative fund may receive
14 any grants or other monies designated for the administrative fund from the state, or any unit of
15 federal or local government, or any other person. Any interest earnings that are attributable to
16 monies in the administrative fund must be deposited into the administrative fund.

17 **35-15.1-9. Rhode Island secure choice retirement trust.**

18 (a) There is hereby created as an instrumentality of the state a trust to be known as the
19 Rhode Island secure choice retirement savings trust.

20 (b) The board shall appoint an institution qualified to act as trustee of IRA trusts or
21 insurance company issuing annuity contracts under 26 U.S.C. § 408 of the Internal Revenue Code
22 and licensed to do business in the state to act as trustee.

23 (c) The assets of IRAs established for covered employees shall be allocated to the trust
24 and combined for investment purposes. Trust assets shall be managed and administered for the
25 exclusive purposes of providing benefits to covered employees and defraying reasonable
26 expenses of administering and maintaining, and managing investments, of the IRAs and the trust,
27 including the expenses of the board under § 35-15.1-5.

28 (d) The board shall establish within the trust one or more investment funds, each pursuing
29 an investment strategy and policy established by the board. The underlying investments of each
30 investment fund shall be diversified so as to minimize the risk of large losses under the
31 circumstances. The board may, at any time and from time to time, add, replace, or remove any
32 investment fund.

33 (e) The board may allow covered employees to allocate assets of their IRAs among such
34 investment funds and in such case, the board also may designate an investment fund as a default

1 investment for the IRAs of covered employees who do not make an investment choice.

2 (f) Subject to § 35-15.1-9(g), the board, in consultation with such third-party professional
3 investment advisers, managers, or consultants as it may retain, shall select the underlying
4 investments of each investment fund. Such underlying investments may include, without
5 limitation, shares of mutual funds and exchange-traded funds, publicly-traded equity and fixed-
6 income securities, and other investments available for investment by the trust. No investment
7 fund shall invest in any bond, debt instrument or other security issued by the state.

8 (g) The board may, in its discretion, retain an investment adviser to select and manage the
9 investments of an investment fund on a discretionary basis, subject to the board's ongoing review
10 and oversight.

11 (h) The trustee shall be subject to directions of the board under § 35-15.1-9(f) or an
12 investment adviser under § 35-15.1-9(g) and shall otherwise have no responsibility for the
13 selection, retention, or disposition of trust investments or assets.

14 (i) The assets of the trust shall at all times be preserved, invested, and expended solely for
15 the purposes of the trust and no property rights therein shall exist in favor of the state or any
16 covered employer. Trust assets shall not be transferred or used by the state for any purposes other
17 than the purposes of the trust or funding the expenses of operating the program. Amounts
18 deposited with the trustee shall not constitute property of the state and shall not be commingled
19 with state funds and the state shall have no claim to or against, or interest in, the trust assets.

20 (j) The assets of the trust shall at all times be held separate and apart from the assets of
21 the state. Neither the state, the program, the board, any board member nor any employer shall
22 guaranty any investment, rate of return, or interest on amounts held in the trust, an investment
23 fund, or any IRA. Neither the state, the program, the board, any board member, nor any employer
24 shall be liable for any losses incurred by trust investments or otherwise by any covered employee
25 or other person as a result of participating in the program.

26 (k) The provisions of chapter 11 of title 7 shall not apply to the trust, any investment
27 fund, or any interest held by an IRA in the trust or such investment fund.

28 (l) The trust and each investment fund shall not be subject to taxation under any
29 provisions contained in title 44.

30 **35-15.1-10. Construction.**

31 The provisions and purposes of this chapter with respect to powers granted shall be
32 construed liberally to effectuate the chapters intent and purposes.

33 **35-15.1-11. Effective date of the program.**

34 The board shall establish the program so that covered employees may begin making

1 [contributions by January 1, 2020.](#)

2 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC FINANCE - RHODE ISLAND SECURE CHOICE RETIREMENT
SAVINGS PROGRAM ACT

1 This act would create a program to facilitate voluntary retirement savings by workers by
2 establishing an IRA savings program and would require employers not offering a retirement plan
3 to make the program available to their employees.

4 This act would take effect upon passage.

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