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October 29, 2021

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*Via electronic submission to the Division of Legislative Automated Systems ([reportdocs@dlas.virginia.gov](mailto:reportdocs@dlas.virginia.gov))*

**Re: Report on State-Facilitated Private Retirement Plan Programs: Encouraging Citizens to Save for Retirement**

Attached is the report (the Report) of the Virginia College Savings Plan (Virginia529) delivered pursuant to the third enactment clause of Chapter 556 of the 2021 Virginia Acts of Assembly, establishing a state-facilitated IRA savings program (the Program) by adding a new Chapter 27.1 of Title 2.2 of the Code of Virginia of 1950, as amended (the Code) and amending § 23.1-701 of the Code. The Report includes a discussion of (i) recommendations for technical amendments to clarify the scope of the Program and ensure compliance with law, (ii) the experience of other states that have enacted similar legislation, (iii) potential incentives to encourage participation in the Program and defray the costs of participation for small businesses, and (iv) costs and benefits, to employers and to the Commonwealth, of reducing the threshold number of employees of an eligible employer under the provisions of the Program's enabling legislation.

Should you have questions about the Report, please feel free to contact Peter Thompson, Retirement Program Director at [pthompson@virginia529.com](mailto:pthompson@virginia529.com) or Leslie Crudele, Government Relations Director at [lcrudele@virginia529.com](mailto:lcrudele@virginia529.com).

Sincerely,

Mary G. Morris

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## **Executive Summary**

In April 2021, legislation was enacted to establish a state-facilitated private retirement program (the Program) for private-sector workers whose employers do not offer a workplace retirement plan in the Commonwealth of Virginia. Virginia College Savings Plan (Virginia529) was directed and authorized to establish the Program to promote greater voluntary retirement savings for private-sector workers in a convenient and portable manner. This Virginia529 report provides additional information on state-facilitated retirement programs and recommends other technical amendments to the Code of Virginia necessary and prudent to effectuate the establishment of the Program in Virginia pursuant to Chapter 556 of the 2021 Acts of the Assembly.

The scope of this report consists of: (i) legislative enhancements; (ii) experience of other states with active programs; (iii) potential incentives to encourage participation and defray costs; and (iv) cost-benefit analysis of reducing the current employer eligibility threshold. Virginia529's intent in delivering this report is to provide an overview of the current landscape of state-facilitated private retirement programs and empirically-based evidence to inform the legislature on those recommendations that ensure the Program more effectively aligns with the legislature's recognition that many employed Virginians lack access to a workplace retirement plan and, conversely, sufficient retirement savings. This lack of access disproportionately affects Hispanic, Black, and Asian employees who typically comprise a significant portion of uncovered (ineligible) employees at the workplace or work for employers whose size consists of 25 or fewer employees. Women generally have lower overall access and participation rates than men when looking at all employees.

Since December 2020, when Virginia529 submitted to the General Assembly its *Report on State-Facilitated Private Retirement Plan Programs: Encouraging Citizens to Save for Retirement* (2020 Report) pursuant to Chapter 506 of the 2020 Acts of the Assembly, the experience of other states that have enacted similar legislation has helped to inform how Virginia should implement its own specifically with active automatic enrollment individual retirement account (IRA) programs (also known as auto-IRA programs). To better effectuate the intent of the General Assembly, this report proposes technical amendments to help clarify the scope of the Program, facilitate administration of the Program and clarify potentially ambiguous language.

This report also looks to the three states with active auto-IRA programs – Oregon, Illinois, and California – which help to provide insight into the impact and prevalence of auto-IRA programs on those private-sector workers who, prior to the establishment of each program, had no access to an employer-sponsored retirement savings plan. Since publication of the 2020 Report, these states have experienced several changes. In July 2021, with strong bipartisan support the Illinois legislature approved several key elements of legislation for its Illinois Secure Choice Program which was originally launched in 2018. The 2021 legislation created a more inclusive and nimbler program structure including, most notably, a reduction of the employer eligibility threshold from 25 to 5 employees and an annual automatic increase to the contribution rates, among other enacted changes.

As these other auto-IRA programs have matured, more data has been published about the effectiveness of these programs. Established in 2017, the OregonSaves auto-IRA program is the

oldest auto-IRA program and serves an eligible population of approximately one million private sector workers. In just under four years, the OregonSaves program has amassed approximately 111,916 total funded accounts and total assets of more than \$131 million as of August 31, 2021. Surveys of employers facilitating their employees' participation in the OregonSaves program have shown that the large majority of those employers view the program positively and have experience minimal costs, if any, associated with program participation.

An auto-IRA program meets potential savers where they are and facilitates access for all eligible private-sector workers whose employers do not offer a retirement savings option. The experience of the three states with active auto-IRA programs and the overwhelming support among employers and employees shows that Virginia's auto-IRA Program can help to address and ameliorate the high level of retirement insecurity in the Commonwealth, leading to better retirement outcomes. This means that the Program can be used to not only close the retirement savings gap but also to secure the Commonwealth's fiscal position and enhance the quality of life for all Virginians in their retirement years.

Finally, this report examines potential incentives to encourage participation in the Program and defray the costs of participation for small business employers. The experience of other states serves as an indicator of the pent-up demand for a no-cost retirement savings program for workers and incentive initiatives can help cover any costs employers may face when enrolling eligible employees in the Program. As most states have found that employers face little to no cost in offering an auto-IRA program, there are no active incentive programs in the market though other states do include provision for such a program in the future. This report, therefore, examines what potential incentives may look like for Virginia employers who may need assistance facilitating their employees' participation in the Program.

## **Section 1: Legislative Technical Amendments**

Scope: The Board shall recommend any technical amendments necessary to clarify the scope of the Program and ensure compliance with law.

### **Key Recommendations**

To best effectuate the General Assembly's intent in passing the Program's enabling statute, several technical edits are recommended:

Recommendation #1: Remove the references to the Virginia Employment Commission (VEC) in the "eligible employer" definition in § 2.2-2744 of the Code. This technical edit is needed because with the addition of the "hours worked" requirement within the statutory definition of "eligible employee," the reference is insufficient to meet the Program's data needs. With the removal of this clause, Virginia529 will work with the VEC and other state agencies, pursuant to the provisions of § 2.2-2748 of the Code, to obtain relevant information to implement the Program

Recommendation #2: Remove the specific qualifications for Program Advisory Committee (PAC) membership under Va. Code § 2.2-2746. The needs of the PAC may change over time as program design and implementation requiring a certain kind of experience and knowledge may shift when the Program is operational and benefit from small business owners or employees interested in the ease and cost-effectiveness of the Program. In addition, this section is not limited to non-Board members who may not meet the criteria, but Board participation is important.

Recommendation #3: Clarify the language pertaining to incentives for small businesses under Va. Code § 2.2-2747(7) by changing the language to "Explore and, as appropriate, establish incentives to encourage participation in the Program by eligible employers, eligible employees and participating individuals, including a grant or similar program to incentivize compliance with the Program and to defray Program participation costs for participating employers." This technical edit would serve to better effectuate the intent of the General Assembly to encourage Program adoption and compliance for employers required to participate in the Program. The legislative intent in using the undefined term "small businesses" is unclear, so using defined terms adds clarity. Any participation requirements in any kind of incentive may be included in the Program design.

Recommendation #4: Conform language throughout the enabling statute to align with revised statutory definitions. This technical edit is necessary in order to clarify who is and is not eligible for Program participation, as well as which individuals are required to be automatically enrolled in the Program. This technical edit would require the following changes in the legislation:

- Va. Code § 2.2-2751(A)(1): Change reference from “eligible employees” to “employees” to better reflect the ministerial role of employers facilitating enrollment in the Program, and to allow any employee to voluntarily participate in the Program outside of the employer mandate.
- Va. Code § 2.2-2751(A)(2): Change reference from “eligible employee” to “employee” to better reflect the ministerial role of employers facilitating enrollment in the Program for any employees voluntarily choosing to participate in the Program.
- Va. Code § 2.2-2751(A)(3): Change reference from “self-employed individual” to “participating individual or self-employed individual.” This technical edit is necessary to clarify the General Assembly’s intent to allow Virginians to participate in the Program outside of a mandated employer participation relationship. This allows self-employed individuals, so-called gig workers or participating individuals (as that term is defined in the statute), to enroll in the Program.
- Va. Code § 2.2-2751(B): Change the implementation date to “is expected to begin on or before July 1, 2023” to allow the Program to begin enrolling eligible employers in the Program in advance of the deadline. This technical edit is recommended to clarify that the Program may begin enrolling employers in advance of the July 1, 2023 deadline for initiatives such as a pilot program or voluntary early compliance with the mandate.
- Va. Code § 2.2-2751(F): Add “participating individual” to this provision. This technical edit is necessary to clarify that an individual participating outside of an employment relationship may terminate their participation in the Program at any time in a manner prescribed by the Board. As currently written, this provision may be construed as to limiting that ability to individuals participating through an employment relationship.

Attached as Exhibit A to this Report is a proposed redline of Chapter 27.1 of Title 2.2 reflecting the recommended technical amendments to the enabling legislation for the Program.

## **Section 2: Experience of Other States with State-Facilitated Private Retirement Programs**

**Scope:** The Board shall examine the experience of other states that have enacted similar legislation.

### **Overview**

The nation faces a massive retirement savings shortfall, as 45% of working-age households do not have any personal retirement savings.<sup>1</sup> Due to this shortfall, states began a number of years ago to pursue public policy initiatives to reduce barriers that millions of hard-working citizens face in saving for retirement. Since 2012, 46 states have studied or considered legislation to establish, or implemented, state-facilitated retirement savings programs.<sup>2</sup> In 2021 alone, at least 20 states and cities have introduced or adopted legislation to address the retirement savings gap among private sector workers. Figure 1 illustrates the various models adopted by states with enacted programs.<sup>3</sup> Two-thirds of states with enacted programs selected the so-called auto-IRA model, which is what Virginia adopted in 2021.

**Figure 1: State-Facilitated Retirement Savings Programs**

Individual Retirement Account (Auto-IRA)	Voluntary Payroll Deduction IRA	Voluntary Open Multiple Employer Plan	Voluntary Marketplace	Voluntary Marketplace and Voluntary Payroll IRA (Hybrid)
<p><b>California</b>  <b>Colorado</b>  <b>Connecticut</b>  <b>Illinois</b>  <b>Maryland</b>  <b>New Jersey</b>  <b>Oregon</b>  <b>New York City</b>  <b>Seattle, Washington</b>  <b>Virginia</b></p>	<p><b>New York (note: shifting to an auto-IRA)</b></p>	<p><b>Massachusetts</b>    <b>Vermont</b></p>	<p><b>Washington</b></p>	<p><b>New Mexico</b></p>

<sup>1</sup> National Institute on Retirement Security and the Aspen Institute Financial Security Program, *How States Can Utilize the Saver’s Tax Credit to Boost Retirement Savings* (2021), <https://www.nirsonline.org/wp-content/uploads/2021/06/Aspen-Savers-Credit-2021-Update.pdf>.

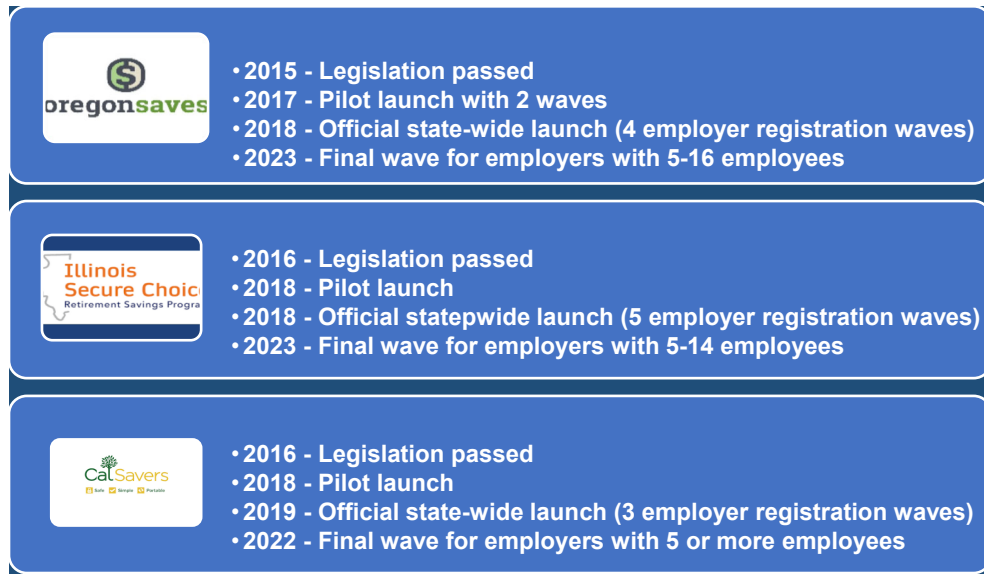
<sup>2</sup> Georgetown Center for Retirement Initiatives, *State Brief 21-02: State-Facilitated Retirement Savings Programs: A Snapshot of Program Design Features*, p. 2 (May 15, 2021), <https://cri.georgetown.edu/wp-content/uploads/2018/12/CRI-State-Brief-20-02.pdf>.

<sup>3</sup> *Id.* Not reflected in Figure 1 is New York state, which recently passed a law creating an auto-IRA for eligible employers with ten or more eligible employees. See generally, Keisha Clukey and Austin R. Ramsey, *Auto-IRA Law Aimed at Private Sector Signed by N.Y. Governor* (October 21, 2021), <https://news.bloomberglaw.com/daily-labor-report/auto-ira-law-aimed-at-private-sector-signed-by-new-york-governor>.



Consistent with the spirit of Chapter 556 of the Virginia Acts of Assembly – 2021 Special Session 1, this report will focus on the three states with open auto-IRA programs – Oregon, Illinois, and California. As illustrated in Figure 2, these three states have active auto-IRA programs with track records and account and asset growth sufficient to draw meaningful information. This section highlights each state’s experience with their respective programs to date.<sup>4</sup>

**Figure 2: Active State-Facilitated Auto-IRA Program Timeline**



### Program Launch, Growth and Data

Established in 2017, the OregonSaves auto-IRA program has a pool of approximately one million private sector workers who, prior to the establishment of the OregonSaves Program, had no access to an employer-sponsored retirement savings plan.<sup>5</sup> Illinois opened their Secure Choice program in 2018 and offers more than two million workers who previously lacked access to an employer-sponsored retirement savings plan the option to save for their future.<sup>6</sup> In 2019, California joined Oregon and Illinois and officially opened its auto-IRA program, CalSavers, for statewide enrollment for the estimated 7.4 million private-sector workers in California without access to an employer-sponsored retirement savings plan.<sup>7</sup>

<sup>4</sup> Georgetown Center for Retirement Initiatives, *State Program Performance Data* (September 30, 2021), <https://cri.georgetown.edu/states/state-data/>.

<sup>5</sup> Georgetown Center for Retirement Initiatives, *OregonSaves Implementation Update* (August 31, 2021), <https://cri.georgetown.edu/wp-content/uploads/2019/02/Infographic-20-03-OregonSaves.pdf>.

<sup>6</sup> Georgetown Center for Retirement Initiatives, *Illinois Secure Choice Implementation Update* (September 31 [sic], 2021), <https://cri.georgetown.edu/wp-content/uploads/2020/04/Infographic-20-04-IL-Secure-Choice.pdf>.

<sup>7</sup> Georgetown Center for Retirement Initiatives, *CalSavers Implementation Update* (September 30, 2021), <https://cri.georgetown.edu/wp-content/uploads/2020/04/Infographic-20-02-CalSavers.pdf>.

Although each program has slight differences in program details such as auto-escalation caps, fees, and investments (see Appendix B for detailed descriptions), all three programs follow the same basic program design and share the following program design elements:

- Mandatory employer participation for employers who do not currently offer qualified retirement savings plans and who employ **five or more employees**;
- **Roth IRA** as the default savings vehicle, with a traditional IRA option as an alternative;
- Employees are automatically enrolled but may **opt-out at any time**;
- **Five percent** default contribution rate; and
- Employer contributions to employee accounts are **prohibited**.<sup>8</sup>

The figure below illustrates program performance for the three auto-IRA program states as of August 31, 2021.<sup>9</sup> Although the programs are relatively new, with just under three years of performance data, there is evidence of consistent and sustained growth over time. Compared with defined contribution plans in the private sector, OregonSaves is already one of the largest retirement savings arrangements in the state as measured by number of participants.<sup>10</sup>

Figure 3: Active Auto-IRA Program Participant Data

		OregonSaves <sup>1</sup>	Illinois Secure Choice <sup>2</sup>	CalSavers <sup>3</sup>	
		Estimated eligible population of private sector workers in each state who lack access to an employer-sponsored retirement savings plan			
		1 million	1.9 million	7.4 million	
Participant Data <sup>4</sup>	Total Assets (millions \$)	\$131.5	\$74	\$117.1	Across all programs
	Average Contribution Rate	5.50%	5.05%	5.09%	\$322.6 million Total Assets
	Average Monthly Contribution	\$138	\$114.24	\$143	385,429 Funded Accounts
	Effective Opt-Out Rate	32.0%	33.67%	29.85%	37,309 Employers Registered

As shown in Figure 3, the effective opt-out rate is consistent across all three active programs, averaging about 32%. Worth noting, the 2018 *Christopher Newport University Feasibility Study of Retirement Savings Programs for Virginia* estimated opt-out rates between 20 – 30%, depending on economic conditions.<sup>11</sup> Also of note, the bill introduced by Chairman Torian in

<sup>8</sup> Georgetown Center for Retirement Initiatives, *State Program Performance Data* (September 30, 2021), <https://cri.georgetown.edu/states/state-data/>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

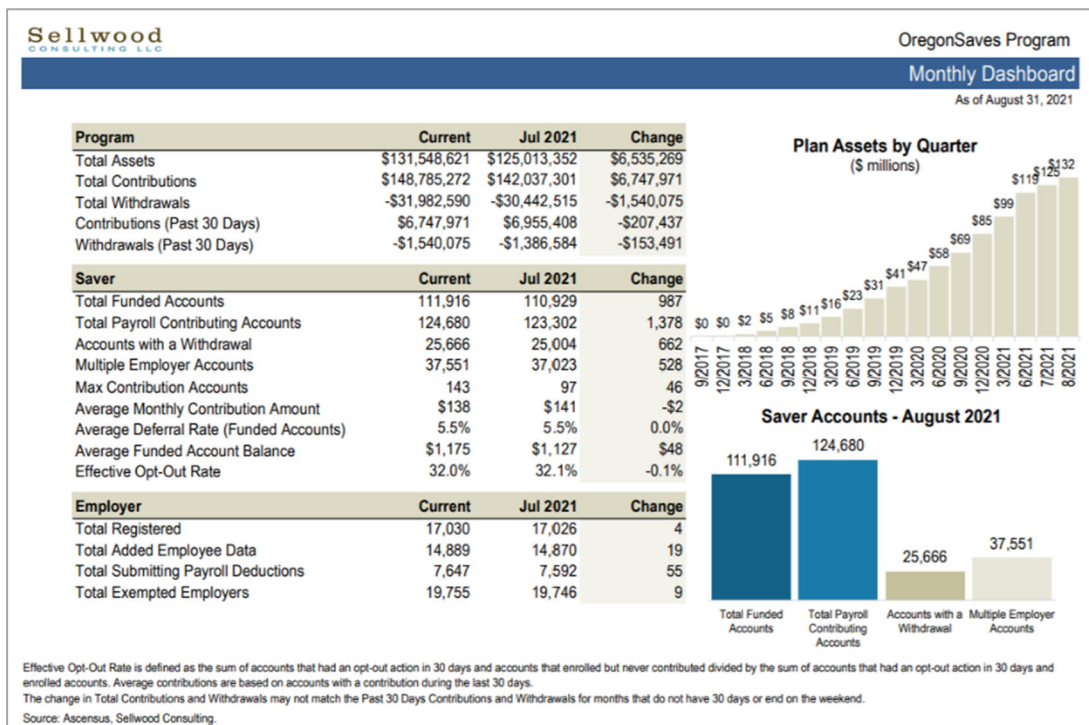
<sup>11</sup> See generally, Christopher Newport University, *HJR 103 Feasibility Study of Retirement Savings Programs for Virginia* (2018), <https://rga.lis.virginia.gov/Published/2019/HD7/PDF>.

2021 was consistent with the coverage in the three open programs, with mandatory employer participation for those who employ five or more employees, and the estimated eligible Virginia population for the Program was 1.2 million with that threshold. As enacted, with the employee threshold increased to 25 and the definition of eligible employee narrowed to those who work at least 30 hours (full-time employees), the eligible population in Virginia was cut in half.

### Influence of the COVID-19 Pandemic

Despite the profound social and economic impacts COVID-19 had on employers and employees since the start of the pandemic in early 2020, the three open auto-IRA programs continued to see growth in employer registration, funded accounts, and total assets as illustrated in the state dashboard data in Figures 4 through 6 below.<sup>12</sup> The growth of these programs and the relatively flat withdrawal patterns is indicative of program acceptance among employers and employees alike.<sup>13</sup>

Figure 4: OregonSaves Program Performance (as of August 31, 2021)



Although the impacts of the pandemic are deep and still unfolding, program performance throughout the pandemic is an indicator of the resilience of these programs and the

<sup>12</sup> John Scott and Andrew Blevins, *Oregon State Retirement Program Growing During Pandemic Despite Some Worker Withdrawals* (October 20, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/10/20/oregon-state-retirement-program-growing-during-pandemic-despite-some-worker-withdrawals>.

<sup>13</sup> *Id.*

understanding by employees of the need to plan and save for their futures. Unsurprisingly, communications and education remain of paramount importance to the success of these programs. Oregon, Illinois, and California quickly adapted their communications strategy to a virtual environment, leveraging technology and direct mail contact to engage employers and employees. Sensitive to the economic impacts caused by the pandemic, states modified and adjusted onboarding procedures, refocused saver communications to ensure individuals understood that they had access to the money in their accounts as needed and ensured customer service support was available to help participants with account questions and concerns.<sup>14</sup>

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<sup>14</sup> See generally, *CalSavers 2020 Year End Highlights Report* (January 6, 2021), <https://www.treasurer.ca.gov/calsavers/year-end-highlights-report-2020.pdf>; *Illinois Secure Choice Retirement Savings Program 2020 Annual Report* (2021), [https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal\\_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf](https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf).

Figure 5: Illinois Secure Choice Program Performance (as of August 31, 2021)

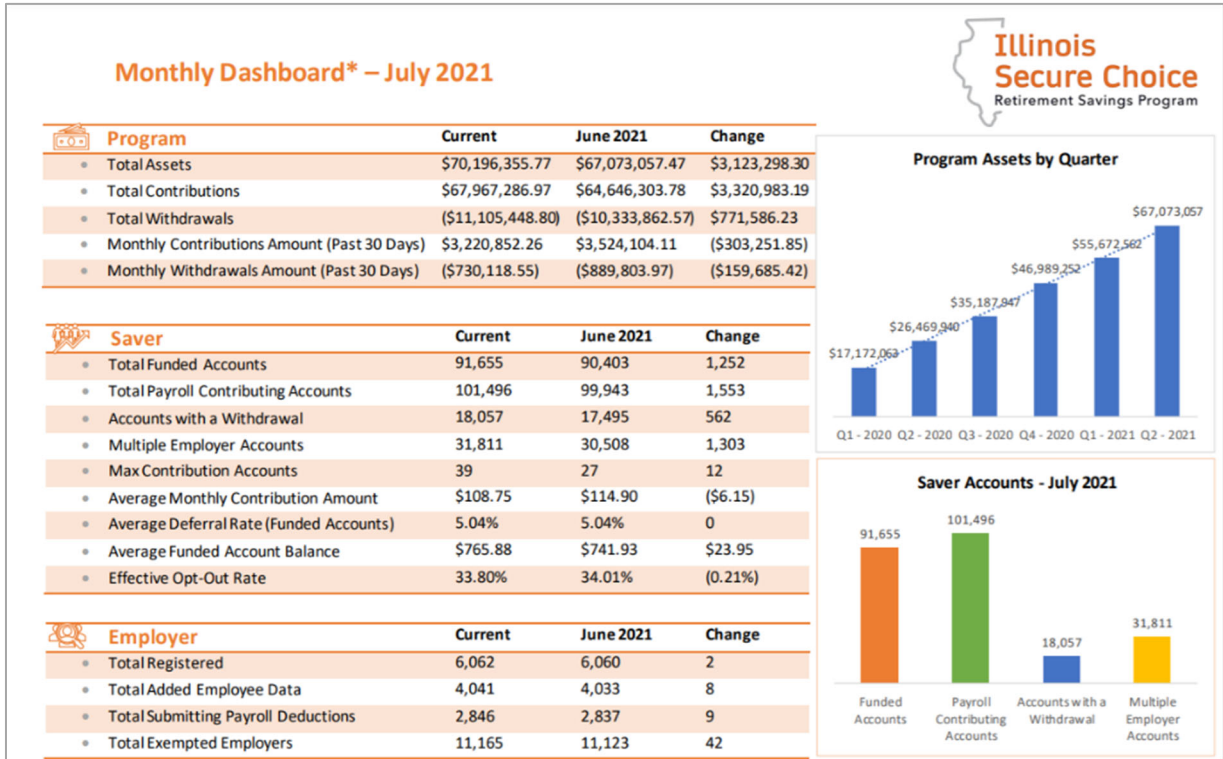
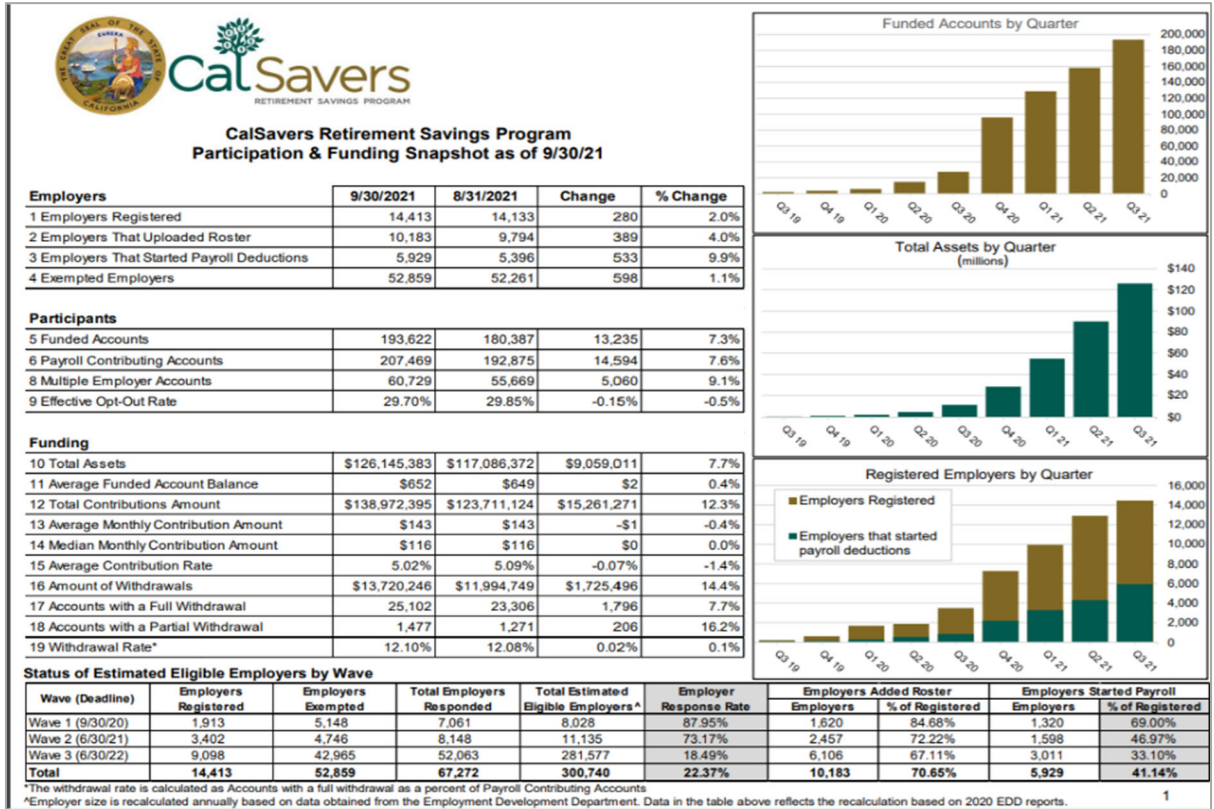
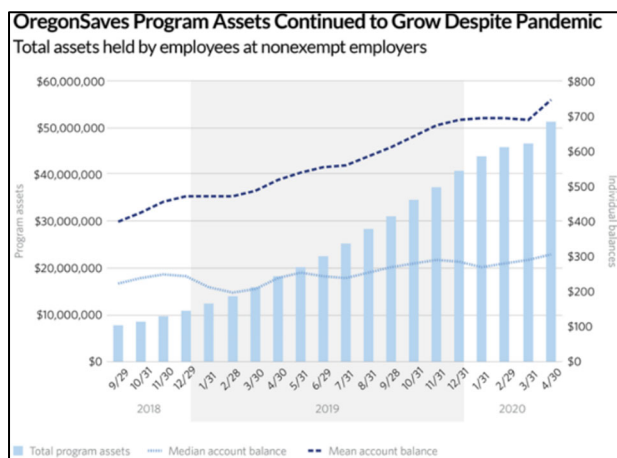


Figure 6: CalSavers Program Performance (as of September 30, 2021)

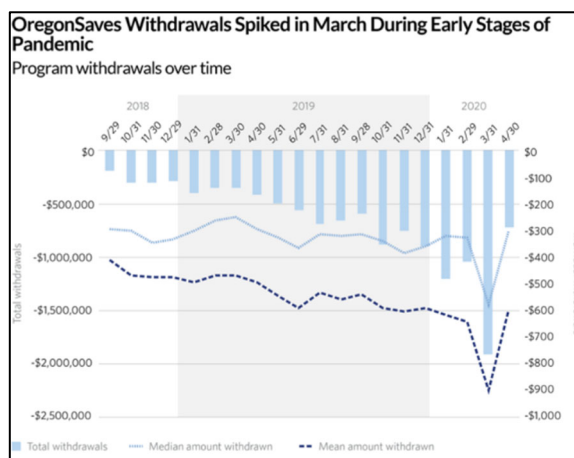


Though active state-facilitated programs have and continue to see performance growth in funded accounts and assets, all three auto-IRA programs experienced a spike in withdrawals in the initial months of the COVID-19 pandemic. Figures 7 and 8 illustrate Oregon’s experience during this period.<sup>15</sup> However, as shown below, although there was a slight fluctuation in withdrawals in spring 2020, the OregonSaves program continued to grow during the pandemic. Based on these trends, participants appear to be staying the course and continuing to take advantage of wealth-generating opportunities they would not have otherwise had.

**Figure 7: OregonSaves Program Growth During Pandemic**



**Figure 8: OregonSaves Withdrawals during Pandemic**



## Auto IRA Programs Continue to Evolve: Program Design and Administrative Changes

### Oregon

As the first auto-IRA program launched, Oregon also is the first to change its Program Administrator. In June 2021, the Oregon Retirement Savings Board voted to approve several changes to the program as summarized below:

- Transitioned the program administrative service provider from Ascensus College Savings Record Keeping Services, LLC (Ascensus) to Sundry Administration, LLC, and its affiliates (Sundry);
- Launched a limited pilot program with Sundry for employers not currently participating in the program;

<sup>15</sup> John Scott and Andrew Blevins, *Oregon State Retirement Program Growing During Pandemic Despite Some Worker Withdrawals* (October 20, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/10/20/oregon-state-retirement-program-growing-during-pandemic-despite-some-worker-withdrawals>.

- Modified the timeline for certain employers to certify an exemption from the program or register with the program; and
- Designated investment option changes and the standard investment election for the program upon full conversion of the program administration services from Ascensus to Sunday.<sup>16</sup>

## Illinois

In July 2021, with strong bipartisan support, the Illinois legislature approved several changes which created a more inclusive and nimbler program structure. Of greatest significance is the change in employer participation from those employing at least **25 employees** to those employing at least **5 employees, and the method for calculating employees was simplified.**<sup>17</sup>

Other changes during the last Illinois legislative session included features to ease administration of their program and communicate with employers and employees.

## California

An ongoing issue in California has involved challenges to the concept of providing a state-facilitated retirement program. To date, every such challenge has been rejected in applicable courts. The most recent favorable ruling for California was the May 2021 decision of the Ninth Circuit Court of Appeals which affirmed the District Court for the Eastern District of California’s dismissal of claims by the Howard Jarvis Taxpayers Association (HJTA) who filed suit against the CalSavers program on the grounds that the Employee Retirement Income Security Act (ERISA) preempts CalSavers, therefore invalidating the program.

*“We are very pleased with the court’s ruling. CalSavers is a simple solution to level the playing field for workers who for too long haven’t had access to workplace-based retirement plans. There is no reason to deny millions of hardworking Californian’s access to this savings program when the alternative is to see them work until they are physically unable to, or suffer the hardships that come with little to no savings.”*

Source: California State Treasurer Fiona Ma on the Ninth Circuit Court Ruling

In its initial suit in California’s U.S. District Court for the Eastern District of California, HJTA asserted that the CalSavers Board and Trust are employers because a “trust” is a “person” who is “acting indirectly in the interest of an employer”.<sup>18</sup> The lawsuit was dismissed by the court,

<sup>16</sup> Minutes of the Oregon Retirement Savings Program Board Meeting (June 30, 2021), <https://www.oregon.gov/treasury/financial-empowerment/Documents/ors-board-meeting-minutes/2021/2021-06-30-ORSBMinutes.pdf>.

<sup>17</sup> Illinois Secure Choice Savings Program Act, Public Act 102-0179 (HB0117) (July 30, 2021), <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0179>.

<sup>18</sup> Rebecca Moore, Lawsuit Arguing ERISA Preemption of CalSavers Dismissed (March 11, 2020), <https://www.plansponsor.com/lawsuit-arguing-erisa-preemption-calsavers-dismissed/>.

which found that since the CalSavers' Trust is administered by a state-created board and not a group of employers, they are not considered "employers" under ERISA.<sup>19</sup> Second, the court held that actual employers have no discretion in the administration of CalSavers and perform simply ministerial functions such as remittance of payroll deductions but otherwise have no discretion regarding the funds.<sup>20</sup> Finally, the court found that "while CalSavers applies only when actual employers do not have an existing ERISA or employer-sponsored retirement plan, the program does not interfere with existing ERISA or retirement plans provided by actual employers."

Upon appeal to the Ninth Circuit Court of Appeals, HJTA's suit was once again dismissed as the court found that ERISA does not preempt the CalSavers program.<sup>21</sup> In its decision, the court held



*CalSavers puts my mind at ease because I know my team is in good hands.*

**- Kenitra Dominguez**  
Director of People & Culture, Red Bay Coffee

that Congress's repeal of a 2016 Department of Labor rule that sought to exempt CalSavers, and other state-facilitated retirement savings programs, from ERISA under a safe harbor did not resolve the preemption question. However, the court concluded that "CalSavers is not an ERISA plan because it is established and maintained by the state, not employers; it does not require employers to operate their own ERISA plans; and it does not have an impermissible reference to or connection with ERISA. Nor does CalSavers interfere with ERISA's core purposes. Accordingly, ERISA does not preempt the California law."<sup>22</sup>

The most recent activity in this litigation was on October 12, 2021, when HTJA petitioned the U.S. Supreme Court to review the Ninth Circuit Court of Appeals' judgment. While California and, arguably, all

active and enabled state-facilitated auto-IRA programs, awaits the decision of the U.S. Supreme Court, the CalSavers Board and staff remain confident they will prevail and continue to enroll new participants.

Notwithstanding the HJTA litigation, CalSavers accomplished key policy goals in 2020. Most notably, passage of Assembly Bill 102, which made several important technical amendments to

<sup>19</sup> Howard Jarvis Taxpayers Ass'n et al. v. Cal. Secure Choice Ret. Sav. Program et al., No. 2:18-cv-01584-MCE-KJN at 9 (E.D. CA Mar. 10, 2020), <https://si-interactive.s3.amazonaws.com/prod/plansponsor-com/wp-content/uploads/2020/03/11132327/HowardJarvisTaxpayersvCalSaversDismissal.pdf>.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> Amanda Umpierrez, Appellate Court Affirms Dismissal of CalSavers Lawsuit (May 7, 2021), <https://www.plansponsor.com/appellate-court-affirms-dismissal-calsavers-lawsuit/>.

<sup>22</sup> See generally, Howard Jarvis Taxpayers Ass'n et al. v. Cal. Secure Choice Ret. Sav. Program et al., No. 20-15591, D.C. No. 2:18-cv-01584-MCE-KJN (9<sup>th</sup> Cir. May 6, 2021), <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/05/06/20-15591.pdf>.



state law including (i) renaming the program and its Board, (ii) expanding investment option choices; (iii) and simplifying the employer compliance enforcement procedures.<sup>23</sup>

Recognizing the challenges of a volatile market and the potential adverse impacts of a near-zero interest rate environment, the CalSavers Board voted to change the default investment arrangement to ensure that California's Money Market Fund participants did not experience negative returns net of fees.<sup>24</sup> After examining various options to optimize savers' experiences, the program changed the default investment arrangement to more quickly direct contributions to its target date funds series beginning in April 2021.<sup>25</sup> All of the legislative enhancements and actions to increase inclusion and participation while simplifying program participation will serve to inform Virginia529's decision making as it moves forward with Program implementation. The collegiality of all states working on state-facilitated retirement programs and the sharing of information, best practices and lessons learned has been invaluable to date and promises to be helpful in the future.

### **Congressional Interest in Retirement Savings**

Congress and the Executive Branch have a continuing interest in closing the national retirement savings gap and in finding ways to encourage and support more working Americans in saving for retirement. A measure to mandate an automatic retirement savings program for U.S. workers without access to a workplace retirement plan has been discussed as part of the pending Build Back Better (BBB) proposals discussed in Congress this year. Of particular interest, the legislation as introduced includes an employer eligibility threshold of five or more employees and a 6% default contribution rate. It appears these provisions will not be included in the final version of the bill, but the interest in this provision highlights the importance of expanding retirement coverage and providing an additional layer of protection beyond Social Security to low-income workers, people of color, and women.

### **Employer Industry & Sector Analysis**

Although the size and numbers of employers and employees varies from state to state, the universe of types of employers participating in state-facilitated retirement savings programs is consistent across programs. Figure 9 illustrates business sector group distribution for program participants in Illinois and California as of December 31, 2020.<sup>26</sup> Leisure and hospitality represent the largest industry sector participating in the programs for both states, though Illinois

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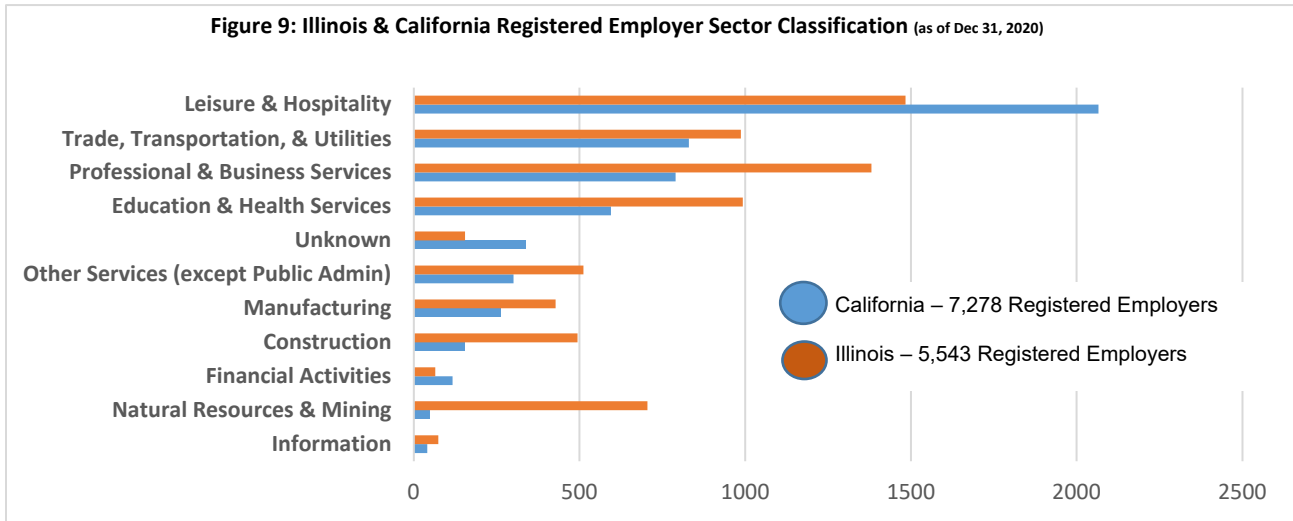
<sup>23</sup> *CalSavers 2020 Year End Highlights Report*, p. 1 (January 6, 2021), <https://www.treasurer.ca.gov/calsavers/year-end-highlights-report-2020.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *See id.* at 5. *See also Illinois Secure Choice Retirement Savings Program 2020 Annual Report*, p. 10 (2021), [https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal\\_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf](https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf).

savers in this sector account for only 24% of total assets in the Illinois Secure Choice program; this is in spite of the leisure and hospitality sector having the largest number of registered employers offering the program to employees.<sup>27</sup> Illinois attributes this anomaly in part to the high turnover rate or lower salary levels within this sector.<sup>28</sup>



Using the data in Figure 10 for comparison, Virginia can likely anticipate similar trends in business sector participation as Illinois and California and may consider tailored messaging to achieve penetration across diverse business sectors.<sup>29</sup> Given the high turnover in the leisure and hospitality sector, small businesses may be less inclined to embrace the program based on the experience of Illinois and a more robust and high touch onboarding process may be considered.

**Figure 10: Industry Comparison: CNU Report & VA529 Market Survey 2020**

**Table 3-4: Industry Comparison: CNU Report and Virginia529 Market Survey 2020**

Industry Sector	CNU Report 2018	Virginia529 Market Survey 2020
Healthcare & Social Assistance	14%	9%
Retail Trade	12%	13%
Accommodations & Food Service	12%	11%
Construction	9%	7%
Admin Support & Waste Management	7%	6%
Other non-retail services (except private households)	7%	13%

Other Services (specified by respondents: media production, barber, childcare, piano teacher, boat sales, church, salon & spa, graphic design, custodian services, freelance).

<sup>27</sup> *Illinois Secure Choice Retirement Savings Program 2020 Annual Report*, p. 10 (2021), [https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal\\_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf](https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf).

<sup>28</sup> *Id.*

<sup>29</sup> See, *HD-12 Report on State-Facilitated Private Retirement Plan Programs: Encouraging Citizens to Save for Retirement* (Chapter 506, 2020) (December 10, 2020), <https://rga.lis.virginia.gov/Published/2020/HD12/PDF>.

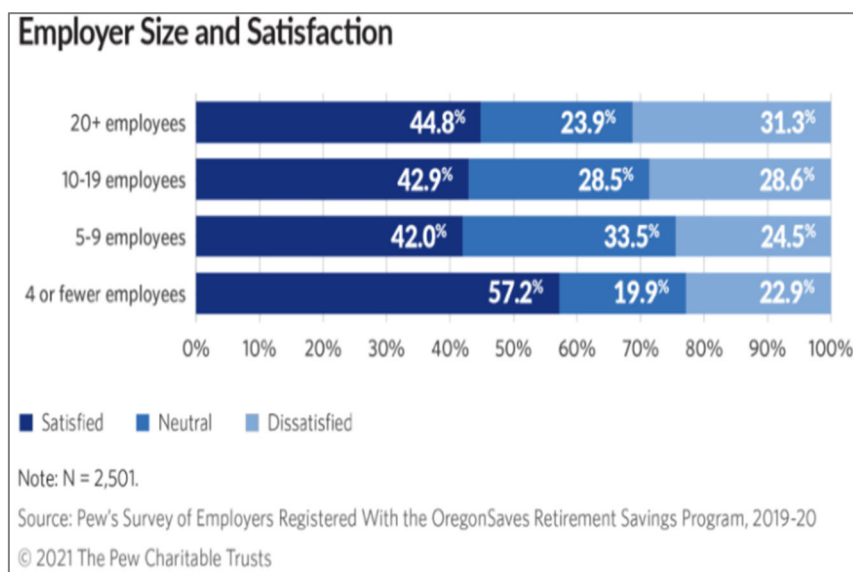
## Employer Experiences – Outreach and Simplicity Matter

Despite the difficulties the COVID-19 pandemic caused for employers and savers, all programs continued to see an increase in registered employers, total number of savers, and total program assets over every single month as previously illustrated in Figures 4 through 6, above. This growth continues to underscore the high level of interest in these programs and the benefits they provide to employers and savers alike.<sup>30</sup>

Anecdotally, all active state programs report overall employer satisfaction and continued growth and performance in line with expectations. During the pandemic, communications and outreach efforts of programs largely shifted from in-person seminars and events to an all-virtual environment. As state health and safety restrictions relaxed, programs have resumed in-person outreach events (as able) while combining best practices and lessons learned from online webinars and education sessions. States continue to work with program administrators to enhance payroll integration, expand access to educational webinars, increase partnership with community and asset building organizations and improve the employer onboarding experience. During this time, CalSavers and its program administrator Ascensus collaborated on technology enhancement including a bilingual mobile application for employees to monitor and manage their accounts from their phones.<sup>31</sup>

Interestingly, research on active programs has found that business characteristics – such as size – are associated with satisfaction levels in a way that may be counter-intuitive to some. Case in point, Figure 11 shows that **smaller companies** expressed **higher satisfaction** with the OregonSaves program than larger ones.<sup>32</sup> Smaller firms, often with few financial resources, are less likely than bigger companies to

Figure 11: OregonSaves Employer Size & Satisfaction



<sup>30</sup> *Illinois Secure Choice Retirement Savings Program 2020 Annual Report*, p. 5 (2021), [https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal\\_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf](https://www.ilga.gov/reports/ReportsSubmitted/2460RSGAEmail4366RSGAAttachFinal_2020%20Secure%20Choice%20Annual%20Report%20DIGITAL.pdf).

<sup>31</sup> *CalSavers 2020 Year End Highlights Report*, p. 8 (January 6, 2021), <https://www.treasurer.ca.gov/calsavers/year-end-highlights-report-2020.pdf>.

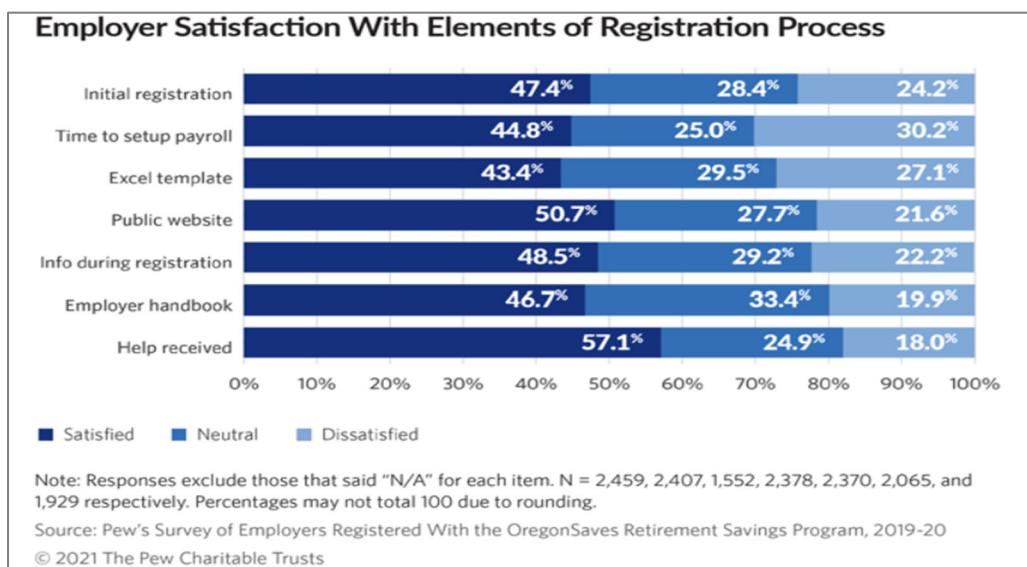
<sup>32</sup> John Scott, *OregonSaves Auto-IRA Program Works for Employers* (April 2, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/04/oregonsaves-auto-ira-program-works-for-employers>.

offer their own retirement plan, and so may be more receptive to an alternative such as OregonSaves.<sup>33</sup>

In a survey of over 2,500 private sector businesses participating in the OregonSaves program, the Pew Charitable Trusts (Pew) reported that 73% of participating employers are satisfied or neutral (neither satisfied nor dissatisfied) with their experience in the program, and employers who have begun to process payroll contributions into funded accounts for their employees experience higher levels of satisfaction than employers who have not yet started to process payroll contributions.<sup>34</sup>

Ease of program administration is a key factor contributing to employer satisfaction. The Pew survey found that satisfaction levels for participating employers was high across all elements of the registration process as illustrated in Figure 12.<sup>35</sup> Employer satisfaction was similarly strong with program facilitation. In fact, at least 80% of employers were either satisfied with or neutral about the program’s online employer portal, help received, and the email communications from OregonSaves and Ascensus, Oregon’s program administrator through fall of 2021.<sup>36</sup>

Figure 12: Employer Satisfaction with Elements of Registration Process



Finally, a key datapoint gleaned from the report indicates that businesses that outsource payroll are slightly more satisfied with the program than those that handle payroll internally.<sup>37</sup>

Virginia529 understands the importance of outreach and customer communications, ease of

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

administration and clarity in advice and assistance from 25 years of providing education and disability savings programs. Additionally, there are lessons to be learned from the earliest adopters of these retirement programs. Virginia529 will continue to apply those lessons, including the role of the payroll provider and the experience of potential program administrators with payroll providers and smaller employers without such services as it works on program implementation.

### **Section 3: Potential Incentives to Encourage Participation and Defray Costs**

**Scope:** The Board shall (iii) assess potential incentives to encourage participation in the Program and defray the costs of participation for small businesses.

#### **Employer Experiences and Costs**

The Pew survey previously cited reveals the pent-up demand for a no-cost retirement savings program for workers. State-facilitated private retirement programs open to-date do not charge businesses any participation fees, and the Pew survey of the OregonSaves program found that 79% of participating employers did not experience any related out-of-pocket costs.<sup>38</sup> The demand for a low- to no-cost program is evident in the number of employers proactively completing the enrollment process. In Oregon, while employers did not need to register prior to their assigned deadline, almost 27% of participating employers registered at least 90 days in advance of their deadline.<sup>39</sup>

Though there are no direct costs associated with facilitating an auto-IRA, some employers may incur limited costs associated with complying with the program. The most common out-of-pocket expenses for employers participating in the OregonSaves program were office supplies and the time it takes to register and facilitate the program by onboarding employees.<sup>40</sup> Only 22% of businesses surveyed reported any out-of-pocket expenses and there was a direct correlation between expenses incurred and the level of satisfaction with the program. Essentially, those who experienced out-of-pocket expenses reported higher levels of dissatisfaction with program implementation.<sup>41</sup> Program administrators including Ascensus and Sunday are actively assessing ways to further enhance the relationship with employers and payroll providers and are working together to streamline the onboarding experience and reduce the time it takes to register and facilitate the program. In other words, states implementing these programs know that for success and satisfaction the hurdles to participation, whether cost or time or red tape, must be reduced or eliminated entirely. This is another lesson Virginia529 is aware of and will consider in program implementation.

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<sup>38</sup> John Scott, *OregonSaves Auto-IRA Program Works for Employers* (April 2, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/04/oregonsaves-auto-ira-program-works-for-employers>.

<sup>39</sup> *Id.*

<sup>40</sup> John Scott, *OregonSaves Auto-IRA Program Works for Employers* (April 2, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/04/oregonsaves-auto-ira-program-works-for-employers>.

<sup>41</sup> *Id.*



No active state program currently offers incentives to encourage participation; however, the benefit of the program for employees serves as a source of fulfillment for many employers who currently face barriers to providing an employer-sponsored retirement plan. Like Virginia, Colorado has a provision in their enabling statute that allows for the creation of a grant program to incentivize compliance with the program and defray the costs of small

businesses with five to twenty-five employees.<sup>42</sup> Colorado also allows the program to “seek and accept grants, and donations to be used for the grant program and for the purposes of program establishment.”<sup>43</sup> Although a grant program is authorized, Colorado’s program is not currently active so it remains to be seen whether Colorado establishes an incentive.

The proposed federal auto-IRA legislation discussed earlier provided for an incentive in the form of a \$500 tax credit per year—for up to four years—for eligible employers.<sup>44</sup> The proposed legislation also includes potential participant incentives in the form of an expanded Saver’s Credit, allowing the federal government to match up to \$500 in contributions to a participant’s account.<sup>45</sup> How any of these incentives might be implemented or impact Virginia’s program remains to be seen.

Although there are no active grant programs currently available, potential incentives could include offsetting the cost of onboarding a payroll provider, waiving business filing or registration fees, or creating a public/private partnership to offer payroll provider services at a reduced cost to small businesses in Virginia.

These options have not been fully explored and as Virginia’s program matures the potential for grants or incentives will need to be further examined to assess need and demand. In marketing our education and disability programs a variety of limited, short term incentives are offered to encourage taking action and Virginia529 will explore those types of activities as the program develops.



<sup>42</sup> Colorado S.B. 20-200, 24-54.3-103.5(1)(f) (2020), [https://leg.colorado.gov/sites/default/files/2020a\\_200\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_200_signed.pdf).

<sup>43</sup> *Id.*

<sup>44</sup> Alicia H. Munnell, *Opinion: Federal Auto-IRA Program Would be a Big Step Forward in Expanding Retirement Coverage* (September 27, 2021), <https://www.marketwatch.com/story/ways-and-means-committee-adds-a-federal-auto-ira-program-to-3-5-trillion-package-11632753752>.

<sup>45</sup> *Id.*

## **Section 4: Cost-Benefit Analysis of Reducing Employer Threshold**

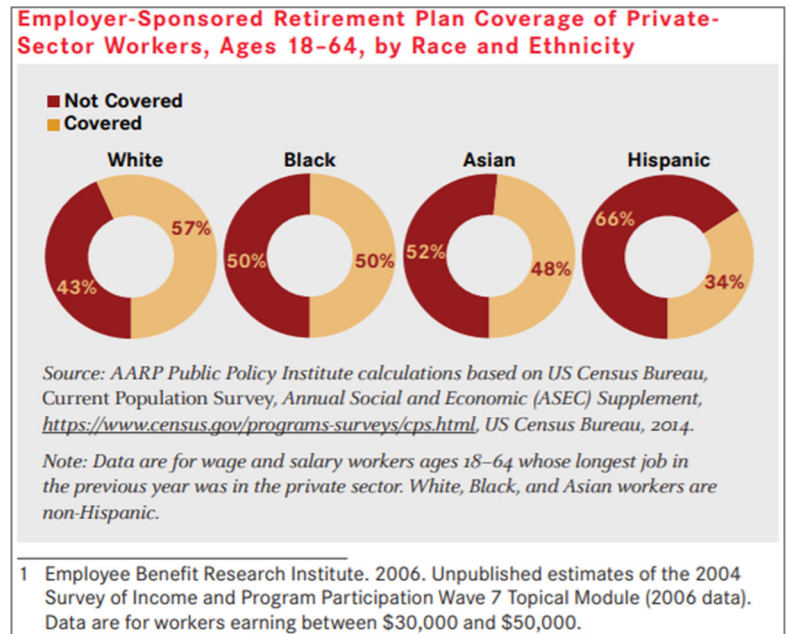
**Scope:** The Board shall (iv) assess the costs and benefits, to employers and to the Commonwealth, of reducing the threshold number of employees of an eligible employer under the provisions of this act.

### **Greater Access to Retirement Savings Enhances Equity, Access and Inclusion While Closing the Retirement Savings Gap**

Not unlike barriers to higher education, barriers to participating in employer-sponsored retirement plans disproportionately affect communities of color, women, and lower income employees. According to Federal Reserve data, 36% of working Black households and 39% of Hispanic households have no money saved for retirement as compared to 21% of white households in the same situation.<sup>46</sup> Figure 13 underpins the disparity in access to retirement plan coverage among working age minority communities.<sup>47</sup>

According to a 2013 National Institute on Retirement Security (NIRS) report on race and retirement insecurity, a large majority of Black and Latino working-age households – 62% and 69%, respectively – do not own assets in a retirement account, compared to 37% of white households.<sup>48</sup> The racial disparities are more pronounced in the private sector where Black, Asian and Latino employees are 15%, 13%, and 42% respectively less likely than white employees to have access to an employer-based retirement plan.<sup>49</sup> The disparity in access to simple and cost-effective workplace saving programs is magnified when workers of color reach retirement age. Among near retirees, the per-household average retirement savings

**Figure 13: Access to Employer-Sponsored Retirement Plan Coverage**



<sup>46</sup> Ben Werschkul. Why the 'statewide IRA' could be a way to lessen the racial retirement gap (July 17, 2020), <https://money.yahoo.com/why-the-statewide-ira-could-be-a-way-to-lessen-the-racial-retirement-gap-183623886.html?guccounter=1>.

<sup>47</sup> Catherine Harvey, Access to Workplace Retirement Plans by Race and Ethnicity, p. 1 (February 2017), <https://www.aarp.org/content/dam/aarp/ppi/2017-01/Retirement%20Access%20Race%20Ethnicity.pdf>.

<sup>48</sup> Nari Rhee, *Race and Retirement Insecurity in the United States*, p. 8 (Dec 2013), [https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Documents/race\\_and\\_retirement\\_insecurity\\_final.pdf](https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Documents/race_and_retirement_insecurity_final.pdf).

<sup>49</sup> *Id.* at 5.



balance among households of color is approximately \$30,000 - a staggering one-fourth that of white households at \$120,000.<sup>50</sup>

The NIRS report also found that Hispanic full-time workers are considerably less likely than white full-time workers to have access to a plan, even when accounting for industry and household income.<sup>51</sup> In a more recent 2021 Pew report, lack of access to a workplace plan was found to be the most significant barrier to retirement savings facing nontraditional workers, also known as gig, alternative, or independent workers.<sup>52</sup> Several compelling findings from Pew's report are outlined below:



- Only 21.9% of all **nontraditional workers** participated in a workplace defined contribution (DC) plan during the year leading up to the survey.<sup>53</sup>
- Low participation by nontraditional workers in workplace retirement savings is due more to **lack of access** than to lack of demand. Over three-quarters (77.5%) of those who had access and were eligible for a workplace DC plan decided to participate in it.<sup>54</sup> Two-thirds of nontraditional workers said they wanted workplace retirement benefits, second only to health benefits, desired by 76.6% of nontraditional workers.<sup>55</sup>
- A large part of the problem is lack of access. Many do not have the option to save in a workplace plan. Less than half (46.3%) of nontraditional workers had an employer during the previous year that offered any type of retirement plan.<sup>56</sup> A third (33.9%) had a workplace over the past year that offered a DC savings plan and 11.3% of nontraditional workers had a workplace that offered a defined benefit (DB) plan.<sup>57</sup>
- Most nontraditional workers also hold other jobs, and some have access to a workplace plan through a second, traditional job. More than one-third (37.6%) of nontraditional

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<sup>50</sup> *Id.* at 11.

<sup>51</sup> *Id.* at 3.

<sup>52</sup> The Pew Charitable Trusts Brief, Nontraditional Workers Lack Access to Workplace Retirement Options, p. 2 (October 2021), <https://www.pewtrusts.org/-/media/assets/2021/10/nontraditional-worker-access-retirement-plans.pdf>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

workers held a single, nontraditional job.<sup>58</sup> The other workers held multiple jobs: 40% of nontraditional workers had a mix of traditional and nontraditional jobs, and the remaining quarter (22.4%) had two or three nontraditional jobs but no traditional job.<sup>59</sup>

- Access to a plan was strongly tied to having at least one traditional job. Just 29.8% of nontraditional workers with no traditional job had access to a workplace retirement plan, but 69.7% of nontraditional workers with a traditional job had access.<sup>60</sup>

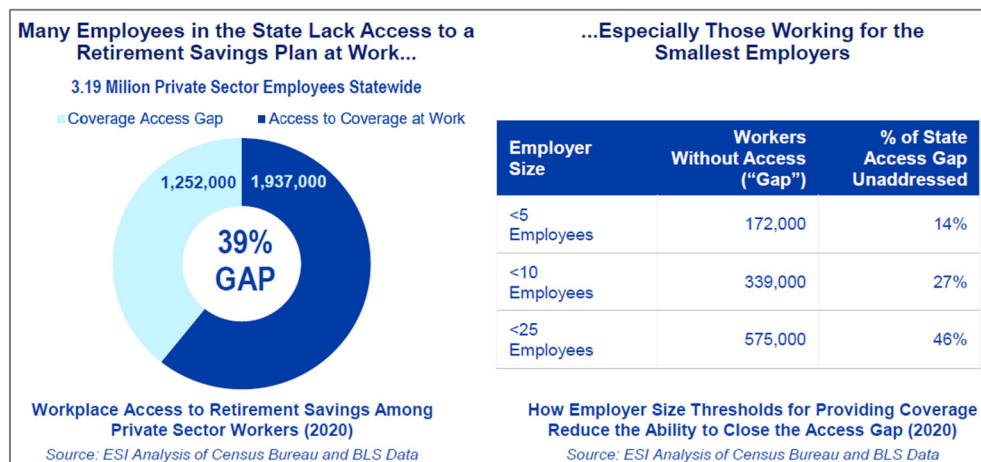
The Commonwealth’s lens on equity must include access to private retirement options and the establishment of a state-facilitated private retirement program is a good start at closing the access and retirement savings gap. Although lack of access is a factor in worker participation, it is not the only factor. As with barriers to higher education, a subject on which Virginia529 has considerable experience and knowledge, first generation savers may be unfamiliar with financial planning terminology, may feel intimidated by various fund options or how to assess risk, and may be uncertain about what to do when major life changes occur (death, divorce, loss of employment). When combined, these barriers create a near-insurmountable situation which leaves many workers uncertain about their future. State-facilitated programs reduce or eliminate many of these barriers.

Given that more than **1.2 million workers** in Virginia – almost half of all employed adults - are not covered by an employer-sponsored retirement savings plan, expanding the aperture as widely as possible to cover all eligible workers is as much an economic imperative as it is a social justice imperative.

### Economic Benefits of Expanding Access to Retirement Savings

Employer-sponsored retirement plans are the primary way for private sector workers to build savings. As enacted, Virginia’s state-facilitated retirement program’s enabling statute reduces

**Figure 14: Retirement Savings Gap in Virginia**



<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

program reach by more than half of the otherwise eligible population. The legislation as introduced included an employer participation threshold of **employers with five or more eligible employees**— consistent with the other states which have enacted auto-IRA programs; as enacted, the legislation adopted an employer size threshold of 25 or more eligible employees.<sup>61</sup> The differential in the employer size threshold from 5 to 25 employees reduces coverage by 511,000 workers who would have been covered as introduced.<sup>62</sup> As illustrated in Figure 14 above, under the current employer threshold, more than 40% of private sector workers without access to an employer-sponsored retirement plan will remain uncovered.<sup>63</sup> This limitation disproportionately impacts communities of color and female workers. Moreover, with the increased threshold more than 40,000 small businesses are now deprived of a low- to no-cost retirement benefit with no fiduciary responsibility which could make them more competitive with larger employers and increase employee retention.

By limiting program access, the increase in the employer size threshold will have a significant impact on Virginia’s ability to close the retirement access and savings gap as well as increase government spending over time. In Virginia, current government expenditures to support low-income seniors through benefit programs like Medicaid are significant and in 2018-2019, approximately 22% of elderly households in the Commonwealth relied on Social Security benefits for at least 90% of their income.<sup>64</sup> Based on current projections for Virginia, the state, local and federal gap in benefit program expenditures caused by insufficient savings grows from an annual rate of \$1 billion in 2020 to \$1.7 billion by 2035, and totals \$21.6 billion cumulatively over the 15-year period.<sup>65</sup> The Commonwealth’s cumulative state and local government portion of this expenditure from 2021-2035 totals \$11.8 billion.<sup>66</sup> Analysis shows that by the year 2035, the average Virginia household with less than \$75,000 in annual income would need to contribute an additional \$1,930 annually, or \$161 monthly over their working years, to close the savings gap.<sup>67</sup>

### **Expanding Access Now Could Grow Savings in Retirement**

In addition to increasing the burden on government benefits programs, insufficient savings going into retirement can have an adverse impact on a saver’s ability to delay claiming Social Security, thereby decreasing the monthly benefit amount the individual will receive in retirement. Assets accumulated in a state-facilitated retirement program can act as a “bridge” to Social Security, allowing savers to supplement their savings as they plan the best age to claim benefits. This,

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<sup>61</sup> Virginia Acts of Assembly 2021 Reconvened Special Session, Chapter 556 (April 15, 2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0556+pdf>.

<sup>62</sup> See, *HD-12 Report on State-Facilitated Private Retirement Plan Programs: Encouraging Citizens to Save for Retirement* (Chapter 506, 2020) (December 10, 2020), <https://rga.lis.virginia.gov/Published/2020/HD12/PDF>.

<sup>63</sup> Angela Antonelli, *Policy Report: State Benefits of Expanding Access to Retirement Savings*, p. 94 (February 2021), <https://cri.georgetown.edu/wp-content/uploads/2021/02/CRI-Econsult-State-Benefits-of-Expanding-Access-FINAL.pdf>.

<sup>64</sup> *Id.* at 95.

<sup>65</sup> *HD-12 Report on State-Facilitated Private Retirement Plan Programs: Encouraging Citizens to Save for Retirement* (Chapter 506, 2020), p. 40 (December 10, 2020), <https://rga.lis.virginia.gov/Published/2020/HD12/PDF>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

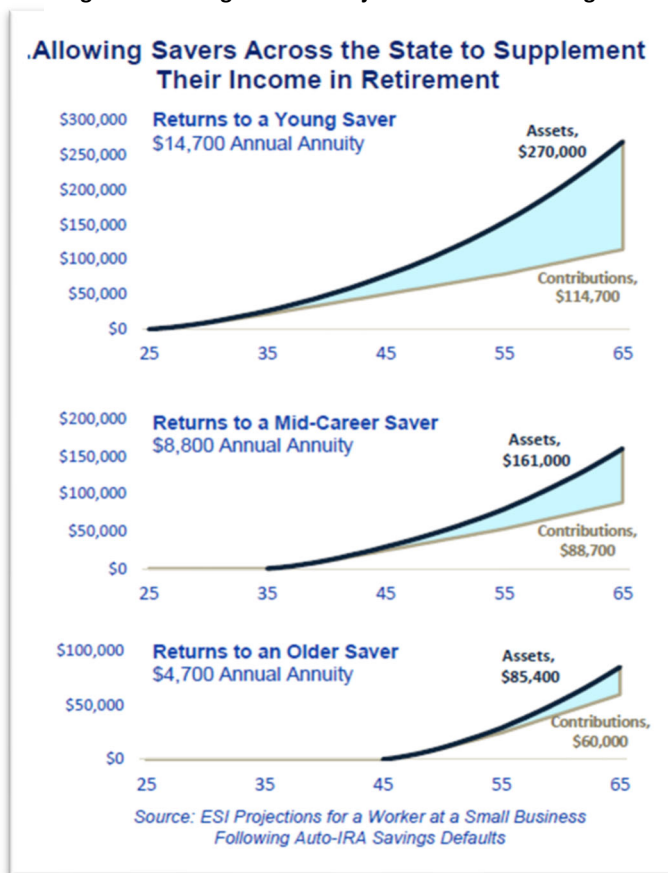
coupled with delayed Social Security benefits claims, could provide a more substantial monthly benefit to future retirees, and significantly boost retirement income and security.

Skeptics may argue that access to a retirement savings plan alone may not be enough to incentivize workers to save, and they would be correct in that assertion. However, as shown in Figure 15 at right, a modest savings scenario could have a significant impact at the age of retirement.<sup>68</sup> Educating individuals about the positive impact of saving early and often by projecting savings growth over time can be a powerful motivator for reluctant savers, particularly when retirement seems like a far-off event.

Finally, state-facilitated retirement programs may make participants eligible for an under-utilized federal tax credit called the **Saver's Credit**. The Saver's Credit is a tax credit worth up to \$1,000 for an individual filer, \$2,000 for joint filers, for making a retirement plan contribution. While the Saver's Credit is limited to individuals who make less than \$33,000 a year (\$66,000 if married) in 2021, it can be worth 10-50% of the taxpayer's retirement contributions, depending on their income level and retirement contributions.<sup>69</sup>

Though the Saver's Credit reduces a filer's tax liability and is a nonrefundable tax credit, when combined with a refundable tax credit such as the Earned Income Tax Credit or the Additional Child Tax Credit, the Saver's Credit may facilitate a filer receiving a tax refund.<sup>70</sup> Figure 16

Figure 15: Savings Growth Projections at Various Stages



<sup>68</sup> Angela Antonelli, *Policy Report: State Benefits of Expanding Access to Retirement Savings*, p. 94 (February 2021), [https://cri.georgetown.edu/wp-content/uploads/2021/02/CRI-Econsult-State\\_Benefits\\_of\\_Expanding\\_Access\\_FINAL.pdf](https://cri.georgetown.edu/wp-content/uploads/2021/02/CRI-Econsult-State_Benefits_of_Expanding_Access_FINAL.pdf).

<sup>69</sup> National Institute on Retirement Security, *How States Can Utilize the Saver's Tax Credit to Boost Retirement Savings*, p. 1 (June 2016), <https://www.nirsonline.org/wp-content/uploads/2021/06/Aspen-Savers-Credit-2021-Update.pdf>.

<sup>70</sup> *Id.*

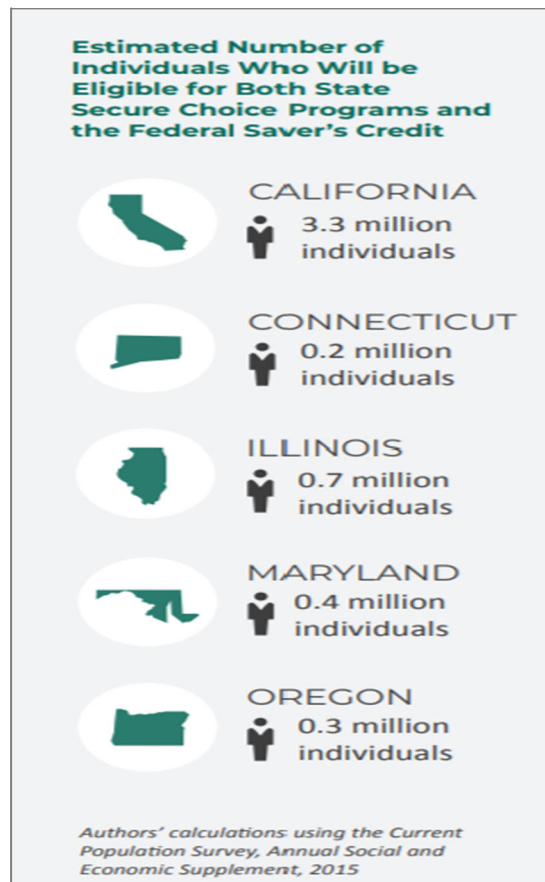
provides a snapshot of the estimated number of individuals in states with state-facilitated retirement programs who would be eligible for both that state's program and the federal Saver's Credit.<sup>71</sup>

### Creating a Culture of Saving

While incentives such as the Saver's Credit and delayed use of Social Security benefits are certainly strong motivators for saving, creating a culture of savers will take more than just providing a savings vehicle. Several components necessary to effectively close the savings gap include:

- ❖ Financial literacy and education that meets consumers where they are.
- ❖ Public policy that is nimble enough to meet the needs of the tens of millions of private sector workers without access to retirement savings.
- ❖ Cooperation and collaboration by the small business community to embrace programs that will benefit their workforce and encourage a culture of savers.
- ❖ Innovation in the financial services industry to deliver the products and services Americans need to make retirement planning understandable and retirement saving attainable.

Figure 16: Saver's Credit & State-Facilitated Retirement Program



Virginia's enabling legislation has many of the components fundamental to the launch and administration of a successful program. However, central to its success will be maximizing access to the program to the widest number of potential savers, **including employees working at small businesses and part-time workers, both groups traditionally lacking access to retirement savings and other employee benefits.** By cutting these individuals off from access to the state-facilitated program, Virginia is perpetuating a status quo which has thus far proven to fail to meet the savings needs of marginalized populations lacking access to an employer-sponsored plan. Increasing access is not only an economic but a social justice imperative.

<sup>71</sup> *Id.*

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**Appendix A: Suggested Technical Amendments as Shown in the Enabling Legislation**

# 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.*

Approved April 15, 2021

[H 2174]

### Be it enacted by the General Assembly of Virginia:

*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, for purposes of identifying eligible employers, 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 (i) 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 (ii) has been operating for at least two years prior to Program implementation participation.*

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

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

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

G.F. 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.G. 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, and participating individuals including a grant or similar program to incentivize compliance with the Program and to defray ~~the Program participation~~ costs of participating employers-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 ~~person-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~~ is expected to begin on or before 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) for the deposit and investment of contributions of participating employees and participating individuals. 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.**

**Appendix B: Excerpt from: The Pew Charitable Trusts Comments on the Report Pursuant  
to HB 775 on State and Federal Programs to Encourage Private Sector Retirement Savings  
(Amended)**

## State Programs: Automatic Individual Retirement Account

The automatic IRA, or auto-IRA, is a program overseen by the state in which businesses without their own retirement plan facilitate participating workers' payroll contributions to an individual retirement account (IRA). Governed by federal IRA rules, employers are unable to make their own contributions to the account and annual

An **automatic IRA** is a program overseen by the state in which businesses without its own plan facilitate participating workers' payroll contributions to an individual retirement account.

contributions are relatively limited. Designed to directly address the coverage gap and keep costs low by rapidly reaching scale, the employer role and responsibilities are kept to a minimum—no fiduciary responsibility and no fees—as compared to an employer plan like a 401(k). This approach helps employers offer a simple savings arrangement when they are unable to adopt a more robust plan themselves and without competing with the private financial services market. Workers in turn can leverage regular payroll contributions to build significant savings. Additionally, as most contributions are envisioned as post-tax, there is limited immediate impact on state and federal revenues.

### Automatic Individual Retirement Account (auto-IRA) Implementation History

Illinois and Oregon were the first states to enact auto-IRA legislation in 2015. Oregon's program, branded as OregonSaves, launched with a pilot in 2017 and applies to all employers in the state without a workplace plan. It has rolled out in phases and is currently enrolling those in its last wave—employers with fewer than 5 employees—which will be complete by January 2021.

The Pew Charitable Trusts has conducted a survey of covered OregonSaves employers and found that approximately three quarters said they had a positive or neutral experience with the program.<sup>72</sup> The same survey found eight in ten employers faced no out-of-pocket costs while those that did characterized the costs as increased spending on office supplies and payroll processing time.<sup>73</sup> Because auto-IRAs are explicitly designed to not be an employer plan, businesses should not have to field or face questions from participating employees. Pew's survey found this to be broadly the case with 80% of respondents hearing only "a little" or "no questions at all" from their employees about the program.<sup>74</sup>

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<sup>72</sup> John Scott and Mark Hines, "Employers Express Satisfaction with New Oregon Retirement Savings Program: Many in Survey Say OregonSaves Creates Minimal Added Burden" (The Pew Charitable Trusts, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/30/employers-express-satisfaction-with-new-oregon-retirement-savings-program>.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

Illinois' program, Illinois Secure Choice, launched in 2018 covering employers with 25 or more employees and no retirement plan, follows a phased rollout like Oregon's. The final wave of employers with 25 or more employees will be complete by the end of 2020.

2016 saw three additional states adopt programs: Maryland with MarylandSaves, Connecticut with its Retirement Savings Authority, and California with CalSavers. Of these efforts, only CalSavers has launched covering employers with five or more employees that do not offer a retirement plan. After a pilot in 2018, the program is rolling out in three large waves with the first covering those with more than 100 employees completed in September 2020. The two successive waves covering employers with more than 50 workers and those with 5 or more workers will be completed in June 2021 and 2022 respectively.

Both Maryland and Connecticut's programs were placed within newly created quasi-governmental agencies and are in the process standing these agencies up, designing the programs, and soliciting bids for financial partners.

Maryland is operating under a somewhat unique structure in that the program incentivizes participation by waiving an existing annual employer fee levied by the state and only applies to employers utilizing payroll service providers. Additionally, the program is operating under a very aggressive legislatively mandated fee cap limiting participant costs to 50 basis points annually at launch. Other state's fee caps range from 100 to 75 basis points at launch and may fall in later years as assets grow. Maryland has delayed the implementation of a pilot which is now expected in early 2021 with a launch later that year.

The Connecticut Retirement Savings Authority (CRSA) struggled with a limited appropriation which hampered initial efforts to launch the program. In early 2020, Connecticut Governor Ned Lamont reorganized CRSA under the jurisdiction of the Connecticut Office of the State Comptroller. In April of 2020 CRSA announced it had selected a plan administrator and, at last update, had planned to launch in early 2021 covering employers with five or more employees that do not sponsor a plan.

Since 2016, New Jersey (2019) and Colorado (2020) have also adopted auto-IRA programs. Additionally, several cities and counties have expressed an interest in their own auto-IRA programs and the City of Seattle became the first substate political subdivision to adopt a program in 2017.

New Jersey's program, which applies to employers without a plan and 25 or more workers, will begin enrolling participants in 2021 or 2022. Colorado's program applies to businesses without a plan and five or more workers but does not have a public implementation timeline. Seattle's program applies to all employers without a plan but the city postponed implementation in 2019

pending possible action by Washington State itself. The program was to begin enrolling participants in 2021.

New York (2018) and New Mexico (2020) have adopted programs that are similar to the other auto-IRA programs. New York and New Mexico's programs are unique in that they require no employer participation, but what this means for coverage and program adoption remains to be seen. New York's program will be implemented no later than 2021 and New Mexico's by 2022. However, there are questions about whether these programs would be governed under the federal pension law known as the Employee Retirement Income Security Act of 1974 or ERISA, which would trigger a host of compliance responsibilities.<sup>75</sup>

As the auto-IRA model has matured and expanded to other states, legislatures are beginning to apply learnings from other state-facilitated savings programs. In a prominent example, to lower costs through economies of scale, many states participate in interstate compacts for joint services around their Achieving a Better Life Experience (ABLE) account offerings. ABLE accounts are tax-advantaged vehicles designed to help individuals with disabilities save for qualified disability expenses and are not dissimilar from Roth IRAs in the retirement context. Both Colorado and New Mexico included language explicitly allowing for interstate compacts in recently passed retirement legislation and the Oregon legislature modified the state's original implementing auto-IRA language to allow for interstate compacts as well. While no state has yet to sign an interstate agreement, the cost advantages in doing so may act as a catalyst to further expand auto-IRA programs to additional states.

### **Automatic Individual Retirement Account Summary**

Auto-IRAs allow employees at employers without workplace plans to take advantage of payroll contributions to save for retirement. The regular and automatic nature of payroll contributions has a dramatic impact on the retirement savings coverage gap as only 14% of US households save for retirement outside of work.<sup>76</sup> Additionally, while not a feature unique to auto-IRAs, automatic enrollment of program participants has been shown to dramatically increase plan participation. Vanguard, a financial services firm, finds that automatic enrollment doubles the participation rates in plans compared to plans without automatic enrollment.<sup>77</sup>

However, the increase in participation and coverage comes by requiring employers to register their employees for the program, which involves a one-time effort of an estimated 6 to 12 hours

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<sup>75</sup> New York has not launched their program or in fact begun to establish their governing board. They have proposed language that would make their program mandatory for employers, but this change has not yet been adopted.

<sup>76</sup> Colorado Secure Savings Plan Board, "Colorado Retirement Savings Recommendations."

<sup>77</sup> Jeffrey W. Clark and Jean A. Young, "Automatic Enrollment: The Power of the Default" (Vanguard Research, 2018), <https://institutional.vanguard.com/iam/pdf/CIRAE.pdf>.



depending on employer size.<sup>78</sup> Additionally, for businesses not utilizing a payroll service, facilitating payroll contributions for participating employees may take approximately one-half hour to two hours per month depending on employer size with larger employers facing longer commitments.<sup>79</sup>

The IRA used in state-facilitated auto-IRA programs is also governed by contribution rules that prohibit employer contributions and limit employee contributions to \$6,000 annually in 2020 with the option for an additional \$1,000 catchup contribution for those 50 years old or over. This pales in comparison to the contribution limits of a 401(k) where, in 2020, employees can contribute up to \$19,500 annually (\$26,000 for those aged 50+) and employers can contribute up to a combined \$57,000 annually (\$63,500 for those aged 50+). While few participants are likely to be bothered by the individual limits (most programs set a default contribution rate of 5% meaning a worker would have to make \$120,000 after tax to face the limit) the impossibility of an employer contribution leaves the burden of saving for retirement entirely on the worker while a 401(k) or other employer-sponsored program typically shares that burden between the employer and the employee.

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<sup>78</sup> Overture Financial, "California Secure Choice: Financial Feasibility Study."

<sup>79</sup> Ibid.

**Appendix C: State-Facilitated Retirements Savings Program: A Snapshot of Program  
Design Features**

**GEORGETOWN  
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**CENTER FOR  
RETIREMENT  
INITIATIVES**

## **State-Facilitated Retirement Savings Programs: A Snapshot of Program Design Features**

**State Brief 21-02**

**May 15, 2021  
UPDATE**

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<sup>1</sup>This updates State Brief 20-02, dated August 31, 2020.

*This document is an update of an earlier version published by the Georgetown Center for Retirement Initiatives (CRI) and remains subject to change and refinement based on additional information, including any legislative, regulatory, or administrative interpretations and actions taken by the states and/or the federal government. All information presented here and in prior versions remains the property of the CRI. This document and its contents may not be duplicated, reproduced, or copied, in whole or in part, without permission from and appropriate attribution to the Georgetown University Center for Retirement Initiatives. © Copyright 2021, Georgetown University.*

## Illinois Secure Choice

<b>Year Enacted</b>	2015, as amended in 2016, 2017, 2019, and 2021 <sup>5</sup>
<b>Employer Participation</b>	Mandatory for certain employers, with a two-year deferral for new businesses.
<b>Employers Affected</b>	Employers with 5 or more employees that have not offered a qualifying retirement plan in the last two years
<b>Administrative Entity</b>	The Illinois Secure Choice Savings Board, chaired by the Treasurer
<b>Structure of Accounts</b>	Roth IRA as the default, with a traditional IRA option as an alternative election
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	5%. Annual auto-escalation permitted up to 10%
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Employers with fewer than 5 employees can voluntarily choose to participate in the program.
<b>Investment of Assets</b>	The program offers a suite of 11 target date funds based upon the age of the enrollee as the default investment option and additional investment options, including a capital preservation fund, a growth fund, and a conservative fund. For the first 90 days after the initial contribution is made to an account after enrollment, the default is to hold the money in a money market fund (a temporary fund only), but participants can select a different fund option immediately. If no investment option is selected, the funds are put into the age-appropriate target date fund.
<b>Fees</b>	Total expenses cannot exceed 0.75% of the total trust balance (currently .05% state fee; .61% program administration fee; and .09% investment fee).
<b>Implementation Timeline</b>	<p>After pilot testing was completed in 2018, the program formally launched with Wave 1 with employers with more than 500 employees required to register by November 2018; Wave 2 with employers with 100-499 employees required to register by July 2019; and Wave 3 with employers with 25 to 99 employees required to register by November 2019. With the lowering of the threshold from 25 to 5 employees, there are now two additional employer registration waves. Employers with 15-24 employees will be required to register by September 2022 and employers with 5-14 employees will be required to register by September 2023. However, employers are free to register at any time before deadline.</p> <p>Authorized to Partner With Other States: Yes</p>

## OregonSaves

<b>Year Enacted</b>	2015, as amended in 2019
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Employers that do not currently offer qualified plans
<b>Administrative Entity</b>	The Oregon Retirement Savings Board, chaired by the Treasurer
<b>Structure of Accounts</b>	Roth IRA as the default, with a traditional IRA option as an alternative election
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	5% with annual 1% auto-escalation on January 1 of each year until a maximum of 10% is reached. Auto- escalation applies to participants who have been contributing for at least six months, but an employee can opt out and set his or her own rate. The first auto-escalation took place on January 1, 2019.
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Available to employers with no employees and employees of non-participating employers
<b>Investment of Assets</b>	The program offers a suite of 12 target date funds based upon the age of the enrollee as the default investment option and additional investment options, including a capital preservation fund and a growth fund. The program has approved changing its policy from holding the first \$1,000 in the capital preservation fund to holding funds only for the first 90 days in the capital preservation fund and then defaulting the funds into the age-appropriate target date fund unless another investment option is selected.
<b>Fees</b>	The Board will charge each IRA a program administrative fee not to exceed 1.05% per annum (per rulemaking) with the current fees as follows: .15% for state administration; .75% for program administration; and .09% for investment management. Effective in the fall 2021, the program is proposing to change its fee structure to a combination of fixed fee and basis points. The approved new fee structure: \$4 per saver for state program administration; \$14 per saver and 15 basis points on assets for recordkeeping; and 10 basis points for investment management
<b>Implementation Timeline</b>	Two pilots were completed in 2017. The program is being implemented in six employer registration phases or “waves,” based on the number of employees. The program is in the process of registering its final wave of employers (those with four or fewer employees) and the registration deadline for these employers has been extended to the fall 2021 (after the transition to a new program recordkeeper is completed). However, employers are free to register at any time before deadline.  Authorized to Partner With Other States: Yes

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## MarylandSaves

<b>Year Enacted</b>	2016, as amended in 2018
<b>Employer Participation</b>	Mandatory for all employers that pay employees through a payroll system or service, with a two-year deferral for new businesses.
<b>Employers Affected</b>	Employers that do not currently offer qualified plans
<b>Administrative Entity</b>	The Maryland Small Business Retirement Savings Board, chair elected by Board members
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	The Board will set default, minimum, and maximum employee contribution levels.
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	The Board may evaluate and establish the process by which a non-covered employer, an employee of a non-participating employer, or a self-employed individual may participate.
<b>Investment of Assets</b>	The Board will establish a range of investment options, including a default investment selection for employees' payroll deposit IRAs. The Board cannot offer options that could result in liability to the state or its taxpayers. When selecting investment options, the Board will consider methods to minimize the risk of significant investment losses at the time of a participating employee's retirement. The Board will consider investment options that minimize administrative expenses and may provide an investment option that provides an assured lifetime income.
<b>Fees</b>	Administrative expenses may not exceed 0.5% of assets under management in the program.
<b>Implementation Timeline</b>	The Board is finalizing its selection of a program manager and investment consultant. Assuming these decisions are finalized in the summer 2021, the program currently anticipates a pilot by late 2021 and program launch by no later than early 2022.

**Connecticut Retirement Security Authority (“MyCT Savings”)**

<b>Year Enacted</b>	2016, as amended in 2019
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Qualified employers with five or more employees that do not currently offer a plan
<b>Administrative Entity</b>	The Connecticut Retirement Security Authority, chair appointed by the Governor
<b>Structure of Accounts</b>	Roth IRA
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	3%
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	A private employer with four employees or fewer may choose to make the program available.
<b>Investment of Assets</b>	Each participant’s account will be invested in an age-appropriate target date fund or other investment vehicles selected by the Authority. Once the participant reaches normal retirement age, 50% of the participant’s account will be invested in the lifetime income investment. Participants may elect to invest a higher percentage of account balances in the lifetime income investment. The Authority will designate a lifetime income investment option intended to provide participants with a source of retirement income for life.
<b>Fees</b>	After completion of the fourth calendar year after the program effective date, total annual fees associated with the program cannot exceed 0.75% of the total value of the program assets.
<b>Implementation Timeline</b>	A pilot launch is currently scheduled for September 2021 with the first wave program launch expected to begin in December 2021.

## CalSavers

<b>Year Enacted</b>	2016, as amended in 2017, 2018, 2019, and 2020
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Employers with five or more employees that do not already provide a qualified retirement plan and that satisfy requirements for a payroll deposit retirement savings arrangement, and employers of providers of in-home supportive services, if determined to be eligible
<b>Administrative Entity</b>	The CalSavers Retirement Savings Board, chaired by the Treasurer
<b>Structure of Accounts</b>	Roth IRA as the default, with a traditional IRA as an alternative election
<b>Automatic Enrollment</b>	The Board will disseminate an employee information packet with information about the program and appropriate disclosures, including the mechanics of how to make contributions to the program. Employees must acknowledge that they have read all the disclosures and understand their content.
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	5% with auto-escalation of 1% per year to be capped at 8% of salary. An employee may opt out of auto- escalation and set his or her own rate.
<b>Employer Contribution</b>	Permitted if would not trigger ERISA
<b>Availability to Other Employers</b>	Employees of non-participating employers and the self-employed can participate.
<b>Investment of Assets</b>	The program offers a suite of 12 target date funds based upon the age of the enrollee as the default investment option and additional investment options, including a capital preservation fund; a bond fund; a global equity fund; and an environmental, social, and governance (ESG) fund. For the first 30 days, funds are held in the capital preservation fund and then moved to the default age-appropriate target date fund unless another investment option is selected.
<b>Fees</b>	On or after six years from the effective program date, expenditures from the Administrative Fund cannot exceed 1% of the total Program Fund annually (currently .05% state fee; .75% program administration fee; and .09% investment manager fee).
<b>Implementation Timeline</b>	The pilot program began in November 2018, and official statewide employer registration began in July 1, 2019. Employer registrations are being implemented in three phases, beginning with employers with 100 or more employees required to register by September 30, 2020; employers with 50 or more employees required to register by June 30, 2021; and employers with five or more employees required to register by June 30, 2022. However, employers are free to register at any time before deadline.



## Seattle Retirement Savings Plan

<b>Year Enacted</b>	2017
<b>Employer Participation</b>	Mandatory. There is a two-year deferral for new businesses.
<b>Employers Affected</b>	Employers that do not currently offer qualified plans or participate in a multiple employer plan (MEP)
<b>Administrative Entity</b>	The Seattle Retirement Saving Plan Board of Administration, chair appointed by the Mayor
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	The Board can set default, minimum, and maximum rates. The plan must offer default escalation.
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	The Board can establish participation rules for self-employed individuals or employees who are not eligible to participate in an employer's qualified retirement plan.
<b>Investment of Assets</b>	The Board will establish several investment funds, each pursuing an investment strategy and policy established by the Board. The Board will establish at least three "core" investment funds, diversified to minimize the risk of large losses, and may establish one or more "non-core" investment funds. The Board may, at any time, add, replace, or remove any investment fund. Investment funds may include mutual funds, index funds, collective funds, separately managed accounts, exchange-traded funds, or other pooled investment vehicles that are generally available in the marketplace.
<b>Fees</b>	Not specified. The plan must keep administration fees low, but sufficient to ensure that the plan is sustainable.
<b>Implementation Timeline</b>	Contributions may begin no earlier than January 1, 2019, and no later than January 1, 2021. The Board decided in December 2018 that it will not implement its program pending possible action by the Washington State Legislature on proposals to establish a statewide Secure Choice auto-IRA program.

## New Jersey Secure Choice Retirement Savings Program

<b>Year Enacted</b>	2019
<b>Employer Participation</b>	Mandatory. There is a two-year deferral for new businesses.
<b>Employers Affected</b>	Employers with 25 or more employees that have not offered a qualified retirement plan.
<b>Administrative Entity</b>	The New Jersey Secure Choice Savings Board, chaired by the Treasurer
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	3%
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Employers with fewer than 25 employees and/or those that have been in business for less than two years may provide payroll deposit retirement savings arrangements for each employee who elects to participate in the program.
<b>Investment of Assets</b>	The Board may establish any or all of the following investment options: a capital preservation fund, into which the Board may provide that the first \$1,000 in contributions be deposited and also may provide for an account revocation period during which an enrollee may withdraw the deposited amounts without penalty; a life-cycle fund; or any other investment option deemed appropriate by the Board. The Board shall designate by rule or regulation one of the investment options as the default investment option for enrollees who fail to elect an investment option and may, from time to time, amend, modify, or repeal such investment options as it deems necessary or proper, and may subsequently select, by rule or regulation, a different investment option as the default investment option.
<b>Fees</b>	During the first three years after the establishment of the program, annual administrative fees may not exceed 0.75% of the Program Fund. After that time, the annual administrative fees shall not exceed 0.6% of the Program Fund.
<b>Implementation Timeline</b>	To be determined. Board appointments are currently in progress. By law, enrollment of employees shall begin within 24 months after the effective date of the act (which was immediate), and the date can be extended by an additional 12 months. The Board shall implement the program in two phases based on the size of the employers participating, with implementation for larger employers first. No later than nine months after the Board opens the program for enrollment, each covered employer must establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program.

## Colorado Secure Savings Program

<b>Year Enacted</b>	2020
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Employers with 5 or more employees that have not offered a qualified retirement plan. Grants, in an amount not to exceed \$300 per employer, may be available to employers with between 5 and 25 employees to support participation in the program.
<b>Administrative Entity</b>	The Colorado Secure Savings Program Board in the Office of the State Treasurer, chaired by the Treasurer
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	5%
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Employers not required to participate in the program will be allowed to participate on a voluntary basis. Individual who qualify for an IRA also will be allowed to voluntarily participate.
<b>Investment of Assets</b>	Not specified. The Board is authorized to make or enter into contracts with up to three investment managers, private financial institutions, and other service providers to invest money and administer the program.
<b>Fees</b>	For the first five years of program operation, total annual fees may not exceed 1% of total value of program assets. In the sixth year and subsequent years, the total annual fees may not exceed .75% of the total value of program assets.
<b>Implementation Timeline</b>	The Board has developed its implementation timeline and expects to hire its program administrator and investment manager(s) by June 2021. The program anticipates launching a pilot in late 2021.  Authorized to Partner With Other States: YES

## VirginiaSaves Program

<b>Year Enacted</b>	2021
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Employers that have employed 25 or more employees who work at least 30 hours a week in the preceding calendar year and have been in business for at least two years that do not already provide a qualified employer-sponsored retirement plan.
<b>Administrative Entity</b>	The Governing Board of the Virginia College Savings Plan with a Program Advisory Committee appointed by the Board to assist with program implementation
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	To be determined by the Board
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Employers not required to participate in the program will be allowed to participate on a voluntary basis. Any eligible employee whose employer does not facilitate his participation in the Program or any self-employed individual may participate, so long as the individual has Virginia taxable income.
<b>Investment of Assets</b>	Not specified. The Board shall invest moneys in the Program in any instruments, obligations, securities, or property deemed appropriate by the Board
<b>Fees</b>	To be determined by the Board
<b>Implementation Timeline</b>	<p>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. The Board shall enter into all contractual agreements, including contracts for legal, financial, program management, and consulting services necessary to develop and administer the Program.</p> <p>Authorized to Partner With Other States: YES</p>

## Savings Access New York Retirement Program

<b>Year Enacted</b>	2021
<b>Employer Participation</b>	Mandatory.
<b>Employers Affected</b>	Employers with at least five employees that have been in business for at least two years and have not offered a qualified retirement plan in the previous two years
<b>Administrative Entity</b>	Retirement Savings Board (3-member board appointed by the Mayor)
<b>Structure of Accounts</b>	One or more payroll deposit IRA arrangements
<b>Automatic Enrollment</b>	Yes
<b>Employee Opt-out</b>	Yes
<b>Default Contribution Rate</b>	5%
<b>Employer Contribution</b>	Not permitted
<b>Availability to Other Employers</b>	Employers not required to participate in the program will be allowed to participate on a voluntary basis.
<b>Investment of Assets</b>	To be determined by the Comptroller, subject to Board approval
<b>Fees</b>	To be determined by the Board
<b>Implementation Timeline</b>	<p>The law is effective 90 days after it becomes law. The program shall be operational no later two years after the effective date of the law, unless the Board finds a reasonable reason to delay in implementation. The program shall not be implemented if New York State establishes a program covering a substantial portion of uncovered employers.</p> <p>Authorized to Partner With Other States: YES</p>

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**Appendix D: California Assembly Bill No. 102 Summary**

CHAPTER 21

An act to add Section 26163 to the Business and Professions Code, to amend Sections 100000, 100002, 100004, 100010, 100014, 100024, 100028, 100032, 100034, 100038, and 100043 of, to amend the heading of Title 21 (commencing with Section 100000) of, and to add Section 100033 to, the Government Code, to add Section 19567 to, and to add Article 6 (commencing with Section 19285) to Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Section 1095 of, and to repeal Section 1088.9 of, the Unemployment Insurance Code, relating to retirement savings, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[ Approved by Governor June 29, 2020. Filed with Secretary of State June 29, 2020. ]

LEGISLATIVE COUNSEL'S DIGEST

AB 102, Committee on Budget. Retirement savings.

(1) Existing law, the California Secure Choice Retirement Savings Trust Act, establishes the CalSavers Retirement Savings Program and the California Secure Choice Retirement Savings Trust, a trust consisting of a program fund and an administrative fund with trust moneys that are continuously appropriated and administered by the California Secure Choice Retirement Savings Investment Board. Existing law requires the Treasurer, on behalf of the board, to appoint an executive director who is not a member of the board and who serves at its pleasure. Existing law requires eligible employers to offer a payroll deposit retirement savings arrangement so that eligible employees may contribute a portion of their salary or wages to a retirement savings program account in the program, as specified. Existing law requires the board to take various actions upon implementation of the program and, for up to 3 years following its initial implementation of the program, requires the board to establish managed accounts invested in United States Treasuries, myRAs, or similar investments. Existing law states that the program is implemented as of January 1, 2017.

This bill would rename the California Secure Choice Retirement Savings Trust Act as the CalSavers Retirement Savings Trust Act, the body that administers the act as the CalSavers Retirement Savings Board, and would make conforming changes in this regard. The bill would make various changes in the act to reflect that it has been implemented, including eliminating the requirement to establish managed accounts invested in United States Treasuries, myRAs, or similar investments described above. The bill would authorize the board to delegate rulemaking authority to its executive director. The bill would authorize an employee to opt out of participation in the program by telephone and would eliminate a condition relating to contribution amounts that depends on the length of time that an employee has contributed to the program. The bill would grant the board the power to administer the enforcement of employer compliance, including the power to impose specified penalties on employers who fail to allow eligible employees to participate in the program, subject to an appeals and collections process administered by the Franchise Tax Board, as specified below.

(2) Existing law authorizes the collection of various debts by the Franchise Tax Board, including fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, and other amounts imposed by state courts and delinquent tax debt due. Existing law, the Financial Information System for California (FI\$Cal) Act, establishes the FI\$Cal system, a single integrated financial management system for the state.



This bill would authorize penalties imposed on an employer under the CalSavers Retirement Savers Program for failure to comply with the program to be referred by the CalSavers Retirement Savings Board to the Franchise Tax Board (FTB) for collection under guidelines prescribed by the FTB. The bill would require the FTB to establish criteria, including a minimum dollar amount subject to referral and collection. The bill, upon written notice to a noncompliant employer, would treat amounts referred to the FTB as final and payable and would authorize the amounts to be collected from the eligible employer by the FTB in any manner authorized for collection of a delinquent income tax liability, except as specified. The bill would establish specified administrative procedures, including an appeals process. The bill would require amounts collected by the FTB to be transmitted to the CalSavers Retirement Savings Board for deposit in the CalSavers Retirement Savings Trust or remitted by means of the Fi\$Cal system. By authorizing amounts collected by the FTB to be transferred to the board for deposit into the CalSavers Retirement Savings Trust, a continuously appropriated trust, the bill would make an appropriation.

Existing law makes it a misdemeanor, except as specified, for the FTB or any deputy, agent, clerk, or other officer or employee of the state who has access to returns, reports, or documents filed under the franchise and income tax laws to disclose information regarding income or particulars from those documents.

This bill, notwithstanding that provision, would authorize the FTB to disclose information to the CalSavers Retirement Savings Board to facilitate the collection of amounts due and the appeals of the determination of the board, as specified.

(3) Existing law grants the Employment Development Department (EDD) the power to administer enforcement of employer compliance with the CalSavers Retirement Savings Program. Existing law requires EDD to assess a penalty on any eligible employer that fails to make the program available to employees. Existing law makes these provisions operative when the board notifies the Director of Employment Development that enforcement should proceed and the board and the Director of Employment Development agree to a reasonable implementation timeline.

This bill would repeal the above provisions.

(4) Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial, medicinal, and adult-use cannabis activities. MAUCRSA generally divides responsibility for the state licensure and regulation of commercial cannabis activity among the Department of Food and Agriculture, the State Department of Public Health, and the Bureau of Cannabis Control, which are generally referred to as licensing authorities.

This bill would require the licensing authorities described above to provide specified information regarding licensees to the CalSavers Retirement Savings Board upon request by the board.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

DIGEST KEY

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

BILL TEXT can be found at:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB102](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB102)

**Appendix E: Amendment to Illinois HB0017 (Enrolled)**

Rep. Will Guzzardi

Filed: 3/15/2021

10200HB0117ham001

LRB102 00216 JLS 23604a

1 AMENDMENT TO HOUSE BILL 117

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 117 as follows:

3 on page 2, lines 1 and 2, by replacing "one employee" with "5  
4 employees"; and

5 on page 2, lines 19 and 20, by replacing "~~or small employer~~"  
6 with "or small employer"; and

7 on page 3, by replacing lines 1 through 8 with the following:

8 "Small employer" means a person or entity engaged in a

9 business, industry, profession, trade, or other enterprise in

10 Illinois, whether for profit or not for profit, that (i)

11 employed less than 5 ~~25~~ employees during any quarter of ~~at any~~

12 ~~one time in the State throughout~~ the previous calendar year,

13 or (ii) has been in business less than 2 years, or both items

14 (i) and (ii), but that notifies the Board that it is interested

15 in being a participating employer."; and

1 on page 9, by replacing lines 16 through 18 with the following:

2 "The enrollment deadline for employers with fewer than 25

3 employees and more than 15 employees shall be no sooner than

4 September 1, 2022. The enrollment deadline for employers with

5 at least 5 employees but not more than 15 employees shall be no

6 sooner than September 1, 2023. Board's implementation timeline

7 shall ensure that all employees are required to be enrolled in

8 the Program by December 31, 2020. The provisions of this

9 Section shall be in";and

10 on page 10, by replacing lines 5 through 12 with the following:

11 "Program. Small employers may, but are not required to,

12 provide payroll deduction retirement savings arrangements for

13 each employee who elects to participate in the Program. ~~Small~~

14 ~~employers' use of automatic enrollment for employees is~~

15 ~~subject to final rules from the United States Department of~~

16 ~~Labor.~~ Utilization of automatic enrollment by small employers

17 may be allowed only if it does not create employer liability

18 under the federal Employee Retirement Income Security Act.";

19 and

20 on page 14, line 4, by replacing "90" with "12090"; and

21 on page 14, by replacing line 8 with the following:

22 "subsection (c) of this Section or come into full compliance

1 with the Program as required under Section 60 of this Act.;

2 and

3 on page 14, line 9, by replacing "90" with "120~~90~~"; and

4 on page 14, line 19, by replacing "90" with "120~~90~~"; and

5 on page 16, line 11, by replacing "90" with "120~~90~~".

[END OF REPORT AND APPENDICES]

**Virginia529<sup>SM</sup>**  
*Dream Save Achieve*