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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

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

Introduced By: Representatives Shanley, Shekarchi, Barros, Vella-Wilkinson, and
Williams

Date Introduced: February 06, 2020

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

3 CHAPTER 23

4 RHODE ISLAND SECURE CHOICE RETIREMENT SAVINGS TRUST ACT

5 **35-23-1. Short title.**

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

8 **35-23-2. Definitions.**

9 As used in this chapter:

10 (1) "Board" means the Rhode Island secure choice retirement savings investment board.

11 (2) "RISavers retirement savings program" or "program" means a retirement savings
12 program offered by the Rhode Island secure choice retirement savings trust.

13 (3) "Eligible employee" means a person who is employed by an eligible employer.

14 "Eligible employee" does not include:

15 (i) Any employee covered under the federal Railway Labor Act (45 U.S.C. Sec. 151), or
16 any employee engaged in interstate commerce not subject to the legislative powers of the state,
17 except insofar as application of this chapter is authorized under the United States Constitution or
18 laws of the United States; or

1 (ii) Any employee on whose behalf an employer makes contributions to a Taft-Hartley
2 pension trust fund.

3 (4) "Eligible employer" means a person or entity engaged in a business, industry,
4 profession, trade, or other enterprise in the state, whether for-profit or not-for-profit, excluding
5 the federal government, the state, any county, any municipal corporation, or any of the state's
6 units or instrumentalities, that has five (5) or more employees and that satisfies the requirements
7 to establish or participate in a payroll deposit retirement savings arrangement or an employer of a
8 provider of in-home supportive services. "Eligible employer" does not include an employer that
9 provides a retirement savings program as described in § 35-23-16.

10 (5) "IRA" means an individual retirement account or individual retirement annuity under
11 Section 408(a), 408(b), or 408A of Title 26 of the United States Code.

12 (6) "Participating employer" means an eligible employer that provides a payroll deposit
13 retirement savings arrangement provided for by this chapter for eligible employees.

14 (7) "Payroll deposit retirement savings arrangement" means an arrangement by which an
15 employer allows employees to remit payroll deduction contributions to a retirement savings
16 program, which may include an IRA, and in the case of a payroll deduction IRA arrangement, to
17 remit specifically to an IRA.

18 (8) "Trust" means the Rhode Island secure choice retirement savings trust established by
19 this chapter.

20 (9) "Vendor" means an investment company registered or exempt from registration
21 pursuant to the provisions of the general laws or a life insurance company qualified to do business
22 in Rhode Island that provides retirement investment products. "Vendor" also includes a company
23 that is registered to do business in Rhode Island that provides payroll services or recordkeeping
24 services and offers retirement plans or payroll deduction IRA arrangements using products of
25 regulated investment companies and insurance companies qualified to do business in Rhode
26 Island. "Vendor" shall include individual registered representatives, brokers, financial planners,
27 or agents.

28 **35-23-3. Creation, membership, and terms of the Rhode Island secure choice**
29 **retirement savings investment board.**

30 (a) There is authorized, created, and established a public corporation of the state, having a
31 distinct legal existence from the state and not constituting a department of the state government,
32 with the politic and corporate powers set forth in this chapter, to be known as the Rhode Island
33 secure choice retirement savings investment board (the "board"), to carry out the provisions of
34 this chapter. The board is constituted as a public instrumentality and agency exercising public and

1 essential governmental functions, and the exercise by the board of the powers conferred by this
2 chapter shall be deemed and held to be the performance of an essential governmental function of
3 the state.

4 (b) It is the intent of the general assembly by the passage of this chapter to create and
5 establish a public corporation and instrumentality and agency of the state for the purpose of the
6 activities authorized by this chapter, and to vest the corporation with all powers, authority, rights,
7 privileges, and titles that may be necessary to enable it to accomplish those purposes. This
8 chapter shall be liberally construed in conformance with the purpose expressed in this section.

9 (c) The powers of the corporation shall be vested in nine (9) members, consisting of the
10 general treasurer, or designee, who shall act as chairperson; the director of administration, or
11 designee; the director of the department of business regulation, or designee; an individual with
12 retirement and investment expertise to be appointed by the governor with advice and consent of
13 the senate for an initial term of two (2) years; a member of the public to be appointed by the
14 governor with advice and consent of the senate for an initial term of one year; an individual with
15 small business administration experience to be appointed by the governor with the advice and
16 consent of the senate, for an initial term of two (2) years; an individual with expertise in finances
17 or investments to be appointed by the governor with the advice and consent of the senate, for an
18 initial term of three (3) years; a certified public accountant to be appointed by the governor with
19 the advice and consent of the senate, for an initial term of three (3) years; and an individual with
20 expertise in retirement planning to be appointed by the governor with the advice and consent of
21 the senate, for an initial term of one year.

22 (d) After the initial term, all appointed members shall serve staggered three (3) year terms
23 or until their respective successors are appointed and qualified after expiration of the appointed
24 term.

25 (e) Any vacancy occurring in the office of a member by death, resignation, or otherwise
26 shall be filled in the same manner as the original appointment.

27 (f) Members shall receive no compensation for the performance of their duties but may
28 be reimbursed reasonable expenses.

29 (g) The members of the board shall at regular intervals at least eight (8) times a year
30 conduct business meetings for the purpose of carrying out its general business. The meetings shall
31 be open to the public and all records and minutes will be a matter of public record. The board
32 shall be considered a "public body" and shall be subject to the provisions of chapter 46 of title 42
33 ("open meetings") and to the provisions of title 38 concerning public records.

34 (h) The board shall continue until its existence is terminated by law.

1 (i) The state shall indemnify and hold harmless every past, present, or future member,
2 officer, or employee of the board who is made a party to or is required to testify in any action,
3 investigation, or other proceeding in connection with or arising out of the performance or alleged
4 lack of performance of that person's duties on behalf of the corporation. These persons shall be
5 indemnified and held harmless, whether they are sued individually or in their capacities as
6 members, officers, or employees of the board, for all expenses, legal fees and/or costs incurred by
7 them during or resulting from the proceedings, and for any award or judgment arising out of their
8 service to the corporation that is not paid by the board and is sought to be enforced against a
9 person individually, as expenses, legal fees, costs, awards or judgments occur. Provided,
10 however, that neither the state nor the corporation shall indemnify any member, officer, or
11 employee:

12 (1) For acts or omissions not in good faith or which involve intentional misconduct or a
13 knowing violation of law;

14 (2) For any transaction from which the member derived an improper personal benefit; or

15 (3) For any malicious act.

16 (j) No one shall be eligible for appointment unless they are a resident of the state.

17 **35-23-4. Rhode Island secure choice retirement savings trust.**

18 (a) There is hereby established a retirement savings trust known as the Rhode Island
19 secure choice retirement savings trust to be administered by the board for the purpose of
20 promoting greater retirement savings for Rhode Island private employees in a convenient,
21 voluntary, low-cost, and portable manner. After sufficient funds are made available for this
22 chapter to be operative, the Rhode Island secure choice retirement savings trust, as a self-
23 sustaining trust, shall pay all costs of administration only out of monies on deposit therein.

24 (b) The board shall segregate monies received by the Rhode Island secure choice
25 retirement savings trust into two (2) funds, which shall be identified as the program fund and the
26 administrative fund. Monies in the trust may be hereby continuously appropriated, without regard
27 to fiscal years, to the board for the purposes of this chapter.

28 (c) Monies in the program fund may be invested or reinvested by the treasurer or may be
29 invested in whole or in part under contract with the board of a Rhode Island public retirement
30 system, with private money managers, or a combination thereof, as determined by the board.

31 (d) Transfers may be made from the program fund to the administrative fund for the
32 purpose of paying operating costs associated with administering the trust and as required by this
33 chapter, including, but not limited to, board operations, program administrator and investment
34 expenses, and enforcement and compliance costs. On and after six (6) years from the date the

1 program is implemented, on an annual basis, expenditures from the administrative fund shall not
2 exceed more than one percent (1%) of the total program fund. All costs of administration of the
3 trust shall be paid out of the administrative fund.

4 (e) Any contributions paid by employees and employers into the trust shall be used
5 exclusively for the purpose of paying benefits to the participants of the RISavers retirement
6 savings program, for the cost of administration of the program, and for investments made for the
7 benefit of the program.

8 (f) The Rhode Island secure choice retirement savings trust is an instrumentality of the
9 state. Any security issued, managed, or invested by the Rhode Island secure choice retirement
10 savings investment board within the Rhode Island secure choice retirement savings trust on
11 behalf of an individual participating within the RISavers retirement savings program shall be state
12 income tax deferred for investment earnings to include interest, dividends and capital gains until
13 such time as withdrawal pursuant to the terms of this chapter.

14 **35-23-5. Payroll deduction.**

15 The RISavers retirement savings program shall include, as determined by the board, one
16 or more payroll deduction IRA arrangements.

17 **35-23-6. Powers of the board.**

18 (a) The board shall have the power and authority to do all of the following:

19 (1) Make and enter into contracts necessary for the administration of the trust;

20 (2) Adopt a seal and change and amend it from time to time;

21 (3) Cause monies in the program fund to be held and invested and reinvested;

22 (4) Accept any grants, gifts, legislative appropriation, and other monies from the state,
23 any unit of federal, state, or local government or any other person, firm, partnership, or
24 corporation for deposit to the administrative fund or the program fund;

25 (5) Contract with a program administrator and determine the duties of the program
26 administrator. The treasurer shall, on behalf of the board, appoint an executive director, who shall
27 not be a member of the board and who shall serve at the pleasure of the board. The treasurer shall
28 determine the duties of the executive director and other staff as appropriate and set their
29 compensation. The board may authorize the executive director to enter into contracts on behalf of
30 the board or conduct any business necessary for the efficient operation of the board;

31 (6) Make provisions for the payment of costs of administration and operation of the trust;

32 (7) Employ staff;

33 (8) Retain and contract with the board of a Rhode Island public retirement system, private
34 financial institutions, other financial and service providers, consultants, actuaries, counsel,

1 auditors, third-party administrators, and other professionals as necessary;
2 (9) Procure insurance against any loss in connection with the property, assets, or
3 activities of the trust;
4 (10) Procure insurance indemnifying each member of the board from personal loss or
5 liability resulting from a member's action or inaction as a member of the board;
6 (11) Set minimum and maximum investment levels in accordance with contribution
7 limits set for IRAs by the Internal Revenue Code;
8 (12) Collaborate and cooperate with the board of a Rhode Island public retirement
9 system, private financial institutions, service providers, and business, financial, trade,
10 membership, and other organizations to the extent necessary or desirable for the effective and
11 efficient design, implementation, and administration of the program and to maximize outreach to
12 eligible employers and eligible employees;
13 (13) Collaborate with, and evaluate the role of, licensed insurance agents and financial
14 advisors in assisting and providing guidance for eligible employees;
15 (14) Cause expenses incurred to initiate, implement, maintain, and administer the
16 program to be paid from contributions to, or investment returns or assets of, the program or
17 arrangements established under the program, to the extent permitted under state and federal law;
18 (15) Facilitate compliance by the retirement savings program or arrangements established
19 under the program with all applicable requirements for the program under the Internal Revenue
20 Code of 1986, including tax qualification requirements or any other applicable law and
21 accounting requirements, including providing or arranging for assistance to program sponsors and
22 individuals in complying with applicable law and tax qualification requirements in a cost-
23 effective manner; and
24 (16) Carry out the duties and obligations of the Rhode Island secure choice retirement
25 savings trust pursuant to this title and exercise any and all other powers as appropriate for the
26 effectuation of the purposes, objectives, and provisions of this title pertaining to the trust.
27 (b) The board shall adopt regulations it deems necessary to implement this chapter
28 consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure
29 that the program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.
30 **35-23-7. Additional authority of the board.**
31 In addition to the powers and authority granted to the board pursuant to § 35-23-6, the
32 board shall have the power and authority to do the following:
33 (1) Cause the retirement savings program or arrangements established under the program
34 to be designed, established, and operated, in a manner consistent with all of the following:

- 1 (i) In accordance with best practices for retirement savings vehicles;
- 2 (ii) To encourage participation, saving, and sound investment practices, and appropriate
3 selection of default investments; and
- 4 (iii) With simplicity, ease of administration for participating employers, and portability of
5 benefits.
- 6 (2) Arrange for collective, common, and pooled investment of assets of the retirement
7 savings program or arrangements, including investments in conjunction with other funds with
8 which those assets are permitted to be collectively invested, with a view to saving costs through
9 efficiencies and economies of scale;
- 10 (3) Disseminate educational information designed to educate participants about the
11 benefits of planning and saving for retirement and information to help them decide the level of
12 RISavers retirement savings program participation and savings strategies that may be appropriate
13 for them;
- 14 (4) Disseminate information concerning tax credits available to small business owners for
15 allowing their employees to participate in the program, and the federal Retirement Savings
16 Contribution Credit (Saver's Credit) available to low- and moderate-income households for
17 qualified savings contributions;
- 18 (5) Submit progress and status reports to participating employers and eligible employees;
- 19 (6) If necessary, determine the eligibility of an employer, employee, or other individual to
20 participate in the program;
- 21 (7) Evaluate and establish the process by which an eligible employee of an eligible
22 employer is able to contribute a portion of their salary or wages to the program for automatic
23 deposit of those contributions and the participating employer provides a payroll deposit
24 retirement savings arrangement to forward the employee contribution and related information to
25 the program or its agents. This evaluation and process may include, but is not limited to, financial
26 services companies and third-party administrators with the capability to receive and process
27 employee information and contributions for payroll deposit retirement savings arrangements or
28 other arrangements authorized by this chapter;
- 29 (8) Design and establish the process for the enrollment of program participants;
- 30 (9) Allow participating employers to use the program to remit employees' contributions
31 to their IRAs on their employees' behalf;
- 32 (10) Allow participating employers to make their own contributions to their employees'
33 IRAs, provided that the contributions would be permitted under the Internal Revenue Code and
34 would not cause the program to be treated as an employee benefit plan under the federal

1 Employee Retirement Income Security Act; and

2 (11) Evaluate and establish the process by which an individual or an employee of a
3 nonparticipating employer may enroll in and make contributions to the program.

4 **35-23-8. Disclosure of information.**

5 (a) Prior to opening the RISavers retirement savings program for enrollment, the board
6 shall design and disseminate to employers an employee information packet that shall be available
7 in an electronic format. The packet shall include background information on the program and
8 appropriate disclosures for employees.

9 (b) The disclosure form shall include, but not be limited to, all of the following:

10 (1) The benefits and risks associated with making contributions to the program;

11 (2) The mechanics of how to make contributions to the program;

12 (3) How to opt out of the program;

13 (4) The process for withdrawal of retirement savings; and

14 (5) How to obtain additional information on the program.

15 (c) In addition, the disclosure form shall clearly articulate the following:

16 (1) Employees seeking financial advice should contact financial advisors in that
17 employers do not provide financial advice, that employees are not to contact their employers for
18 financial advice, and that employers are not liable for employee investment decisions;

19 (2) This retirement program is not sponsored by the employer, and therefore the employer
20 is not responsible for the plan or liable as a plan sponsor; and

21 (3) The program fund is not guaranteed by the state.

22 (d) The disclosure form shall include a method for the employee to acknowledge that the
23 employee has read all of the disclosures and understands their content.

24 (e) The employee information packet shall also include an opt-out form for an eligible
25 employee to note their decision to opt out of participation in the program. The opt-out form shall
26 be simple and concise and drafted in a manner that the board deems necessary to appropriately
27 evidence the employee's understanding that they are choosing not to automatically deduct
28 earnings to save for retirement.

29 (f) The employee information packet with the disclosure and opt-out forms shall be made
30 available to eligible employees by the RISavers retirement savings program and supplied to
31 employees at the time of hiring. All new employees shall review the packet and acknowledge
32 having received it.

33 (g) The employee information packet with the disclosure and opt-out forms shall be
34 supplied to existing employees when the program is initially launched for a participating

1 employer.

2 **35-23-9. Vendor participation.**

3 (a) Prior to opening the RISavers retirement savings program for enrollment, if there is
4 sufficient interest by vendors to participate and provide the necessary funding, the board shall
5 establish both of the following:

6 (1) A retirement investments clearinghouse on its Internet website; and

7 (2) A vendor registration process through which information about employer-sponsored
8 retirement plans, and payroll deduction IRAs offered by private sector providers is made
9 available for consideration by eligible employers.

10 (b) Vendors that would like to participate in the board's retirement investments
11 clearinghouse and be listed on the board's Internet website as a registered vendor shall provide all
12 of the following information:

13 (1) A statement of experience in Rhode Island and in other states in providing employer-
14 sponsored retirement plans, and payroll deduction IRAs;

15 (2) A description by the vendor of the types of retirement investment products offered;

16 (3) A disclosure of all expenses paid directly or indirectly by retirement plan participants,
17 including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal
18 charges, surrender or deposit charges, management fees, and annual fees, supported by
19 documentation as required for prospectus disclosure by the National Association of Securities
20 Dealers and the Securities and Exchange Commission. Vendors shall be required to provide
21 information regarding the impact of product fees upon a hypothetical investment;

22 (4) The types of products, product features, services offered to participants, and
23 information about how to access product prospectuses or other relevant product information;

24 (5) A discussion of the ability, experience, and commitment of the vendor to provide
25 retirement counseling and education services, including, but not limited to, access to group
26 meetings and individual counseling by various means, including telephone and
27 telecommunications devices for the deaf (TDD), Internet, and face-to-face consultations by
28 registered representatives;

29 (6) A statement of the financial strength of the vendor by identifying its ratings assigned
30 by nationally recognized rating services that evaluate the financial strength of similar companies;

31 (7) The location of offices and counselors, individual registered representatives, brokers,
32 financial planners, agents, or other methods of distribution, of the vendor that would serve
33 employers and their employees in Rhode Island;

34 (8) A description of the ability of the vendor to comply with all applicable provisions of

1 federal and state law governing retirement plans, including minimum distribution requirements
2 and contribution limits;

3 (9) To the extent applicable, the demonstrated ability of the vendor to offer an
4 appropriate array of accumulation funding options, including, but not limited to, investment
5 options that offer guaranteed returns on contributions and the conversion of retirement savings
6 account balances to secure retirement income, a diversified mix of value, growth, growth and
7 income, hybrid, and index funds or accounts across large, medium, and small capitalization asset
8 classes, both domestic and international;

9 (10) A discussion of the range of administrative and customer services provided,
10 including asset allocation, accounting and administration of benefits for individual participants,
11 recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a
12 participant's instructions as to asset and contribution allocation, calculation of daily net asset
13 values, direct access for participants to their account information, periodic reporting that is not
14 less than quarterly to active participants on their account balances and transactions, and
15 compliance with the standard of care consistent with federal law and applicable to the provision
16 of investment services; and

17 (11) Certification by the vendor that the information provided to the board accurately
18 reflects the provisions of the retirement investment products it registers.

19 (c) Vendors shall supply information and data in the format prescribed by the board.

20 **35-23-10. Registration.**

21 Registration shall be offered to vendors once annually, and renewal of registration shall
22 be required at least once every five (5) years thereafter for vendors that elect to continue to
23 participate in the retirement investments clearinghouse. The board shall provide public notice
24 prior to the initial registration, annual registration, and registration renewal periods.

25 **35-23-11. Vendor removal.**

26 (a) The board may remove a vendor from the registry if the vendor submits materially
27 inaccurate information to the board, does not remit assessed fees within sixty (60) days, or fails to
28 submit notice of material changes to its registered investment products. Vendors found to have
29 submitted materially inaccurate information to the board shall be allowed sixty (60) days to
30 correct the information.

31 (b) The board shall remove a vendor from the registry if investments offered by the
32 vendor are products of a regulated investment company or insurance company that is not licensed
33 or has had its license revoked by the department of business regulation for engaging in conduct
34 prohibited by those entities.

1 (c) Vendors that are denied registration or removed from the registry may appeal and
2 have the denial or removal reviewed pursuant to the provisions of chapter 35 of title 42,
3 ("administrative procedures act").

4 **35-23-12. Retirement investments clearinghouse.**

5 (a) The board shall maintain the retirement investments clearinghouse containing the
6 information required in § 35-23-9 about the retirement investment products offered by each
7 registered vendor and objective comparisons of vendors and types of products.

8 (b) The clearinghouse shall include information on investment performance based upon
9 the investment's average annual total return as measured by a nationally recognized rating service
10 selected by the board for standard periods of time of not less than one year.

11 (c) The board's Internet website shall include a table showing, for each registered fund,
12 the total fee cost in dollars incurred by a shareholder who initially invested five thousand dollars
13 (\$5,000), earned a five percent (5%) rate of return for one-, five (5)-, ten (10)-, fifteen (15)-, and
14 twenty (20)-year time periods. This table shall be accompanied by a disclaimer that the rate of
15 return is for purposes of illustrating the respective impacts of different fee amounts on each
16 investment, and is not to predict future investment returns.

17 (d) The board shall include a notice of the existence of, and the Internet website address
18 for, the retirement investments clearinghouse in a notice disseminated to eligible employers.

19 **35-23-13. Failure to disclose fee.**

20 A vendor may not charge a fee associated with a registered product that is not disclosed.

21 **35-23-14. Cost of vendor registration system.**

22 (a) The actual cost of establishing the vendor registration system and the retirement
23 investments clearinghouse shall be borne equally by registered vendors, based on the total
24 number of registered vendors. Each registered vendor shall pay a one-time establishment fee
25 equal to a pro rata share of the establishment costs charged to vendors that register with the board
26 prior to the close of the initial registration period, as determined by the board. The one-time
27 establishment fee charged to vendors that register with the board after the completion of the
28 initial registration period shall be distributed equally among registered vendors that have paid the
29 establishment fee and credited toward subsequent maintenance and administrative fees charged to
30 each vendor.

31 (b) The actual cost of maintaining the vendor registration system and the retirement
32 investments clearinghouse, and the costs associated with publicizing the availability of the
33 clearinghouse to eligible employers, shall be borne equally by registered vendors, based on the
34 total number of registered vendors. Each registered vendor shall pay a renewal fee equal to a pro

1 rata share of the maintenance costs, as determined by the board.

2 (c) Each registered vendor shall pay an administrative fee for each retirement investment
3 product it offers to employers, which shall represent the actual costs associated with processing
4 the information related to the investment option and presenting it on the retirement investments
5 clearinghouse, as determined by the board.

6 (d) The board shall not divert Rhode Island secure choice retirement savings trust funds
7 to establish or maintain the vendor registration system or the retirement investments
8 clearinghouse.

9 **35-23-15. Board not responsible for inaccurate information.**

10 (a) The board and the program, and its officers and employees, are not responsible for,
11 and shall not be held liable for, the adequacy of the information provided by the participating
12 vendors and contained in the clearinghouse. The clearinghouse maintained by the board serves
13 only to provide information supplied by the participating vendors for the consideration of the
14 selection of retirement investment products.

15 (b) Participating vendors shall not utilize the program's logo, or claim or infer
16 endorsement or recommendation by the board or the program with respect to products and
17 services identified by the vendors in the clearinghouse. At the discretion of the board, a violation
18 of this section may lead to removal from the registry.

19 (c) The board and the program shall not be held liable for the actions of registered
20 vendors.

21 **35-23-16. Employer participation.**

22 (a) After the board opens the RISavers retirement savings program for enrollment, any
23 employer may choose to have a payroll deposit retirement savings arrangement to allow
24 employee participation in the program under the terms and conditions prescribed by the board.

25 (b) Within twelve (12) months after the board opens the program for enrollment, eligible
26 employers with more than one hundred (100) eligible employees and that do not offer a
27 retirement savings program pursuant to subsection (g) of this section shall have a payroll deposit
28 retirement savings arrangement to allow employee participation in the program.

29 (c) Within twenty-four (24) months after the board opens the program for enrollment,
30 eligible employers with more than fifty (50) eligible employees and that do not offer a retirement
31 savings program pursuant to subsection (g) of this section shall have a payroll deposit retirement
32 savings arrangement to allow employee participation in the program.

33 (d) Within thirty-six (36) months after the board opens the program for enrollment, all
34 other eligible employers that do not offer a retirement savings program pursuant to subsection (g)

1 of this section shall have a payroll deposit retirement savings arrangement to allow employee
2 participation in the program.

3 (e) The board, in its discretion, may extend the time limits defined in subsections (b)
4 through (d) of this section.

5 (f)(1) Each eligible employee shall be enrolled in the program unless the employee elects
6 not to participate in the program. An eligible employee may elect to opt out of the program by
7 making a notation on the opt-out form.

8 (2) Following initial implementation of the program pursuant to this section, at least once
9 every two (2) years, the board shall designate an open enrollment period during which eligible
10 employees that previously opted out of the program shall be given the employee information
11 packet with the disclosure and opt-out forms, for the employee to enroll in the program or opt out
12 of the program by making a notation on the opt-out form.

13 (3) An employee who elects to opt out of the program who subsequently wants to
14 participate through the employer's payroll deposit retirement savings arrangement may only
15 enroll during the board's designated open enrollment period or if permitted at an earlier time.

16 (g)(1) An employer that provides an employer-sponsored retirement plan, such as a
17 defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive
18 Match Plan for Employees (SIMPLE) plan, or that offers an automatic enrollment payroll
19 deduction IRA, shall be exempt from the requirements of the RISavers retirement savings
20 program, if the plan or IRA qualifies for favorable federal income tax treatment under the federal
21 Internal Revenue Code.

22 (2) An employer shall retain the option at all times to set up and offer a tax-qualified
23 retirement plan, instead of having a payroll deposit retirement savings arrangement to allow
24 employee participation in the RISavers retirement savings program.

25 (h) An eligible employee may also terminate their participation in the program at any
26 time in a manner prescribed by the board and thereafter by making a notation on the opt-out form.

27 (i) Unless otherwise specified by the employee, a participating employee shall contribute
28 three percent (3%) of the employee's annual salary or wages to the program.

29 (j) By regulation, the board may adjust the contribution amount set in subsection (i) of
30 this section to no less than two percent (2%) and no more than five percent (5%) and may vary
31 that amount within that two percent (2%) to five percent (5%) range for participating employees
32 according to the length of time the employee has contributed to the program.

33 (k) The board may implement annual automatic escalation of employee contributions.

34 (1) Employee contributions subject to automatic escalation shall not exceed eight percent

1 (8%) of salary.

2 (2) Automatic escalation shall result in no more than a one-percent-of-salary (1%)
3 increase in employee contributions per calendar year.

4 (3) A participating employee may elect to opt out of automatic escalation and may set his
5 or her contribution percentage rate at a level determined by the participating employee.

6 **35-23-17. Employer liability protection.**

7 (a) Employers shall not have any liability for an employee's decision to participate in, or
8 opt out of, the RISavers retirement savings program, or for the investment decisions of employees
9 whose assets are deposited in the program.

10 (b) Employers shall not be a fiduciary, or considered to be a fiduciary, over the Rhode
11 Island secure choice retirement savings trust or the program. The program is a state-administered
12 program, not an employer-sponsored program. If the program is subsequently found to be
13 preempted by any federal law or regulation, employers shall not be liable as plan sponsors. An
14 employer shall not bear responsibility for the administration, investment, or investment
15 performance of the program. An employer shall not be liable with regard to investment returns,
16 program design, and benefits paid to program participants.

17 (c) An employer's voluntary contribution pursuant to § 35-23-7(j) shall not in any way
18 contradict the provisions of this section or change the employer's relationship to the program or
19 an employer's obligations to employees.

20 (d) An employer shall not have civil liability, and no cause of action shall arise against an
21 employer, for acting pursuant to the regulations prescribed by the board defining the roles and
22 responsibilities of employers that have a payroll deposit retirement savings arrangement to allow
23 employee participation in the program.

24 **35-23-18. State immunity.**

25 The state shall not have any liability for the payment of the retirement savings benefit
26 earned by program participants pursuant to this chapter. The state, and any of the funds of the
27 state, shall have no obligation for payment of the benefits arising from this chapter.

28 **35-23-19. Annual audited financial report.**

29 (a) The board shall submit an annual audited financial report, prepared in accordance
30 with generally accepted accounting principles, on the operations of the Rhode Island secure
31 choice retirement savings trust by August 1 to the governor, and the legislature. The annual audit
32 shall be made by an independent certified public accountant and shall include, but not be limited
33 to, direct and indirect costs attributable to the use of outside consultants, independent contractors,
34 and any other persons who are not state employees.

1 (b) The annual audit shall be supplemented by the following information prepared by the
2 board:

3 (1) Any studies or evaluations prepared in the preceding year;

4 (2) A summary of the benefits provided by the trust including the number of participants
5 in the trust; and

6 (3) Any other information that is relevant in order to make a full, fair, and effective
7 disclosure of the operations of the Rhode Island secure choice retirement savings trust.

8 **35-23-20. Required favorable federal tax treatment.**

9 (a) The board shall not implement the program if the IRA arrangements offered fail to
10 qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the
11 Internal Revenue Code, or if it is determined that the program is an employee benefit plan under
12 the federal Employee Retirement Income Security Act.

13 (b) Prior to opening the program for enrollment, the board shall report to the governor
14 and legislature the specific date on which the program will start to enroll program participants
15 and that the following prerequisites and requirements for the program have been met:

16 (1) The program is structured in a manner to keep the program from being classified as an
17 employee benefit plan subject to the federal Employee Retirement Income Security Act;

18 (2) The payroll deduction IRA arrangements offered by the program qualify for the
19 favorable federal income tax treatment ordinarily accorded to IRA arrangements under the
20 Internal Revenue Code;

21 (3) The board has defined in regulation the roles and responsibilities of employers in a
22 manner to keep the program from being classified as an employee benefit plan subject to the
23 federal Employee Retirement Income Security Act; and

24 (4) The board has adopted a third-party administrator operational model that limits
25 employer interaction and transactions with the employee to the extent feasible.

26 **35-23-21. Prohibited conduct.**

27 A board member, program administrator, and other staff of the board shall not do any of
28 the following:

29 (1) Directly or indirectly have any interest in the making of any investment made for the
30 program, or in the gains or profits accruing from any investment made for the program;

31 (2) Borrow any funds or deposits of the trust, or use those funds or deposits in any
32 manner, for themselves or as an agent or partner of others; or

33 (3) Become an endorser, surety, or obligor on investments by the board.

34 **35-23-22. Duties of board and staff.**

1 (a) The board and the program administrator and staff, including contracted
2 administrators and consultants, shall discharge their duties as fiduciaries with respect to the trust
3 solely in the interest of the program participants as follows:

4 (1) For the exclusive purposes of providing benefits to program participants and
5 defraying reasonable expenses of administering the program; and

6 (2) By investing with the care, skill, prudence, and diligence under the circumstances
7 then prevailing that a prudent person acting in a like capacity and familiar with those matters
8 would use in the conduct of an enterprise of a like character and with like aims.

9 (b) The board, subject to its authority and fiduciary duty, shall design and implement the
10 RISavers retirement savings program as follows:

11 (1) For up to three (3) years following the initial implementation of the program, the
12 board shall establish managed accounts invested in United States Treasuries, or similar
13 investments; the board shall have the authority to provide for investment in accordance with the
14 provisions of federal law providing for tax deferred treatment;

15 (2) The board shall develop and implement an investment policy that defines the
16 program's investment objectives and shall establish policies and procedures enabling investment
17 objectives to be met in a prudent manner. The board shall seek to minimize participant fees and
18 strive to implement program features that provide maximum possible income replacement
19 balanced with appropriate risk in an IRA-based environment. The policy shall describe the
20 investment options available to holders of individual savings accounts established as part of the
21 program. Investment options may encompass a range of risk and return opportunities and allow
22 for a rate of return commensurate with an appropriate level of risk to meet the investment
23 objectives stated in the policy;

24 (3) The board shall annually prepare and adopt a written statement of investment policy
25 that includes a risk management and oversight program. The board shall consider the statement of
26 investment policy and any changes in the investment policy at a public hearing; and

27 (4) The risk management and oversight program shall include an effective risk
28 management system to monitor the risk levels of the RISavers retirement savings program
29 investment portfolio and ensure that the risks taken are prudent and properly managed. The
30 program shall be managed to provide an integrated process for overall risk management on both a
31 consolidated and disaggregated basis, and to monitor investment returns as well as risk to
32 determine if the risks taken are adequately compensated compared to applicable performance
33 benchmarks and standards.

34 (c) The board shall approve an investment management entity or entities, the costs of

1 which shall be paid out of funds held in the trust and shall not be attributed to the administrative
2 costs of the board in operating the trust. Not later than thirty (30) days after the close of each
3 month, the board shall place on file for public inspection during business hours a report with
4 respect to investments made pursuant to this section and a report of deposits in financial
5 institutions.

6 **35-23-23. Rules and regulations.**

7 (a) The board may adopt regulations to implement this chapter.

8 (b) The tax administrator in consultation with the board shall adopt rules and regulations
9 regarding the reporting and the deferral of taxers in accordance with the provisions of this
10 chapter.

11 **35-23-24. Effect on benefit means test.**

12 A payroll deposit IRA arrangement offered pursuant to the RISavers retirement savings
13 program shall have the same status as, and be treated consistently with, any other IRA for the
14 purpose of determining eligibility or benefit level for a program that uses a means test.

15 **35-23-25. Liberal construction.**

16 This chapter shall be construed liberally in order to effectuate its purpose. The purposes
17 of this chapter and all of its provisions with respect to the powers granted shall be broadly
18 interpreted to effectuate that intent and purposes and not as to any limitation of powers.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

1 This act would establish the Rhode Island secure choice retirement savings trust. The act
2 would establish an investment board which is a public corporation. The act would allow for
3 creation of IRA-type retirement investments managed by the investment board.

4 This act would take effect upon passage.

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LC003219
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