

No. 43. An act relating to the establishment of VT Saves.

(S.135)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. chapter 18 is added to read:

CHAPTER 18. VT SAVES

§ 531. DEFINITIONS

As used in this chapter:

(1) “Contribution level” means the contribution rate for the participant that may be expressed as one of the following:

(A) A percentage of the participant’s taxable wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

(B) A dollar amount up to the maximum deductible amount for the participant’s taxable year under Section 219(b)(1) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

(C) In the absence of an affirmative election by the participant, five percent of the participant’s taxable wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time. The contribution level of a participant who

customarily and regularly receives gratuities in conjunction with the participant's employment shall be a percentage of such participant's wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

(2) "Covered employee" means an individual who is 18 years of age or older who is employed by a covered employer and who has wages or other compensation that are allocable to the State during a calendar year. A covered employee may include a part-time, seasonal, or temporary employee only to the extent permitted in rules adopted by the Treasurer. A covered employee shall not include:

(A) any employee covered under the federal Railway Labor Act, 45 U.S.C § 151;

(B) any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's units or instrumentalities; or

(C) any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension trust fund.

(3) "Covered employer" means a person, entity, or subsidiary engaged in a business, industry, profession, trade, or other enterprise in the State, whether for profit or not for profit, that has not offered to an employee, or is within a control group that maintains or contributes to, effective in form or

operation at any time within the current calendar year or two preceding calendar years, a specified tax-favored retirement plan. If an employer does not maintain a specified tax-favored retirement plan for a portion of a calendar year ending on or after the effective date of this chapter but does adopt such a plan for the remainder of that calendar year, the employer is not a covered employer for the remainder of the year. A covered employer does not include:

(A) the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's units or instrumentalities;

(B) any employer that has not been in business during both the current calendar year and the preceding calendar year.

(4) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C § 1001 et seq.

(5) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

(6) "IRA" means a traditional IRA or a Roth IRA.

(7) "Participant" means an individual who has an IRA under the Program.

(8) "Payroll deduction IRA or payroll deduction IRA arrangement" means an arrangement by which an employer allows employees to contribute to an IRA by means of payroll deduction.

(9) “Program” means the VT Saves Program established in accordance with this chapter.

(10) “Roth IRA” means a Roth individual retirement account or Roth individual retirement annuity described in Section 408A of the Internal Revenue Code.

(11) “Specified tax-favored retirement plan” means a plan, program, or arrangement that is tax qualified under or described in, and satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code, without regard to whether it constitutes an employee benefit plan under ERISA.

(12) “Traditional IRA” means a traditional individual retirement account or traditional individual retirement annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(13) “Trust” means the trust in which the assets of the Program are held.

(14)(A) “Vendor” means:

(i) a federally regulated retirement plan sponsor conducting business in the State, including a federally regulated investment company, program administrator, custodian or trustee, or an insurance company; or

(ii) a company conducting business in the State to:

(I) provide ancillary services, including technological, payroll, or recordkeeping services, and

(II) offer retirement plans or payroll deposit individual retirement account arrangements using products of regulated retirement plan sponsors.

(B) “Vendor” does not mean individual registered representatives, brokers, financial planners, or agents.

(15) “Vermont Retirement Security Fund” means the fund established in section 534 of this chapter for the sole purpose of paying the administrative costs and expenses of the Program.

(16) “Wages” means any compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by an employee from an employer during a calendar year.

§ 532. VT SAVES PROGRAM; ESTABLISHMENT

(a) Establishment; purpose. There is established the VT Saves Program (Program), administered by the Office of the State Treasurer, for the purpose of increasing financial security for Vermonters by providing access to an IRA for Vermont employees of companies that do not currently offer a retirement savings program. The Program shall be designed to facilitate portability of benefits through withdrawals, rollovers, and direct transfers from an IRA and achieve economies of scale and other efficiencies to minimize costs. The Program shall:

(1) allow a covered employee to contribute to an IRA under the Program, which may be contributed through a payroll deduction; and

(2) notwithstanding any other provision of law to the contrary, require each covered employer to offer its covered employees the choice to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out.

(b) Type of IRA. The type of IRA to which contributions are made pursuant to subsection (a) of this section shall be a Roth IRA; provided, however, the Treasurer is authorized to add an option for all participants to affirmatively elect to contribute to a traditional IRA instead of a Roth IRA.

(c) Contributions.

(1) Unless otherwise specified by the covered employee, a covered employee shall automatically initially contribute five percent of the covered employee's salary or wages to the Program. A covered employee may elect to opt out of the Program at any time or contribute at any higher or lower rate, expressed as a percentage of salary or wages, or, as permitted by the Treasurer, expressed as a flat dollar amount, subject in all cases to the IRA contribution and eligibility limits applicable under the Internal Revenue Code at no additional charge.

(2) The Treasurer shall provide for, on a uniform basis, an annual increase of each active participant's contribution rate, by not less than one percent, but not more than eight percent, of salary or wages each year. Any

such increases shall apply to active participants, including participants by default with an option to opt out or participants who are initiated by affirmative participant election, provided that any increase is subject to the IRA contribution and eligibility limits applicable under the Internal Revenue Code.

(3) The Treasurer shall provide for direct deposit of contributions into investments under the Program, including a default investment such as a series of target date funds, and a limited number of investment alternatives, including a principal preservation option.

(4) Contributions by a covered employer are not required or permitted under the Program.

(5) Each participant owns the contributions to, and earnings on, amounts contributed to the participant's account under the Program. The State and covered employers have no proprietary interest in those contributions or earnings.

(d) Administration. The Treasurer shall administer and implement the provisions of this chapter or contract with a vendor to administer the Program and manage the investments in accordance with this chapter, pursuant to the following:

(1) The Program shall be designed and implemented in a manner consistent with federal law to the extent that it applies and consistent with the Program not being preempted by, and the payroll deduction IRAs and covered employers not being subject to, ERISA.

(2) The costs and expenses incurred to initiate, implement, maintain, manage, and administer the Program and its investments are paid or defrayed from investment returns or assets of the Program or through fees, charges, or funds, whether account based, asset based, per capita, or otherwise, to the extent permitted under federal and State law.

(3) The Treasurer shall establish the following processes and requirements to administer the Program:

(A) processes for enrollment and contributions to an IRA under the Program, including:

(i) withholding by covered employers of employee payroll deduction contributions from wages and remittance for deposit to an IRA;

(ii) automatic enrollment in a payroll deduction IRA and opt-outs by covered employees, including self-employed individuals and independent contractors, through payroll deduction or otherwise; and

(iii) the making of default contributions using default investments and participant selection of alternative contribution rates or amounts and alternative investments from among the options offered under the Program;

(B) processes for phasing in enrollment of eligible individuals, including phasing in enrollment of covered employees by size or type of covered employer;

(C) processes for a participant to make nonpayroll contributions to accounts under the Program;

(D) processes for an employer to be determined to be exempt from the Program because the employer sponsors a specified tax-favored retirement plan; and

(E) requirements for the determination of whether a part-time, seasonal or temporary employee is a covered employee eligible to participate in the Program.

(e) Records and accounting. The Treasurer shall maintain separate records and accounting for each account under the Program and allow for participants to maintain their accounts regardless of place of employment and to roll over funds into other IRAs or other retirement accounts.

(f) Reports. Annually, the Treasurer shall send a report to each participant detailing the status of the participant's account. Each participant shall also be granted frequent or continual online access to information on the status of that participant's account.

(g) Outreach and disclosures. The Treasurer shall conduct outreach to individuals, employers, other stakeholders and the public regarding the Program, including specifying the contents, frequency, timing and means of required disclosures from the Program to covered employees, participants, other individuals eligible to participate in the Program, covered employers and other interested parties.

(h) Participant accounts.

(1) Interest, investment earnings, and investment losses shall be allocated to each participant's individual retirement account.

(2) A participant's benefit under the Program shall be equal to the balance in such participant's individual retirement account as of any applicable measurement date prescribed by the Program.

(i) Program assets.

(1) The Treasurer is authorized to establish a trust or custodial accounts meeting the requirements of Section 408(a) or (c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or any other applicable federal law requirements for Program participants' investments and assets. Any trust established pursuant to this chapter shall be considered an instrumentality of the State and shall not be subject to ERISA.

(2) No assets of the Program or Fund as set forth in section 534 of this chapter shall be transferred to the General Fund or to any other fund of the State or otherwise encumbered or used for any other purpose.

(3) All contributions to an IRA under the Program shall be used only to pay benefits to participants, to pay the cost of administering the Program, or to make investments for the benefit of the Program.

(j) Fees.

(1) The Treasurer may require that each participant be charged a fee to defray Program costs. The amount and method of collection of such fee shall be determined by the Treasurer, provided that the fee shall not exceed \$30.00 per participant in each calendar year.

(2) No employer shall be required to fund or be responsible for collecting fees from participants.

§ 533. DUTIES OF THE STATE TREASURER

In carrying out the purposes of this chapter, the Treasurer:

(1) May adopt such rules, pursuant to the Vermont Administrative Procedure Act, as the Treasurer determines to be necessary or advisable for the implementation and general administration and operation of the Program, including rules governing:

(A) the distribution of funds from the Program and promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the Program to other IRAs or to tax-qualified plans that accept such rollovers or transfers; and

(B) that each participant's initial contributions, up to a specified dollar amount or for a specified period of time, are required to be invested in a principal preservation investment or must be defaulted into such an investment, unless the participant affirmatively opts for a different investment for those contributions.

(2) May make and enter into contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements to collaborate, cooperate, coordinate, contract, or combine resources, investments, or administrative functions with other governmental entities, including States or their agencies or instrumentalities that maintain or are establishing retirement savings programs compatible with the Program, including collective, common, or pooled investments with other funds of other States' programs with which the assets of the Program and Trust are permitted by law to be collectively invested, to the extent necessary or desirable for the effective and efficient design, administration, and implementation of the Program. The Treasurer is authorized to use sole source or simplified bid processes as may be consistent with the purposes of this chapter.

(3) May contract with financial institutions, a trustee, a record keeper, investment managers, investment advisors, other administrative, professional and expert advisors and service providers or other organizations offering or servicing retirement programs.

(4) Shall establish criteria and guidelines for the Program to offer qualified retirement investment choices.

(5) Shall cause the Program and accounts established under the Program to be designed, established, invested, and operated in accordance with best practices for retirement savings accounts and to avoid preemption of the Program by federal law.

(6) May apply for and accept any grants, gifts, legislative appropriations, loans, and other funds from the State, any unit of federal, state, or local government or any other person, firm, or entity to defray Program costs.

(7) Shall evaluate the need for, and procure if necessary, insurance against any loss in connection with the property, assets, or activities of the Program as well as establish procedures for abandoned accounts pursuant to 27 V.S.A. chapter 13.

(8) Shall enter into agreement with the Vermont Department of Taxes to:

(A) facilitate the checking of Program eligibility for employers and employees; and

(B) pursuant to 32 V.S.A. § 3102(e), share tax return information sufficient to verify wages to determine the ability of an individual to be covered by the Program.

(9) May enter into an intergovernmental agreement or memorandum of understanding with any agency or instrumentality of the State to receive outreach, technical assistance, enforcement, and compliance services; collection or dissemination of information pertinent to the Program, subject to such obligations of confidentiality as may be agreed to or required by law; or other services or assistance. The State and any agencies or instrumentalities of the State that enter into such agreements or memoranda of understanding shall

collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the Program. The agreements or memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

(10) Discharge the Treasurer's duties as fiduciary with respect to the Program solely in the interest of the Participants as follows: for the exclusive purpose of providing benefits to Participants and defraying reasonable expenses of administering the Program and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

§ 534. VERMONT RETIREMENT SECURITY FUND

(a) There is established the Vermont Retirement Security Fund to be administered by the State Treasurer.

(b) The Fund shall consist of the following:

(1) any monies appropriated to the Fund by the General Assembly;

(2) any monies transferred to the Fund from the federal government,

other state agencies, or other governmental source;

(3) any monies from the payment of fees, penalties, and the payment of other money due to the Program; and

(4) any gifts, grants, or donations made to the Fund and any gifts, grants, donations, or investments received by the Treasurer.

(c) The Treasurer shall credit to the Fund all interest and income derived from the deposit and investment of monies in the Fund.

(d) Any unexpended and unencumbered monies at the end of a fiscal year shall remain in the Fund.

§ 535. PENALTIES

(a) Failure to enroll. If a covered employer fails to enroll a covered employee without reasonable cause, the covered employer is subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the Program or had not opted out of participation in the Program. The amount of any penalty imposed on a covered employer for the failure to enroll a covered employee without reasonable cause is determined as follows:

(1) prior to October 1, 2025, the maximum penalty per covered employee is \$10.00;

(2) beginning on October 1, 2025 and ending on September 30, 2026, the maximum penalty per covered employee is \$20.00;

(3) on or after October 1, 2026, the maximum penalty per covered employee is \$75.00.

(b) Waivers. The Treasurer is authorized to establish a rule waiving the penalty for a covered employer for any failure to enroll a covered employee for

which it is established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirements of this chapter, provided that:

(1) no penalty shall be imposed on any failure for which it is established that the covered employer subject to liability for the penalty did not know that the failure existed and exercised reasonable diligence to meet the requirements of this subsection above;

(2) no penalty shall be imposed on any failure if:

(A) the covered employer subject to liability for the penalty exercised reasonable diligence to meet those requirements; and

(B) the covered employer complies with the requirements set forth in subdivision (1) of this subsection (b) with respect to each covered employee by the end of the 90-day period beginning on the first date the covered employer knew, or exercising reasonable diligence would have known, that the failure existed; and

(3) in the case of a failure that is due to reasonable cause and not to willful neglect, the Treasurer may waive all or part of the penalty to the extent that the payment of the penalty would be excessive or otherwise inequitable relative to the failure involved.

§ 536. PROTECTION FROM LIABILITY

(a) Employer protection from liability.

(1) A covered employer shall not be considered a fiduciary in relation to the Program.

(2) A covered employer or other employer shall not be liable for and shall not bear responsibility for:

(A) any employee's decision to participate in or opt out of the Program;

(B) any investment decisions of any participant;

(C) the administration, investment, investment returns, or investment performance of the Program, including any interest rate or other rate of return on any contribution or account balance;

(D) the Program design or the benefits paid to participants;

(E) an individual's awareness of or compliance with the conditions and other provisions of the tax laws that determine which individuals are eligible to make tax-favored contributions to an IRA, in what amount and in what time frame and manner; or

(F) any loss, deficiency, failure to realize any gain or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the Program.

(b) Protection for the State and others. The Treasurer and Program:

(1) have no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine

which individuals are eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;

(2) have no duty, responsibility, or liability to any party for the payment of any benefits under the Program, regardless of whether sufficient funds are available under the Program to pay such benefits;

(3) shall not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

(4) shall not be liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of participating in the Program.

§ 537. CONFIDENTIALITY

The Treasurer shall establish policies and procedures, consistent with the Vermont Public Records Act and other statutory provisions, for the Program participants' personal and confidential information.

§ 538. ACCOUNTING AND REPORTS

Beginning on January 15, 2024, and annually thereafter, the Treasurer shall submit a report to the Governor and the House Committees on Commerce and Economic Development and on Government Operations and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations detailing the activities, operations, receipts, and expenditures of the Program during the preceding calendar year.

and any other information regarding the Program. The report shall include, as applicable, the number of participants, the investment options, rates of return, and the projected activities of the Program for the current calendar year.

Sec. 2. VT SAVES; IMPLEMENTATION

(a) Subject to an appropriation from the General Assembly, the State Treasurer shall implement the VT Saves Program (Program), established in 3 V.S.A. chapter 18, as follows:

(1) Beginning on July 1, 2025, all covered employers with 25 or more covered employees shall offer the Program to all covered employees.

(2) Beginning on January 1, 2026, all covered employers with 15 to 24 covered employees shall offer the Program to all covered employees.

(3) Beginning on July 1, 2026, all covered employers with five to 14 covered employees shall offer the Program to all covered employees.

(b) As used in this section, “covered employer” and “covered employee” have the same meanings as in 3 V.S.A. § 531.

Sec. 3. REPEALS

(a) 2017 Acts and Resolves No. 69, Sec. C.1 (Green Mountain Secure Retirement Plan) is repealed.

(b) 2019 Acts and Resolves No. 72, Sec. C.114 (amending 2017 Acts and Resolves No. 69) is repealed.

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Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

Date Governor signed bill: June 1, 2023