

2022 -- H 8048

LC005561

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

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

Introduced By: Representatives Williams, Giraldo, Batista, Diaz, Biah, Henries, Perez, Felix, Barros, and Cassar

Date Introduced: March 25, 2022

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 PROGRAM 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 Program Act."

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

9 As used in this chapter:

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

11 (2) "Eligible employee" means a person age eighteen (18) or older who is employed by an
12 eligible employer. "Eligible employee" does not include:

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

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

1 (3) "Eligible employer" means a person or entity engaged in a business, industry,
2 profession, trade, or other enterprise in the state, whether for-profit or not-for-profit, excluding the
3 federal government, the state, any county, any municipal corporation, or any of the state's units or
4 instrumentalities, that has five (5) or more employees and that satisfies the requirements to establish
5 or participate in a payroll deposit retirement savings arrangement. "Eligible employer" does not
6 include an employer that provides a tax-qualified retirement savings program as described in § 35-
7 23-10.

8 (4) "IRA" means an individual retirement account or individual retirement annuity under
9 Section 408(a), 408(b), or 408A of Title 26 of the United States Code (the federal Internal Revenue
10 Code).

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

13 (6) "Payroll deposit retirement savings arrangement" means an arrangement by which an
14 employer allows employees to remit payroll deduction contributions to RISavers retirement savings
15 program.

16 (7) "RISavers retirement savings program" or "program" means a retirement savings
17 program offered by the Rhode Island secure choice retirement savings program.

18 (8) "State investment commission" or "commission" means the state investment
19 commission as defined in § 35-10-1.

20 **35-23-3. Creation, membership, and terms of the Rhode Island secure choice**
21 **retirement savings board.**

22 (a) There is authorized, created, and established a public corporation of the state, having a
23 distinct legal existence from the state and not constituting a department of the state government,
24 with the politic and corporate powers set forth in this chapter, to be known as the Rhode Island
25 secure choice retirement savings board (the "board"), to carry out the provisions of this chapter.
26 The board is constituted as a public instrumentality and agency exercising public and essential
27 governmental functions, and the exercise by the board of the powers conferred by this chapter shall
28 be deemed and held to be the performance of an essential governmental function of the state.

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

34 (c) The powers of the corporation shall be vested in seven (7) members, consisting of the

1 general treasurer, or designee, who shall act as chairperson; the director of the department of
2 business regulation, or designee; two (2) members of the public to be appointed by the governor
3 with advice and consent of the senate, one of whom shall serve for an initial term of two (2) years,
4 and one of whom shall serve for an initial term of one year; an individual with small business
5 administration experience to be appointed by the treasurer with the advice and consent of the senate,
6 for an initial term of two (2) years; an individual with expertise in retirement planning to be
7 appointed by the treasurer with the advice and consent of the senate, whom shall serve for an initial
8 term of one year; and one member of the public to be appointed by the treasurer with advice and
9 consent of the senate, whom shall serve for an initial term of two (2) years.

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

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

15 (f) Members shall receive no compensation for the performance of their duties but may be
16 reimbursed necessary expenses.

17 (g) The members of the board shall at regular intervals at least four (4) times a year conduct
18 business meetings for the purpose of carrying out its general business. The board shall be
19 considered a "public body" for purposes of, and shall be subject to, the provisions of chapter 46 of
20 title 42 ("open meetings") and to the provisions of title 38 concerning public records.

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

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

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

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

1 (3) For any malicious act.

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

3 **35-23-4. Rhode Island secure choice retirement savings program.**

4 (a) There is hereby established a retirement savings program known as the Rhode Island
5 secure choice retirement savings program to be administered by the board for the purpose of
6 promoting greater retirement savings for Rhode Island private sector employees in a convenient,
7 voluntary, low-cost, and portable manner.

8 (b) The secure choice retirement savings program is a plan in which retirement savings are
9 accumulated in individual accounts for the exclusive benefit of the participants or their
10 beneficiaries. The program is established effective upon receipt of sufficient funds, at which time
11 contributions by employees begin.

12 **35-23-5. Investments.**

13 (a) The board may select an appropriate third-party administrator for the program and shall
14 adopt such plan, trust and/or custodial documents, with such features and attributes as the board
15 determines necessary or advisable in its discretion to effectuate the provisions of this chapter in
16 accordance with the following:

17 (1) The board may select one or more firm(s) or company(ies) to provide retirement
18 program investments, program administration, and communication services to employees who
19 participate in the retirement savings program. The program shall provide for appropriate long-term
20 retirement-oriented investments and shall include investment options as determined by the state
21 investment commission. In determining the firm or the company to provide these services, the
22 board shall consider the following:

23 (i) The financial stability of the company or firm;

24 (ii) The cost of the investments, program administration, and services to the members;

25 (iii) The experience of the company or firm in administering retirement savings plans;

26 (iv) The experience of the company or firm in providing education, counseling, and advice
27 to participants of retirement savings plans; and

28 (v) Any criminal convictions, securities or antitrust law violations, material civil or
29 regulatory fines or judgments against the company or firm which the company or firm shall be
30 required to disclose to the commission as part of the selection process.

31 (2) The program shall provide education, counseling, and objective employee-specific plan
32 advice to participants.

33 (3) The program shall include a limited number of investment options which shall include
34 either:

1 (i) Investment portfolio options that are constructed to reflect different risk profiles such
2 as conservative, moderate and aggressive; and/or

3 (ii) Options constructed to reflect different risk profiles that automatically reallocate and
4 rebalance contributions as an employee ages. There shall be investment options that prioritize the
5 securities of companies that demonstrate good governance, efficient use of environmental resources
6 and thoughtful management of social impact. All investment offerings shall be approved by the
7 state investment commission.

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

14 (c) The state investment commission shall adopt a written statement of investment policy
15 that includes a risk management and oversight program. The commission shall consider the
16 statement of investment policy and any changes in the investment policy at a public meeting.

17 **35-23-6. Payroll deduction.**

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

20 **35-23-7. Powers of the board.**

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

22 (1) Adopt a seal and change and amend it from time to time;

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

28 (3) Make provisions for the payment of costs of administration and operation of the
29 program;

30 (4) Employ staff;

31 (5) Retain and contract with of a Rhode Island public retirement system, consultants,
32 actuaries, counsel, auditors, and other professionals as necessary;

33 (6) Procure insurance against any loss in connection with the property, assets, or activities
34 of the program;

1 (7) Procure insurance indemnifying each member of the board from personal loss or
2 liability resulting from a member's action or inaction as a member of the board;

3 (8) Set minimum and maximum contribution levels in accordance with contribution limits
4 set for IRAs by the Internal Revenue Code;

5 (9) Collaborate and cooperate with a public retirement system, private financial
6 institutions, service providers, and business, financial, trade, membership, and other organizations
7 to the extent necessary or desirable for the effective and efficient design, implementation, and
8 administration of the program and to maximize outreach to eligible employers and eligible
9 employees;

10 (10) Collaborate with, and evaluate the role of, licensed insurance agents and financial
11 advisors in assisting and providing guidance for eligible employees;

12 (11) Cause expenses incurred to initiate, implement, maintain, and administer the program
13 to be paid from contributions to, or investment returns or assets of, the program or arrangements
14 established under the program, to the extent permitted under state and federal law;

15 (12) Facilitate compliance by the retirement savings program or arrangements established
16 under the program with all applicable requirements for the program under the Internal Revenue
17 Code of 1986, including tax qualification requirements or any other applicable law and accounting
18 requirements, including providing or arranging for assistance to program sponsors and individuals
19 in complying with applicable law and tax qualification requirements in a cost-effective manner;
20 and

21 (13) Carry out the duties and obligations of the Rhode Island secure choice retirement
22 savings program pursuant to this title and exercise any and all other powers as appropriate for the
23 effectuation of the purposes, objectives, and provisions of this title pertaining to the program.

24 (b) The board shall adopt regulations it deems necessary to implement this chapter
25 consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure
26 that the program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.

27 **35-23-8. Additional authority of the board.**

28 In addition to the powers and authority granted to the board pursuant to § 35-23-7, the
29 board shall have the power and authority to do the following:

30 (1) Cause the retirement savings program or arrangements established under the program
31 to be designed, established, and operated, in a manner consistent with all of the following:

32 (i) In accordance with best practices for retirement savings vehicles;

33 (ii) To encourage participation, saving, and sound investment practices; and

34 (iii) With simplicity, ease of administration for participating employers, and portability of

1 benefits.

2 (2) Disseminate educational information designed to educate participants about the benefits
3 of planning and saving for retirement and information to help them decide the level of RISavers
4 retirement savings program participation and savings strategies that may be appropriate for them;

5 (3) Disseminate information concerning state and federal tax credits available to small
6 business owners for allowing their employees to participate in the program, and any relevant state
7 or federal tax credits available for participating employees;

8 (4) Submit progress and status reports to participating employers and eligible employees;

9 (5) If necessary, determine the eligibility of an employer, employee, or other individual to
10 participate in the program;

11 (6) Evaluate and establish the process by which an eligible employee of an eligible
12 employer is able to contribute a portion of their salary or wages to the program for automatic deposit
13 of those contributions and the participating employer provides a payroll deposit retirement savings
14 arrangement to forward the employee contribution and related information to the program or its
15 agents. This evaluation and process may include, but is not limited to, financial services companies
16 and third-party administrators with the capability to receive and process employee information and
17 contributions for payroll deposit retirement savings arrangements or other arrangements authorized
18 by this chapter;

19 (7) Design and establish the process for the enrollment of program participants;

20 (8) Allow participating employers to use the program to remit employees' contributions to
21 their IRAs on their employees' behalf;

22 (9) Allow participating employers to make their own contributions to their employees'
23 IRAs; provided that, the contributions would be permitted under the Internal Revenue Code and
24 would not cause the program to be treated as an employee benefit plan under the federal Employee
25 Retirement Income Security Act; and

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

28 **35-23-9. Disclosure of information.**

29 (a) Prior to opening the RISavers retirement savings program for enrollment, the board
30 shall design and disseminate to employers an employee information packet that shall also be made
31 available in an electronic format. The packet shall include background information on the program
32 and appropriate disclosures for employees.

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

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

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

2 (3) How to opt-out of the program;

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

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

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

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

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

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

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

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

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

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

25 **35-23-10. Employer participation.**

26 (a) After the board opens the RISavers retirement savings program for enrollment, eligible
27 employers shall have a payroll deposit retirement savings arrangement to allow employee
28 participation in the program under the terms and conditions prescribed by the board.

29 (b) Within twelve (12) months after the board opens the program for enrollment, eligible
30 employers with more than one hundred (100) 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 (c) Within twenty-four (24) months after the board opens the program for enrollment,
34 eligible employers with more than fifty (50) eligible employees and that do not offer a retirement

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

3 (d) Within thirty-six (36) months after the board opens the program for enrollment, all other
4 eligible employers that do not offer a retirement savings program pursuant to subsection (g) of this
5 section shall have a payroll deposit retirement savings arrangement to allow employee participation
6 in the program.

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

9 (f)(1) Each eligible employee shall be enrolled in the program unless the employee elects
10 not to participate in the program. An eligible employee may elect to opt-out of the program at any
11 time by making a notation on the opt-out form.

12 (2) Following initial implementation of the program pursuant to this section, at least once
13 every year, the board shall designate an open enrollment period during which eligible employees
14 that previously opted out of the program may enroll in the program.

15 (3) An employee who elects to opt-out of the program who subsequently wishes to
16 participate through the employer's payroll deposit retirement savings arrangement may enroll at
17 any time.

18 (g)(1) An employer that provides an employer-sponsored retirement plan, such as a defined
19 benefit plan or a 401(k), 403(b), 457(b), Simplified Employee Pension (SEP) plan, or Savings
20 Incentive, Match Plan for Employees (SIMPLE) plan, or that offers an automatic enrollment payroll
21 deduction IRA, shall be exempt from the requirements of the RISavers retirement savings program,
22 if the plan or IRA qualifies for favorable federal income tax treatment under the federal Internal
23 Revenue Code.

24 (2) An employer shall retain the option at all times to set up and offer a tax-qualified
25 retirement plan, instead of facilitating employee participation in the RISavers retirement savings
26 program.

27 (h) By regulation, the board may set a default contribution rate which, unless otherwise
28 specified by the employee, shall be the amount of the employee's annual salary or wages
29 contributed to the program. Employees shall have the ability to elect to change their contribution
30 rate at any time with thirty (30) days' notice provided to the program administrator.

31 (i) The board may implement annual automatic escalation of employee contributions.

32 (j) Employee contributions subject to automatic escalation shall not exceed eight percent
33 (8%) of salary.

34 (2) Automatic escalation shall result in no more than a one percent (1%) of salary increase

1 in employee contributions per calendar year.

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

4 **35-23-11. Employer liability protection.**

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

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

15 (c) An employer's voluntary contribution pursuant to § 35-23-8(10) shall not in any way
16 contradict the provisions of this section or change the employer's relationship to the program or an
17 employer's obligations to employees.

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

22 **35-23-12. State immunity.**

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

26 **35-23-13. Annual audited financial report.**

27 (a) The board shall submit no later than December 31 an annual audited financial report,
28 prepared in accordance with generally accepted accounting principles, on the operations of the
29 Rhode Island secure choice retirement savings program to the governor, and the legislature. The
30 annual audit shall be made by an independent certified public accountant and shall include, but not
31 be limited to, direct and indirect costs attributable to the use of outside consultants, independent
32 contractors, and any other persons who are not state employees.

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

- 1 (1) Any studies or evaluations prepared in the preceding year;
2 (2) A summary of the benefits provided by the program including the number of
3 participants in the program; and
4 (3) Any other information that is relevant in order to make a full, fair, and effective
5 disclosure of the operations of the Rhode Island secure choice retirement savings program.

6 **35-23-14. Required favorable federal tax treatment.**

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

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

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

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

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

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

24 **35-23-15. Prohibited conduct.**

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

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

29 (2) Borrow any funds or deposits of the program, or use those funds or deposits in any
30 manner, for themselves or as an agent or partner of others; or

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

32 **35-23-16. Duties of board and staff.**

33 The board, commission, and the program administrator and staff, including contracted
34 administrators and consultants, shall discharge their duties as fiduciaries with respect to the

1 program for the exclusive purposes of providing benefits to program participants and defraying
2 reasonable expenses of administering the program.

3 **35-23-17. Penalties.**

4 (a) The board shall have the power and duties necessary to administer the enforcement of
5 employer compliance with this title including the ability to impose penalties.

6 (b) The board shall issue a notice of noncompliance to each employer that fails to allow its
7 eligible employees to participate in the Rhode Island secure choice savings retirement program
8 pursuant to this title.

9 (c) Each eligible employer that, without good cause, fails to allow its eligible employees
10 to participate in the program within thirty (30) days from the date the notice of penalty was issued,
11 shall be subject to a penalty of two hundred fifty dollars (\$250) per eligible employee. Proceeds of
12 such penalties, after deducting enforcement expenses, shall be deposited for the benefit of the
13 program.

14 (d) The director of the department of labor and training shall assist the board in its
15 enforcement of this chapter.

16 **35-23-18. Rules and regulations.**

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

18 (b) The tax administrator in consultation with the board shall adopt rules and regulations
19 regarding the reporting and the deferral of taxes in accordance with the provisions of this chapter.

20 **35-23-19. Effect on benefit means test.**

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

24 **35-23-20. Liberal construction.**

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

- 1 This act would establish the Rhode Island secure choice retirement savings program, which
- 2 provides for the creation of IRA-type retirement investments managed by a board established by
- 3 the act which would be a public corporation.
- 4 This act would take effect upon passage.

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